*** CAPITAL CASE ***

No. _____

IN THE

Supreme Court of the United States

ANTHONY FLOYD WAINWRIGHT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

EXECUTION SCHEDULED FOR JUNE 10, 2025, AT 6:00 P.M.

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Florida Supreme Court Order

Affirming Denial of Eighth Amended

Successive Motion for Postconviction Relief

June 3, 2025

Supreme Court of Florida

No. SC2025-0708

ANTHONY FLOYD WAINWRIGHT,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

June 3, 2025

PER CURIAM.

Anthony Floyd Wainwright is a prisoner under sentence of death for whom a warrant has been signed and an execution set for June 10, 2025. He appeals the circuit court's order summarily denying his amended eighth successive motion for postconviction relief filed under Florida Rule of Criminal Procedure 3.851.[1] For the reasons that follow, we affirm. We likewise deny his motion to stay execution.

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1. We have jurisdiction. *See* art. V, § 3(b)(1), Fla. Const.

I

Wainwright was convicted and sentenced to death for the 1994 murder of C.G. *Wainwright v. State* (*Wainwright I*), 704 So. 2d 511, 512 (Fla. 1997). After Wainwright and co-perpetrator Richard Hamilton escaped from prison in North Carolina, they stole guns and a car and drove to Florida. Once in Florida, Wainwright and Hamilton accosted C.G., a young mother of two, at gunpoint as she loaded groceries into her car in a Winn-Dixie parking lot. They stole the car and took off with C.G. "They raped, strangled, and executed [C.G.] by shooting her twice in the back of the head, and were arrested the next day in Mississippi following a shootout with police." *Id.*

Wainwright was found guilty of first-degree murder, robbery, kidnapping, and sexual battery, all with a firearm. The jury unanimously recommended death. The trial court sentenced Wainwright to death after finding six aggravating circumstances,[2]

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2. The aggravating circumstances were: (1) Wainwright committed the murder while under sentence of imprisonment; (2) Wainwright had been convicted of a prior violent felony; (3) the murder was committed during the course of a robbery, kidnapping, and sexual battery; (4) the murder was committed to effect an escape; (5) the murder was especially heinous, atrocious, or cruel;

no statutory mitigating circumstances, and some nonstatutory mitigation.[3] *Id.* at 512-13. Wainwright raised nine claims on direct appeal.[4] This Court affirmed the convictions and sentences as corrected.[5] *Id.* at 516. Wainwright's convictions and sentences

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and (6) the murder was committed in a cold, calculated, and premeditated manner. *Wainwright I*, 704 So. 2d at 512 n.2.

3. For nonstatutory mitigating circumstances, the trial court found: "The Court finds that defendant's difficulties in school and his social adjustment problems, due in part to his problems associated with bed-wetting do provide some measure of mitigation." *Wainwright I*, 704 So. 2d at 513 n.3. However, the trial court accorded the mitigating circumstances little weight and found the mitigating circumstances were outweighed by any single aggravating circumstance.

4. Wainwright's claims on direct appeal were: (1) the trial court erred by allowing Wainwright's pretrial statements to be introduced; (2) the trial court erred by allowing the final three DNA loci to be introduced; (3) the trial court erred by allowing the case to be tried jointly with separate juries; (4) the trial court erred by allowing introduction of evidence of other crimes; (5) the trial court erred by removing a juror on the tenth day of trial; (6) the trial court erred by allowing introduction of testimony that C.G. routinely picked her children up from preschool; (7) the trial court erred by overlooking the State's failure to establish the corpus delicti of sexual assault; (8) the trial court erred by allowing introduction of Wainwright's statement to police that he had AIDS; and (9) the trial court erred by imposing the mandatory minimum portions of the noncapital sentences and retaining jurisdiction over the life sentences. *Wainwright I*, 704 So. 2d at 513 n.4.

5. The Court ordered that "Wainwright's sentencing forms for the non[]capital offenses reflect the imposition of no mandatory minimum terms under section 775.082(1), Florida Statutes (1993),

became final when the United States Supreme Court denied certiorari on May 18, 1998. *Wainwright v. Florida*, 523 U.S. 1127 (1998).

Wainwright has since unsuccessfully challenged his convictions and death sentence in both state and federal court. Wainwright filed an initial motion for postconviction relief raising fourteen claims.[6] *Wainwright v. State* (*Wainwright II*), 896 So. 2d

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and no retention of jurisdiction under section 947.16(3), Florida Statutes (1983)." *Wainwright I*, 704 So. 2d at 515-16.

6. Wainwright's claims in the initial postconviction motion were: (1) trial counsel was ineffective regarding the admission of additional DNA evidence; (2) trial counsel was ineffective regarding Wainwright's statements and admissions; (3) trial counsel was ineffective regarding evidence of Wainwright's out-of-state crimes; (4) trial counsel was ineffective regarding a microphone discovered in Wainwright's cell; (5) trial counsel was ineffective for failing to object to the penalty phase instructions on the aggravators; (6) trial counsel was ineffective for failing to object to the prosecutor's argument at the guilt and penalty phases; (7) trial counsel was ineffective for failing to maintain a proper attorney-client relationship, failing to ensure that Wainwright received adequate mental health evaluations, and failing to investigate and present additional mitigating evidence; (8) trial counsel was ineffective for allowing the victim's family to testify at sentencing; (9) trial counsel was ineffective for failing to object to an alleged *Caldwell v. Mississippi*, 472 U.S. 320 (1985), error; (10) initial counsel was ineffective in his pretrial representation of Wainwright; (11) trial counsel was ineffective for failing to be prepared for trial; (12) trial counsel was ineffective for introducing statements of the co-defendant; (13) trial counsel was ineffective for committing an

695, 697 (Fla. 2004). After the circuit court denied the motion, Wainwright raised eight issues on appeal to this Court. Wainwright also filed a habeas petition raising four claims.[7] This Court affirmed the denial of the postconviction motion and denied the habeas petition. *Id.* at 704. The United States Supreme Court denied Wainwright's certiorari petition. *Wainwright v. Florida*, 546 U.S. 878 (2005).

Wainwright also sought federal habeas relief pursuant to 28 U.S.C. § 2254. *Wainwright v. McDonough*, No. 3:05-cv-276-J-25, 2006 WL 8449862, at *1 (M.D. Fla. Mar. 10, 2006). The Middle District of Florida dismissed the petition as untimely. *Id.* at *4. The Eleventh Circuit Court of Appeals affirmed the district court's

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alleged discovery violation; and (14) trial counsel's illness during trial rendered him ineffective. *Wainwright II*, 896 So. 2d at 697 n.1.

7. Wainwright's claims in the habeas petition were: (1) Florida's capital sentencing scheme is unconstitutional under *Ring v. Arizona*, 536 U.S. 584 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000); (2) trial counsel failed to raise an issue involving the felony murder jury instruction; (3) the trial court erred by failing to make specific findings before requiring Wainwright to wear a stun belt at trial; and (4) the trial court erred by failing to conduct a *Koon v. Dugger*, 619 So. 2d 246 (Fla. 1993), inquiry. *Wainwright II*, 896 So. 2d at 703 & n.7.

dismissal. *Wainwright v. Sec'y, Dep't of Corr.*, 537 F.3d 1282, 1287 (11th Cir. 2007).

Wainwright then filed a first and second successive motion for postconviction relief raising newly discovered evidence claims. This Court affirmed the denial of both postconviction motions. *Wainwright v. State*, 2 So. 3d 948 (Fla. 2008); *Wainwright v. State*, 43 So. 3d 45 (Fla. 2010). Wainwright filed five more successive postconviction motions. This Court dismissed or denied each appeal, or Wainwright did not appeal the circuit court's denial to this Court. *Wainwright v. State*, 63 So. 3d 751 (Fla. 2011); *Wainwright v. State*, 77 So. 3d 648 (Fla. 2011); *Wainwright v. State*, No. SC2015-2280, 2017 WL 394509 (Fla. Jan. 30, 2017); *Wainwright v. State*, No. SC2022-1187, 2022 WL 4282149 (Fla. Sept. 16, 2022).

In 2019, Wainwright filed a Rule 60(b) motion in his federal habeas case in the Middle District of Florida. *Wainwright v. Sec'y, Fla. Dep't of Corr.*, No. 20-13639, 2023 WL 4582786, at *1 (11th Cir. July 18, 2023). The district court denied the motion, and the Eleventh Circuit affirmed the denial. *Id.* at *7. The United States

Supreme Court denied certiorari. *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024).

On May 9, 2025, Governor DeSantis signed a death warrant for the execution of Wainwright. The execution is scheduled for Tuesday, June 10, 2025, at 6:00 p.m.

Timely under this Court's scheduling order and the circuit court's extended deadline for seeking postconviction relief, Wainwright filed an amended eighth successive motion for postconviction relief. The motion raised three claims: (1) finding the prior violent felony aggravator violated the Sixth Amendment right to trial by jury in light of *Erlinger*;[8] (2) newly discovered evidence of the effects of Wainwright's father's exposure to toxins during the Vietnam War; and (3) newly discovered evidence of a *Brady*[9] violation based on the State's alleged failure to disclose a benefit for one jailhouse informant and the expectation of a benefit for another jailhouse informant.

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8. *Erlinger v. United States*, 602 U.S. 821 (2024).

9. *Brady v. Maryland*, 373 U.S. 83 (1963).

The circuit court held a *Huff*[10] hearing, after which it determined that an evidentiary hearing was not necessary. The circuit court summarily denied the amended eighth successive motion for postconviction relief on May 20, 2025. Wainwright timely appealed the circuit court's order. He also filed a motion for stay of execution.

II

"Summary denial of a successive postconviction motion is appropriate '[i]f the motion, files, and records in the case conclusively show that the movant is entitled to no relief.' " *Bogle v. State*, 322 So. 3d 44, 46 (Fla. 2021) (alteration in original) (quoting Fla. R. Crim. P. 3.851(f)(5)(B)); *see also* Fla. R. Crim. P. 3.851(h)(6). In reviewing a circuit court's summary denial, "this Court must accept the defendant's allegations as true to the extent that they are not conclusively refuted by the record." *Tompkins v. State*, 994 So. 2d 1072, 1081 (Fla. 2008) (citing *Rolling v. State*, 944 So. 2d 176, 179 (Fla. 2006)). Still, "[t]he defendant bears the burden to establish a prima facie case based on a legally valid claim; mere

10. *Huff v. State*, 622 So. 2d 982 (Fla. 1993).

conclusory allegations are insufficient." *Franqui v. State*, 59 So. 3d 82, 96 (Fla. 2011) (citing *Freeman v. State*, 761 So. 2d 1055, 1061 (Fla. 2000)). A circuit court's decision whether to grant an evidentiary hearing on a rule 3.851 motion "is tantamount to a pure question of law, subject to de novo review." *Marek v. State*, 8 So. 3d 1123, 1127 (Fla. 2009) (citing *State v. Coney*, 845 So. 2d 120, 137 (Fla. 2003)).

Also relevant here, postconviction claims in capital cases must generally be filed within one year after the judgment and sentence become final. Fla. R. Crim. P. 3.851(d)(1). With certain exceptions, rule 3.851 prohibits both untimely and repetitive claims. Fla. R. Crim. P. 3.851(e)(2); *see also Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014) ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion." (citing *Van Poyck v. State*, 116 So. 3d 347, 362 (Fla. 2013))).

A

In his first argument on appeal, Wainwright argues that his death sentence is unconstitutional under the Sixth Amendment in light of *Erlinger v. United States*, 602 U.S. 821 (2024), because a

judge instead of a jury made the findings necessary to impose death. This is so, says Wainwright, because the prior violent felony aggravator applied in his case required a finding of fact (1) of a prior conviction and (2) that the prior crime involved the use or threat of violence to the person.[11] Wainwright argues that only a jury is constitutionally permitted to determine whether the crime was one that involved the use or threat of violence to the person. He says that because a judge made that finding in his case, every aggravating circumstance applied in his case requires at least one factual finding that should have been made by a jury.

We agree with the circuit court that Wainwright's claim is procedurally barred. Wainwright has raised this exact claim before.

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11. In contrast to the categorical approach utilized by federal courts, Florida takes a fact-specific approach to determining whether a previous conviction was for a violent felony. *See, e.g.*, *Spann v. State*, 857 So. 2d 845, 855 (Fla. 2003) ("Whether a crime constitutes a prior violent felony is determined by the surrounding facts and circumstances of the prior crime." (citing *Gore v. State*, 706 So. 2d 1328, 1333 (Fla. 1997))); *Anderson v. State*, 841 So. 2d 390, 407 (Fla. 2003) (holding that trial court did not err in admitting testimony that demonstrated the defendant's conviction for attempted sexual battery was actually a completed sexual battery), *abrogation on other grounds recognized by Cruz v. State*, 372 So. 3d 1237 (Fla. 2023).

Wainwright's habeas petition challenged Florida's capital sentencing scheme as unconstitutional under *Ring v. Arizona*, 536 U.S. 584 (2002), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). *Wainwright II*, 896 So. 2d at 703-04. And in his sixth successive motion for postconviction relief, Wainwright argued:

> In this case, the court made the findings regarding the fact of the prior conviction, as well as the additional findings that the Defendant was serving a sentence of imprisonment and that the prior felony was violent. Thus, proof of more than the fact of a prior conviction was required. . . . As a result, [the] sentence was imposed in violation of the Sixth Amendment right to trial by jury.

We rejected the claim based on *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016), a case in which we applied our state-specific retroactivity test and concluded that *Hurst v. Florida*, 577 U.S. 92 (2016), does not apply retroactively to sentences that became final before the issuance of *Ring*. So, because Wainwright's current claim has been raised and rejected, it is procedurally barred.[12] *See, e.g.*, *Jackson v.*

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12. While we do not agree with the State that *Erlinger* categorically never applies in the capital postconviction context, we agree that Wainwright's specific claim has been raised and rejected. Wainwright's argument is that a jury instead of a judge was required to determine whether his prior felony conviction was, in fact, violent. It was rejected because his sentence was final prior to *Ring*, which encompasses any refinement of *Apprendi* protections

State, 335 So. 3d 88, 89 n.2 (Fla. 2022) (concluding that a claim was procedurally barred because a "prior successive postconviction motion . . . raised essentially the same arguments" (citing *Hendrix*, 136 So. 3d at 1125)).

This does not end our analysis though because Wainwright argues an exception to the procedural bar: that *Erlinger* constitutes a new rule of law that should apply retroactively to his case. *See* Fla. R. Crim. P. 3.851(d)(2)(B), (e)(2) (exempting from the one-year time limitation motions alleging that "the fundamental constitutional right asserted was not established within the period provided for in subdivision (d)(1) and has been held to apply retroactively").

We reject Wainwright's argument because even if *Erlinger* constitutes a change of law, it does not apply retroactively.[13] A

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provided by *Erlinger*. As such, it is not a new claim simply because Wainwright now relies on *Erlinger* instead of *Hurst*.

13. Although we conduct a state-law analysis, we conclude that *Erlinger* also does not apply retroactively based on federal law. In his dissenting opinion, Justice Kavanaugh observed that "[f]or any case that is already final, the *Teague* rule will presumably bar the defendant from raising today's new rule in collateral proceedings." 602 U.S. at 859 n.3 (Kavanaugh, J., dissenting) (citing *Edwards v. Vannoy*, 593 U.S. 255, 258 (2021); *Teague v.*

change in the law only applies retroactively to final cases if the change (1) emanates from the Florida Supreme Court or the United States Supreme Court, (2) is constitutional in nature, and (3) constitutes a development of fundamental significance. *Dettle v. State*, 395 So. 3d 1054, 1057-58 (Fla. 2024) (quoting *Witt v. State*, 387 So. 2d 922, 931 (Fla. 1980)). A change of law is of fundamental significance when it (1) places beyond the authority of the state the power to regulate certain conduct or impose certain penalties or (2) is of sufficient magnitude to necessitate retroactive application under the three-factor test in *Linkletter v. Walker*, 381 U.S. 618 (1965).[14] *Dettle*, 395 So. 3d at 1058 (quoting *Witt*, 387 So. 2d at 929). "We have said this retroactivity analysis is supposed to balance the justice system's dual goals of fairness and finality." *Id.* (citing *Witt*, 387 So. 2d at 926). "And, we have said, we use it to

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Lane, 489 U.S. 288, 310 (1989)). We agree. *See also Stackhouse v. United States*, No. 8:15-cr-177-VMC-TGW, 2024 WL 5047342, at *8 (M.D. Fla. Dec. 9, 2024) (deciding *Erlinger*'s procedural rule does not apply retroactively).

14. Those factors are (1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect retroactive application would have on the administration of justice. *Dettle*, 395 So. 3d at 1058 (quoting *Witt*, 387 So. 2d at 926).

determine whether a new rule amounts to a 'jurisprudential upheaval[]' (to which we give retroactive effect), or whether it is more like an 'evolutionary refinement[] in the criminal law' (to which we do not)." *Id.* (alterations in original) (quoting *Witt*, 387 So. 2d at 929).

Erlinger is not a development of fundamental significance under our existing retroactivity test. First, we reject Wainwright's argument that *Erlinger* places beyond the authority of the state the power to impose the death penalty or other enhanced sentence on a defendant who has not been found eligible for such penalty by a jury of his peers. We have said cases that fall within that class categorically limit the state's ability to impose a sentence of death. *See, e.g.*, *Phillips v. State*, 299 So. 3d 1013, 1019 (Fla. 2020) (citing *Coker v. Georgia*, 433 U.S. 584 (1977), as an example of a case that placed beyond the authority of the state the power to impose the death penalty, which held that the Eighth Amendment categorically prohibits imposing the death penalty for the crime of rape of an adult woman as cruel and unusual punishment). *Erlinger* does not place beyond the authority of the state the power to impose a

certain penalty because it, at most, merely altered the manner of determining a defendant's culpability.

Second, *Erlinger* does not satisfy the *Linkletter* test. Indeed, in *State v. Johnson*, 122 So. 3d 856 (Fla. 2013), we concluded application of the *Linkletter* test to a materially identical precedent failed to justify retroactive application. *Id.* at 861-66. At issue there was whether an *Apprendi* progeny case, *Blakely v. Washington*, 542 U.S. 296 (2004), applied retroactively. *Johnson*, 122 So. 3d at 861. Applying *Apprendi*, *Blakely* held that a fact that increases the sentencing range had to be found by the jury. *Blakely*, 542 U.S. at 303-04. We concluded that decision, like *Apprendi* itself, was a new rule that was nonretroactive under the three-part *Linkletter* test. *Johnson*, 122 So. 3d at 861-66 (explaining why the purpose of the new rule in *Blakely* did not support retroactivity, that Florida had significantly relied on the old rule, and why applying *Blakely* retroactively would have an adverse impact on the administration of justice). We reached the same result in *Hughes v. State*, 901 So. 2d 837, 846 (Fla. 2005) (rejecting argument that *Apprendi* applied retroactively based on analysis of the *Stovall v. Denno*, 388 U.S. 293 (1967)/*Linkletter* factors).

Guided by our analysis in *Johnson* and *Hughes*, we conclude *Linkletter*'s first factor weighs against retroactive application of *Erlinger*. Retroactive application is generally favored when it furthers the new rule's purpose. *See Williams v. State*, 421 So. 2d 512, 515 (Fla. 1982). But we have declined to give retroactive effect to new procedural rules unless their absence would "cast serious doubt on the veracity or integrity of the original trial proceeding." *Witt*, 387 So. 2d at 929; *see, e.g.*, *Williams*, 421 So. 2d at 515 (refusing to apply a rule in part because it "would not enhance the reliability of the fact-finding process [and] . . . has no bearing on guilt and did not involve an attack on the fairness of the trial"); *Chandler v. Crosby*, 916 So. 2d 728, 730 (Fla. 2005) ("This rationale for the new rule weighs against its retroactive application because the rule's purpose is not to improve the accuracy of trials or even to improve the reliability of evidence.").

The purpose of any new rule announced by *Erlinger* does not demand retroactive application. Like *Blakely*, the purpose of *Erlinger* is to conform criminal procedure to the Sixth Amendment's guarantee. It properly allocates decision-making rather than increasing the fairness or accuracy of convictions. *See Schriro v.*

Summerlin, 542 U.S. 348, 353 (2004) (concluding that judicial factfinding did not so seriously diminish accuracy such that there was an impermissibly large risk of punishing conduct the law did not reach). For that reason, it does not fall into the type of significant procedural changes this Court has determined justify retroactive application.

As to the second and third prongs of the *Linkletter* test, our analysis in *Hughes* and *Johnson* applies equally here. *Johnson*, 122 So. 3d at 865 (citing *Hughes* and concluding second prong of *Linkletter* test weighed against retroactivity because Florida had relied on trial courts in sentencing for a significant period); *Hughes*, 901 So. 2d at 845 (repeating district court's observation that retroactive application of *Apprendi* would have a far-reaching adverse impact on the administration of justice and concluding third prong of *Linkletter* test did not warrant retroactive application). We again conclude that consideration of *Linkletter*'s second and third prongs counsels against retroactive application of *Erlinger*.

In sum, Wainwright's claim is procedurally barred because the substance of his claim, whether a judge rather than a jury must

find that his prior felony conviction was violent, has been raised and rejected. And even if *Erlinger* announced a new rule that might serve as a vehicle for Wainwright to overcome this procedural bar, *Erlinger* does not apply retroactively. As a result, we affirm the circuit court's order denying Wainwright's claim.

B

In his second argument on appeal, Wainwright asserts that the circuit court erred in denying his claim based on allegedly newly discovered evidence of the effect his father's exposure to toxins during the Vietnam War had on Wainwright. Wainwright argues that evidence has accumulated showing that he has long suffered from neurobehavioral deficits, but a causative explanation for these deficits was missing.

Because Wainwright is seeking to vacate his death sentence based on allegations of newly discovered evidence, he must establish "(1) that the newly discovered evidence was unknown by the trial court, by the party, or by counsel at the time of trial and it could not have been discovered through due diligence, and (2) that the evidence is of such a nature that it would probably . . . yield a less severe sentence on retrial." *Dillbeck v. State*, 357 So. 3d 94,

100 (Fla. 2023) (omission in original) (quoting *Dailey v. State*, 329 So. 3d 1280, 1285 (Fla. 2021)). Additionally, for a claim relying on newly discovered evidence to be considered timely, the successive rule 3.851 motion must be filed within one year of the date on which the claim became discoverable through due diligence. *Dillbeck v. State*, 304 So. 3d 286, 288 (Fla. 2020) (quoting *Jimenez v. State*, 997 So. 2d 1056, 1064 (Fla. 2008)); *see also* Fla. R. Crim. P. 3.851(e)(2) (allowing the trial court to dismiss a successive postconviction motion "if the trial court finds the claim fails to meet the time limitation exceptions set forth in subdivision (d)(2)(A), (d)(2)(B), or (d)(2)(C)"). We have explained that "the circuit court is authorized to summarily deny a newly-discovered-evidence claim if the motion, files, and record refute the allegations pertaining to either (or both) prongs of the *Jones* [*v. State*, 709 So. 2d 512 (Fla. 1998)] test." *Rogers v. State*, 327 So. 3d 784, 787 (Fla. 2021).

Here we agree with the circuit court that the information that Wainwright relies on is not newly discovered evidence. Wainwright's newly discovered evidence claim is based on two expert reports prepared specifically for this case. But those reports are based on preexisting studies dating years back. For example,

the report cites studies from 1996 and 2001 and relies in large part on a study from 2023. And while the report points to shortcomings in the investigation of the effects of toxins on the children of Vietnam veterans, it does not suggest the information was unavailable. Under our precedent this report is insufficient to support a newly discovered evidence claim. *Sliney v. State*, 362 So. 3d 186, 189 (Fla.) (concluding a claim of newly discovered evidence based on the publication of a new manual in 2021 was untimely, explaining that, while a new manual might provide more support for the claim, the underlying scientific facts were available before 2021), *cert. denied*, 144 S. Ct. 501 (2023); *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) (recent report based on compilation of studies relying on previously available data did not constitute newly discovered evidence).

Similarly, we reject Wainwright's argument that he had no reason to pursue a claim regarding the effect of Agent Orange exposure until he became aware that his father may have been exposed to it in the first place. *See Rogers*, 327 So. 3d at 788 (denying a newly discovered evidence claim where the defendant

"alleged that three of his brothers had knowledge" of the allegedly new evidence).

We also agree with the circuit court that the alleged evidence would not be material. First, while Wainwright says he was unaware of the cause of his cognitive and neurobehavioral impairments, his intellectual, behavioral, and psychological issues have been an issue throughout the postconviction proceedings.[15] Thus, it is unlikely that one additional cause to explain this set of behaviors would result in a life sentence. *See, e.g.*, *Hutchinson v. State*, No. SC2025-0497, 2025 WL 1155717, at *3 (Fla. Apr. 21, 2025) (concluding that additional mitigation concerning brain injury and cognitive issues would only have a marginal effect at a new penalty phase where trial court had heard evidence of cognitive and mental health issues), *cert. denied*, No. 24-7079, 2025 WL 1261215 (U.S. May 1, 2025).

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15. *See, e.g.*, *Wainwright II*, 896 So. 2d at 697 n.1 (initial postconviction motion alleged that trial counsel was ineffective for failing to ensure that Wainwright received adequate mental health evaluations); *Wainwright v. State*, 43 So. 3d at 45 (second successive postconviction motion alleged that newly discovered evidence showed that Wainwright's mental age at the time of the murder was below eighteen years).

Likewise, Wainwright's case involved six statutory aggravators. This Court has described the heinous, atrocious, or cruel; cold, calculated, and premeditated; and prior violent felony aggravators as "three of the most serious and weighty aggravators in the capital sentencing scheme." *Craft v. State*, 312 So. 3d 45, 56 (Fla. 2020) (citing *Bush v. State*, 295 So. 3d 179, 215 (Fla. 2020)). Given the heavy aggravation and limited mitigation, the alleged new evidence would not probably result in a life sentence, especially here where the trial court indicated the mitigating circumstances were outweighed by any single aggravating circumstance. *See Dillbeck*, 357 So. 3d at 102 (concluding that the defendant could not demonstrate the probability of a lesser sentence in light of weighty aggravation). We therefore affirm the circuit court's denial of Wainwright's second claim.[16]

16. To the extent Wainwright argues this additional information makes his sentence unconstitutional under the Eighth Amendment to the United States Constitution, we reject the claim. The argument is inadequately briefed and without merit. *See, e.g.*, *Hutchinson v. State*, 50 Fla. L. Weekly S71, 2025 WL 1198037 (Fla. Apr. 25, 2025), *cert. denied*, No. 24-7087, 2025 WL 1261217 (U.S. May 1, 2025).

C

Lastly, Wainwright argues that the postconviction court erred by denying a claim of newly discovered evidence of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), for not disclosing that a State's witness, Robert Allen Murphy, expected a benefit from his testimony. Wainwright has not established that the postconviction court erred in denying this claim.

Wainwright's *Brady* claim is based on a May 13, 2025, affidavit by Robert Murphy, who was housed with Wainwright at Taylor County Jail and later testified at Wainwright's trial. The affidavit alleges that Murphy spoke with another inmate who told Murphy that he was receiving a benefit from the State for testifying against Wainwright. This led Murphy to ask the State if he could also receive a benefit in exchange for his testimony. The affidavit recounts that the prosecutor "said that he could not make me a promise but the way he said it made it clear to me that I would get a benefit if I testified." The affidavit also explains how Murphy received a modified sentence following his testimony against Wainwright. Wainwright does not claim that Murphy received a promise from the State, only that Murphy had a "clear

understanding and expectation on his part that he would get a benefit."

We agree with the circuit court that Wainwright failed to exercise reasonable diligence in pursuing this claim. *Freeman*, 761 So. 2d at 1062 ("[T]here is no *Brady* violation where the information is equally accessible to the defense and the prosecution, or where the defense either had the information or could have obtained it through the exercise of reasonable diligence." (quoting *Provenzano v. State*, 616 So. 2d 428, 430 (Fla. 1993))). As the circuit court determined, it was clear from the trial testimony that Murphy had a motion for modification of sentence pending at the time of Wainwright's trial. And it was a matter of public record that Murphy was released on probation shortly after his testimony. Murphy's recent affidavit was not necessary to pursue this claim. So as the circuit court observed, his recent affidavit really adds "nothing" to this claim. All of the information necessary for this claim to be raised was readily available to postconviction counsel decades ago. *See id.* at 1062-63 (finding no *Brady* violation when defense counsel could have discovered the details of a witness

statement through reasonable diligence, such as by deposition or another discovery method).

Even if this claim was reasonably pursued though, the evidence presented by Wainwright is insufficient to establish a claim.[17] To establish a *Brady* violation, Wainwright must also demonstrate that "(1) the evidence was either exculpatory or impeaching; (2) the evidence was willfully or inadvertently suppressed by the State; and (3) because the evidence was material, the defendant was prejudiced." *Sheppard v. State*, 338 So. 3d 803, 827 (Fla. 2022) (quoting *Duckett v. State*, 231 So. 3d 393, 400 (Fla. 2017)). "To establish materiality or prejudice under *Brady*, the defendant 'must demonstrate . . . a reasonable probability that the jury verdict would have been different had the suppressed information been used at trial.' " *Id.* (omission in original) (quoting *Smith v. State*, 931 So. 2d 790, 796 (Fla. 2006)). "Reasonable probability" means "a probability sufficient to undermine confidence

17. We review the postconviction court's legal conclusions on a *Brady* claim de novo. *Sheppard v. State*, 338 So. 3d 803, 827-28 (Fla. 2022) (citing *Duckett v. State*, 231 So. 3d 393, 400 (Fla. 2017)).

in the outcome." *Guzman v. State*, 868 So. 2d 498, 506 (Fla. 2003) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

We agree with the postconviction court that the *Brady* claim fails because the allegations are insufficient to establish that the State suppressed evidence. *See Stein v. State*, 406 So. 3d 171, 175 (Fla. 2024) (holding allegation that a witness expected a deal with the State in exchange for testifying at trial was insufficient to establish *Brady* claim where defendant did not allege specific facts showing that the State knew about or suppressed information relating to the witness's expectations), *reh'g denied*, 2025 WL 855671 (Fla. Mar. 19, 2025); *Sheppard*, 338 So. 3d at 828 (defendant did not demonstrate the State willfully or inadvertently suppressed favorable evidence as necessary to prevail under *Brady* where evidence did not establish that the witness entered into a specific deal with the State in exchange for his testimony); *Davis v. State*, 928 So. 2d 1089, 1115-16 (Fla. 2005) (evidence was insufficient to establish *Brady* violation where the witness had the hope that the State would assist him in his effort to secure his gain time, but there was no evidence that a deal was in fact made or a promise conclusively extended).

We also agree with the postconviction court that the alleged evidence would not be material. In addition to Murphy's testimony, there was other significant evidence introduced against Wainwright. *See Wainwright I*, 704 So. 2d at 515; *Wainwright II*, 896 So. 2d at 700. The alleged evidence of Murphy's expectation of a benefit for his testimony would not undermine confidence in the outcome.[18] We affirm the postconviction court's decision to deny this claim.

III

For the reasons stated, we affirm the postconviction court's order summarily denying Wainwright's amended eighth successive motion for postconviction relief. As a result, we deny his motion for stay of execution. *See Dillbeck*, 357 So. 3d at 103 ("[A] stay of execution on a successive motion for postconviction relief is warranted only where there are substantial grounds upon which relief might be granted." (quoting *Davis v. State*, 142 So. 3d 867, 873-74 (Fla. 2014))).

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18. For these reasons the affidavit also does not constitute newly discovered evidence. Wainwright does not show that there is evidence that was not previously available. The alleged new evidence also would not probably lead to a life sentence.

No motion for rehearing will be considered by this Court. The mandate shall issue immediately.

It is so ordered.

MUÑIZ, C.J., and CANADY, LABARGA, COURIEL, GROSSHANS, FRANCIS, and SASSO, JJ., concur.

An Appeal from the Circuit Court in and for Hamilton County,
Melissa G. Olin, Judge
Case No. 241994CF000150CFBXMX

Baya Harrison, III, Monticello, Florida; and Terri L. Backhus, Tampa, Florida,

for Appellant

James Uthmeier, Attorney General, Charmaine M. Millsaps, Senior Assistant Attorney General, Jason W. Rodriguez, Senior Assistant Attorney General, and Janine D. Robinson, Assistant Attorney General, Tallahassee, Florida,

for Appellee

A2
Third Judicial Circuit Court
for Hamilton County
Order Denying Eighth Amended
Successive Motion for Postconviction Relief
May 20, 2025

Filing # 223502995 E-Filed 05/20/2025 11:46:37 AM

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT

IN AND FOR HAMILTON COUNTY, FLORIDA

STATE OF FLORIDA CASE NO.: 1994-150-CF

vs.

ANTHONY FLOYD WAINWRIGHT,

Defendant.

_____/

ORDER SUMMARILY DENYING AMENDED EIGHTH

SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE came before the Court on the Defendant's "Amended Eighth Successive Motion for Postconviction Relief," filed May 15, 2025, and the State's response thereto, filed May 16, 2025. Upon consideration of the pleadings, the record, and applicable law, the motion is **DENIED** for the reasons expressed below.

Procedural History

On May 30, 1995, the Defendant was found guilty by a jury of first-degree murder, armed robbery, armed kidnapping, and armed sexual battery and, on June 1, 1995, he was sentenced to death. His conviction and sentence were affirmed on appeal. *See Wainwright v. State*, 704 So. 2d 511 (Fla. 1997), *cert. denied*, *Wainwright v. Florida*, 523 U.S. 1127 (1998). The State filed a document titled Facts of the Crime and Procedural History to the Court on May 12, 2025. Counsel

for Defendant stipulated to the facts and history provided therein. The State's Facts of the Crime and Procedural History is therefore adopted and incorporated by reference into this final order.

On May 9, 2025, Governor DeSantis signed a death warrant, scheduling the execution for June 10, 2025. On the same day, the Florida Supreme Court issued an order directing that all proceedings in the circuit court be completed and the final order entered by the lower court by Tuesday, May 20, 2025, at noon. *Wainwright v. State*, 1960-86022. This Court issued its Scheduling Order on May 12, 2025, establishing deadlines for the progression of the case to include the timing of any further record demands, objections thereto, Defendant's successive petition, the State's reply, the *Huff* hearing, and the tentative evidentiary hearing. Counsel for Defendant advised the Court and the parties that he would not be seeking additional public records and the hearing on record production was canceled.

Counsel for Defendant, Baya Harrison III, timely filed Defendant's Eighth Successive Motion for Postconviction Relief on May 14, 2025. However, a competing and unauthorized Eighth Successive Motion for Postconviction Relief was filed, along with a Motion for Substitution of Counsel, by "proposed *Pro Bono* counsel" for Defendant, Ms. Terri Backhus. Upon the State's motion for an emergency case management hearing and motion to strike Ms. Backhus' unauthorized petition and motion for substitution, the Court conducted a hearing on Thursday, May 15, 2025. As documented in the Court's orders on the hearing, Ms. Backhus was permitted to appear in the case as second chair. Additionally, the Court granted the State's motion to strike the unauthorized pleading. Counsel was afforded an opportunity and additional time to amend the Eighth Successive Petition, limited to the claims previously raised in each of the prior

documents, and subject to Mr. Harrison's final approval as lead counsel. The Amended Eighth Successive Petition was filed timely, and the State timely filed its Answer on May 16, 2025.[1]

A case management conference/*Huff* hearing was conducted on May 16, 2025, whereupon this Court heard arguments on the three claims, as referenced in the Court's Order Following a *Huff* Hearing, Concluding an Evidentiary Hearing is not Required, entered that same date. At the hearing, the first claim (*Erlinger/Apprendi* claim) was argued by Mr. Harrison, who had previously advised that the claim was a legal argument, resolvable upon the pleadings and oral argument with no evidentiary hearing necessary. The remaining claims were presented and argued by Ms. Backhus. After considering the arguments presented by counsel, this Court determined that an evidentiary hearing would not be necessary to address the three claims raised in the amended petition. Upon announcement of the ruling, Ms. Backhus asked to proffer the unauthorized petition that had been previously stricken by order of this Court for the purpose of having the pleading included in the official record. *Huff* Hearing, May 15, 2025, at p. 28. This Court advised that the pleading had been stricken and would not be part of the record. *Huff* Hearing, May 15, 2025, at p. 30. The claims contained within the Amended Eighth Successive Petition are addressed as follows.

Legal Standard

Motions seeking to collaterally attack a death sentence must be filed within one year of the date the conviction and sentence become final. *See* Fla. R. Crim. P. 3.851(d)(1); *see also e.g.*,

[1] The amended petition contained essentially all three claims raised by Mr. Harrison and Ms. Backhus, along with the exhibits not contained in the initial unauthorized petition but provided to the Court during the hearing by Ms. Backhus after the 11:00 a.m. filing deadline had passed. The substantive claims raised in the unauthorized petition were incorporated into the amended petition. Accordingly, no prejudice to Defendant can be demonstrated.

Rogers v. State, 2025 WL 1341642, at *3 (Fla. May 8, 2025), *cert. denied sub nom. Rogers v. Fla.*, 2025 WL 1387828 (U.S. May 14, 2025). There is an exception to the one-year limitation when "the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence." *See e.g.*, *Rogers*, 2025 WL 1341642, at *3 (citing Fla. R. Crim. P. 3.851(d)(2)(A)).

The Defendant's conviction and sentence became final on May 18, 1998. *See Wainwright*, 523 U.S. at 1127; *Dillbeck v. State*, 304 So. 3d 286, 287 (Fla. 2020) (citing Fla. R. Crim. P. 3.851(d)(1)(B) ("a judgment is final ... on the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.")). Thus, the one-year deadline for the Defendant to collaterally attack his death sentence was May 18, 1999. The instant motion was filed twenty-six years after the Defendant's conviction and death sentence became final. Thus, the motion is untimely unless the Defendant can establish an exception articulated in Florida Rule of Criminal Procedure 3.851(d)(2)(A)-(C). Additionally, because this is the Defendant's amended eighth successive motion, he must establish "the reason or reasons the claim or claims raised in the present motion were not raised in the former motion or motions." Fla. R. Crim. P. 3.851(e)(2)(B).

A postconviction court should summarily deny any postconviction claim that is conclusively rebutted by the existing record. Fla. R. Crim. P. 3.851(f)(5)(B). A postconviction court should also summarily deny any claim that is legally insufficient because it is meritless as a matter of law. *Hutchinson v. State*, 2025 WL 1198037, at *3 (Fla. Apr. 25, 2025) (noting, in an active warrant case, the Florida Supreme Court affirms the summary denial of successive postconviction claims where the claims are untimely, procedurally barred, legally insufficient, or refuted by the record), *cert. denied*, *Hutchinson v. Florida*, 2025 WL 1261217 (U.S. May 1, 2025)

(No. 24-7087); *Zack v. State*, 371 So.3d 335, 338 (Fla. 2023) (affirming the postconviction court summarily denying the claims as "untimely, procedurally barred, and meritless"), *cert. denied*, *Zack v. Florida*, 144 S.Ct. 274 (2023).

The Defendant's Allegations – Ground One

Essentially, the Defendant alleges that, based on the recent decision in *Erlinger v. United States*, 602 U.S. 821 (2024), his death sentence violates his Sixth Amendment right to a trial by jury. He avers that, pursuant to *Erlinger*, a jury must determine the existence of a prior conviction to enhance a sentence. He contends that, in his case, the trial court made the finding that he had a prior violent felony and used that finding as an aggravating factor to impose the death sentence.

He asserts that he consistently, timely challenged his sentence on Sixth Amendment right to a trial by jury grounds as case law has evolved, but his claims were denied because he had a prior violent felony conviction, which, under *Ring*[2] and *Apprendi,*[3] was a factor not required to be found by a jury. He contends that, because *Erlinger* requires a jury to determine the existence of a prior conviction to enhance a sentence, which he avers did not occur in his case, *Erlinger* should be retroactively applied, his death sentence should be vacated, and he should be resentenced.

Discussion – Ground One

This Court finds that Defendant's claims raised in his first ground for relief should be denied because they are procedurally barred, untimely and do not ultimately succeed on a review of the merits. First, because the Defendant's *Erlinger* claim is a "repackaged version" of his prior Sixth Amendment right to a jury trial claims previously rejected, the Defendant's claim is

[2] *Ring v. Arizona,* 536 U.S. 584 (2002).
[3] *Apprendi v. New Jersey,* 530 U.S. 466, (2000).

procedurally barred. *See Ford v. State*, 402 So.3d 973, 981 (Fla. 2025) (concluding that an *Erlinger* claim was procedurally barred because a right-to-a-jury trial claim was raised in prior successive postconviction motions); *Jackson v. State*, 335 So.3d 88, 89, n.2 (Fla. 2022) (finding a similar claim to be procedurally barred because it was raised in a prior successive postconviction motion). Claims that are simply a variation on previously raised claims are procedurally barred. *Rogers v. State*, 2025 WL 1341642, at *6 (Fla. May 8, 2025) (concluding the current claim was a "variation" of a prior claim and "is procedurally barred for that reason."), cert. denied, *Rogers v. Florida*, 2025 WL 1387828 (U.S. May 14, 2025).

Defendant previously raised a Sixth Amendment right-to-a-jury claim regarding his death sentence in his counseled sixth successive postconviction motion. The Florida Supreme Court affirmed the summary denial of the right-to-a-jury claim, concluding that *Hurst v. State*, 202 So.3d 40 (Fla. 2016), did not apply retroactively to him. *Wainwright v. State*, 2017 WL 394509, *3 (Fla. Jan. 30, 2017) (No. SC15-2280) (citing *Asay v. State*, 210 So. 3d 1, 22 (Fla. 2016)). The *Erlinger* claim presented in Defendant's Amended Eight Successive Petition is simply a variation of Wainwright's prior *Hurst* claim. And for that reason, the *Erlinger* claim is procedurally barred.

Regarding the retroactivity of *Erlinger* and timeliness of Defendant's claim, in his amended petition Defendant argues that "*Erlinger's* holding that the prior record exception to the jury trial right does not extend to all factual findings in a recidivist statute invalidates several Florida decisions, including those that supported the denial of [Defendant's] prior Sixth Amendment claims." Amended Petition at pg. 15, ¶ 35. It is now evident that the Florida Supreme Court has determined that *Erlinger* does not apply to capital cases such as Defendant Wainwright's; *Erlinger* does not apply retroactively to collateral postconviction cases. *See Ford v. State*, 402 So. 3d 973, 980-81 (Fla. 2025) (holding, in active death warrant case, that *Erlinger*

did not apply; noting *Erlinger* was a direct-appeal case, not a postconviction case, and involved required jury findings regarding an element); *Tanzi v. State*, 2025 WL 971568, at *5-6 (Fla. Apr. 1, 2025) (holding, in active death warrant case, that *Erlinger* did not apply; noting *Erlinger* was a direct-appeal involving required jury findings as to an element; rejecting "repackaged versions" of *Apprendi*, *Ring*, and *Hurst*[4] arguments previously rejected) (citing *Ford*, 402 So. 3d 980-81).

Erlinger and the line of cases that *Erlinger* followed involved "enhanced sentences," or sentences that exceed the maximum penalty authorized or that increase the minimum penalty allowed. To the contrary, the sentence of death for a person who is convicted of a capital felony is not an "enhanced sentence" in the same manner in which a sentence under the ACCA is an enhanced sentence. Under §775.082(1), Fla. Stat. (1993), death was, in fact, already the maximum penalty authorized:

> A person who has been convicted of a capital felony shall be punished by life imprisonment and shall be required to serve no less than 25 years before becoming eligible for parole unless the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, and in the latter event such person shall be punished by death.

This is true whether applying the current version of §775.082(1) or the version in effect at the time Defendant committed the offenses of capital murder.

McKinney v. Arizona, 589 U.S. 139 (2020), and *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020) explicitly hold which facts must be found by the jury to impose a death sentence. They are both capital-specific holdings, unlike *Erlinger*. Both the nation's highest court and Florida's highest court have held that one aggravating factor must be found by the jury beyond a reasonable doubt under the Sixth Amendment to sentence a defendant to death. *McKinney v.*

[4] *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

Arizona, 589 U.S. 139, 144 (2020) ("a jury must find the aggravating circumstance that makes the defendant death eligible" but a jury "is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision"); *State v. Poole*, 297 So.3d 487, 507 (Fla. 2020) (a jury must "unanimously to find the existence of a statutory aggravating circumstance beyond a reasonable doubt.").

This case presents similarly to the sentence addressed recently by the Florida Supreme Court in *Ford v. State,* 402 So.3d 973 (Fla. 2025). The jury, in *Ford*, found him guilty of sexual battery with a firearm, aggravated child abuse, and two counts of first-degree murder, and recommended death for each murder by a vote of eleven to one. *Id* at 976. In the case at bar, a jury convicted Defendant Wainwright of the contemporaneous first-degree murder, robbery while armed with a firearm, kidnapping while armed with a firearm, and sexual battery while armed with a firearm at the guilt phase, and further recommended death for the murder by a vote of twelve to zero. See Verdict Form, Transcript of Guilt Phase Jury Instructions, and Advisory Sentence Form (Penalty Phase), attached hereto.[5] The court in *Ford* found that by convicting *Ford* of the "contemporaneous murder and sexual battery with a firearm at the guilt phase, the jury found beyond a reasonable doubt the aggravator that "[t]he defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person," § 921.141(5)(b), Fla. Stat." *Id* at 981. Accordingly, as argued by the State, Wainwright became eligible for a death sentence upon the jury's unanimous verdict finding him guilty on the three felonies in addition to first degree murder at the guilt phase.

[5] The sentencing judge instructed the jury that there are two ways in which a person may be convicted of First Degree Murder. One is known as premeditated murder and the other is known as felony murder – the jury was instructed on both. See Transcript at pp. 1973-1975.

The Florida Supreme Court's recent opinion in *Tanzi* further confirms that *Erlinger* (and by extension, the Fourth DCA's opinion in *Jackson*[6]) is not applicable to capital cases. The *Tanzi* opinion rejected the argument that even unanimous jury recommendations are void because they cannot substantively limit executive and judicial power. *Tanzi v. State*, No. SC2025-0371, 2025 WL 971568, at *5-*6 (Fla. Apr. 1, 2025), cert. denied sub nom. *Tanzi v. Dixon*, No. 24-6932, 2025 WL 1037494 (U.S. Apr. 8, 2025). Tanzi reaffirmed the holding in *Poole* that

> our state constitution's prohibition on cruel and unusual punishment, article I, section 17, does not require a unanimous jury recommendation—or any jury recommendation—before a death sentence can be imposed.... Binding Supreme Court precedent in *Spaziano* holds that the Eighth Amendment does not require a jury's favorable recommendation before a death penalty can be imposed.

Tanzi v. State, 2025 WL 971568, at *6. This Court therefore finds that Defendant's *Erlinger* claim lacks merit because, as explained in *Ford* and in *Tanzi*, *Erlinger* is inapplicable here.

The Defendant's Allegations – Ground Two

The Defendant asserts newly discovered evidence establishes his execution would violate the Eighth Amendment, and that he would probably receive a life sentence in a new penalty phase. He avers that, since trial, "evidence has accumulated showing that the defendant has long suffered from post-traumatic stress, learning disabilities, and a neurocognitive disorder, but a causative explanation for these global deficits was missing." *Amended Eighth Successive Motion for Postconviction Relief, p. 20, numbered paragraph 47.* He avers recent evidence establishes the cause of these deficits was his father's exposure to Agent Orange while serving in the military;

[6] *Jackson v. State,* 2025 WL 1119094 (Fla. 4th DCA April 16, 2025).

that newly discovered evidence shows this toxic exposure was passed on to the Defendant at conception; and, there is a causal link between this exposure and the numerous neurocognitive and developmental deficits that directly affected his criminal behavior.

In support of this assertion, he provides the report of Dr. Victoria Cassano, dated May 14, 2025[8], which references various studies; and a report of Private Investigator David Ferrier, dated May 13, 2025, providing the military history and background of the Defendant's father, and his likely exposure to Agent Orange. He asserts Dr. Cassano, Investigator Ferrier, and the Defendant's sister, Krista Wainwright, are available to testify regarding this causal link. He seeks to have his death sentence vacated and present this allegedly new mitigation evidence to a jury at resentencing.

Discussion – Ground Two

Regardless of any causation now alleged, Defendant acknowledges that his cognitive deficits and mental health issues have been apparent since childhood. Defendant previously raised a similar claim regarding cognitive deficits in his *pro se* Successive Motion for Postconviction Relief, filed May 26, 2009. Specifically, the Defendant, *pro se*, alleged newly available neuropsychological evidence showed his mental age at the time he committed the capital offense was below eighteen years due to organic brain damage and/or mental retardation. His motion was denied. His appeal of the denial was affirmed. *See Wainwright v. State*, 43 So. 3d 45 (Fla. 2010). Thus, the instant claim is procedurally barred. *See Jackson v. State*, 335 So. 3d 88, 89-90, n.2 (Fla. 2022) (finding claim procedurally barred because essentially same claim was raised in prior

[8] On the face of the documents, it appears that the physician's report ("Attachment B") was based, in part, upon a review of Defendant's medical records from 1975 to 2019 and was provided to the Office of the Federal Public Defender on May 14, 2025.

successive postconviction motion) (citing *Hendrix v. State*, 136 So. 3d 1122, 1125 (Fla. 2014) ("Claims raised and rejected in prior postconviction proceedings are procedurally barred from being relitigated in a successive motion."); *Rogers*, 2025 WL 1341642, at *6 (holding claims that are a variation on previously-raised claims are procedurally barred).

On the merits, to set aside a death sentence on the basis of newly discovered evidence of mitigation, a capital defendant must establish (1) the evidence was unknown by the trial court, the party, or counsel at the time of trial, and that defendant or his counsel could not have known of it by the use of diligence; and (2) the new evidence must be of such nature that it would probably result in a life sentence at a new penalty phase. *See Damren v. State*, 397 So. 3d 607, 610 (Fla. 2023). The phrase "would probably" produce a life sentence means a "preponderance of the evidence" or "more likely than not," and requires a showing of "greater than fifty percent." *See id.* at 611 (citations omitted). The Defendant must establish both prongs. *See id.* at 610 (citing *Hutchinson v. State*, 343 So.3d 50, 53 (Fla. 2022)).

Here, the Defendant acknowledges he "has long suffered from post-traumatic stress, learning disabilities, and a neurocognitive disorder" but did not know their cause.[9] The record supports the Defendant's assertion and contains several psychological evaluations. *Psychological Evaluations included in Record on Appeal in Florida Supreme Court case no.: SC02-1342.* As early as November 14, 1986, he was diagnosed with "conduct disorder," "undersocialized," "aggressive," "verbal learning disability," and "rule out bipolar affective disorder, depressed type." *Cumberland Hospital Psychological Evaluation, November 14, 1986.* Thus, at the time of trial, the

[9] Defendant does not raise an intellectual disability claim under section 921.137, Florida Statutes.

Defendant and defense counsel knew, or could have learned through use of due diligence, of the Defendant's "post-traumatic stress, learning disabilities, and a neurocognitive disorder."

That the Defendant and defense counsel are only now learning the cause of these conditions does not constitute newly discovered evidence. *See Hutchinson v. State*, 2025 WL 1155717, at *2 (Fla. Apr. 21, 2025) (holding "traumatic brain damage, neurocognitive impairment, and PTSD, regardless of their specific causation, are not new diagnosable conditions" where defendant knew his symptoms at or before trial); *Rogers*, 2025 WL 1341642 at *5–6 (rejecting claim that, "based on new evidence from the Florida Legislature reflecting the conscience of Florida's citizens in protecting children from the manner of abuse that [defendant] suffered as a child" defendant would likely receive a life sentence) (citing *Cole v. State*, 392 So. 3d 1054, 1061-62 (Fla. 2024) (rejecting proposition that new articles and scholarship constitute newly discovered evidence; noting court has "routinely held that resolutions, consensus opinions, articles, research, and the like do not satisfy the [newly discovered evidence] standard") (citing *Barwick v. State*, 361 So. 3d 785, 793 (Fla. 2023) (holding American Psychological Association resolution did not constitute newly discovered evidence); *Melton v. State*, 367 So. 3d 1175, 1177 (Fla. 2023) ("new opinions or research studies based on a compilation or analysis of previously existing data and scientific information are not generally considered newly discovered evidence") (quoting *Dillbeck v. State*, 357 So. 3d 94, 99 (Fla. 2023) (citations omitted) and (citing *Foster v. State*, 132 So. 3d 40, 72 (Fla. 2013) ("[N]ew research studies are not recognized as newly discovered evidence."). If every new study or publication could be invoked to restart the clock for filing a timely successive rule 3.851 motion it "would be at odds with the finality interests served by the rule." *Sliney v. Florida*, 362 So.3d 186, 189 (Fla. 2023). Thus, the Defendant cannot meet the first prong necessary to establish a claim of newly discovered evidence.

The record in this case demonstrates that, along with the knowledge of the potential for mitigation offered by introducing Defendant's cognitive and mental health issues, there was an abandonment of that mitigation midway through its introduction at the penalty phase. Evidentiary Hearing, Jan. 23, 2002, 102-104. Defendant directed his counsel to cease further questioning of his mother during mitigation testimony. *Id.* at p. 104. There was also a strategic decision not to introduce mental health information because Defendant's counsel believed that the benefits of its introduction would not necessarily have outweighed the potential negative impacts of information that would have likely been disclosed. *Id.* at pp. 117-126. In recalling the defense strategy regarding the introduction of cognitive and mental health mitigation through witnesses other than Defendant's mother, Defendant's counsel recounted, "the consensus was we would do more harm than good." *Id.* at p. 121. Alleging a newly discovered causation of his well-documented difficulties cannot now allow Defendant to undo strategic defense decisions made long ago and at his own direction.

Nor would new mitigation evidence of cognitive deficits caused by the Defendant's father's exposure to Agent Orange before the Defendant's conception likely result in a life sentence at a new penalty phase. Six aggravators were found in this case, including the prior violent felony aggravator; the especially heinous, atrocious or cruel (HAC) aggravator; and the cold, calculated, and premeditated (CCP) aggravator. *See Wainwright v. State*, 704 So. 2d 511, 512, n.2 (Fla. 1997) (listing aggravators found). As noted by the State, these aggravators are considered the most serious of aggravators individually, but here, all three are present. *See Wood v. State*, 209 So. 3d 1217, 1228 (Fla. 2017) (stating CCP aggravator "is among the most serious aggravators set out in the statutory sentencing scheme") (citations omitted); *Craft v. State*, 312 So. 3d 45, 56 (Fla. 2020) (finding aggravation "substantial" because it included the "HAC, CCP, and prior-violent-felony

aggravators," which it described as "three of the most serious and weighty aggravators in the capital sentencing scheme.") (citing *Bush v. State*, 295 So. 3d 179, 215 (Fla. 2020)). Moreover, Defendant's speculative claim that a life sentence would result if the evidence were introduced rests on an assertion that this "evidence is of such a nature that it would probably result in a recommendation of life at retrial *when considered with all other admissible evidence in the case, including that developed since the trial*[.]" Amended Eighth Petition at p. 22, ¶ 53 (emphasis supplied). To the extent "all other admissible evidence in the case" refers to arguments not contained in the amended petition (i.e., those relating to witness Murphy), such arguments are now foreclosed and for the reasons addressed herein, the weight of both arguments does not demonstrate a likelihood of a life sentence at a new penalty phase, especially considering that the jury's recommendation in this case was unanimous.

The claim is untimely and the aggravators and facts present in this case would greatly outweigh any proposed mitigation. For the foregoing reasons, the Defendant cannot meet the standard to set aside his death sentence based on newly discovered evidence. Thus, he is not entitled to relief on Ground Two.

The Defendant's Argument – Ground Three

To set aside a conviction on the basis of newly discovered evidence, a defendant must establish (1) the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of it by the use of diligence; and (2) the new evidence must be of such nature that it would probably produce an acquittal on retrial. *Damren v. State*, 397 So.3d 607, 610 (Fla. 2023) (quoting *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998)), cert. denied, *Damren v. Florida*, 144 S. Ct. 1398

(2024). The defendant *must* establish both prongs. *Damren*, 397 So.3d at 610 (quoting *Hutchinson v. State*, 343 So.3d 50, 53 (Fla. 2022) ("To be facially sufficient, a claim of newly discovered evidence must meet the two-part Jones test."). The Florida Supreme Court recently clarified the standard of proof for the second prong when it explained the phrase "would probably" produce an acquittal means a "preponderance of the evidence" or "more likely than not." *Id.* at 611. It requires a showing of a probability "greater than fifty percent." *Id.*

The Defendant asserts a claim of newly discovered evidence consisting of a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). He avers that, at trial, the State called a jailhouse informant, Robert Allen Murphy, who testified about incriminating statements made by the Defendant. He asserts that, during his trial testimony, Murphy repeatedly denied having any hope or desire to obtain a lesser sentence by testifying, nor was any benefit or expectation of one disclosed by the State. On May 13, 2025, several days after the warrant was signed and apparently at the behest of the Federal Public Defender's Office, Murphy executed an affidavit essentially attesting that: he asked his attorney for a benefit after he learned that another informant, Dennis Givens[10], was receiving a benefit for testifying; his attorney assured him he would get a benefit in exchange for his testimony, his attorney spoke to a prosecutor; when Murphy met with Wainwright's prosecutor prior to testifying, the prosecutor told him he could not make any promises and he "repeated that so much that it became annoying", but "the way he said it made it clear" to Murphy that he "would get a benefit if" he testified; because everyone "knew what was going on and that [Murphy] would be receiving something in exchange for [his] testimony"; his "modification of sentence hearing was pushed back until after" he testified; at the

[10] Givens did not testify in front of Wainwright's jury.

hearing, the judge presiding over Murphy's case called a prosecutor on the phone and the prosecutor provided information about his testimony; he was given a choice by the judge of doing time in prison or a lengthier probation, and ultimately his 12-year prison sentence was reduced to probation. See *Murphy Affidavit*. Upon careful review, the affidavit does not allege that the State ever tendered any offer to Murphy in exchange for his testimony.

The Defendant asserts Murphy's counsel's inquiry to the State, and Murphy's altered modification of sentence hearing date show the State knew that Murphy expected a sentence reduction for testifying, thereby triggering a duty to disclose this impeachment evidence to the defense. Wainwright also asserts that the State also had a duty to come forward when Murphy falsely testified that he had no such expectation and that the State's failure to disclose this information during trial deprived him of a fair trial. He also avers the State failed to disclose these material facts to appellate or postconviction counsel or disclose to the Defendant that Givens received a benefit, despite relying heavily on informant testimony in closing. He contends the court relied on the informant's testimony to find the HAC and CCP aggravators, and to reject a statutory mitigator.

The Defendant claims this evidence could not have been discovered any sooner and he has been diligent in obtaining it. He contends that his investigators have interviewed Murphy several times over the years, and it was only now that Murphy was willing to make the referenced admissions. He asserts the State suppressed favorable, material information, which would have provided critical impeachment of the State's case for death and that when considered with all evidence at trial or developed after trial, evidence that Murphy expected to receive a benefit for his testimony would probably produce a life sentence.

Notably, the record establishes that, on March 13, 1995, a hearing was held on the Defendant's "Motion to Compel Disclosure of Existence and Substance of Promises of Immunity, Leniency or Preferential Treatment." The Defendant requested disclosure of any promises of leniency, immunity or preferential treatment offered to Murphy and Givens. The State represented that "there are no promises, no offers of leniency and no deals made with either of those." The State further indicated he understood Murphy had a pending Motion for Mitigation of Sentence, filed prior to the State learning he would be a witness in this case, and that the motion had not been ruled upon by the Court. The State represented "as an officer of the court that no promises have been made to either of those two inmates, nor do I anticipate that any will be, but in the event that they are, I will disclose that to you." *Motion Hearing*, March 13, 1995, pp. 181-182.

Moreover, during the jury trial, Murphy testified he was sentenced on January 26, 1995 to 12 years in prison for forging checks of close friends and family members; he had between four to nine prior convictions; at the time of the Defendant's trial, he had a pending motion for modification of sentence for a case in Taylor County, which was prosecuted by a different prosecutor than the one prosecuting the Defendant; he was "not necessarily" hoping for a sentence reduction in his pending motion, just a correction, so that his three consecutive sentences totaling 12 years could be run concurrently, for a total of five to seven years; with gain time earned, his ultimate sentence could be between two and one-half years, to three years; he was not promised anything for testifying in the Defendant's case. *Jury Trial*, pp. 1035-1037, 1044-1055, 1059.

The Defendant's assertion that he could not have learned of this evidence until Murphy was willing to provide it after multiple visits from Wainwright's investigators and through his

affidavit dated May 13, 2025, is without merit. It is a matter of public record that Murphy's prison sentence was modified to probation soon after his testimony. Additionally, it was known to counsel on March 13, 1995, that Murphy had a pending motion to modify his sentence, and defense counsel elicited testimony from Murphy regarding the pending motion during the trial. Motion Hearing, March 13, 1995, pp. 181-182; Jury Trial, 1044-1055. At trial, Murphy also conceded that, despite not having a deal with the State, his attorney would be able to inform the sentencing judge in his case of his trial testimony to possibly be considered at the resentencing hearing. Jury Trial 1044-1046. Ultimately, Murphy's affidavit is not different from what the Defendant admits was Murphy's trial testimony. Essentially, Defendant asserts that during trial Murphy repeatedly denied having any hope or desire to obtain a lesser sentence by testifying, and that the State never promised any benefit in exchange for his testimony. Nothing changes with Murphy's affidavit except that after thirty-one years he now alleges that even though the State repeatedly stated that it was not extending him any offer of a benefit, he surmised he would receive some benefit. Despite his beliefs now, there is no indication or evidence to establish that the State ever offered him anything. In fact, his trial testimony and his recent affidavit establish otherwise.

Nor would this evidence more likely than not result in a life sentence. As noted, six aggravating factors were found in the Defendant's case. See *Wainwrigh*t, 704 So. 2d 511at 512, n.2 (Fla. 1997). Three factors, HAC, CCP, and prior-violent-felony, are among the most serious in the statutory sentencing scheme. See *Craft*, 312 So. 3d 45 at 56 (Fla. 2020); *Wood*, 209 So. 3d 1217 at 1228 (Fla. 2017). Thus, the Defendant cannot meet the standard necessary to establish Murphy's affidavit constitutes newly discovered evidence entitling him to vacation of his death sentence. See *Damren,* 397 So. 3d 607 at 610-611 (Fla. 2023).

Additionally, the Defendant cannot establish that the State committed a *Brady* violation. "To prevail on a *Brady* claim, a defendant must prove that (1) favorable evidence which is exculpatory or impeaching; (2) was suppressed by the State, and (3) because the evidence was material, he was prejudiced." *Stein v. State*, 2024 WL 4231183, *2 (Fla. Sept. 19, 2024) (citing *Sweet v. State*, 293 So. 3d 448, 451 (Fla. 2020)). The Defendant asserts this *Brady* violation warrants vacating his death sentence.

The Florida Supreme Court has explained that in assessing *Brady* materiality and ensuing prejudice, a court reviews "the net effect of the suppressed evidence and determine whether the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Sweet v. State*, 293 So.3d 448, 451 (Fla. 2020) (rejecting a *Brady* claim based on impeachment). But "evidence that is 'too little, too weak, or too distant from the main evidentiary points to meet *Brady's* standards is not material." *Sweet*, 293 So.3d at 451 (quoting *Turner v. United States*, 582 U.S. 313, 326 (2017)).

Similarly, in his affidavit, Murphy attests the prosecutor repeatedly told him he could not promise him anything in exchange for his testimony. Thus, the Defendant failed to establish that the State promised Murphy anything in exchange for his testimony, or that the State suppressed evidence of such a promise. Even if Murphy expected to receive a benefit in exchange for his testimony, any impeachment of Murphy with his expectation would not be material to the convictions under *Brady*. *See Stein*, 2024 WL 4231183, at *3 (holding proposed impeachment of one of State's key witnesses with his expectation of not being charged in exchange for his testimony was not material under *Brady*, and impeaching the witness with his expectation would not put the case "in a different light" because the "State's case was strong" and included a confession.). Here, as in *Stein*, the State's case against the Defendant was strong, and included

scientific evidence and a confession. See *Wainwright v. State*, 704 So. 2d 511, 512 (Fla. 1997) (discussing evidence in case); *Wainwright v. State*, 2 So. 3d 948, 950-952 (Fla. 2008) (discussing evidence in case). The Defendant failed to meet the standard to establish Murphy's affidavit attestations constitute newly discovered evidence, there was no *Brady* violation, and, as such, the Defendant is not entitled to relief on Ground Three.

Therefore, it is hereby **ORDERED** that the Defendant's Amended Eighth Successive Motion for Postconviction Relief is **SUMMARILY DENIED.** The Defendant may appeal this decision to the Florida Supreme Court.

DONE and ORDERED in Chambers in Columbia County, Florida, this 20th day of May 2025.

MELISSA G. OLIN, CIRCUIT JUDGE

APPENDICES:

A Motion Hearing, March 13, 1995, pp. 2, 181-182

B Jury Trial, pp. 910, 1035-1037, 1044-1055, 1059

C Jury Trial (Guilt Phase), pp. 1969-2000

D Verdict Form

E Advisory Sentence Form (Penalty Phase)

F Transcript Excerpts of Evidentiary Hearing, Jamuary 23, 2002

G Psychological Evaluations included in Record on Appeal in Florida Supreme Court case no.: SC02-1342.

H *Pro Se* Successive Motion for Postconviction Relief, filed May 26, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Order, with attachments, was furnished by U.S. Mail or electronic transmission, as represented below, this 20th day of May 2025.

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Person sending copies

State of Florida v. Anthony Floyd Wainwright
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Case No.: 1994-150-CF
Melissa G. Olin, Circuit Judge

APPENDIX

A

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT, IN AND
FOR HAMILTON COUNTY, FLORIDA.

RICHARD EUGENE HAMILTON,

Defendant/Appellant,

VS.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO. 94-150CF

(VOLUME I)

COPY

IN RE: MOTION HEARINGS

BEFORE: Hon. E. Vernon Douglas
Circuit Judge

DATE: March 13, 1995

TIMES: Commenced at 9:00 a.m.
Concluded at 5:15 p.m.

LOCATION: Hamilton County Courthouse
Jasper, Florida

REPORTED BY: LYNN SAPP
Official Court Reporter
and Notary Public

FILED IN OFFICE
THIS THE 29th DAY OF
September, 1995
AT 1:00 O'CLOCK P. M
ELAINE ROZIER
CLERK OF COURTS
HAMILTON COUNTY, FLORIDA

LYNN SAPP, OFFICIAL COURT REPORTER
Route 1, Box 110E, Jasper, Florida 32052
(904) 792-3204

THE COURT: At this point, then, the Court rules you have received what is --

MR. TAYLOR: Denied subject to renewal.

THE COURT: Yes, sir.

MR. TAYLOR: Judge, I have got a Motion to Compel Disclosure of Existence and Substance of Promises of Immunity, Leniency or Preferential Treatment. Since this appears to be a two-defendant case, and there are no promises of record and no breaks offered to either defendant at this time, except for specific witnesses who have come in at the eleventh hour and have made claims that my client in this particular case, Anthony Wainwright, made statements to them, I have taken the depositions of one of those witnesses and do not need information in that regard. I have a specific request as to the last two people, I believe at the Taylor County Jail, that were disclosed late and the State can -- I think I am entitled to that at this point in time. This was late coming to the Defense and, therefore, appropriate with this motion.

MR. BLAIR: I understand that you are not requesting any information with regard to promises made to Gary Dean Gunter?

MR. TAYLOR: That's correct.

MR. BLAIR: Your Honor, with respect to the other two witnesses, Robert Allen Murphy and Anthony Givens, the State -- there are no promises, no offers of leniency and no deals made with either of those. It is my understanding that Robert Allen Murphy has pending a Motion for Mitigation of Sentence, which was filed prior to our learning that he would be a witness in this case and has not been ruled upon by the Court. But I will represent as an officer of the court that no promises have been made to either of those two inmates, nor do I anticipate that any will be, but in the event that they are, I will disclose that to you.

MR. TAYLOR: My request as to Gunter was based upon the deposition that we took of Gunter at the Taylor County Jail. If anything occurred subsequent to that, then I would have --

MR. BLAIR: I did bring to court today and I am prepared to offer to counsel an offer of plea in the Gary Dean Gunter case. He was charged with attempted burglary, possession of burglary tools and possession of less than 20 pounds of cannabis. According to the offer of plea, he pled guilty as

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APPENDIX

B

IN THE CIRCUIT COURT OF THE
THIRD JUDICIAL CIRCUIT, IN AND
FOR HAMILTON COUNTY, FLORIDA.

ANTHONY FLOYD WAINWRIGHT,

Defendant/Appellant,

VS.

STATE OF FLORIDA,

Appellee.
_____/

CASE NO. 94-150CF

SUPREME COURT NO. 86,022

IN RE:	JURY TRIAL
BEFORE:	Hon. E. Vernon Douglas Circuit Judge
DATE:	May 23, 1995
TIMES:	Commenced at 9:00 a.m. Concluded at 4:00 p.m.
LOCATION:	Clay County Courthouse Green Cove Springs, Florida
REPORTED BY:	LYNN SAPP Official Court Reporter and Notary Public

May 23, 1995 Nine o'clock a.m.

PROCEEDINGS

(DAY 7 - VOL. IX)

(WHEREUPON, THESE PROCEEDINGS WERE HAD AT THE BENCH, OUT OF THE HEARING OF THE JURIES, AS FOLLOWS:)

MR. TAYLOR: We have two motions concerning testimony that I anticipate may be attempted to be brought in today by the State.

One deals with statements allegedly made by my client on May 9th, again on May 11th and on May 20th, 1994. It is the position of the defendant Anthony Wainwright, as to the May 9th statements and the May 20th statements, and I think May 11th even can be incorporated into that, that there were communications begun between the State Attorney and then Counsel, Victor Africano, who had not, I think, been appointed, but who had been asked to come over and assist Mr. Wainwright, with the idea that Mr. Wainwright would give statements and cooperate with the State in the anticipation of avoiding facing the death penalty.

And on May 9th there in fact was a meeting that was attended by Mr. Africano, the defendant, Sheriff Reid, I believe Mr. Kinsey and other law enforcement representatives wherein there with a

Q Captain Gutshall, you say you've known Mr. Gunter for thirteen years and he's been truthful and honest with you?

A I didn't say that. I said ten to twelve years.

Q Ten to twelve years. And he's been truthful and honest with you?

A Yes, sir.

Q With your knowledge of Mr. Gunter, if you were gone for the weekend, would you give him the keys to your house, sir?

A No, sir.

Q Thank you. Same thing for Mr. Murphy?

A Same for you.

MR. BLAIR: Nothing further from this witness, Your Honor.

The State calls Robert Allen Murphy.

May this witness be -- well, let me ask that the witness remain under the rule.

THE COURT: You will remain under the rule for today.

* * *

Whereupon,

ROBERT ALLEN MURPHY

was called as a witness on behalf of the State, and

having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLAIR:

Q Mr. Murphy, I'm going to ask you if you would pull the chair as close to the stand as you can get it. Okay? Tell us what your name is, please.

A Robert Allen Murphy.

Q And, Mr. Murphy, are you an inmate in the Florida Department of Corrections?

A Yes, I am.

Q And how long have you been an inmate in the Florida Department of Corrections, most recently?

A Since January the 26th.

Q Of this year?

A Yes, sir.

Q And for the record, what sentence did you receive?

A Twelve years.

Q And for what offense?

A Forgery.

Q Did you plead guilty?

A Yes, sir.

Q Where was that offense prosecuted?

A Perry, Florida.

Q And did my office prosecute that offense?
A Not that I know of.
Q The State Attorney's Office in Perry prosecuted you?
A Yes, sir.
Q Let me represent to you that that's part of the Third Judicial Circuit. You don't know me from that case; is that correct?
A No, sir.
Q All right. Now, this is not your first time in a Florida prison; is that right?
A No, sir.
Q How many prison sentences have you previously served, if you know?
A Two.
Q And how many felony convictions do you have?
A Four or five.
Q And that's over a period of how many years?
A Since about '86.
Q Now, directing your attention to a period of time in September of last year. Were you an inmate in the Taylor County Jail in Perry?
A Yes, I was.
Q Did there come a time when you were transferred to the confinement unit upstairs at the

Anthony Wainwright, who is that seated at that table over there, which one of the three?

A The one in the middle.

MR. BLAIR: Your Honor, may the record reflect the person he has referred to is the defendant, Anthony Floyd Wainwright.

MR. TAYLOR: Referred to, Judge, not identified.

THE COURT: So ordered.

MR. BLAIR: That's all I have, Your Honor.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Murphy, you're currently serving a twelve year sentence in the State Department of Corrections?

A That's correct.

Q And when were you sentenced to that twelve years, sir?

A January 11th.

Q Of 1995?

A Yes.

Q Do you currently have any motions pending or appeals pending in conjunction with that sentence?

A I have a modification of sentence.

Q And what do you understand the modification of sentence to be? What is that? Is it a document

that's been filed on your behalf?

A Yes, sir. My lawyer filed it.

Q Okay. And when did he file that motion to modify your sentence?

A You only have sixty days after the sentence, so I'm sure in that time sometime. I was sentenced incorrectly.

Q And so he's trying to get you back into court so the judge can resentence you?

A Yes, sir.

Q And give you a lower sentence?

A Not necessary lower, just a different one. I was sentenced to five, five, and two running wild.

Q So you've got twelve years, and you've got to serve the first five before you start working on your second five, before you start working on your last two; is that correct?

A That's correct.

Q All right. And in conjunction with this motion, it's your understanding, is it not, that if your lawyer can get you back into court, the judge can resentence you?

A That is my understanding that he can change the sentence to run concurrent or inconcurrent.

Q And he can take into account, can he not,

anything that you've done since he last sentenced you on January 26th of 1995; isn't that true?

A I guess so.

Q So as you sit here today, you're hoping that you can get a sentence reduction out of Taylor County; isn't that correct?

A Not necessarily.

Q You don't want your sentence reduced?

A I want to be sentenced correctly.

Q Which would be what, five years?

A It would be five or either seven years.

Q All right. And you've been in the system now -- where are you located?

A TCI.

Q And that Tomoka?

A Taylor.

Q You're at Taylor Correctional?

A Yes.

Q So since you've been sentenced, you've stayed in your own county; is that right?

A I went to Lake Butler.

Q For a while, and then you got sentenced back to Taylor; is that right?

A That's correct.

Q And as we sit here today on a twelve year

sentence, how much time will you have to serve on that sentence, if you know?

A It depends on the gain time situation. They give out different time.

Q You could serve up to six or seven years on that or eight?

A Could serve up to six or seven.

Q And if you get your sentence reduced, you would serve about half of whatever the reduction is; isn't that correct?

A That's correct.

Q If you get your sentence down to five years, you serve two and a half; isn't that right?

A About three.

Q About three. All right. Now, you were asked on direct examination if you've been convicted before, and I think you said four or five times; is that your recollection, or is it more than that?

A Four or five times, I don't know how many.

Q Well, do you remember giving a deposition at the Hamilton County Jail on March 27th in the afternoon where you were brought into the library area?

A I remember.

Q All right. And do you remember being put under oath just like you are here today where you're

supposed to tell the truth and all that stuff?

A Yes, sir.

Q And do you remember being asked about your felony convictions, and your response being, "Yes, eight or nine"?

A I don't remember. I mean, I didn't say I didn't say that. I might have.

Q Well, today, do you know the truth, have you been convicted four or five times or eight or nine times?

A I don't know the exact number.

Q And what were you convicted of doing?

A Forgery.

Q Forgery. That is what, writing checks?

A Yes.

Q What, just writing a check on your own account and you didn't have any money in it and it bounced, or something else?

A I was writing checks on somebody else's account.

Q Oh, so you were taking somebody else's checks and writing and forging their name to it?

A Correct.

Q Okay. And would these be people that you would know?

A Yes.
Q Would they be family and close friends?
A Yes.
Q Well, who would they be?
A One was my first cousin.
Q All right. And was he or she living in and around Taylor County?
A Yes.
Q Was it a male or female?
A Male.
Q So you stole his checks and then wrote checks on his account and took the money; is that right?
A Basically.
Q Well, you either you did or you didn't. Is that what you did?
A Well, actually he left the checkbook in my truck the night before.
Q His mistake, and so you just borrowed it.
A Yes.
Q All right. And then wrote checks and took the money?
A Correct.
Q And who else?
A Who else did I write a check on?
Q Yes.

A A lady name Lucille Wilder.
Q Just a citizen in Taylor County?
A Just a citizen.
Q What about Jack Murphy?
A That's my father.
Q What about his checking account?
A I wrote a few on him.
Q So you stole your own dad's checks and forged his signature and stole the money from him; is that right?
A That's right.
Q And for those offenses and others you're now doing this twelve year sentence?
A Not for the one on my dad's, I wasn't prosecuted on them.
Q Charges were dropped?
A Never pressed.
Q Never pressed. Okay. And, incidently, you've got some other relatives in Taylor County, don't you?
A I've got a bunch of relatives in Taylor County.
Q Do you have any that work for the sheriff?
A Yes, I do.
Q Who are they?

A Timmy Murphy and a judge, about four cousins.
Q That's Buddy Murphy?
A Yes.
Q Anybody else at the jail?
A Ken Sparks and Timmy Murphy.
Q And they both work at the Taylor County Jail?
A Yes, sir.
Q So they would work under Captain Gutshall, wouldn't they?
A Yes, sir.
Q And he would see them on a regular basis as his employees, wouldn't he?
A Yes.
Q And you were there at the same time they were working there, weren't you?
A Yes.
Q And they knew -- they, your family, knew you were there in the jail; isn't that right?
A That's right.
Q And Captain Gutshall knew you were there in the jail?
A Yes.
Q He knew you were related to those other Murphys, doesn't he?
A Yes.

Q Now, when you first came -- you've been into court before like this, you, yourself, have been a defendant in court before, haven't you? That is, you've had to go to court on a number of occasions in your life on these eight or nine convictions; isn't that correct?

A Correct.

Q And when you go into court, you know that your lawyer is usually sitting there with you; isn't that right?

A Correct.

Q And you have a table that you sit at in front of the Judge; isn't that correct?

A Correct.

Q Yes?

A Correct.

Q And then the guys that are prosecuting you, that is the prosecutors, they sit in the courtroom when you're in the courtroom with the Judge and your lawyer; isn't that right?

A That's right.

Q And they sit at a table sort of like Mr. Blair here; isn't that right?

A That's right.

Q Okay. And then you've been in a courtroom

and you've seen jury boxes where you've got seats for jurors to sit; isn't that also true?

A That's true.

Q Okay. And you've seen a court reporter before?

A Yes.

Q And a judge before; isn't that right?

A Yes.

Q And this has happened on what, dozens and dozens of times in your life that you've had court appearances?

A A few.

Q Okay. And you knew today why you were brought up here from Taylor County was to testify in a trial; isn't that correct?

A Correct.

Q And you knew who was on trial, didn't you?

A Yes.

Q Anthony Wainwright. And this courtroom isn't really any different than any of the other ones that you've sat in before when you were the defendant; isn't that true? You've got a table for the prosecutor, you've got a table for the defense lawyer; isn't that right?

A Basically the same, I guess.

Q Okay. And you had seen me, had you not, on March 27th at the Hamilton County Jail when we took a deposition in the afternoon, along with Mr. Blair and a couple of other people?

A That's correct.

Q All right. So when you walked into the courtroom today, it was no secret that there would be a table with a defense lawyer sitting at it and somebody on trial; isn't that true?

A That's true.

Q And there would be a table with a prosecutor sitting at it on trial; isn't that also true?

A That's true.

Q And you knew the person that should be sitting at that table on trial would be Anthony Wainwright; isn't that further true?

A That's true.

Q And as you came into this courtroom, you say back sometime when you were in the Taylor County Jail somebody who said he was Anthony Wainwright told you this story; is that right?

A That's true.

Q And as you looked around this courtroom, you looked at the jury, you looked out all the way over here, and you looked at this table, which you knew was

the table the defendant would be sitting at, and when you were first asked to identify somebody that you say was Anthony Wainwright, you couldn't do it, could you?

A He looked different when I seen him.

Q And as you sit here today, knowing that Mr. Wainwright should be sitting with his attorney, who you saw on March 27th, you can only say he looks different, or that person looks different; isn't that true?

A That's true.

Q Now, when you were at the Taylor County Jail, did you have access to the medical unit?

A Did I have access?

Q Yes, had you been in the medical unit before?

A Yes, I've been in it before.

Q As a matter of fact, while you were in Taylor County Jail, you had occasion to see somebody who you say might have been Anthony Wainwright in that medical unit; isn't that correct?

A I never seen him in the medical unit.

Q Okay. So if anybody was in there, it wasn't Anthony Wainwright; isn't that true?

A Not when I was there --

Q Was Gunter there?

A -- I didn't see him.

Q Okay. So could you talk to those people or not?

A I could say hello, yes.

MR. TAYLOR: Thank you.

REDIRECT EXAMINATION

BY MR. BLAIR:

Q Mr. Murphy, have I promised you anything in return for your testimony here today?

A No, sir.

Q Has anyone promised you anything in return for your testimony here today?

A No, sir.

MR. BLAIR: Nothing further.

MR. TAYLOR: Just briefly, Judge.

RECROSS-EXAMINATION

BY MR. TAYLOR:

Q Mr. Murphy, is there any rule that you know that would preclude your lawyer from bringing to the Court's attention you testifying in this case?

A Excuse me?

Q Do you know of any reason that your lawyer would be precluded or could not advise the judge in Taylor County that you had testified in the case against Anthony Wainwright?

A No.

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APPENDIX

C

THE COURT: Members of the jury, I shall now instruct you on the laws that you should apply to the facts as you find them. We thank you for your attention. Please pay attention to the instructions I am about to give you.

Anthony Floyd Wainwright, the defendant in this case, has been accused of the crimes of murder in the first degree, robbery while armed with a firearm, kidnapping while armed with a firearm, and sexual battery while armed with a firearm. I'll read to you from the indictment. Count I, first degree murder, the Grand Jurors of Hamilton County, Florida charge that Richard Eugene Hamilton and Anthony Floyd Wainwright on the 27th day of April, 1994, in Columbia County, Florida and/or in Hamilton County, Florida, unlawfully and from a premeditated design and intent to effect the death of Carmen G. Gayheart, or any other human being, did kill said Carmen G. Gayheart by strangulation and/or by shooting her with a firearm, thereby inflicting in and upon said Carmen G. Gayheart mortal wounds and injuries, from which said mortal wounds and injuries, Carmen G. Gayheart died, contrary to Florida Statute 782.04(1)(a).

Count II charges armed robbery. The Grand Jurors of Hamilton County, Florida further charge that Richard Eugene Hamilton and Anthony Floyd Wainwright on the 27th day of April, 1994, in Columbia County, Florida and/or in Hamilton County, Florida, did then and there unlawfully take money or other property, to wit, a motor vehicle and assorted personal items from the person or custody of Carmen G. Gayheart, with the intent to either permanently or temporarily deprive Carmen G. Gayheart of the money or other property, and in the course of the taking used force, violence, assault or putting in fear, and carried a firearm contrary to Florida Statute 812.13.

Count III, armed kidnapping. The Grand Jurors of Hamilton County, Florida further charge that Richard Eugene Hamilton and Anthony Floyd Wainwright on the 27th day of April, 1994, in Columbia County, Florida and/or in Hamilton County, Florida, without lawful authority did then and then forcibly, secretly, or by threat, confine, abduct or imprison another person, to wit, Carmen G. Gayheart, against said person's will, with the intent to commit or facilitate the

commission of a felony, to wit, robbery and/or sexual battery, or to inflict bodily harm upon, or to terrorize the victim or any other person, contrary to Florida Statute 787.01; and during the commission of said offense, did carry, display, use, threaten, or attempted to use a firearm, contrary to Florida Statute 775.087.

Count IV, armed sexual battery. The Grand Jurors of Hamilton County, Florida further charge that Richard Eugene Hamilton and Anthony Floyd Wainwright on the 27th day of April, 1994, in Columbia County, Florida and/or in Hamilton County, Florida, did then and there unlawfully commit a sexual battery upon Carmen G. Gayheart, a person twelve years of age or older, without that person's consent, by vaginal penetration, or by union with the sexual organ of another, and in the process thereof, used actual physical force likely to cause serious personal injury and/or used or threatened to use a deadly weapon, to wit, a firearm, contrary to Florida Statute 794.011(3).

Murder in the first degree includes the lesser crimes of murder in the second degree and manslaughter, all of which are unlawful. A killing that is excusable or was committed by the

use of justifiable deadly force is lawful.

If you find Carmen Gayheart was killed by Anthony Floyd Wainwright, you will then consider the circumstances surrounding the killing in deciding if the killing was murder in the first degree, murder in the second degree or manslaughter, or whether the killing was excusable or resulted from justifiable use of deadly force.

I will now give you the definition of justifiable homicide. The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing.

Now the definition of excusable homicide. The killing of a human being is excusable, and therefore lawful under any one of the following three circumstances: When the killing is committed by accident or any misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent; or, number two, when the killing occurs by accident or misfortune in the heat of passion, upon any sudden and sufficient provocation; or, thirdly, when the

killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing was not done in a cruel or unusual manner.

A dangerous weapon is any weapon that taking into account the manner in which it is used is likely to produce death or great bodily harm.

I will now instruct you on the circumstances that must be proved before Anthony Floyd Wainwright may be found guilty of first degree murder or any lesser included crime. There are two ways in which a person may be convicted of first degree murder. One is known as premeditated murder, and the other is known as felony murder.

Before you can find the defendant guilty of first degree premeditated murder, the State must prove the following three elements beyond a reasonable doubt: Number one, that Carmen Gayheart is dead. Number two, the death was caused by the criminal act or agency of Anthony Floyd Wainwright. Number three, there was a premeditated killing of Carmen Gayheart.

Killing with premeditation is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing.

The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow refection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

Before you can find the defendant guilty of first degree felony murder, the State must prove the following three elements beyond a reasonable doubt: Number one, that Carmen Gayheart is dead. Number two, the death occurred as a consequence of and while Anthony Floyd Wainwright was engaged in the commission of robbery, kidnapping or sexual battery. Number three, that Anthony Floyd Wainwright was the person who actually killed Carmen Gayheart, or Carmen Gayheart was killed by a person other than Anthony Wainwright, but both Anthony Floyd Wainwright and the person who killed

Carmen Gayheart were principals in the commission of robbery, kidnapping or sexual battery.

In order to convict of first degree felony murder, it is not necessary for the State to prove that the defendant had a premeditated design or intent to kill.

If two or more persons help each other commit a crime, and the defendant is one of them, the defendant is a principal and must be treated as if he had done all of the things the other person or persons did, if the defendant, number one, knew what going to happen; number two, intended to participate actively or by sharing in an expected benefit; and, three, actually did something by which he intended to help commit the crime.

"Help" means to aid, to plan or assist. To be a principal, the defendant does not have to be present when the crime is committed.

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crimes of which he is accused, there may be evidence that he committed other acts that would constitute a lesser included crime. Therefore, if you decide the main accusation has

not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime.

The lesser crimes indicated in the definition of first degree murder are second degree murder and manslaughter. Before you can find the defendant guilty of the lesser included offense of second degree murder, the State must prove the following three elements beyond a reasonable doubt: Number one, Carmen Gayheart is dead. Number two, the death was caused by the criminal act or agency of Anthony Floyd Wainwright; and, three, there was an unlawfully killing of Carmen Gayheart by an act imminently dangerous to another and evincing a depraved mind regardless of human life.

An act is one imminently dangerous to another, evincing a depraved mind regardless of human life, if it is an act or series of acts that, number one, a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another; number two, is done from ill will, hatred, spite or evil intent; and, number three, is of such a nature that the act itself indicates an indifference to human

life.

In order to convict of second degree murder, it is not necessary for the State to prove the defendant had a premeditated intent to cause death. If you find that Anthony Floyd Wainwright committed second degree murder, and you should also find that during the commission of the crime he carried, displayed, used, threatened to use or attempted to use a firearm, you should find him guilty of second degree murder while armed with a firearm. A firearm has been previously defined for you.

If you find only that the defendant committed second degree murder, but did not carry, display, use, threat to use or attempt to use a firearm, then you should find him guilty only of second degree murder.

Before you can find the defendant guilty of the lesser included offense of manslaughter, the State must prove the following two elements beyond a reasonable doubt: Number one, that Carmen Gayheart is dead. Number two, the death was caused by the intentional act of Anthony Floyd Wainwright or intentional procurement of Anthony Floyd Wainwright, or culpable negligence of

Anthony Floyd Wainwright.

However, the defendant cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide, as I have previously explained those terms.

To "procure" means to means to persuade, induce, prevail upon or cause a person to do something.

I will now define culpable negligence for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intent to harm, that violation is negligence. Culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant.

Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to the consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of other as is

equivalent to an intentional violation of such rights of others. The negligent act or omission must have been committed with an utter disregard for the safety of others.

Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known or reasonably should have known was likely to cause death or great bodily injury.

If you find that Anthony Floyd Wainwright committed manslaughter, and you also find that during the commission of the crime he carried, displayed, used, threatened to use or attempted to use a firearm, you should find him guilty of manslaughter while armed with a firearm. Firearm has been previously defined for you.

If you find only that the defendant committed manslaughter, and did not carry, display, use, threaten to use or attempt to use a firearm, then you should find him guilty only of manslaughter.

The next count charges robbery. And before you can find the defendant guilty of robbery, the State must prove the following four elements beyond a reasonable doubt: Number one, Anthony Floyd Wainwright took the motor vehicle and/or

assorted personal items from the person or custody of Carmen Gayheart. Secondly, force, violence or assault, or putting in fear was used in the course of the taking. And, thirdly, the property taken was of some value. Fourthly, the taking was with the intent to permanently deprive Carmen Gayheart of her right to the property and any benefit from it, or appropriate the property of Carmen Gayheart to his own use of the use of any other person not entitled to it.

In the course of taking means that the act occurred prior to, or contemporaneous with, or subsequent to the taking of the property, and that the act and the taking of the property constitute a continuous series of acts or events.

In order for a taking of property to be robbery, it is not necessary that the person robbed be the actual owner of the property. It is sufficient if the victim has the custody of the property at the time of the offense.

The taking must be by the use of force or violence or by assault so as to overcome the resistance of the victim, or by putting the victim in fear so that she does not resist. The law does not require that the victim of robbery resist to

any particular extent, or that she offer any actual physical resistance, if the circumstances are such that she is placed in fear of death or great bodily harm if she does resist. But unless prevented by fear, there must be some resistance to make the taking one done by force or violence.

In order for a taking by force, violence or putting in fear to be robbery, it is not necessary that the taking be from the person of the victim. It is sufficient if the property taken is under the actual control of the victim so that it cannot be taken without the use of force, violence or intimidation directed against the victim.

The punishment provided by law for the crime of robbery is greater if in the course of committing the robbery the defendant carried some kind of weapon. An act is in the course of committing the robbery, if it occurs in an attempt to commit robbery or in flight after the attempt or commission. Therefore, if you find the defendant guilty of robbery, you must then consider whether the State has further proved those aggravating circumstances, and reflect this on your verdict.

If you find that the defendant carried a

firearm in the course of committing the robbery, you should find him guilty of robbery with a firearm.

A firearm is legally defined as any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler or firearm silencer, any destructive device or any machine gun. That's the definition of a firearm.

The lesser included crimes indicated in the definition of robbery while armed with a firearm are, robbery with a weapon, robbery, grand theft in the third degree.

The crime of robbery has already been defined for you. And if you find that the defendant carried a weapon that was not a firearm in the course of committing the robbery, you should find him guilty of robbery with a weapon.

If you find that the defendant carried no firearm or weapon in the course of committing the robbery, but did commit the robbery, you should find him guilty only of robbery.

A weapon is legally defined to mean any

object that can be used to cause death or inflict serious bodily harm.

Before you can find the defendant guilty of theft, the State must prove the following two elements beyond a reasonable doubt: Number one, Anthony Floyd Wainwright knowingly and unlawfully obtained, used, endeavored to obtain or endeavored to use, the motor vehicle of Carmen Gayheart; and, secondly, he did so with the intent to either temporarily or permanently deprive Carmen Gayheart of her right to the property or any benefit from it, or to appropriate the property of Carmen Gayheart to his own use or to the use of any person not entitled to it.

If you find the defendant guilty of theft, you must determine by your verdict whether the property was a motor vehicle.

Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

"Obtain or uses" means any manner of taking or exercising control over property.

"Endeavor" means to attempt or try.

"Property" means anything of value.

Before you can find the defendant guilty of kidnapping, the State must prove the following three elements beyond a reasonable doubt: Number one, that Anthony Floyd Wainwright, forcibly, secretly or by threat, confined, abducted or imprisoned Carmen Gayheart against her will; and Anthony Floyd Wainwright had no lawful authority; and, thirdly, Anthony Floyd Wainwright acted with the intent to commit or facilitate the commission of robbery, and/or sexual battery, or to inflict bodily harm upon or to terrorize the victim, or another person.

In order to be kidnapping, the confinement, abduction or imprisonment must not be slight, inconsequential or merely incidental to the felony. It must not be of the kind inherent in the nature of the felony; and must have some significance independent of the felony in that it makes the felony substantially easier of commission or substantially lessens the risk of detection.

If you find that Anthony Floyd Wainwright committed kidnapping, and you also find that during the commission of the crime, he carried,

displayed, used, threatened to use or attempted to use a firearm, you should find him guilty of kidnapping with a firearm. A firearm has been previously explained to you.

If you find only that the defendant committed a kidnapping, but did not carry, display, use, threaten to use or attempt to use a firearm, then you should find him guilty only of kidnapping.

The lesser included crime indicated in the definition is false imprisonment. Before you can find the defendant guilty of false imprisonment, the State must prove the following three elements beyond a reasonable doubt: Anthony Floyd Wainwright forcibly, secretly or by threat, confined, abducted, imprisoned or restrained Carmen Gayheart against her will. And, secondly. Anthony Floyd Wainwright had no lawful authority. And thirdly, Anthony Floyd Wainwright acted for any purpose other than to hold for ransom or reward or as a shield or hostage, or to commit or facilitate the commission of any felony, inflict bodily harm upon or to terrorize the victim or another person; or interfere with the performance of any governmental or political function.

As to the sexual battery count with a victim

twelve years of age or older with use of great force, before you can find the defendant guilty of sexual battery upon a person twelve years of age or older, with the use of a deadly weapon or physical force, the State must prove the following four elements beyond a reasonable doubt: Number one, Carmen Gayheart was twelve years of age or older. Number two, Anthony Floyd Wainwright committed an act upon Carmen Gayheart in which the sexual organ of Anthony Floyd Wainwright penetrated or had union with the vagina of Carmen Gayheart. Number three, that Anthony Floyd Wainwright, in the process used or threatened to use a deadly weapon, or used actual physical force likely to cause serious personal injury. And, fourth, the act was done without the consent of Carmen Gayheart.

"Consent" means intelligent, knowing and voluntary consent and does not include coerced submission.

A weapon is a deadly weapon if it is used or threatened to be used in a way likely to produce death or great bodily harm.

"Serious personal injury" means great bodily harm or pain, permanent disability or permanent

disfigurement.

"Union" is an alternative of penetration and means coming into contact.

If you find that Anthony Floyd Wainwright committed sexual battery upon a person twelve years of age or older with great force, and you also find that during the commission of the crime he carried, displayed, used, threatened to use, or attempted to use a firearm, you should find him guilty of sexual battery upon a person twelve years of age or older with great force, with a firearm. A firearm has been previously defined.

If you find only that the defendant committed sexual battery upon a person twelve years of age or older with great force, but did not carry, display, use, threaten to use, or attempt to use a firearm, then you should find him guilty only of sexual battery upon a person twelve years of age or older, with great force.

The lesser indicated crimes in the definition of sexual battery upon a person twelve years of age or older with great force are sexual battery upon a person twelve years of age or older by the use of slight force and battery.

As to the lesser includeds, before you can

find the defendant guilty of sexual battery upon a person twelve years of age or older, by the use of slight force, the State must prove the following four elements beyond a reasonable doubt: Number one, Carmen Gayheart was twelve years of age or older. Number two, Anthony Floyd Wainwright committed an act upon Carmen Gayheart in which the sexual organ of Anthony Floyd Wainwright penetrated or had union with the vagina of the victim, Carmen Gayheart. Thirdly, that Anthony Floyd Wainwright, in the process, used physical force or violence not likely to cause serious personal injury. And, four, that act was committed without the consent of Carmen Gayheart.

"Consent," again, means intelligent, knowing and voluntary consent and does not include coerced submission.

"Serious personal injury" means great bodily harm or pain, permanent disability or permanent disfigurement.

"Union" is an alternative of penetration and means coming into contact.

And, finally, as to the lesser included of battery, before you can find the defendant guilty of battery, the State must prove the following

element beyond a reasonable doubt: A, that Anthony Floyd Wainwright intentionally touched or struck Carmen Gayheart against her will; or Anthony Floyd Wainwright intentionally caused bodily harm to Carmen Gayheart.

The defendant has entered a plea of not guilty. This means you must presume or believe that the defendant is innocent. The presumption stays with the defendant as to each material allegation in the indictment, through each stage of the trial until it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the following two elements: Number one, that the crimes with which the defendant is charged were committed, and, number two, the defendant is the person who committed the crimes. The defendant is not required to prove anything.

Whenever the words "reasonable doubt" are used, you must consider the following: A reasonable doubt is not a possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict

of not guilty if you have an abiding conviction of guilt.

On the other hand, if after carefully considering, comparing and weighing all of the evidence, there is not an abiding conviction of guilt, or if having a conviction, it is one which is not stable, but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced upon this trial and to it alone that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or lack of evidence. If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict.

You may find some of the evidence not reliable or less reliable than other evidence in the case. You should consider how the witnesses acted as well as what they said. And some of the things you should consider are these: Did the witness seem to have an opportunity to see and know the things about which that witness testified? Did the witness seem to have an accurate memory? Was the witness honest and straightforward in answering the attorney's questions? Did the witness have some interest in how the case should be decided? Does the witness' testimony agree with the other testimony and other evidence in the case? Has the witness been offered or received any money, preferred treatment or any other benefit in order to get the witness to testify? Had any pressure or threat been used against the witness that affected the truth of the witness' testimony? Did the witness at some other time make a statement that was inconsistent with the testimony he gave in court? Was it proved that the witness had been convicted of a crime? Was it proved that the general reputation of the witness for telling the truth and being honest was bad?

You may rely upon your own conclusions about the witnesses. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

Expert witnesses are like other witnesses with one exception, the law permits an expert witness to give his or her opinion. However, an expert's opinion is only reliable when given on a subject about which you believe them to be an expert. Like other witnesses you may believe or disbelieve all or any part of an expert's testimony.

You should use great caution in relying on the testimony of a witness who claims to -- you're not requesting the instruction?

MR. BLAIR: That's correct.

THE COURT: The Constitution requires the State to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything, nor is the defendant required to prove his innocence. It's up to the State to prove the defendant's guilt by evidence.

The defendant exercised a fundamental right by choosing not to be a witness in this case. You must not view this as an admission of guilt or be

influenced by it in any way in your decision. No juror should ever be concerned that a defendant did or did not take the witness stand to give testimony in the case.

A statement claimed to have been made by the defendant outside of court has been placed before you. Such a statement should always be considered with caution and be weighed with great care to make certain that it was freely and voluntarily made. Therefore, you must determine from the evidence that the defendant's alleged statement was knowingly, voluntarily and freely made.

In making this determination, you should consider the total circumstances, including but not limited to: Number one, whether when the defendant made the statement, he had been threatened in order to get him to make it. And, number two, whether anyone had promised him anything in order to get him to make the statement. If you conclude the defendant's out of court statement was not freely and voluntarily made, you should disregard it.

These are some general rules that apply to your discussions when you retire to consider your verdict. You must follow these rules in order to

return a lawful verdict. If you fail to follow the law, your verdict would be a miscarriage of justice. And there's no reason for failing to follow the law in this case. And all of us are depending upon you to make a wise and legal decision in this case.

This case must be decided only upon the evidence that you have heard from the answers of the witnesses and have seen in the form of exhibits in evidence, and on these instructions. This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone.

Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case. Your duty is to determine if the defendant is guilty or not guilty in accord with the law.

It is judge's job to determine what a proper sentence would be if the defendant is guilty.

Whatever verdict you render must be unanimous. That is each juror must agree on the same verdict.

It's entirely proper for a lawyer to talk to a witness about the testimony that witness would

give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his or her testimony.

Feelings of prejudice, bias and sympathy are not legally reasonable doubts and they should not be discussed by any of you in any way. Your verdict must be based on your views of the evidence and on the law as contained with these instructions.

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything that I may have said or done that causes you to believe that I prefer one verdict over another.

You will have this verdict form to take with you into the jury room. Leaving off the formal parts, it reads as follows: Verdict of the Jury: We, the Jury, find as follows as to the defendant in this case, as to Count I of the indictment, the charge is murder in the first degree, check only one as to this count: Choice A, the defendant is guilty of murder in the first degree as charged in the indictment; Choice B, the defendant is guilty of the lesser included offense of murder in the second degree while armed with a firearm; Choice

C, the defendant is guilty of the lesser included offense of murder in the second degree; Choice D, the defendant is guilty of the lesser included offense of manslaughter while armed with a firearm; Choice E, the defendant is guilty of the lesser included offense of manslaughter; and Choice F, the defendant is not guilty.

As to Count II of the indictment, the charge is robbery while armed with a firearm. Check only one. Choice A, the defendant is guilty of robbery while armed with a firearm as charged in the indictment; Choice B, the defendant is guilty of the lesser included offense of robbery while armed with a weapon; Choice C, the defendant is guilty of the lesser included offense of robbery; and Choice D, the defendant is guilty of the lesser included offense of grand theft in the third degree; Choice E, the defendant is not guilty.

As to Count III of the indictment that charges kidnapping while armed with a firearm, check only one. Choice A, the defendant is guilty of kidnapping while armed with a firearm as charged in the indictment; Choice B, the defendant is guilty of the lesser included offense of kidnapping; Choice C, the defendant is guilty of

the lesser included offense of false imprisonment; and Choice D, the defendant is not guilty.

As to Count IV of the indictment that charges sexual battery while armed with a firearm. Check only one. Choice A, the defendant is guilty of sexual battery upon a person twelve years of age or older while armed with a firearm as charged in the indictment; Choice B, the defendant is guilty of the lesser included offense of sexual battery upon a person twelve years of age or older with great physical force; Choice C, the defendant is guilty of the lesser included offense of sexual battery upon a person twelve years of age or older, with slight physical force; Choice D, the defendant is guilty of the lesser included offense of battery; and Choice E, the defendant is not guilty.

So say we all, dated at Green Cove Springs, Clay County, Florida, this blank day of May, 1995. The date for a blank is left open intentionally so that the foreman of the jury is required to write the date on the verdict form. And the foreman of the jury should sign the verdict form and return it to the courtroom. Either a man or a woman may be the foreman of the jury.

Your first order of business upon leaving the courtroom would be to select one of your number to serve as foreman of the jury.

The foreman of the jury presides over your deliberations like the chairman of a meeting.

Any corrections or additions to the instructions as given, by the State?

MR. BLAIR: None by the State, Your Honor.

THE COURT: By the Defense?

MR. TAYLOR: No, sir.

THE COURT: Very well. Members of the jury, the earlier cautionary instructions you were given are now expressly lifted. You are directed to retire to the jury room to discuss the case and to reach a verdict.

We now thank the one alternate juror. And this will conclude your service. Please call and see if it's necessary for your return. Call Room 105 for Thursday at nine, if we're having court that day.

MR. TAYLOR: Judge, may we approach a moment?

THE COURT: Yes, sir.

(WHEREUPON, THESE PROCEEDINGS WERE HAD AT THE BENCH, OUT OF THE HEARING OF THE WAINWRIGHT JURY, AS FOLLOWS:)

MR. TAYLOR: I understood that the first case, that the actual exhibits did not go into the jury room. I introduced some specifically that I want before the jury. I didn't know what the Court's position was going to be.

THE COURT: What we did, we told them they could have all of the exhibits, and they could ask for any that they wanted specifically. If you prefer just to send them all back, or I can tell them that they can have any exhibit. I think all or none.

MR. TAYLOR: I have to ask that all of mine be put in, because we never did, because we were running short. I never actually published them in their entirety, that one letter.

MR. BLAIR: No objection to everything going back.

THE COURT: We'll send it all back.

(WHEREUPON, THE CONFERENCE AT THE BENCH WAS CONCLUDED, AND THE FOLLOWING PROCEEDINGS WERE HAD IN THE PRESENCE OF THE WAINWRIGHT JURY.)

THE COURT: You will have this verdict form in the jury room with you, and you will have all of the items which have been received in evidence as exhibits, will be brought into the jury room.

If you desire to communicate with the Court in any way, please write your questions, knock on the door, and the bailiff will be right outside. If you have any other needs, also communicate in writing to the bailiff.

Thank you. And you may retire to consider your verdict.

And thank the alternate juror. You're free to go.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM FOR DELIBERATIONS AT 4:27 P.M.)

(WHEREUPON, THESE PROCEEDINGS WERE HAD AT THE BENCH.)

MR. TAYLOR: Judge, there's been a question from the jury. I have reviewed that question with Mr. Blair, and I've reviewed that question with my client at counsel table. The proposed response in writing that has been submitted to the Court, drafted by Mr. Blair with my one hundred percent concurrence. And my client understands. We requested that a response be sent into the jury room.

THE COURT: Anything else by the State?

MR. BLAIR: Judge, you might inquire of Mr. Wainwright if he understands and agrees with

State of Florida v. Anthony Floyd Wainwright
Order Summarily Denying Amended Eighth Successive Motion for Postconviction Relief
Case No.: 1994-150-CF
Melissa G. Olin, Circuit Judge

APPENDIX

D

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR HAMILTON COUNTY, FLORIDA.

ON CHANGE OF VENUE TO CLAY COUNTY, FLORIDA

STATE OF FLORIDA

-vs-

ANTHONY FLOYD WAINWRIGHT,
Defendant.

CASE NO. 94-150-CF

FILED IN OFFICE
THIS THE 30th DAY OF
May, 1995
AT 9:05 O'CLOCK P. M
ELAINE ROZIER
CLERK OF COURTS
HAMILTON COUNTY, FLORIDA

VERDICT OF THE JURY

We, the Jury, find as follows, as to the defendant in this case:

As to Count I of the Indictment that charges MURDER IN THE FIRST DEGREE (Check only one as to this Count):

✓ a. The defendant is GUILTY of MURDER IN THE FIRST DEGREE as charged in the Indictment.

_____ b. The defendant is GUILTY of the lesser included offense of MURDER IN THE SECOND DEGREE WHILE ARMED WITH A FIREARM.

_____ c. The defendant is GUILTY of the lesser included offense of MURDER IN THE SECOND DEGREE.

_____ d. The defendant is GUILTY of the lesser included offense of MANSLAUGHTER WHILE ARMED WITH A FIREARM.

_____ e. The defendant is GUILTY of the lesser included offense of MANSLAUGHTER.

_____ f. The defendant is NOT GUILTY.

As to Count II of the Indictment that charges ROBBERY WHILE ARMED WITH A FIREARM (Check only one as to this Count):

✓ a. The defendant is GUILTY of ROBBERY WHILE ARMED WITH A FIREARM as charged in the Indictment.

_____ b. The defendant is GUILTY of the lesser included offense of ROBBERY WHILE ARMED WITH A WEAPON.

_____ c. The defendant is GUILTY of the lesser included offense of ROBBERY.

_____ d. The defendant is GUILTY of the lesser included offense of GRAND THEFT IN THE THIRD DEGREE.

_____ e. The defendant is NOT GUILTY.

As to Count III of the Indictment that charges KIDNAPPING WHILE ARMED WITH A FIREARM (Check only one as to this Count)

✓ a. The defendant is GUILTY of KIDNAPPING WHILE ARMED WITH A FIREARM as charged in the Indictment.

_____ b. The defendant is GUILTY of the lesser included offense of KIDNAPPING.

_____ c. The defendant is GUILTY of the lesser included offense of FALSE IMPRISONMENT.

_____ d. The defendant is NOT GUILTY.

As to Count IV of the Indictment that charges SEXUAL BATTERY WHILE ARMED WITH A FIREARM (Check only one as to this Count)

✓ a. The defendant is GUILTY of SEXUAL BATTERY UPON A PERSON TWELVE YEARS OF AGE OR OLDER WHILE ARMED WITH A FIREARM as charged in the Indictment.

_____ b. The defendant is GUILTY of the lesser included offense of SEXUAL BATTERY UPON A PERSON TWELVE YEARS OF AGE OR OLDER WITH GREAT PHYSICAL FORCE.

_____ c. The defendant is GUILTY of the lesser included offense of SEXUAL BATTERY UPON A PERSON TWELVE YEARS OF AGE OR OLDER WITH SLIGHT PHYSICAL FORCE.

_____ d. The defendant is GUILTY of the lesser included offense of BATTERY.

_____ e. The defendant is NOT GUILTY.

So say we all.

Dated at Green Cove Springs, Clay County, Florida, this 30th day of May, 1995.

Wayne S. Wetzel
FOREMAN

State of Florida v. Anthony Floyd Wainwright
Order Summarily Denying Amended Eighth Successive Motion for Postconviction Relief
Case No.: 1994-150-CF
Melissa G. Olin, Circuit Judge

APPENDIX

E

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR HAMILTON COUNTY, FLORIDA.

ON CHANGE OF VENUE TO CLAY COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO. 94-150-CF

-vs-

ANTHONY FLOYD WAINWRIGHT,
Defendant.

ADVISORY SENTENCE

(CHECK ONLY ONE)

___V___ A majority of the jury, by a vote of __12-0__, advise and recommend to the court that it impose the death penalty upon Anthony Floyd Wainwright.

_____ The jury advises and recommends to the court that it impose a sentence of life imprisonment upon Anthony Floyd Wainwright without possibility of parole for 25 years.

So say we the jury.

Dated at Green Cove Springs, Clay County, Florida, this _1ST_ day of June, 1995.

Wayne E. Wetzel
FOREMAN

FILED IN OFFICE
THIS THE 1st DAY OF
June, 1995
AT 4:15 O'CLOCK P M
ELAINE ROZIER
CLERK OF COURTS
HAMILTON COUNTY, FLORIDA

State of Florida v. Anthony Floyd Wainwright
Order Summarily Denying Amended Eighth Successive Motion for Postconviction Relief
Case No.: 1994-150-CF
Melissa G. Olin, Circuit Judge

APPENDIX

F

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT

IN AND FOR HAMILTON COUNTY, FLORIDA

STATE OF FLORIDA

vs. CASE NO. 94-150-CF

ANTHONY FLOYD WAINWRIGHT,

ORIGINAL

Defendant.

_____/

IN RE: EVIDENTIARY HEARING

BEFORE: Hon. E. Vernon Douglas
Circuit Judge

DATE: January 23, 2002

LOCATION: Columbia County Courthouse
Lake City, Florida

REPORTED BY: LYNN SAPP
Registered Professional Reporter
and Notary Public

APPEARANCES:

REPRESENTING THE STATE OF FLORIDA:

GEORGE R. DEKLE, ASSISTANT STATE ATTORNEY
Post Office Box 1546
Live Oak, Florida 32060

-and-

BARBARA J. YATES, ASSISTANT ATTORNEY GENERAL
The Capitol
Tallahassee, Florida 32399-1050

REPRESENTING THE DEFENDANT:

R. GLENN ARNOLD, ATTORNEY AT LAW
314 South Baylen Street, Suite 116
Pensacola, Florida 32501

* * *

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facilities, I think, that whoever their in-house person was in the medical unit talk to Mr. Wainwright and see about giving him something to calm him and let him sleep.

That, as I understood it, had not occurred and because of all of this, and the sequence would be right, that would be the next day, we were asking that his medications, I felt that that would help, filed that motion. And as a result of the filing of the motion, Dr. Mhatre, who was known to the Court and to all of the parties as a psychiatrist, was in fact appointed to either see or consult with Mr. Wainwright. And, ultimately, I believe he did recommend some medication.

Q And did the activities, the bazaar activity and conduct of Mr. Wainwright continue?

A Well, throughout the period of my representation, incidents occurred. They were never as bad as they were on that and I believe that was May 22, but I may be incorrect, May 22, 23, somewhere in that range. Those were the worst by far. They continued from time to time. Again, it would flare up during the sentencing phase of the case. But none of it was as significant as it was around the issue of the microphone.

Q And you never obtained a written report from

Dr. D'Errico?

A No, sir, I did not. I may have seen some but I did not -- there was another lawyer, a young lawyer, that was working with me by the name of Sean Owens and part of his duties were to try to interact with Mike D'Errico. It seems to me I know I have seen some documents, but I don't believe we wanted a formal report prepared after the evaluations that Dr. D'Errico had conducted on Mr. Wainwright.

Q Mr. Taylor, were you aware at that time that Anthony Wainwright had, if you will, for lack of a better word, he suffered some sort of mental problems since like age four or five, throughout --

A He had a number of incidents that occurred at an early age and then they continued on and he had received treatment. We had access to those records. Dr. D'Errico had access to those records. I talked to family and we may have, either someone from my office, including Owens, may have actually been in or the investigator may have been in communication directly with some of the personnel. I don't recall any specific conversation myself with any of the North Carolina medical people or the treating facilities.

Q And with regards to D'Errico, you and I have earlier discussed that and you made me aware that there

were no written reports and I am assuming that was a strategical thing?

A Yes, sir.

Q With regards to the reports?

A Yes, sir.

Q But at the point in time that I am talking about in court after the stun belt and after the microphone incident, would it be safe to say from that point on in that trial that your relationship with the defendant Wainwright was pretty much gone?

A It was certainly affected. I wouldn't characterize it as gone.

Q Preceding that, there were a number of incidents where you were surprised by DNA evidence and that sort of thing?

A That's true.

Q We're going to talk about that in a minute, but what I was going to ask next was after the stun belt incident and the microphone, that combined with all of the other matters that had gone on during the course of the trial, did you make any effort to bring it to the Court's attention regarding the cumulative effect of all these things on the deterioration of your attorney/client relationship?

A I don't know that I phrased it in that way. I

A Correct.

Q Why did you not present evidence during the penalty phase pertaining to Mr. Wainwright following Hamilton? There is a statutory mitigator dealing with that.

A I thought we were getting that in candidly through the testimony that had come in through those two previous witnesses. You can basically ask a jury to take into account everything they have heard earlier and argue from that. At least, that's always been my understanding.

The issues concerning the leader/follower, I had hoped to get through and did I think in some ways through the mother, who was a delightful person and made a very good witness. Mr. Wainwright refused to participate in the penalty phase individually. He was not going to say anything. He would not give me the authority to go into certain areas, either with his mother or if I had wanted to bring Mike D'Errico on, which we had already decided we probably wouldn't do, but even so, I wasn't going to be allowed to do that and he was rather adamant.

So I guess Monday morning quarterbacking, we did the best with what we thought we had at the time. I was comfortable with the testimony -- I think I brought

it in through at least two witnesses and maybe a third during the trial and I was comfortable with that having come in, that he clearly -- and then his mother's testimony that we got out that he was always a loner, wouldn't communicate basically with people, pretty much just was off by himself, and would sometimes go off with older people and be gone for a couple of days, was all consistent with that approach. That's how I am recollecting it and I think that's what the record shows. What else should have been done, I thought it was sufficient at the time.

Q Mr. Taylor, the record reflects that at the time that Mr. Wainwright stopped you on the examination of his mother during the penalty phase, apparently there was a bench conference and you indicated to the judge that you were getting ready to go into an area wherein the mother was going to testify about some sexual abuse against the defendant Wainwright when he was a younger man. Do you recall that?

A Yes, sir.

Q And subsequent to that, you announced that to the Court?

A I didn't announce --

Q I don't mean out loud. You had a bench conference?

A I simply tried to alert Judge Douglas that I was absolutely being stopped from going further by the client. I think it was the state attorney that brought to the Court's attention the actual subject matter. I was not even going to disclose that aspect of it based upon an attorney-client communication and the instructions I had from my client. I simply was saying there are areas that we're going to go into and we can't and I am being directed to stop, words to that effect. I can't go forward with the witness. I am being told to stop. Anthony was quite adamant about it and really concerned about it and he -- there is no question in my mind that he didn't want to put his mother through it. He didn't even want me to put his mother on the stand at all.

Q In essence, what happened from that point on, though, was no other mitigation from the mother at all?

A That's true.

Q About anything?

A That's true.

Q Let me ask if you recall --

MR. ARNOLD: Judge, it may make it easier -- for some reason I only ended up with one copy of these reports -- if I could stand up there by Mr. Taylor, would you have any objections to

THE COURT: I think you are asking him does he disagree -- has his experience been that he disagrees with psychiatric evaluations. That's about as far as you can go. And you do want an answer to that question?

MR. ARNOLD: Yes, sir.

THE COURT: You can answer that question.

THE WITNESS: I have seen it both ways to tell the truth. I have heard from almost every shrink or psychiatrist that we have used in cases that there can be a spread of four to five points either way, just on scoring alone. Also, affecting the ability of the evaluation at any given occasion is the depression that the individual may be under at the time of the evaluation. And the depression is brought on by stress. Stress is brought on by either incarceration or facing a trial.

So if the ultimate question is knowing everything that I knew in this case, why wasn't something more done, I had the benefit of a psychologist that I had a great deal of confidence in, Michael D'Errico. And, candidly, his evaluations were similar to those that are found in at least a third summary there of

exhibit 5 about the anti-social personality disorder and conduct disorder and it was not something that I wanted to get into in conjunction with the trial of this case.

BY MR. ARNOLD:

Q Having testified that in most of those cases you dealt with there was a difference of four to five points between the performance scale versus verbal skills, why is it then when all of these reports reflect a 30 point difference that you did not deem that sufficient enough to cause alarm and bring in other experts?

A I don't think it ever came up, candidly. I know I relied a great deal on Mike D'Errico. He was a forensic psychologist who has worked and been assigned to the Florida State Hospital in Chattahoochee for a number of years. We sat down and went through basically all of the reports. I did talk -- I thought about trying to get it in. The way we ultimately attempted to get -- I think the prosecutor used it as a catch all mitigator. But the way we tried to get it in, as best we could, under the limited circumstances, was through the mother.

Q The next question was going to be and is, why did you not simply list as witnesses and bring into this

courthouse any of these psychologists who could have testified that since age four or five, Anthony Wainwright exhibited all of these personality disorders as a mitigator? You agree that as a statutory mitigator and non-statutory mitigator, those were relevant?

A At the time, I was working under some pretty strict instructions by the client to do literally nothing and don't get into that, don't get into the past, don't open the doors on a couple of other things. I was allowed to put his mother on and then, unfortunately, that came to a halt. I thought she was doing a pretty darn good job on the stand. She was a very credible witness.

Q You will agree with me, will you not, Mr. Taylor, that not withstanding whatever job his mother was doing, she could not have testified as to these evaluations and reports?

A That's correct.

Q The only way you could have gotten all that testimony in was through some of these psychologists or through introduction of those exhibits?

A Or through Michael D'Errico, that's correct.

Q And none of that was offered in mitigation?

A No, sir.

Q There was another issue --

MR. ARNOLD: Judge, I am not trying to be disobedient and I can't remember in your order dealing with that first claim about those statements that I talked about. We went into it earlier. Is it permissible for me to go into those two statements? It is not.

THE COURT: Let me ask the state for the record, four and five, no objection?

MR. DEKLE: No objection.

THE COURT: Received in evidence.

(DEFENSE EXHIBITS NO. 4 AND 5 WERE RECEIVED IN EVIDENCE AT THIS TIME.)

CROSS EXAMINATION

BY MR. DEKLE:

Q Dealing with State's Exhibit 1 through 5 or, excuse me, Defense Exhibit 1 through 5, these were documents in your possession you gave to Dr. D'Errico; is that correct?

A Yes, sir.

Q And these were documents that were never seen by the state up until the time that Mr. --

A I wouldn't think --

Q You didn't disclose them?

A I certainly didn't turn them ever over to y'all.

Q You had something we did not know about?

A True.

Q And there is information in these documents that would be detrimental to Mr. Wainwright's defense on the penalty phase; is there not?

A Yes, sir.

Q Stuff about his aggressiveness and conduct disorder and prognosis that looked like he was going to -- he had no remorse for crimes that he committed and all sorts of material of that nature in all of these documents; is that correct?

A I don't know. You may be over characterizing. Let me put it this way. To answer your question, after consultation with Michael D'Errico, with Sean Owens and myself and yet at least one other lawyer concerning the penalty phase and evidence and the presentation, the consensus was we would do more harm than good and we would be better served to try to get some of this decent information in through a nonprofessional witness. And in this case, it turned out to be his mother, who was, at the time the decision was made, I thought a good witness. Obviously, the jury disagreed.

Q For example, Dr. D'Errico diagnosed Mr. Wainwright as being a sociopath; is that correct?

A I don't have a report from Dr. D'Errico.

Q Having antisocial personality character?

A Dr. D'Errico did not -- Dr. D'Errico's ov- evaluation for purposes of whether we put something on would not have been favorable to the client.

Q In other words, he had information that would have been harmful to the client if it had been developed on cross-examination?

A Yes, sir.

Q And Mr. Blair was going to be cross-examining; is that correct?

A I don't know who y'all would have had cross exam.

Q Mr. Blair ultimately cross-examined; did he not? Mr. Blair ultimately handled the penalty phase; did he not?

A Yes.

Q And you were aware that Mr. Blair was going to handle the penalty phase if we called any witnesses?

A Yes, but that wouldn't have impacted my decision.

Q What I am leading up to, Mr. Blair is a pretty good cross examiner, isn't he?

A Yes, both of you could bully people around.

Q And this likewise Mr. David Coolthank (phonetic) had information that would have been

detrimental to the client that could have been developed on cross-examination?

A My recollection, not having looked at those documents for a couple of years or more, is that for every arguably positive issue in them, there was certainly negative information that would have had to have been explained whether it would have been through by back dooring it through Dr. D'Errico or bringing the individuals down themselves.

One other thing that I remember discussing specifically with D'Errico was the date and age of some of the documents in the evaluation. We were more concerned with a current impression that a jury could get in the penalty phase by someone who had examined Mr. Wainwright more recently, for example, than somebody that had done it when he was 15 or 16. These were all things that were being tossed around.

And right or wrong, the decision was made that we're going to go and try to get in under the broad brush of a sympathetic witness some of this information. I thought as to a lot of it without the technical aspects, we got it in. We got in about his problems as a child and head injuries and treatment, the family's frustration with trying to get him to everybody that they knew about until we had to stop.

Q In other words, you decided to introduce the evidence through the mother's testimony?

A We tried to get in as much as we could through mom. And, candidly, we -- the state was not objecting to some of that coming in and I kept every time I could get a little bit in, then I would try to get a little bit more in.

Q Mom was a whole lot more -- a whole lot less susceptible to cross-examination than these experts would have been?

A In fact, I don't think she was cross-examined. If so, very briefly.

Q Mothers are not people that people want to cross-examine and beat up on; is that correct?

A The problems facing Anthony Wainwright were not brought about by Mrs. Wainwright. She, therefore, was a distinct plus in the defense column as a witness as opposed to a mental health expert.

Q And Mr. Wainwright didn't want you to put her on the stand?

A Not at all.

Q And you negotiated with him to get him to allow you to put her on the witness stand?

A I did.

Q And you were finally able to prevail upon him

to allow you to put her on the witness stand?

A Under narrow circumstances.

Q And you put her on the witness stand and got into as much mitigation as Mr. Wainwright would allow you to get into on the witness stand; is that correct?

A In hindsight, and you know perhaps I should have asked for a 30 minute break and more time with the client, but as I recall, we did take at least one break and the Court did give me some time. I tried to explain as best I could how, what, when, where, and why. In Mr. Wainwright's defense, throughout, he did not want his family to be involved in the case. That is not unusual. In his particular case, he was more adamant than most and we tried to accommodate until we felt that it was absolutely hurting him.

Q In the guilt phase, you discussed your case theory with Mr. Wainwright; is that correct?

A Yes.

Q And Mr. Wainwright approved that case theory; did he not?

A Well, I mean, he -- when you are discussing the case with a client, it is not that cut and dried. But basically you sit and try to explain where you are going with the case. He certainly never said that's stupid, you can't do this, or anything like that, unlike

in certain other aspects of the case. So to answer your question, Anthony Wainwright knew where we were going and I had no reservation that that was approved by the client. He didn't specifically say don't ask this or do that.

Q But when you got something he didn't want you to do, he let you know about it?

A No question about that.

Q And you were very careful to make sure that as a result of that, that he knew what you were doing and where you were going and understood why you were doing the things you were doing?

A To the best of our ability, that's what we tried to do. It was like walking on egg shells.

Q As far as Dr. D'Errico was concerned, he told you that Mr. Wainwright knew the difference between right and wrong; did he not?

A I don't have any specific reports from Dr. D'Errico. He understood the proceedings and knew what we were doing. He had been institutionalized. He understood about testing. My goodness, he had been given MMPIs and Wechsler and all of the tests repeatedly over his lifetime. So the consensus was that he understood the nature of the proceedings.

If you are talking about anything else, yes,

State of Florida v. Anthony Floyd Wainwright
Order Summarily Denying Amended Eighth Successive Motion for Postconviction Relief
Case No.: 1994-150-CF
Melissa G. Olin, Circuit Judge

APPENDIX

G

IN THE CIRCUIT COURT, THIRD
JUDICIAL CIRCUIT, IN AND FOR
HAMILTON COUNTY, FLORIDA

SUPREME COURT CASE NO. SC02-1342
LOWER TRIBUNAL CASE NO. 94-150-CF-2

ANTHONY FLOYD WAINWRIGHT,
Petitioner/Appellant,

vs.

STATE OF FLORIDA,
Respondents/Appellee

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3-71-47-6

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DEFENDANT'S EXHIBIT
table 1
1-23-02

Anthony Wainwright

PSYCHOLOGICAL EVALUATION

(Review and Summary of previous psychiatric and psychological evaluations)

1. Brief review of child's symptomatology: Anthony is a 17 year old white male who seems to have a long term history of learning and behavioral problems with significant written history of such problems starting around the 5th grade. Seemingly, this was about the time he was placed in a learning disability classroom.

He has been evaluated by a variety of professionals, including school psychologists, private and public psychologists, and psychiatrists within institutional settings. Here, generally he has been perceived as having a learning disability along with many other characteristics that have been disruptive, such as impulsivity, excessive talking in school, easily swayed by peers, a lot of negative attention-getting behaviors in school (i.e. spitballs, pulling hair, etc.), occasional bedwetting, defiance of rules imposed by parents and other authoritative figures, etc.

More recently he has had more serious problems with the law, such as appearing in court for making obscene phone calls, vandalism to homes, setting fire to garbage on a neighbor's porch, trying to pass off Dramamine as an illegal drug, throwing a stick at a person's car windshield, and more recently has stolen a car.

In reference to his family, he seems to be somewhat emotionally detached despite the family usually being described in most evaluations as being very supportive and concerned. Anthony does seem to feel that his family has often expected too much out of him and even expressed at times he wished to be removed from the home.

It is felt that generally the family has been supportive in trying to get help for Anthony and often in a very desperate manner, and now pretty much are quite exhausted emotionally.

II. Review of Psychiatric Evaluations: Testing over time has generally reflected Anthony's intellectual ability to be within the low average range, usually in the lower section of that range, with a significant

difference between verbal and performance scores, which are consistent with a child who is going to have a lot of difficulties in the traditional school system. Achievement testing also presents low average range in most areas, again particularly not only verbal but also often difficulties in visual-motor areas. However, generally all testing reflected the child to have particular difficulties in verbal areas (i.e. reading, vocabulary, etc.) which would probably explain a lot of his discouragement in the traditional school system.

However, on the other hand, seemingly often Anthony was expected to do average work on the part of his parents, and on the part of the school system.

After being evaluated by North Carolina Memorial Hospital on 3/25/85, it was recommended that they have family treatment at the local Mental Health Center and/or in-house camp treatment, such as the Wilderness Camp. The parents followed through with the latter of these recommendations, but pulling him out of the Camp at his request prior to completion.

Also, on 11/4/86 he was evaluated at Cumberland Hospital. He was diagnosed as "conduct disorder, under-socialized, aggressive, substance abuser, with mixed sporadic and verbal learning disability". They also felt there was a possibility of a manic-depressive disorder which needed to be ruled out within a longterm in-patient setting, where possible medication support could be used. Also, possibly such an in-house treatment would be helpful in helping him break down some of his strong cognitive defenses and denial systems which seemed to make it very difficult to get beyond surface issues with Anthony.

III. Recommendations: After conferring with Dr. Lenore DeHar of the Division of Mental Health in Raleigh, I have concluded that, despite Anthony's many behavioral problems historically, that this boy at least deserves a good in-house psychiatric evaluation and possibly treatment by psychotherapy and/or some medicational support. Whether this is done within the prison system and/or outside is not really one of concern here as long as he has this opportunity.

M. David Coulthard, M. A.
License # 734
Tarboro Clinic, P.A.

MDC:blh

HCA Cumberland Hospital
3425 Melrose Road — Phone (919) 485-7181
Fayetteville, N.C. 28304

Anthony F. Wainwright
DOB: 10-22-70

DATE OF ADMISSION: 11-4-86
DATE OF DISCHARGE: 11-14-86

IDENTIFYING DATA: Anthony is a 16 year old male who was brought here for evaluation by his father, Ken Wainwright.

CHIEF COMPLAINT AND REASON FOR ADMISSION: Anthony was in detention for a month in Greenville, North Carolina, after stealing an automobile and being picked up for minor traffic violations. He went to court on 11-4-86 and was brought here the same day for a 10-day evaluation.

Anthony dates his problems back to the seventh grade when he began to get in trouble in school. At that time, he got in with the wrong crowd and eventually became involved in delinquent behavior, including the use of drugs and alcohol. He was evaluated at Chapel Hill on an outpatient basis at a younger age and was told that he did not have a learning problem.

Anthony was sent to Wilderness Camp about a year ago. After 10 months there, he ran away and returned home where he has been for the past several months. Since coming home, he has gotten back into drugs and alcohol (as much as he can get his hands on) and gotten back into delinquent behavior, which includes vandalism, wrecking his parents' car, and later stealing another car. Because of his inability to take care of himself or to function well in his parents' home, the judge recommended that he come here for an evaluation to determine whether he should attempt to get long-term residential treatment or go the training school route.

PAST PSYCHIATRIC HISTORY AND OTHER ESSENTIAL DATA: Anthony has had impaired functioning at school and in his interpersonal and family relationships for many years. He is beginning to develop a long history of delinquent behavior, drug and alcohol usage, and of course is beginning to suffer the long-term consequences of this behavior.

His father is the successful owner of a Piggly Wiggly Store, his mother is active in community affairs, and he has a sister that is successful in school and at home. I talked with the parents on several occasions, they are truly concerned and are desperate to find solutions for this youngster. He dislikes school and would like to quit, and gets below average grades. He was enrolled in a private school in the seventh grade, but was expelled because of failure to perform, along with disruptive behavior. Parents have exhausted their insurance and are looking for a brief evaluation that will help them decide which way to go, either to seek longer term residential treatment or to stop rescuing Anthony and have him go to training school as a way of taking responsibility for his actions.

PROVISIONAL DIAGNOSIS: Axis I: Conduct disorder, undersocialized, aggressive. 312.00
Axis II: No diagnosis.
Axis III: No diagnosis.

HCA Cumberland Hospital
3425 Melrose Road — Phone (919) 485-7181
Fayetteville, N.C. 28304

DATE OF ADMISSION: 11-4-86
DATE OF DISCHARGE: 11-14-86

MENTAL STATUS ON ADMISSION: Anthony appeared for his interview neatly dressed, well-groomed and responsive. I had seen him the night before, and on the day I examined him he seemed less angry and somewhat more cooperative. He was responsive to questions, at times elaborated on questions and volunteered additional information. His speech was normal, relevant and coherent, with normal associations. There was no evidence of thought disorder or underlying psychosis. Except for a "chip on the shoulder" attitude, along with his anger about being here, his mood was slightly depressed and he showed no remorse or shed tears over his current situation. He appeared to be of average intelligence, was oriented in all three spheres, had good memory for past and recent events, paid attention and could concentrate on what was being said. His insight and judgment were obviously poor.

PHYSICAL EXAMINATION: Within normal limits.

LABORATORY DATA: Hematology, urinanalysis, Multi-25 panel, and drug screen were all within normal limits or negative.

SUMMARY OF PSYCHOLOGICAL TESTING: This 16 year old male is generally performing in a Low Average range of intellectual achievement. There is a significant discrepancy between his verbal and nonverbal performances, in favor of the latter. Further, this discrepancy is of such magnitude as to warrant a diagnosis of Learning Disability affecting verbal skills. A Mild to Moderate Depression is indicated, along with Conduct Disorder, undersocialized, aggressive type, and Sporadic Substance Abuse. Anthony's depression has been influenced by his verbal deficiency and familial conflicts which have inspired significantly negative perspectives on himself. He is evidencing a low tolerance for stress, in addition to motor restlessness that may be purely a function of his stress or may signify a possible bipolar condition.

HOSPITAL COURSE: Anthony was admitted to the Adolescent Unit for evaluation. He was seen daily by me in individual sessions, was seen by his hospital therapist twice a week, participated in the activities and group meetings on the unit, and attended school. I purposely did not start him on medication because of the short time that he was here.

Both parents and Lora Kahl, MSW, were present for the initial family session. Although I was unable to elicit problems in the marriage or areas of disagreement between the parents, I'm sure there are many things that we don't know that will come up later in longer term treatment. Both parents say that he had the colic for 9 months after he was born, which was a very stressful time for both Anthony and his mother, but from then on until his current difficulties began in the fourth grade, they say he was a model child.

During his stay on the unit, Anthony participated reasonably well in his

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evaluation. Toward the end of his stay here, he began to focus on going home and became more disruptive and aggressive toward another male peer. Although in the beginning he was more open to giving us background history and talking about himself, as time went on he became more and more defensive, utilizing denial, avoidance and manipulation. In the long-term residential treatment facility, it would probably take up to 3 months to begin to work through some of this defensiveness before treatment would actually begin.

CONDITION ON DISCHARGE: Anthony was here primarily for evaluation and has not made any changes in terms of his ability to function at home or at school. He talks about going home and working for his father, of going to a drug treatment program as an outpatient, etc. I have very little confidence that he will last long in any kind of situation that requires him to take responsibility for himself.

PROGNOSIS: This youngster has many good resources, but has had to deal with ongoing problems since the fourth grade. Psychological testing indicates that there is some depression, possibly a bipolar disorder, and that the discrepancy between his verbal and performance levels indicate a learning disability. If he could be treated in a longer term residential setting, with appropriate structure and firmness, and could be tried on lithium and/or antidepressant medication, along with ongoing psychotherapy, his prognosis would be better. Lacking this, he probably will wind up in training school because of his inability to control his impulses and take responsibility for himself.

The mental status examination on discharge remains basically unchanged from that done on his admission (see above).

FINAL DIAGNOSIS: Axis I: Conduct disorder, undersocialized, aggressive. 312.00
Substance abuse, mixed, sporadic (by history). 305.92
Rule out bipolar affective disorder, depressed type. 296.50

Axis II: Verbal learning disability. 315.90

DISCHARGE MEDICATIONS: As mentioned above, no medications were started because of the short time that he was to be here. My recommendation, should he come under treatment, is to give him an adequate trial on lithium and/or antidepressant medication.

DISPOSITION: The patient was returned to the care of his parents in Tarboro, North Carolina. Arrangements are being made for him to continue outpatient counseling for alcohol and drug abuse. My recommendation is that he be treated in a long-term residential treatment center. I realize that because of financial reasons this may not be feasible, but I'm concerned that if he doesn't get this kind of treatment, he will wind up in training school and eventually possibly in prison.

HSA Cumberland Hospital
3425 Melrose Road — Phone (919) 488-7181
Fayetteville, N.C. 28304

DATE OF ADMISSION: 11-4-68
DATE OF DISCHARGE: 11-14-86

Robert Jackson, M.D.

RJ/jp
D: 12-4-86
T: 12-4-86

Name	#	Attending Physician
Anthony F. Wainwright	00-49-92	Robert Jackson, M.D.

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MEDICAL CHART TARBORO CLINIC, TARBORO, N. C.

NAME: Wainwright, Anthony
(Last) (First) (Middle Int.) (Age) (Race) (Sex)

ADDRESS:

RELATIVE:

DATE 10/23/87

SUMMARY OF REVIEW OF PSYCHIATRIC EVALUATIONS: Anthony is a 17 year old white male who presented a history of learning and behavioral problems ever since approximately the 5th grade. At about that time he was also placed in a Learning Disability classroom. He has been evaluated by a variety of professionals. Besides a learning disability he has also been perceived as being very impulsive, an excessive talker, a follower of his peers, presents a lot of negative attention seeking behaviors (spitballs, pulling hair, etc.), occasional bedwetting, defiance of rules imposed by parents and/or authoritative figures, etc.

He also has presented more severe behavior such as having to appear in court for making obsence phone calls, vandalism of two homes, setting fire to garbage on a neighbor's porch, trying to pass Dramamine off as an illegal drug, throwing a stick at a person's car windshield, and more recently having stolen a car, etc.

Emotionally also seemingly he has also felt quite detached from his family, feels that he does not meet up to their expectations, and has expressed at times that he wished he would be removed from the home.

Generally, most evaluations have described the parents as being very supportive, often quite desperate and frazzled.

Testing has generally reflected historically that Anthony's intellectual ability is within the low average range, usually in the lower part of that range, with a significant difference between the verbal scores and the performance scores, which is much more consistent with a child who is going to have a lot of difficulties in the traditional school system. Achievement testing also presents low average range in most areas, again particularly not only verbal but also often difficulties in visual-motor areas also.

All of this probably implies that Anthony is going to be very discouraged in the regular traditional school system.

Also historically seemingly the parents have been told many times by the school system that this child is average and should be able to do as well as anybody else and the parents often responded as such toward Anthony, possibly expecting too much of him.

After having been evaluated by N. C. Memorial Hospital on 3/25/85, it was recommended for family treatment in the Local Mental Health Center and/or in-house camp situation, such as Echo Wilderness Camp. The parents followed through with that, with them pulling him out before completion seemingly at Anthony's request.

Also on 11/4/86 he was taken to Cumberland Hospital for evaluation. There they perceived him as a "conduct disorder, undersocialized, aggressive, substance abuser, mixed sporadic and verbal learning disability". They also felt there was a possibility of a depressive disorder or possibly a manic depressive disorder which needed to be ruled out by in-patient long term evaluation and also medicational support use potentially as a result. Here, possible trials on Lithium or other antidepressant medications may be helpful. Also, possibly in-house treatment may be helpful to help break down some of his strong defensiveness and denial systems which make it very difficult to get beyond initial preliminaries with Anthony.

RECOMMENDATION: Longterm institutional treatment program for adolescents,

MEDICAL CHART — TARBORO CLINIC, TARBORO, N. C.

NAME: Wainwright, (Last) Anthony (First) (Middle Int.) (Age) (Race) (Sex)

ADDRESS:

RELATIVE:

DATE 7/13/87

INTERVIEW WITH ANTHONY: Anthony continued to be quite difficult to open up, as he noted that a lot of things he keeps inside and did not want to talk about. Some of these things are about his girl friend, about school and his feelings about school, etc. Most of the session consisted of the therapist asking questions and him giving yes - no answers or no answer when given an open-ended question.

He has a new girl friend by the name of Jamie Tolson.

INTERVIEW WITH MOTHER: The mother noted that things have gone a little better this week, he has not broken curfew any but there was a fairly big argument between his dad and him this past week.

However, his dad did take him fishing down on the coast and this seemingly helped some.

She was gone for 5 days herself and when she got back she found him in the house this afternoon with someone he was not supposed to be in the home with based on probation rules, and also he had not gone to work or to school this morning.

In reference to school, seemingly he spends most of his time just sitting there.

Seemingly the mother did report to the probation officer what had happened in the last couple of weeks and they did have a long talk with him.

He does go probably on Tuesday and Thursday for community work. He also works every day at the grocery store supposedly with the money going directly for payment of all his bills.

The mother noted she would like to have more direct suggestions: The therapist would encourage them to plan more positive activities with him, particularly the father spending more time with him. There will be more direct recommendations in the next couple of sessions. The therapist would like to see the dad next time.

We reviewed more disciplinary procedures on the part of the parents and general structure and dynamics in the home.

M. David Coulthard, M. A./blh

7/27/87

9/21/87

INTERVIEW WITH ANTHONY: Anthony was seen in the jail for approximately an hour. This was the result of a request by Jimmy Keel, his attorney. Jimmy seemingly had concerns about Anthony being depressed, being almost "catatonic" at times. However, he was quite verbal with the therapist, noting his only primary complaint as being unable to sleep well at night and also just being sort of nervous and shaking at times. He did present some mild tremors at time during the session, appearing almost as he were shivering even though the temperature was quite comfortable in the room. He noted he was getting about 3 or 4 hours

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MEDICAL CHART — TARBORO CLINIC, TARBORO, N. C.

NAME: Wainwright (Last) Anthony (First) (Middle Int.) (Age) (Race) (Sex)

ADDRESS:

RELATIVE:

DATE 5-4-87

Patient was brought out from the jail stating that he bumped his left wrist on a stool when he fell out of the bed. He has a small area of swelling over the distal radius, but x-ray reveals no fracture.
IMP: Minor contusion.
Reassured. Recheck p.r.n.

P. L. Temple, M. D./blh

7-6-87
INTERVIEW WITH ANTHONY AND HIS MOTHER, KAY: Anthony is a 16 year old white male who came in with his mother, Kay, age 38 and also with his father, Ken, age 40 and also his younger sister.

REASON FOR REFERRAL: Anthony has been brought in sort of last ditch effort to try to prevent him from going to prison, in that he is presently on intensive probation for one year and two years of regular probation after that. He has a curfew at 7:00, restricted from alcohol and drugs, and redeemed to get counselling and see his probation officer monthly. However, seemingly there is considerable question already of whether he has been keeping to his probation, coming in a couple of mornings early in the morning, 1:30 and 4:30 and his mother seems to be protecting him by not calling the probation officer. However, Anthony claims he has told his probation officer about these occasions and the probation officer has added a couple of hours to community service. The Probation Officer is James Andrews which the therapist will try to contact.

INDIVIDUAL INTERVIEW WITH ANTHONY: Anthony was fairly despondent even though not disrespectful, basically no eye contact, showing no particular desire to really try to make things work even though he states he does not want to go to prison. Has never been in prison but has spent a couple of months in jail prior to his last court date. Seemingly, he has now stolen a couple of cars.

INTERVIEW WITH MOTHER: Mother would like possibly some kind of medication support. Wonder if antidepressant or something will maybe control his mood levels better as she does feel like there are wide mood swings. She stated that this was discussed some in Cumberland County Mental Health.

Anthony has a long history of mental health support which is mostly documented in the chart.

DISP: No more appointments have been set up.
DIAG: 312.10 Conduct disorder, undersocialized, nonaggressive (even though there does seem to be some tendency to aggression at times)

M. David Coulthard, M.A./jtc

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TC-1002

MEDICAL CHART — TARBORO CLINIC, TARBORO, N. C.

NAME: Wainwright, Anthony (Last) (First) (Middle Int.) (Age) (Race) (Sex)

ADDRESS:

RELATIVE:

DATE 9/21/87 (cont.)

of sleep per night. He also noted that he had some fear about what could possibly happen to him during his sleep in that he seems to be with 5 other men in the cell.

The therapist will discuss the situation with Dr. Thompson.

~~Diag: 312.10, Conduct disorder, undersocialized, non-aggressive.~~

~~M. David Coulthard, M. A./bth~~

9/25/87 Examined by Dr see Anthony - he was ~~at loop~~ sleeping; we decided to let him sleep, due to his being very tired & sleeping poorly

M. D. Smith

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TC 1002

MEDICAL CHART — TARBORO CLINIC, TARBORO, N. C.

NAME: Wainwright Anthony
(Last) (First) (Middle Int.) (Age) (Race) (Sex)

ADDRESS:

RELATIVE:

DATE 4-11-85 wt 112

NIGHT CLINIC:
Anthony has persistent hearing problems of the right ear. Has had persistent effusions over the last six months and was recently evaluated in Chapel Hill for psychiatric problems as listed above. Exam reveals opaque fluid filled right TM. Left TM is normal. By otoscopy, the right TM does not move well. The left TM is normal. Pharynx is benign. The rest of the exam is normal.
IMP: Because of his persistent effusion will retreat him with Amoxicillin 250 mgs. p.o. t.i.d. and decongestants and have him see Dr. Baggett or Mitchell next Thursday afternoon for further evaluation because of his right hearing loss which exceeds the thresholds in the 50 decibel range in the higher frequencies.

Richard L. Auten, M.D./jhp

4/18/85
Was found in October to have a hearing loss in the right ear and continues to have problems there. He has recently found to have fluid in his right ear and has been on antibiotics. EXAM reveals left ear to be slightly retracted with thin scanty fluid. The right ear is dull and retracted. Tunning fork suggested conductive hearing loss in the right ear. Nose congested. Throat and neck are negative. The child has a long time history of allergic type symptoms which are perennial. He also smokes. I started him on a Medrol Dosepak. He will complete his course of antibiotics. Also use Beconase Spray and see me back in 2 weeks.

H. Clifford Baggett, M.D./jw

CC: Dr. Baggett
Dr. Auten

5/2/85
Did not take his Medrol Dosepak as directed. He thinks his ears may be a little better. The left ear looks normal today. The right ear still has fluid. Weber lateralizes to the right. Rinne is negative on the right and positive on the left. After politerization the Rinne became positive on the right as well. I started him on Dimetapp, auto-inflation and will see him back in 2 weeks.

H. Clifford Baggett, M.D. /jw

CC: Dr. Baggett
Dr. Auten

5-17-85 F/up visit for this exam by H. Baggett
Reburn RN. / S. Reburn LPN

6/13/85
Is doing well. Says his hearing has improved. Right ear is clear with tube in good position. Left ear slightly retracted. Rinne is negative on the left but after autoinflation is becomes positive. He has had the sniffles and hay fever for the past couple of weeks. I started him on autoinflation for his left ear and also a Medrol Drosepak and will check him in 2 months.

TC-1002

MEDICAL CHART — TARBORO CLINIC, TARBORO, N. C.

NAME: Wainwright (Last) Anthony (First) (Middle Int.) (Age) (Race) (Sex)

ADDRESS:

RELATIVE:

DATE 2-4-85 Ht 49 Kg. T- 99.6 J Ear.

See my last note. Anthony has been expelled from school and is now enrolled in the Martin Middle School. I am arranging psychiatric referral with Chapel Hill and the psychiatric liaison team is aware of this and will contact Ms. Wainwright about his upcoming evaluation date there. In addition he has had some ear pain on and off for the last day which troubled him quite a bit during last night and developed some drainage from the right ear. He applied some Cortisporin drops w/o much luck and has had intermittent pain since last night.

EXAM: Reveals apparently a perforated right TM with quite a bit of fluid, difficult to see most of the TM but there appears to be quite a bit of inflammation of the canal and the TM. The left TM has some serous effusion but no active infection. Pharynx benign. Remainder of exam is not pertinent.

IMP: 1. ROM with probable perforation.

2. Severe discipline problem which is in part adolescent adjustment reaction and in part some component of a learning disorder which is not otherwise characterized but is consistent with hyperactivity.

PLAN: Amoxicillin 250 p.o. t.i.d. X 10 d. Re-evaluate his ears in 32 wks. and arrange appropriate referral for Anthony to child psychiatry in Chapel Hill. Mother expressed some interest in getting someone closer such as Dr. Silber in Raleigh and I will explore this possibility.

Richard L. Auten, M. D./gh

2-26-85 wt - 50 Kg temp - 99 fever blisters.

This lad complains of some fever blisters on the nose, inside the nares, and on the lip. He has had these in the past. He is also here for recheck.

P: #1. Fever blisters.

EXAM: Shows several vesicles on the labia, a few on the nares and some pustular lesions on the bridge of the nose. There are no lesions consistent with herpetic whitlow on the fingers. Mouth is normal. There are no lesions on the gums.

IMP: Viral stomatitis, possibly herpes.

PLAN: Will try Zovirax on the lips up to t.i.d. and because of the pustular component on the nose possibly representing some secondary impetigo will try Erythromycin for 1 wk. 400 t.i.d.

P: #2. Otitis. He has had no complaints.

EXAM: Shows TMs looking normal w/o evidence of persistent effusion, good landmarks.

IMP: Resolved otitis.

PLAN: Will recheck his hearing later in the summer.

P: #3. See my last note. He has just undergone initial psychiatric evaluation at UNC-Chapel Hill for some of his school problems and they will be contacting us about their recommendations soon.

Richard L. Auten, M. D./gh

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TC-1002

MEDICAL CHART — TARBORO CLINIC, TARBORO, N. C.

NAME: Wainwright, Anthony (Last) (First) (Middle Int.) (Age) (Race) (Sex)

ADDRESS:

RELATIVE:

DATE 10/23/87 (cont.)
perhaps Cherry Hospital or a private hospital with intense follow-up like a probation system and Mental Health.
M. David Coulthard, M. A./blh
ADD: Dr. Hehar from Raleigh Mental Health Services recommended the same.
M. David Coulthard, M. A./blh

11/5/87
Patient states he has a piece of glass embedded in his left elbow. It has been there for many months. He is in jail. I believe I can feel a small piece of foreign material under a scar in the outer aspect of his left elbow. I have advised him that there is no way we can take care of this problem while he is in jail unless he is transferred to the Central Prison Hospital for surgery which he does not wish to do at this time.
P. L. Temple, M. D./blh

3-71-476

Anthony Wainwright
12/2/87
Jail patient. Acute pharyngitis. Treated with Amoxicillin 250 mg. t.i.d. for 10 days and Tylenol for pain or fever. Recheck as needed.
James W. Winslow, M.D./blh

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TC-1002

MEDICAL CHART — TARBORO CLINIC, TARBORO, N. C.

NAME: Wainwright (Last) Anthony (First) Floyd (Middle Init.) (Age) (Race) (Sex)

ADDRESS:

RELATIVE:

DATE 6-1-77 Suture removal

Follow up laceration, forehead.
Laceration healing well. Sutures removed. Return p.rn.
V. G. Herring, M.D./db

12/6/77
Partial suture removal.
Disp: Return in 3 days for removal of rest of sutures.
John G. Morgan, M.D./db

12/12/77
Remainder of skin sutures are removed. Wound looks generally good.
Disp: Follow up next week.
John G. Morgan, M.D./db

12-14-77 DNKA = Dr Morgan
12/14/77
There has now occurred some purulent drainage from the medial aspect of the wound.
I believe this will go ahead now and resolve.
Disp: Follow up in 2 weeks.
John G. Morgan, M.D./db

12/27/77 DNKA = Dr Morgan

1/3/78
Prob: Dog bite.
Subj: Patient's father states that the wound is not draining now.
Obj: Observation of the wound reveals a small scabbed area in the medial aspect of the wound. There is no evidence of infection.
Plan: return in 2 weeks to see Dr. John Morgan unless wound becomes infected and then he is to return to the clinic sooner.
Nancy Morris, FNP/db

JM Well 13yr 10mm

8-30-84 Wt. 50½ kilos
Ht. 63 in.
BP. 120/78

Schwartzwelder
This nearly 14 year old, somewhat immature boy is seen today for sports physical and conference regarding some behavioral problems. Mother states that he has been evaluated by Dr. Schwartzwelder, psychologist, as well as by DEC in Rocky Mount for behavioral disorders with a lot of acting out in school, decreased attention span, and decreased school performance. Psychological testing has not indicated a problem with mental retardation but that he has decreased attention span and needs quite a bit of structuring in order to perform better.

In addition there has been continuing intermittent problem with nocturnal enuresis which has made little improvement over the last 2 years. He does

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MEDICAL CHART — TARBORO CLINIC, TARBORO, N. C. — DOB 10/22/70

NAME: Wainwright Anthony (Last) (First) (Middle Int.) — (Age) — W (Race) — M (Sex)

ADDRESS: 1202 W. Hills Dr.
Tarboro, NC

RELATIVE: 823-7888

DATE

1-28-77 Wt. 52 c.c. sore throat & temp. T - 101

P: Pharyngitis
S: Sore throat and increased temp. for 2 days.
O: T.M.'s gray. Nose clear. Pharynx erythematous but with no exudate. Minimal anterior cervical adenopathy.
A: Pharyngitis, possible strep.
D: 1. Throat culture taken
2. ASA and fluids.

L. M. Cutchin, M.D./rsg

2-14-77 6475 -

HH - Wt - 51 11 2 15 T - 102 4 10, 118/64

CC: FEver, cough, malaise - onset this morning. Anthony had been well all day yesterday. He was seen 2 weeks ago with pharyngitis and throat culture has grown out normal flora. Except in school Anthony has not been exposed to strep throat. Boy has complained some of swollen neck glands. No joint pain.
P.E.: TM's are clear. Pharynx is red and injected. Boy does have enlarged anterior superior cervical glands. Neck supple. Examination of the chest reveals clear breath sounds. Heart sounds are normal, no murmurs. Abdomen soft, no masses. Genitalia normal. Extremities normal.
Hgb. 12.0, het 38%, WBC 6,100 with 14 stabs, 54 segs, 27 lymphs, 5 mono.
Urinalysis; pH 7.0, sp. gr. 1.020, albumin, sugar and acetone negative. Micro exam shows phosphates crystals only.
Imp: Pharyngitis, cervical lymphadenitis, rule out influenza.
Disp: Throat culture.
V-Cillin K 250 mg. p.o. q.i.d. a.c. and h.s.
Return Friday for follow up. Get mono test on return.

V. G. HErring, M.D./db

2-18-77

CC: Follow up fever, pharyngitis, cervical lymphadenitis.
Throat culture has grown out normal flora.
Anthony has been treated since the 14th with Penicillin. Comes back today for follow up.
P.E.: Cervical glands are much smaller. Chest and heart exam okay. ABdomen soft, no masses. No good posterior cervical lymphadenopathy.
Imp: Cervical adenopathy, probably streptococcal origin.
Disp: Cont. Penicillin for a total of 10 days, return p.rn.

V. G. HErring, M.D./db

ADD: WBC 3,300 with 2 stabs, 37 segs, 60 lymphs, 1 mono. Mono test negative.
VGH/db

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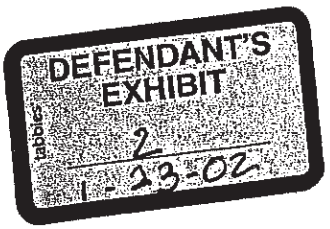

NORTH CAROLINA MEMORIAL HOSPITAL
Chapel Hill, N.C.

CONFIDENTIAL

REPORT OF PSYCHOLOGICAL EXAMINATION

Patient Anthony Wainwright Unit No. 62-84-52 Clinic No. 24, 179

Age 14 2/12 Birthdate 12/22/70 Location Child OPD Date 3/12 & 4/1/85

Examiner Gail Spiridigliozzi, M.A.

Tests Administered: Wechsler Intelligence Scale for Children - Revised
Woodcock-Johnson Psycho-Educational Battery
Part Two: Tests of Achievement
Developmental Test of Visual-Motor Integration
Sentence Completion Form
Piers-Harris Children's Self-Concept Scale
Revised Child Behavior Profile (Parent Report)

Referral Information: Anthony is a 14 year, 2 month old white male from Tarboro, North Carolina. He was referred to the Child Outpatient Psychiatry Unit by the family's pediatrician, Dr. Richard Auten, for a comprehensive diagnostic evaluation. Mr. and Mrs. Wainwright, Anthony's parents, were particularly concerned regarding his learning difficulties and behavior problems to the extent that he was recently asked to leave a private school in the area (Tarboro/Edgecombe Academy). Currently, Anthony is a student at Martin Middle School and is repeating the seventh grade. He attends Chapter 1 remedial classes in math and language arts on a daily basis.

A review of the records indicates that Anthony has been evaluated on several previous occasions. According to Mr. and Mrs. Wainwright, Anthony was initially tested as a fourth grade student in the Pitt County School System. He was subsequently placed in a classroom for learning disabled students as a fifth grader. In October, 1981 (age 11 years, 0 months), Anthony was evaluated by a private psychologist, Dr. Charles Moore, of Greenville, North Carolina and seen for a total of nine sessoins. On the WISC-R, he earned a Verbal IQ score of 82, a Performance IQ score of 81, and a Full Scale IQ score of 85. Although it was recommended that Anthony be enrolled in a private reading clinic and a home-based contingency management program be continued, these suggestions were not followed through. Mrs. Wainwright recalls being told that Anthony was Borderline Mentally Retarded.

In June, 1983 (age 12 years, 8 months), Anthony was evaluated at the Rocky Mount Developmental Evaluation Center at the request of his parents. The WISC-R was re-administered at this time, and Anthony obtained a Verbal IQ score of 79, a Performance IQ score of 109, and a Full Scale IQ score of 92. He earned an age equivalent score of 7½ - 8 years on the Bender Gestalt and grade ratings at the third and fourth grade levels on basic skills areas measured by the Wide Range Achievement Test . Mrs. Wainwright was dissatisfied with the evaluation, however, and recalled only that Anthony was found to have slight auditory problems.

Subsequently, Anthony was seen by Dr. Swartzwelder, a psychologist in Wilson, North Carolina for several sessions. A formal report of this contact was not available. According to Ms. Wainwright, Anthony did not wish to continue meeting with Dr. Swartzwelder and he advised that the sessions be discontinued.

Anthony's current behavior problems include his impulsivity, excessive talking in school, tendency to follow the lead of peers, negative attention-seeking behaviors, occasional bedwetting and defiance of rules imposed by his parents. According to Mr. and Mrs. Wainwright, peer relationships are also problematic for Anthony as well as his low self-esteem and poor school performance. Anthony presently lives at home with his parents and 10 year old sister Krista, who exhibits no significant behavior or academic problems.

Behavioral Observations: Anthony is a handsome adolescent male who appears to be of average height and weight for his age. He was comfortably dressed and neatly groomed for all sessions. Anthony willingly participated in the evaluation and did not voice any objections to doing so.

Anthony was generally quiet throughout the evaluation and difficult to engage in a casual conversation. He spoke only when specifically addressed by the examiner. Even then, his responses were brief and it was often necessary to repeat the initial questions or statement.

Throughout the WISC-R administration, Anthony was cooperative with the examiner and pleasant. Still, he needed to be prompted at times to continue working, particularly on the verbal subtests. He appeared to be more comfortable with the timed, performance tasks. Although Anthony answered impulsively at times, this was not a consistent response. No obvious attentional problems were evident in the one-on-one testing session, although these have been reported in the classroom situation. Anthony often looked to the examiner for c nfirmation of his responses, however, and seemed surprised to receive verbal praise for his overall performance at the conclusion of stubtest. He appeared to have a low opinion of his skills in these areas.

On the Sentence Completion Form and Self-concept Scale, Anthony had difficulty responding to many of the items. On the Piers-Harris, for instance, he circled both yes and no for many of the statements. It was necessary for the examiner to review these items and encourage him to make one response only. Similarly, Anthony failed to complete many of the sentences initially presented. When he later responded, his answers were fairly concrete and guarded.

Test Results: On the WISC-R, Anthony obtained a Verbal IQ score of 81 (Low Average) and a Performance IQ score of 101 (Average). Due to the discrepancy of 30 points between these scales, Anthony's Full Scale IQ score of 89 is essentially meaningless and does not describe the wide variability in his current functioning. His subtest scores were as follows (mean = 10; standard deviation = 3):

REPORT OF PSYCHOLOGICAL EXAMINATION

Patient Anthony Wainwright Unit No. 62-84-52 Clinic No. 24, 179

Verbal Tests	Standard Scores	Performance Tests	Standard Scores
Information	6	Picture Completion	10
Similarities	7	Picture Arrangement	11
Arithmetic	7	Block Design	9
Vocabulary	8	Object Assembly	11
Comprehension	7	Coding	10
(Digit Span)	(9)	(Mazes)	(10)

Anthony's performance on the WISC-R was thought to be a valid assessment of his cognitive functioning.

A significant difference (30 points) was apparent between Anthony's Verbal and Performance IQ scores, although there was little variability noted among his subtest scores in each area. His scores on the Performance tests were solidly in the average range, and suggest a relative strength in perceptual organization tasks. Though verbal instructions are given for each of these subtests, the task requirements are relatively clear and limited verbal responses are necessary. Anthony's scores on the Verbal tests were at the bottom of the average range, and suggest a relative weakness in his verbal comprehension skills. Again, the fact that all of these tests are heavily language based and require verbal responses may account for the verbal/performance discrepancy in his IQ scores.

Anthony's performance on the VMI (age equivalent 9; 11) indicates that his visual-motor integration skills are also an area of weakness. He obtained a standard score of 4 (mean = 10, standard deviation = 3), which is two standard deviations below the mean in comparison to other children his age. Anthony had particular difficulty copying three dimensional designs and those with two or more parts. Similarly, Anthony exhibited a great deal of frustration with the Block Design subtest of the WISC-R (his lowest Performance scaled score) which also requires visual-motor coordination skills.

Anthony's level of academic achievement was evaluated by means of the Woodcock-Johnson. He earned the following scores:

Achievment Cluster	Grade Score	Age Score	Percentile Rank at Age	Age Standard Scores
Reading	4.4	9-8	14	84
Mathematics	6.6	12-0	20	87
Written Language—	4.1	9-1	8	79
Knowledge	5.3	10-8	14	84

Assuming that Anthony's performance IQ score is the most accurate index of his cognitive functioning, his academic achievement in all areas is lower than would be expected. Mrs. Wainwright reports that math is a particularly weak area for Anthony in school. Although he was able to do relatively well on the mathematics cluster, it does not emphasize word problems. Most likely, Anthony has difficulty with these applications of math functions commonly presented in school. His profile of skills, when compared with his Performance IQ scores, is consistent with a diagnosis of a learning disability.

Anthony's behavior and emotional functioning were also assessed as a part of the overall evaluation. His responses on the Sentence Completion Form and Piers-Harris Scale clearly acknowledged his difficulty with academic subjects and behavior problems. Anthony's overall score on the Piers-Harris Scale, in addition to his self-depreciating remarks throughout the evaluation, attest to his low self-concept. His self-esteem is particularly low regarding his physical appearance and intellectual and school functioning.

Anthony's responses also reflect a sense of detachment from his family. Though he describes both parents as "nice", he feels that they should be responding to his basic needs at this age for money and a job. There is also a sense that he would prefer to be removed from this family system. Anthony feels that he is not an important member of his family, and that he has disappointed the family. Though he is aware of his behavior problems, Anthony's view of their severity is clearly less than his parents' rating.

Mr. and Mrs. Wainwright completed a lengthy Child Behavior Checklist (Achenbach) regarding Anthony's behavior problems. Their responses were subsequently recorded on the Revised Child Behavior Profile to evaluate Anthony's behavior in comparison to a normative sample of boys age 12 to 16 years. The profile consists of nine scales derived by means of factor analysis. Although both parents rated Anthony's behavior independently, their overall perceptions were very consistent. According to their reports, his behavior problems exceed the 98th percentile on the nine scales. Essentially, they view him as uncommunicable, immature, delinquent, aggressive, hyperactive and hostile. As opposed to internalizing his problems, Anthony is clearly acting out, in their view, beyond what would be expected of other boys his age. A similar checklist completed by a teacher could not be scored due to an excessive number of ommisions.

Summary and Recommendations: Anthony is a 14 year old male whose performance on WISC-R subtests emphasizing perceptual organization skills was significantly better than on those subtests relying heavily on language and verbal comprehension skills. His academic achievement in all areas is lower than might be expected in light of his Performance IQ, and is consistent with a diagnosis of a learning disability. Anthony's visual-motor integration skills represent another area of weakness. He appears to have a low self-concept, particularly regarding his intellectual and school functioning, and views himself as being detached from his family. Anthony's parents rate his behavior problems as being extensive and severe in comparison to other adolescent boys. They are extremely concerned about his future in the event that Anthony's behavior and academic problems continue.

It is recommended that a placement in the Therapeutic Camping System be pursued for Anthony since outpatient interventions have not been successful in dealing with these issues. Anthony, as well as his parents, have indicated their willingness to try the Camping program, and feel that it could be beneficial for the entire family. Whether or not Anthony participates in this program, we recommend that he continue to receive LD support services for all academic subjects.

Gail A. Spiridigliozzi, M.A.
Psychology Intern

Barbara Boat, Ph.D.
Licensed Practicing Psychologist

NORTH CAROLINA MEMORIAL HOSPITAL
Chapel Hill, N.C.

CONFIDENTIAL

REPORT OF PSYCHOLOGICAL EXAMINATION

Patient Anthony Wainwright Unit No. 62-84-52 Clinic No. 24, 179

Age 14 2/12 Birthdate 12/22/70 Location Child OPD Date 3/12 & 4/1/85

Examiner Gail Spiridigliozzi, M.A.

Tests Administered: Wechsler Intelligence Scale for Children - Revised
Woodcock-Johnson Psycho-Educational Battery
Part Two: Tests of Achievement
Developmental Test of Visual-Motor Integration
Sentence Completion Form
Piers-Harris Children's Self-Concept Scale
Revised Child Behavior Profile (Parent Report)

Referral Information: Anthony is a 14 year, 2 month old white male from Tarboro, North Carolina. He was referred to the Child Outpatient Psychiatry Unit by the family's pediatrician, Dr. Richard Auten, for a comprehensive diagnostic evaluation. Mr. and Mrs. Wainwright, Anthony's parents, were particularly concerned regarding his learning difficulties and behavior problems to the extent that he was recently asked to leave a private school in the area (Tarboro/Edgecombe Academy). Currently, Anthony is a student at Martin Middle School and is repeating the seventh grade. He attends Chapter 1 remedial classes in math and language arts on a daily basis.

A review of the records indicates that Anthony has been evaluated on several previous occasions. According to Mr. and Mrs. Wainwright, Anthony was initially tested as a fourth grade student in the Pitt County School System. He was subsequently placed in a classroom for learning disabled students as a fifth grader. In October, 1981 (age 11 years, 0 months), Anthony was evaluated by a private psychologist, Dr. Charles Moore, of Greenville, North Carolina and seen for a total of nine sessoins. On the WISC-R, he earned a Verbal IQ score of 82, a Performance IQ score of 81, and a Full Scale IQ score of 85. Although it was recommended that Anthony be enrolled in a private reading clinic and a home-based contingency management program be continued, these suggestions were not followed through. Mrs. Wainwright recalls being told that Anthony was Borderline Mentally Retarded.

In June, 1983 (age 12 years, 8 months), Anthony was evaluated at the Rocky Mount Developmental Evaluation Center at the request of his parents. The WISC-R was re-administered at this time, and Anthony obtained a Verbal IQ score of 79, a Performance IQ score of 109, and a Full Scale IQ score of 92. He earned an age equivalent score of 7½ - 8 years on the Bender Gestalt and grade ratings at the third and fourth grade levels on basic skills areas measured by the Wide Range Achievement Test . Mrs. Wainwright was dissatisfied with the evaluation, however, and recalled only that Anthony was found to have slight auditory problems.

Subsequently, Anthony was seen by Dr. Swartzwelder, a psychologist in Wilson, North Carolina for several sessions. A formal report of this contact was not available. According to Ms. Wainwright, Anthony did not wish to continue meeting with Dr. Swartzwelder and he advised that the sessions be discontinued.

Anthony's current behavior problems include his impulsivity, excessive talking in school, tendency to follow the lead of peers, negative attention-seeking behaviors, occasional bedwetting and defiance of rules imposed by his parents. According to Mr. and Mrs. Wainwright, peer relationships are also problematic for Anthony as well as his low self-esteem and poor school performance. Anthony presently lives at home with his parents and 10 year old sister Krista, who exhibits no significant behavior or academic problems.

Behavioral Observations: Anthony is a handsome adolescent male who appears to be of average height and weight for his age. He was comfortably dressed and neatly groomed for all sessions. Anthony willingly participated in the evaluation and did not voice any objections to doing so.

Anthony was generally quiet throughout the evaluation and difficult to engage in a casual conversation. He spoke only when specifically addressed by the examiner. Even then, his responses were brief and it was often necessary to repeat the initial questions or statement.

Throughout the WISC-R administration, Anthony was cooperative with the examiner and pleasant. Still, he needed to be prompted at times to continue working, particularly on the verbal subtests. He appeared to be more comfortable with the timed, performance tasks. Although Anthony answered impulsively at times, this was not a consistent response. No obvious attentional problems were evident in the one-on-one testing session, although these have been reported in the classroom situation. Anthony often looked to the examiner for c nfirmation of his responses, however, and seemed surprised to receive verbal praise for his overall performance at the conclusion of stubtest. He appeared to have a low opinion of his skills in these areas.

On the Sentence Completion Form and Self-concept Scale, Anthony had difficulty responding to many of the items. On the Piers-Harris, for instance, he circled both yes and no for many of the statements. It was necessary for the examiner to review these items and encourage him to make one response only. Similarly, Anthony failed to complete many of the sentences initially presented. When he later responded, his answers were fairly concrete and guarded.

Test Results: On the WISC-R, Anthony obtained a Verbal IQ score of 81 (Low Average) and a Performance IQ score of 101 (Average). Due to the discrepancy of 30 points between these scales, Anthony's Full Scale IQ score of 89 is essentially meaningless and does not describe the wide variability in his current functioning. His subtest scores were as follows (mean = 10; standard deviation = 3):

Patient Anthony Wainwright Unit No. 62-84-52 Clinic No. 24, 179

Verbal Tests	Standard Scores	Performance Tests	Standard Scores
Information	6	Picture Completion	10
Similarities	7	Picture Arrangement	11
Arithmetic	7	Block Design	9
Vocabulary	8	Object Assembly	11
Comprehension	7	Coding	10
(Digit Span)	(9)	(Mazes)	(10)

Anthony's performance on the WISC-R was thought to be a valid assessment of his cognitive functioning.

A significant difference (30 points) was apparent between Anthony's Verbal and Performance IQ scores, although there was little variability noted among his subtest scores in each area. His scores on the Performance tests were solidly in the average range, and suggest a relative strength in perceptual organization tasks. Though verbal instructions are given for each of these subtests, the task requirements are relatively clear and limited verbal responses are necessary. Anthony's scores on the Verbal tests were at the bottom of the average range, and suggest a relative weakness in his verbal comprehension skills. Again, the fact that all of these tests are heavily language based and require verbal responses may account for the verbal/performance discrepancy in his IQ scores.

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Anthony's responses also reflect a sense of detachment from his family. Though he describes both parents as "nice", he feels that they should be responding to his basic needs at this age for money and a job. There is also a sense that he would prefer to be removed from this family system. Anthony feels that he is not an important member of his family, and that he has disappointed the family. Though he is aware of his behavior problems, Anthony's view of their severity is clearly less than his parents' rating.

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Summary and Recommendations: Anthony is a 14 year old male whose performance on WISC-R subtests emphasizing perceptual organization skills was significantly better than on those subtests relying heavily on language and verbal comprehension skills. His academic achievement in all areas is lower than might be expected in light of his Performance IQ, and is consistent with a diagnosis of a learning disability. Anthony's visual-motor integration skills represent another area of weakness. He appears to have a low self-concept, particularly regarding his intellectual and school functioning, and views himself as being detached from his family. Anthony's parents rate his behavior problems as being extensive and severe in comparison to other adolescent boys. They are extremely concerned about his future in the event that Anthony's behavior and academic problems continue.

It is recommended that a placement in the Therapeutic Camping System be pursued for Anthony since outpatient interventions have not been successful in dealing with these issues. Anthony, as well as his parents, have indicated their willingness to try the Camping program, and feel that it could be beneficial for the entire family. Whether or not Anthony participates in this program, we recommend that he continue to receive LD support services for all academic subjects.

Gail A. Spiridigliozzi

Gail A. Spiridigliozzi, M.A.
Psychology Intern

Barbara Boat

Barbara Boat, Ph.D.
Licensed Practicing Psychologist

THE NORTH CAROLINA MEMORIAL HOSPITAL

Psychiatric Diagnostic, Research & Teaching Center

RECORD SHEET
Child Psychiatry Unit

CONFIDENTIAL

SOCIAL HISTORY

Date	Patient WAINWRIGHT, Anthony	Unit No. 62-84-52	Clinic No. 24,179

3/25/85

REFERRAL: Anthony Wainwright is a 14 year old male who is currently attending the seventh grade at Martin Middle School in Tarboro, N.C. He was referred for a diagnostic evaluation by Dr. Richard Auten, his pediatrician in Tarboro. Anthony is apparently having learning problems in school and also extensive behavior problems.

FAMILY COMPOSITION: Anthony lives with his natural parents, Kay and Ken Wainwright. Ken Wainwright is 38 years old and is the owner/operator of Piggly Wiggly Grocery Store in Tarboro. Kay Wainwright is 36 years old and works full-time for NCNB. Anthony is the oldest of two children. Anthony has a younger sister Krista, who is 10 years old and is currently in the fifth grade.

SOURCES OF DATA: Mr. and Mrs. Wainwright and Anthony were seen on 2/26/85, 3/12/85, and 3/26/85. The Wainwrights were seen together initially and also on 3/26/85. Information was also obtained from Dr. Richard Auten, Anthony's pediatrician, Tarboro/Edgecombe Academy and Martin Middle School.

DEVELOPMENTAL HISTORY: Anthony was the 6 1/2 lb. result of a planned pregnancy. Mrs. Wainwright reports no problems during the pregnancy. For the first 12 months following Anthony's birth, Anthony had the colic and Mrs. Wainwright reported that Anthony was in and out of the hospital with bronchitis and asthma. Mrs. Wainwright said that she did not like Anthony very much during that first year. When Anthony was two years old, Mrs. Wainwright described him as being "all boy", i.e., "getting into things." Mrs. Wainwright said that Anthony was very close to her sister for a long time and that this maternal aunt gave Anthony a lot of attention. Mr. and Mrs. Wainwright report that Anthony was average up until the third or fourth grade. In the fourth grade the school began testing him and placed him in an LD classroom in the fifth grade. The Wainwrights report that Anthony's behavior problems began at this time. In the fifth grade, Anthony went to Dr. Moore in Greenville, where the Wainwrights were told that Anthony was Borderline Mentally Retarded. When Anthony was in the sixth grade, he went to the Rocky Mount D.E.C., where they told Mr. and Mrs. Wainwright that Anthony has hearing problems. The Wainwrights' said that they were disappointed with the D.E.C. Following that visit, Anthony began seeing Dr. Swartzwelder, a psychologist in Wilson. Anthony went several times, but he said that he did not want to go back and said that he wished that he were dead. Dr. Swartzwelder told Mrs. Wainwright that Anthony did not have to go back to see him, so this stopped. Anthony is currently repeating the seventh grade. Anthony began Martin Middle School in August, but his parents decided to transfer him to a private school, Tarboro/Edgecombe Academy. Anthony remained at this school from September to December 1984, when he was expelled because of poor conduct. Mrs. Wainwright said that this school gave him as many opportunities as they could, but that Anthony got into trouble all of the time. Presently, Anthony is attending Martin Middle School again and the Wainwrights are still having problems with behavior.

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Both Mr. and Mrs. Wainwright report that Anthony has trouble keeping friends. According to Mr. Wainwright Anthony only has one friend at a time and within six months he does not have that friend anymore. Apparently, Mr. and Mrs. Wainwright cannot talk with Anthony. They say that he closes up and keeps everything inside. Mr. and Mrs. Wainwright report that much of the trouble he gets into stems from attention seeking behavior, such as, throwing spit balls and pulling hair. The Wainwrights say that Anthony has been into more serious trouble in the past. Once Anthony had to go to court over an obscene phone call incident. He has also been involved in the vandalism of two houses, in which his parents settled this matter ouf of court. There have been other behavior problems which were serious, but did not result in court action, i.e., setting fire to some garbage on a neighbor's porch, trying to pass dramamine off as illegal drugs and throwing a stick at a persons windshield.

Mr. and Mrs. Wainwright do not know if Anthony is a leader or a follower. Mrs. Wainwright described Anthony as being very unhappy and that he does not like himself. The Wainwrights say that Anthony cannot do anything well. Mr. and Mrs. Wainwright report that Anthony was very interested in basketball at Tarboro/Edgecombe Academy and that he played on the team. They report that Anthony could not play well but that he never missed a practice. Mr. Wainwright said that Anthony will sometimes help out at his store and says that Anthony does a good job, but that he can only attend for about 2 hours at the most. Mr. Wainwright also stated that Anthony does a terrific job mowing the lawn.

Mr. and Mrs. Wainwright are extremely concerned about the relationship between Anthony and his 10 year old sister, Krista. Mrs. Wainwright said that she fears that Anthony hates Krista. Krista is doing well in school and according to her parents, has a lot going for her. Mrs. Wainwright says that Anthony resents this very much and is concerned that Anthony might hurt his sister.

Mr. and Mrs. Wainwright say they do not discipline Anthony anymore. Mr. Wainwright used to spank Anthony but, Mrs. Wainwright said that that had to stop because Mr. Wainwright got too heavy-handed. The Wainwrights mentioned that taking his T.V. privileges away works best. Currently, however, they just talk to him about what he has done.

PARENTS BACKGROUND: Mrs. Wainwright has one sister, who used to be very close to Anthony when he was younger. Mrs. Wainwright reports that her parents, maternal grandparents, live close by and get along well with Anthony. Mr. and Mrs. Wainwright report that Mrs. Wainwright's parents do not have many behavior problems with Anthony. Recently, Anthony got in trouble riding his grandfather's motorbike and was restricted from riding it. Mr. Wainwright is one of three boys and a girl. He is much older than his sister, therefore, he reports he is not close to his sister or his brothers. Mr. Wainwright reported that Anthony does not like to go to his parents house as much as he used to because his younger sister, who is 16 years old, is not there as often.

IMPRESSIONS AND RECOMMENDATIONS: Anthony's behavior problems basically began around the time he was placed in an LD classroom. Anthony appears to have a low self-esteem and has trouble with peer interactions. The Wainwrights appear to have difficulty accepting Anthony and also have difficulty providing structure for Anthony. Family therapy is recommended for the entire family through the local mental health center to work on family issues and ways to develop structure

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THE NORTH CAROLINA MEMORIAL HOSPITAL

Psychiatric Diagnostic, Research & Teaching Center

RECORD SHEET
Child Psychiatry Unit

CONFIDENTIAL

SOCIAL HISTORY

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3/25/85

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IMPRESSIONS AND RECOMMENDATIONS: Anthony's behavior problems basically began around the time he was placed in an LD classroom. Anthony appears to have a low self-esteem and has trouble with peer interactions. The Wainwrights appear to have difficulty accepting Anthony and also have difficulty providing structure for Anthony. Family therapy is recommended for the entire family through the local mental health center to work on family issues and ways to develop structure

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Date	Patient WAINWRIGHT, Anthony	Unit No.	Clinic No.

for Anthony. If progress is not made within six months to one year, a temporary residential group home placement is recommended for Anthony.

Florence Harris

Florence Harris, ACSW
Supervisor
Division of Child Psychiatry

Bambi Gibson

Bambi Gibson
Social Work Intern
Division of Child Psychiatry

BG:FH/jww
4/17/85

Date	Patient WAINWRIGHT, Anthony	Unit No.	Clinic No.

than would be expected on the basis of his Performance IQ score. Anthony is currently functioning at the low end of the average range in these areas. His profile of skills and history of learning problems are consistent with a diagnosis of a learning disability. Anthony's performance on the Developmental Test of Visual-Motor Integration indicated that his visual-motor integration skills are also an area of weakness. He had particular difficulty copying three dimensional designs and those with two or more parts.

Anthony's responses on the Sentence Completion Form and the Piers-Harris Scale clearly acknowledged his difficulty with academic subjects and behavior problems. His overall score on the Piers-Harris, in addition to his self-depreciating remarks throughout the evaluation attest to his low self-concept. Anthony's self-esteem is particularly low regarding his physical appearance and intellectual and school functioning.

Anthony's responses also reflect a sense of detachment from his family. There is also a sense that he would prefer to be removed from this family system. Anthony feels that he is not an important member of his family, and that he has disappointed the family. Though he is aware of his behavior problems, Anthony's view of their severity is clearly less than his parents' ratings.

PHYSICAL STATUS: Anthony is reportedly in good health. The notes from his most recent physical examiantion are included in the file. Anthony was referred, however, to the NCMH Division of Speech and Hearing Sciences for a complete audiological evaluation and a Central Auditory Processing Test Battery. There has been some concern over the years that part of Anthony's learning and behavior difficulties may be due to his inability to auditorally process information. Anthony's hearing was found to be within normal limits. His performance on the test battery suggested that his difficulty may be due to an Attention Deficit Disorder, opposed to a central auditory processing problem. His behavior at home and in the classroom setting supports this diagnosis as well.

FORMULATION: Anthony is a 14 year old male with a history of significant behavior and learning difficulties. The results of recent intellectual and achievement testing are consistent with a diagnosis of a learning disability. Although little information was obtained about his early behavior and activity level, Anthony's current functioning in the classroom and at home supports a diagnosis of an attention deficit disorder. In regard to his emotional functioning, Anthony appears to have a low self-concept, particularly regarding his intellectual and school functioning, and views himself as being detached from his family. Anthony's parents rate his behavior problems as being extensive and severe in comparison to other adolescent boys. They appear to have difficulty accepting Anthony and providing structure for him, and are clearly stressed by his behavior problems. As a result, there is little communication between Anthony and his parents, thus perpetuating the cycle of negative family interactions.

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At this point, virtually no attention is paid to Anthony's strengths, and the potential for change.

DIAGNOSIS: Conduct Disorder, Undersocialized, Aggressive - 312.00
Attention Deficit Disorder (with question of hyperactivity) - 314.00
Learning Disability

INTERPRETIVE CONFERENCE: An interpretive conference was held on March 26, 1985 with Mr. and Mrs. Wainwright, Anthony, Barbara Boat, Bambi Gibson and Gail Spiridigliozzi participating. Family therapy was recommended through the local mental health center or with a private practitioner in the Tarboro area. With the goal being to learn effective management techniques and integrate Anthony back into the family system. Mrs. Wainwright suggested the option of having Anthony participate in the N.C. Therapeutic Camping Program. Apparently, their previous attempts at outpatient therapy have been unsuccessful. Although this option was not mentioned in the course of the evaluation, Mr. and Mrs. Wainwright had gathered information and talked with Anthony about the program. Anthony, as well as his parents, indicated their willingness to try the residential camping program and felt that it could be beneficial to the entire family. We agreed to contact the appropriate administrators of the program and facilitate the application process. In the meantime, it was recommended that Anthony receive learning disability support services through the local school system.

Barbara Boat

Barbara Boat, Ph.D.
Licensed Practicing Psychologist
Division of Child Psychiatry

Gail Spiridigliozzi (BB)

Gail A. Spiridigliozzi, M.A.
Psychology Intern
Division of Child Psychiatry

GAS:BB/jww
1/23/86

RECORD SHEET
Child Psychiatry Unit

CONFIDENTIAL

DIAGNOSTIC SUMMARY

Date	Patient WAINWRIGHT, Anthony	Unit No. 62-84-52	Clinic No. 24,179

PRESENT: Chairperson, Raymond Schmitt, M.D.; Social Worker and Supervisor, Florence Harris, ACSW; Social Work Intern and Family Therapist, Bambi Gibson; Team Psychologist and Supervisor, Barbara Boat, Ph.D.; Psychology Intern and Child Therapist, Gail Spiridigliozzi, M.A.

PROCESS: Mr. and Mrs. Wainwright and Anthony were seen for a total of three interviews on February 26, March 12, and Marth 26, 1985. The family initially met together with the child and family therapists. In the following sessions, Anthony was seen individually by Gail Spiridigliozzi while his mother spoke with Bambi Gibson. The remainder of the psychological testing was completed on April 2, 1985. Anthony was also seen for an audiological evaluation and a central auditory processing test battery at this time. In addition, information was obtained from Dr. Richard Auten, Anthony's pediatrician, Tarboro/Edgecombe Academy, Martin Middle School, and Dr. Charles Moore, a psychologist affiliated with Greenville Psychiatric Associates.

REASON FOR REFERRAL: Anthony is a 14 year 2 month old white male from Tarboro, N.C. He was referred to the Child Outpatient Psychiatry Unit by the family's pediatrician, Dr. Richard Auten, for a comprehensive diagnostic evaluation. Mr. and Mrs. Wainwright, Anthony's parents, were particularly concerned regarding his learning difficulties and behavior problems to the extent that he was recently asked to leave a private school in the area (Tarboro/Edgecombe Academy).

PRESENTING PROBLEM: Anthony presents with a history of learning and behavior difficulties, beginning with his placement in a learning disability classroom as a fifth grade student. Subsequently, Anthony was evaluated by a variety of professionals and was seen by a psychologist for several sessions. According to Mr. and Mrs. Wainwright, Anthony's current behavior problems include his impulsivity, excessive talking in school, tendency to follow the lead of peers, negative attention-seeking behaviors (e.g., throwing spit balls and pulling hair), occasional bedwetting, and defiance of rules imposed by his parents. Peer relationships are also problematic for Anthony, as well as his low self-esteem and poor school performance.

Mr. and Mrs. Wainwright report that Anthony has been into more serious trouble in the past. For instance, he was required to appear in court regarding an obscene phone call incident. He has also been involved in the vandalism of two houses; this matter was settled out of court. There have been other behavior problems of a serious nature which did not result in court action (i.e., setting fire to some garbage on a neighbor's porch, trying to pass dramamine off as illegal drugs, and throwing a stick at a person's car windshield). Apparently, Anthony's tendency to get into trouble at school resulted in his recent expulsion from Tarboro/Edgecombe Academy.

FAMILY BACKGROUND: Anthony lives with his natural parents, Kay and Ken Wainwright, and a younger sister, Krista, who is 10 years old and currently

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in the fifth grade. Ken Wainwright is 38 years old and is the owner/operator of the Piggly Wiggly Grocery Store in Tarboro. Kay Wainwright is 36 years old and is employed on a full-time basis by North Carolina National Bank.

Anthony was the product of a normal pregnancy, labor and delivery. During his first year, Anthony reportedly had the colic and was in and out of the hospital with bronchitis and asthma according to his mother. Mrs. Wainwright said that she did not like Anthony very much during that first year. When Anthony was two years old, Mrs. Wainwright described him as being "all boy", that is, "getting into things." Apparently, he was very close to a maternal aunt for a long time. Mr. and Mrs. Wainwright describe Anthony as being average up until the third or fourth grade. As they recall, Anthony was evaluated in the fourth grade and placed in a learning disability classroom in the fifth grade. The nature of this placement (whether or not iit was a resource room or a self-contained classroom) was unclear from their description.

Anthony attended the C. B. Martin Middle School in Tarboro as a seventh grade student and was not promoted. According to a former teacher, he spent most of his time in detention hall. He returned for the month of August, 1984, before his parents decided to transfer him to a private school (Tarboro/Edgecombe Academy). Anthony remained there until December, 1984 when he was expelled. He returned to Martin Middle School to repeat the seventh grade and currently attends Chapter 1 remedial classes in math and language arts on a daily basis.

INTERVIEW WITH THE PATIENT: Anthony is a handsome adolescent male who was comfortably dressed and neatly groomed for all sessions. He willingly participated in the evaluation and did not voice any objections to doing so. Anthony was generally quiet, however, and difficult to engage in a casual conversation. He spoke only when specifically addressed by the examiner. Even then, his responses were brief and it was often necessary to repeat the initial question or statement. Perhaps the most information was gained in the course of a structured interview where Anthony responded to items on the Sentence Completion Form and the Piers-Harris Self-Concept Scale. Otherwise, he did not talk about his academic and behavior problems (individually or in the family session).

PSYCHOLOGICAL TESTING: Throughout the psychological testing sessions, Anthony was cooperative with the examiner and pleasant. Still, he needed to be prompted at times to continue working, particularly on the verbal subtests of the WISC-R. Although Anthony answered impulsively at times, this was not a consistent response. No obvious attentional problems were evident in the one-on-one testing sessions, in contrast to reports of his behavior in the classroom situation. Anthony often looked to the examiner for confirmation of his responses, however, and seemed surprised to receive verbal praise for his overall performance at the conclusion of the test.

On the Wechsler Intelligence Scale for Children-Revised, Anthony obtained a Verbal IQ score of 81 (Low Average) and a Performance IQ Score of 101 (Average). Due to the 30 point difference between these scales, Anthony's Full Scale IQ score of 89 [illegible] does not accurately describe his current level of intellectual functioning. Anthony's pattern of subtest scores suggests that his perceptual organization skills are a relative strength in comparison to his verbal comprehension/expression skills.

Anthony's level of academic achievement was evaluated by means of the Woodcock-Johnson Psychoeducational Battery, Part II. His basic reading, math and written language skills as well as his fund of general knowledge are lower than would

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THE NORTH CAROLINA MEMORIAL HOSPITAL

Psychiatric Diagnostic, Research & Teaching Center

RECORD SHEET
Child Psychiatry Unit

CONFIDENTIAL

DIAGNOSTIC SUMMARY

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Date	Patient WAINWRIGHT, Anthony	Unit No.	Clinic No.

than would be expected on the basis of his Performance IQ score. Anthony is currently functioning at the low end of the average range in these areas. His profile of skills and history of learning problems are consistent with a diagnosis of a learning disability. Anthony's performance on the Developmental Test of Visual-Motor Integration indicated that his visual-motor integration skills are also an area of weakness. He had particular difficulty copying three dimensional designs and those with two or more parts.

Anthony's responses on the Sentence Completion Form and the Piers-Harris Scale clearly acknowledged his difficulty with academic subjects and behavior problems. His overall score on the Piers-Harris, in addition to his self-depreciating remarks throughout the evaluation attest to his low self-concept. Anthony's self-esteem is particularly low regarding his physical appearance and intellectual and school functioning.

Anthony's responses also reflect a sense of detachment from his family. There is also a sense that he would prefer to be removed from this family system. Anthony feels that he is not an important member of his family, and that he has disappointed the family. Though he is aware of his behavior problems, Anthony's view of their severity is clearly less than his parents' ratings.

PHYSICAL STATUS: Anthony is reportedly in good health. The notes from his most recent physical examiantion are included in the file. Anthony was referred, however, to the NCMH Division of Speech and Hearing Sciences for a complete audiological evaluation and a Central Auditory Processing Test Battery. There has been some concern over the years that part of Anthony's learning and behavior difficulties may be due to his inability to auditorally process information. Anthony's hearing was found to be within normal limits. His performance on the test battery suggested that his difficulty may be due to an Attention Deficit Disorder, opposed to a central auditory processing problem. His behavior at home and in the classroom setting supports this diagnosis as well.

FORMULATION: Anthony is a 14 year old male with a history of significant behavior and learning difficulties. The results of recent intellectual and achievement testing are consistent with a diagnosis of a learning disability. Although little information was obtained about his early behavior and activity level, Anthony's current functioning in the classroom and at home supports a diagnosis of an attention deficit disorder. In regard to his emotional functioning, Anthony appears to have a low self-concept, particularly regarding his intellectual and school functioning, and views himself as being detached from his family. Anthony's parents rate his behavior problems as being extensive and severe in comparison to other adolescent boys. They appear to have difficulty accepting Anthony and providing structure for him, and are clearly stressed by his behavior problems. As a result, there is little communication between Anthony and his parents, thus perpetuating the cycle of negative family interactions.

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At this point, virtually no attention is paid to Anthony's strengths, and the potential for change.

DIAGNOSIS: Conduct Disorder, Undersocialized, Aggressive - 312.00
Attention Deficit Disorder (with question of hyperactivity) - 314.00
Learning Disability

INTERPRETIVE CONFERENCE: An interpretive conference was held on March 26, 1985 with Mr. and Mrs. Wainwright, Anthony, Barbara Boat, Bambi Gibson and Gail Spiridigliozzi participating. Family therapy was recommended through the local mental health center or with a private practitioner in the Tarboro area. With the goal being to learn effective management techniques and integrate Anthony back into the family system. Mrs. Wainwright suggested the option of having Anthony participate in the N.C. Therapeutic Camping Program. Apparently, their previous attempts at outpatient therapy have been unsuccessful. Although this option was not mentioned in the course of the evaluation, Mr. and Mrs. Wainwright had gathered information and talked with Anthony about the program. Anthony, as well as his parents, indicated their willingness to try the residential camping program and felt that it could be beneficial to the entire family. We agreed to contact the appropriate administrators of the program and facilitate the application process. In the meantime, it was recommended that Anthony receive learning disability support services through the local school system.

Barbara Boat
Barbara Boat, Ph.D.
Licensed Practicing Psychologist
Division of Child Psychiatry

Gail Spiridigliozzi (BB)
Gail A. Spiridigliozzi, M.A.
Psychology Intern
Division of Child Psychiatry

GAS:BB/jww
1/23/86

THE UNIVERSITY OF NORTH CAROLINA
AT
CHAPEL HILL

CONFIDENTIAL

Division of Speech and Hearing Sciences
Department of Medical Allied Health Professions
The School of Medicine

The University of North Carolina at Chapel Hill
76 Wing D Medical School, 208H
Chapel Hill, N.C., 27514
(919) 966-1006

Diagnostic Evaluation Report

Name: Anthony Wainwright

Address: 1700 Pine St.
Tarrboro, NC 27886

Parents: Kay and Kenneth Wainwright

Phone: 823-1121

Date of Testing: April 2, 1985

Date of Birth: 10-22-70

Chronological Age: 14 years, 5 months

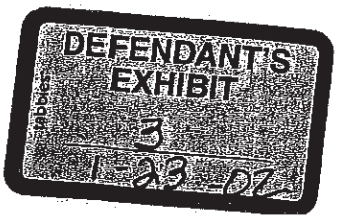
Examiners: Lynn M. Waters
Thomas L. Layton

Statement of Problem

Upon the referral of Gail Spiridigliozzi, Child Therapist at the Outpatient Child Psychiatry Clinic at North Carolina Memorial Hospital, Anthony Wainwright, a 14-year-old male, was seen at our clinic on April 2, 1985 for a complete audiological evaluation and a Central Auditory Processing Test Battery. He is presently enrolled in the 7th grade Learning Disabilities Program at CB Martin Middleschool in Tarrboro, N.C.. According to Mrs. Wainwright, he has been in similar programs since fifth grade. In addition to having difficulty with his school work he had been demonstrating behavioral and attitudinal problems. There is concern that part of Anthony's difficulty may be due to his inability to auditorally process information Medical case history information revealed a history of sinus problems. He had his tonsils and adenoids removed when he was 4 years old and recently completed a course of antibiotics for an ear infection.

Test Results - Audiological

Anthony's hearing was found to be within normal limits with a conductive component present in the right ear. Speech Reception Thresholds (SRT) of 15dB and 5dB were obtained in the right and left ears, respectively. These results were commensurate with pure tone findings. When speech was presented at a suprathreshold level, Anthony's ability to understand and discriminate speech was excellent in both ears. Impedance audiometry revealed a Type B tympanogram in the right ear, which suggests fluid in the middle ear, and a Type C in the left with a severe negative pressure peak at $-300mmH_2O$. These findings are consistent with the conductive component found in his right ear and Anthony's comment that his right ear felt "plugged up" during testing. His decrease in hearing was compensated for during the rest of the test battery.



Test Results - Central Auditory Processing Test Battery

I. Goldman-Fristoe-Woodcock (GFW) Selective Attention Test

(Given to determine if an individual is having difficulty attending when a variety of background noise is present.)

Subtest	Raw Score	Percentile	Age Equivalent	Standard Score	Stanine
Quiet	11/11				
Fan	31/33	54			
Cafeteria	32/33	76			
Voice	31/33	24			
Total	105/110	42	13.10↑	48	5

II. The Adult Version of the Token Test

Part	Raw Score
I	10/10
II	10/10
III	10/10
IV	10/10
V	22/27
Total	62/67

III. The Staggered Spondee Word Test (SSW) by Katz

	C-SSW		A-SSW (Order Effect)	
	Score	Category	Score	Category
Total	8.75	Mild	2.5	Normal
Ear	11.25	Mild	2.5	Normal
Condition	17.5	Mild	5.0	Normal
Overall		Mild		Normal

IV. Wichita Auditory Fusion Test (WAFT) by McCroskey

Mean Auditory Fusion Threshold was greater than 8.

(At 250Hz he became fatigued and did not identify any changes even though he was able to perform the task at other frequencies.)

V. The Boder Test of Reading-Spelling Patterns

Reading Level: 6.6

Reading Age: 11

Reading Quotient: 78

Reading-Spelling Pattern: Dysphonetic
(strength in visual gestalt function and weakness in auditory analytic function)

Interpretation of Central Auditory Processing Battery

The purpose of the GFW Selective Attention Test is to determine if an individual is having difficulty attending to a picture pointing identification task when a variety of competing messages are present.

Although Anthony only had a total of 5 errors, he is in an age group that is expected to get all of the items correct. Three of the errors were when the background noises were at the loudest levels. Two errors were "bag" for "bang", but he did not miss this in all situations.

This would indicate that he has difficulty when background noise is present and therefore, this should be reduced if not eliminated in the classroom situation in order to reduce his distractability.

The Token Test is used to evaluate one's short and long term auditory memory skills. This is a necessary reading readiness skill. Anthony had no difficulty with the task when the commands involved short term memory storage. Technically, an item can not be counted correct if it has to be repeated. In both cases he got them right on the second trial. He admitted he was not paying attention. In two other items, he confused the color and or shape. The last error involved reversing the directions. It should be noted that by Part V, he was not as attentive and had to be reminded of the task.

The SSW is a dichotic listening task (different signals are presented to each ear) that is a measure of central auditory dysfunction. The listening task is presented so that each ear leads 50% of the time. The errors are totaled based on the condition under which the error occurred, i.e. R-NC, R-C, L-C, L-NC. The errors are evaluated in terms of the order in which they were presented (first vs. second spondee) and for ear (first) effect, i.e. does an individual have more errors when the information is presented to one ear vs. the other. Results indicate only a mild problem with this task. He did have more difficulty responding correctly to the second spondee than the first, regardless of the ear he heard it out of. This suggests a problem with attending to a number of complex stimuli.

On the WAFT, Anthony was instructed to respond when he heard auditory stimuli (blips) with varying degrees of short interstimulus intervals. This task takes approximately 10 minutes and is given at a number of frequencies. By the last and lowest frequency he could not differentiate any differences even though he had performed the task at all of the other frequencies without any problems, suggesting that he became bored/inattentive and gave up responding to the task at hand as opposed to being incapable of performing the task correctly.

One of the prime purposes of the Boder Reading and Spelling Test is to determine what method the child is using for his or her word attack skills for reading and writing. Anthony relies very heavily on the visual component and tries to spell everything phonetically. When he was asked to spell

words he knew by sight as well as unknown vocabulary items, he attempted to spell all of them phonetically and came very close if one was reading his responses phonetically instead of as we actually spell them in English. Based on their labeling of reading and spelling patterns, Anthony would be Dysphonetic. His weakness is an auditory analytic function and his strength is in the visual gestalt function.

Summary and Recommendations

Based on the history we have been given and Anthony's performance on the various tests, our results indicate that his difficulty is due to an Attention Deficit possibly associated with hyperactivity as opposed to a Central Auditory Processing problem. If the latter was present, he would have done much poorer on the tests than he did.

In addition, in order to help facilitate his performance in the classroom, background noise needs to be eliminated whenever possible. The use of earplugs may be helpful while doing individual work. Directions should be given with visual cues as reminders as he has some difficulty with a long string of auditorally given directions. If he is receiving any resource help, they could work on slowly introducing background noise, while having him attend to the task at hand, to see if it is possible to help him compensate for this problem.

Since Anthony approaches reading and spelling phonetically, concentration should focus on word attack skills, rote memory of rules and various words that don't fit the phonetic rules, i.e. "eight" sounds like "ate". His confidence also needs to be improved and for a while, the teacher may want to concentrate more on how close he comes to writing a word correct phonetically with the right versus wrong aspect.

Finally, Anthony should also be followed medically with regards to the middle ear problems and resulting in hearing problems still present after his ear infection nearly one month ago.

If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

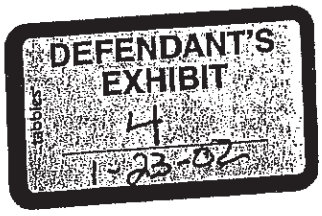
Lynn M. Waters

Lynn M. Waters, M.A., CCC/A
Audiologist

Thomas L. Layton

Thomas L. Layton, Ph.D., CCC/SP
Associate Professor

cc: O/P Child Psychiatry Clinic



HSA Cumberland Hospital
3425 Melrose Road — Phone (919) 485-7181
Fayetteville, N.C. 28304

PSYCHOEDUCATIONAL EVALUATION

NAME: Anthony Wainwright

DOB: 10-22-70

Chronological Age: 16-0

DATE OF TESTING: 12-04-86

GRADE: 9

ACHIEVEMENT TEST ADMINISTERED:

	grade equivalent	standard score	age percentile
I. Wide Range Achievement Test (WRAT)			
Reading Recognition	5B	71	3
Spelling	3B	70	2
Arithmetic	6B	72	3
II. Peabody Individual Achievement Test (PIAT)			
Mathematics	8.2	92	30
Reading Recognition	5.6	81	10
Reading Comprehension	6.2	83	13
Spelling	6.2	82	12
General Information	7.8	89	23
TOTAL TEST:	6.6	81	10

BEHAVIORAL OBSERVATIONS -- Anthony entered testing willingly and was cooperative throughout the session. He was quiet and offered little spontaneous conversation. He was hesitant to respond to questions when he wasn't confident of his answer. He often responded, "huh", asked that questions be repeated and indicated that he "wasn't listening" to questions. Anthony would often mumble a response and then say "Ah, never mind." He seemed to have little confidence in his abilities.

INTERPRETATIONS OF TEST RESULTS

Math -- Anthony's performance on the WRAT written math subtest indicated functioning within the borderline/educable mentally handicapped range for his Chronological age. He missed problems which involved mixed numbers, decimals, percentage and linear measurement. His performance on the PIAT indicated functioning within the average range for his Chronological age.

Reading Recognition and Reading Comprehension -- Anthony's performance on the WRAT and PIAT reading recognition subtests indicated functioning within the borderline to low average range for his Chronological age. Since he had difficulty decoding unknown words - especially with vowel sounds, he gave up easily. His performance on the PIAT reading comprehension subtest indicated functioning within the low average range for his Chronological age.

Spelling -- Anthony's performance on the WRAT written spelling subtest indicated functioning within the borderline/educable mentally handicapped range for his Chronological age. Errors included: ea/educate, mole/material, re/ruin, fashsion/fashion. His performance on the PIAT spelling subtest indicated functioning within the low average range for his Chronological age in recognition of correctly spelled words.

General Information -- Anthony's performance on the PIAT general information subtest indicated functioning within the upper limits of the low average range for his Chronological age.

Summary and Recommendations -- The results of this educational assessment suggest functioning within the average range for his Chronological age in math concepts. He is working within the low average range for his Chronological age in reading comprehension, recognition of correctly spelled words and general information. He is working within the borderline/educable mentally handicapped range for his Chronological age in reading recognition, written spelling, and written math computation. Recommendations include;

(1) Success experiences within the educational setting with encouragement and praise for tasks attempted or achieved.
(2) Use of dictionary respellings to pronounce unknown words and review of vowel sounds and rules might be beneficial.
(3) Remediation of math skills indicated to be weak on the WRAT and Key Math Test.

Kathleen Radcliff, M.E.

Kathleen Radcliff, M. Ed.
Psychoeducational Evaluator

HSA Cumberland Hospital
3425 Melrose Road — Phone (919) 485-7181
Fayetteville, N.C. 28304

LEARNING DISABILITIES EVALUATION

NAME: Anthony Wainwright
DOB: 10-22-70
Chronological Age: 16-10

DATE OF TESTING: 12-04-86
GRADE: 9

Achievement Test Administered:

I. Key Math Diagnostic Arithmetic Test

	Grade Equivalent
Numerations -- square of a number, decimal value, ratio	7.0
Fractions -- 1/2 + 1/4 of a circle, 3 of 8 = 3/8, 2/3 of 15, 3/4 of a set, 16/5 = 3 1/5	5.4
Geometry and Symbols -- (') feet, parallel and perpendicular lines	5.3
Addition -- mixed numbers	8.3
Subtraction -- mixed numbers	7.7
Multiplication -- mixed numbers	8.4
Division -- 2 digit divisors, fractions	7.4
Mental Computation -- 3 computations	7.2
Numerical Reasoning -- mixed numbers and equivalent fractions	5.2
Word Problems -- mixed numbers, percentage, division	5.2
Missing Elements -- no error	9.5
Money -- make change, read bank stub balance	4.8
Measurement -- use balance scales, 1yd.+1ft.= __ inches, ton, estimate height	5.6
Time -- number of years in a decade, read alarm setting to quarter hour	6.9
TOTAL TEST --	6.4

II. Woodcock Reading Mastery Tests

	easy reading level	reading grade level	failure reading level
Letter Identification	4.1	6.2	12.9
Word Identification	3.8	4.4	5.3
Word Attack	2.6	3.5	4.9
Word Comprehension	2.7	3.6	5.1
Passage Comprehension	3.2	4.2	5.5
TOTAL READING	3.4	4.2	5.4

Kathleen Radcliff, M.Ed.
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Psychoeducational Evaluator

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3425 Melrose Road — Phone (919) 485-7181
Fayetteville, N.C. 28304

Anthony Wainwright
DOB: 10-22-70

DATE OF ADMISSION: 11-4-86

IDENTIFYING DATA: Anthony is a 16 year old male who was brought here for evaluation by his father, Ken Wainwright.

CHIEF COMPLAINT AND REASON FOR ADMISSION: Anthony has been in detention for a month in Greenville, NC, after stealing an automobile and being picked up for minor traffic violations. He went to court on 11-4-86 and was brought here the same day for a 10-day evaluation.

HISTORY OF PRESENT ILLNESS: Anthony dates his problems back to the seventh grade when he began to get in trouble in school. At that time, he got in with the wrong crowd, according to his parents, and eventually into delinquent behavior, including the use of drugs and alcohol. He was evaluated at Chapel Hill on an outpatient basis, was told that he did not have a learning problem, and apparently was not taken into treatment.

Anthony was sent to Wilderness Camp about a year ago. I don't have any written reports about how that went for him, but he says that he hated it. Sleeping in a tent, cooking your own meals, being away from the town, etc., was not his idea of fun. After ten months there, he ran away and has been at home for the past two to three months. Since coming home, he has gotten back into drugs and alcohol (as much as he can get his hands on) and has gotten into all kinds of delinquent behavior, including vandalism, totaling his parents' car and almost killing himself, and later taking another car.

His mother says that he is very impulsive, immature, and never thinks of the consequences of his actions. He hangs around with delinquent youngsters and is involved with a crowd of kids who are involved with drugs. She says that he has very low self-esteem and is very quiet, keeps to himself a lot, and is usually polite with adults.

I was unable to elicit problems at home that might have been the root cause for some of his current behavior. He tends to idealize his parents, to deny that there are problems between himself and his mother and father, and says that he gets along with his younger sister.

PAST PSYCHIATRIC HISTORY: See above. As noted, Anthony had a psychiatric workup at Chapel Hill several years ago, with no documentation of treatment, and has just returned from ten months at a Wilderness Camp. I have no record of any diagnoses, medications, etc.

MENTAL STATUS EXAMINATION: Anthony is well-dressed, well-groomed, and responsive in the interview situation. Today he is less angry-looking than he was last night and seemed more cooperative. He was quite candid and responsive to questions, at times elaborating on a question and even producing additional information. His speech was normal, relevant and coherent, and with normal associations. There was no evidence of thought disorder, delusions, hallucinations, etc. The mood and affect, except for his anger about being here and a somewhat chip-on-the-shoulder attitude,

HSA Cumberland Hospital
3425 Melrose Road — Phone (919) 485-7181
Fayetteville, N.C. 28304

DATE OF ADMISSION: 11-4-86

was unremarkable. He did not express any remorse or shed tears over his predicament. He appears to be of average intelligence, is oriented in all three spheres, has memory for past and recent events, pays attention and can concentrate on what is being said. His insight and judgment are obviously faulty.

ADMISSION DIAGNOSIS: Axis I: Conduct disorder, undersocialized, aggressive. 312.00
Axis II: No diagnosis.
Axis III: No diagnosis.

ADMISSION PLAN FOR TREATMENT: We've been advised by the family that they have a very limited insurance policy and that they are anxious to have him assessed and provided with recommendations for future treatment. We will complete physical evaluation, psychological testing, and maintain him in the adolescent milieu. I will be seeing him daily, either in small group therapy or in individual therapy, to facilitate his evaluation. He will also be attending school during this time.

DISCHARGE PLAN: Anticipated length of stay: 10 days. Discharge to: parents, with recommendations for treatment and/or training school. Possible aftercare plan: This will depend somewhat on our workup. It is very possible that one of our recommendations might be to put him in training school.

PROGNOSIS: The prognosis for this youngster for becoming an independent and functioning adult are not very promising. He has been in trouble since the seventh grade, and this has been gradually getting worse, in spite of efforts to help him. He uses alcohol and drugs to excess, he follows other delinquent youngsters, and seems to have little remorse or concern for what happens. At least on one occasion, he has demonstrated that he is very self-destructive, and certainly this is also borne out in his use of drugs and alcohol.

Robert Jackson, M.D.

RJ/jp
D: 11-5-86
T: 11-5-86

Name	#	Attending Physician
Anthony Wainwright	00-49-92	Robert Jackson, M.D. 45

Carolina Psychological Associates

Licensed Psychologists

Rhea Cravens, Ph.D.
Eugenia L. Gullick, Ph.D.
Stephen B. Levenberg, Ph.D.

2597 Raeonhill Drive
Suite 1, Suite
Fayetteville, N.C. 28303
(919) 484-4151

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November 7, 1986

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PSYCHOLOGICAL EVALUATION

Anthony Wainwright
DOB: 10/22/70

DATE OF ADMISSION: 11/4/86

REASON FOR REFERRAL: Anthony is a 16-year-old male who lives with his natural parents and younger, 12-year-old, sister in Tarboro, North Carolina. He is enrolled in the nineth grade at Tarboro High School. He was recently admitted to the Adolescent Unit of HSA Cumberland Hospital with an admitting diagnosis of Conduct Disorder, undersocialized, aggressive type. His presenting problems on admission included the following: detention for a month in Greenville, North Carolina for stealing a car and being picked up for a traffic violation; Wilderness placement about a year ago as a result of deliquent behavior including vandalism and totalling his parents' car; impulsiveness; and low self-esteem. He was referred for evaluation by Dr. Jackson for the purpose of further assessing his psychological status.

TESTS ADMINISTERED: Wechsler Intelligence Scale for Children-Revised (WISC-R), Bender Visual Motor Gestalt Test, Draw-A-Person (DAP), Incomplete Sentences Blank-High School Form (ISB), Rorschach, Minnesota Multiphasic Personality Inventory (MMPI), 15 minute interview.

BEHAVIORAL OBSERVATIONS: Anthony is a rather tall youngster of appropriate weight with brown hair, blue eyes, and freckled complexion. He was alert and oriented at the time of the testing, with his thinking being organized and with his affect being subdued and mildly depressed in quality. He was accepting of the testing tasks and cooperative throughout the administrations. He evidenced a soft-spoken manner, with his articulations being adequate and with there being no problems in comprehending my statements to him. His gait and finer motor performances were unremarkable. He was inclined to deny or play down the significance of personal difficulties. He did admit to a sense of sadness over his behavior and felt that his association with a wrong group of peers had influenced him in a deviant direction. Also, it was his opinion that his law breaking behavior had typically occurred when he was using drugs or had been drinking to excess. There was a certain element of discounting or minimizing involved in his discription of his difficulties.

TEST RESULTS: Anthony evidences a cognitive style that is in the direction of an impressionistic assessment of his experiences that is lacking in attention to details or well elaborated labeling of experiences. He is not inclined to be all that attentive to the day in and day out, routinized elements of his life. His reality testing is marginal by virtue of erroneous interpretations of his experiences that are more a function of personality disturbances than any disorganization or the intrusion of bizarre ideas. He retains a capacity for conventional perspectives

DATE OF ADMISSION: 11/4/86

and he has inner resources in terms of an imaginal life that is realistically tempered and allows him a degree of healthy escape and a degree of healthy ventilation. Anthony's range of interest is certainly constricted currently and his intellectual productivity is similarly curtailed, with this inhibition of his intellectual life associated with a depression. Intellectually, he is generally performing in a Low Average range of achievement, with his verbal skills being Borderline and his non-verbal skills being Average (WISC-R full scale I.Q. 87, verbal scale I.Q. 79, and performance scale I.Q. 98). I have listed below his achievements across the different areas assessed.

VERBAL SUBTESTS	SCALED SCORE	PERFORAMNCE SUBTESTS	SCALED SCORE
Information	6	Picture Completion	9
Similarities	6	Picture Arrangement	9
Arithmetic	6	Block Design	10
Comprehension	8	Coding	11

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There is obviously a significant discrepancy between Anthony's verbal and non-verbal performances with the latter being the superior of the two. This discrepancy is on the order of 19 I.Q. score points and is of sufficient magnitude to warrant a diagnosis of Learning Disability affecting his achievements on verbal tasks. This weakness in verbal areas has significant implications for Anthony's academic performances and suggests that in that area he is experiencing major frustrations. It is notable that he mentioned to me that he had performed acceptably in school until he reached middle school when he began to have difficulties and, in fact, failed the seventh grade. In contrast to his verbal deficiencies, he does quite well in all non-verbal areas. His non-verbal superiority was also reflected in his Bender Visual Motor Gestalt performances where his reproductions of the designs were quite adequate and consistent with an Average intelligence. However, his Bender designs did reflect distortions consistent with depression, as well as an impulsive style and defensiveness in relationships with authorities with a tendency to resist their constraints.

Anthony is a defensive youngster who does not easily own personal problems. Further, he relies on an overly masculinized posturing to buffer his denial and to compensate for undercurrents of bad feelings about himself. Anthony is a depressed youngster, with his depression being of a mild to moderate severity. It is safe to reason that this youngster's verbal deficiencies and associated academic difficulties and failures are figuring importantly in his depressive perspectives. There is further evidence that familial relationships are another key factor. Specifically, there is evidence that he experiences his father and authorities generally as towering over him with a critical mien and that his relationship with his mother is problematic as well. This is not to lay the blame for this youngster's acting out behavior entirely at the feet of his parents, but simply to say that there appears to be familial influences on Anthony's acting out behavior. There is suggestive evidence of a need for greater closeness to his family, but with him experiencing himself as unable to achieve it. His depression is also being influenced by

a quite negative perspective on himself that has been conditioned by his misbehavior and his relationship difficulties.

Anthony's tolerance for stress is rather poor and he resents constraints being placed upon his activities. He is most sensitive to critical feedback, particularly if it is emotionally charged, to which he is apt to over-react in ways that are not constructive. His rebellion is obviously carrying him in the direction of alignment with marginally adjusted youngsters and this in turn is shaping him in the direction of a rule-breaking lifestyle. There was some evidence for a potential for a Bipolar Affective Disorder by virtue of an elevation on the MMPI Mania Scale. This elevation may be strictly a function of this youngster's more anti-social traits or the sense of frustration and failure that he is encountering. Nonetheless, there is sufficient evidence for it to warrant assessment for this possibility.

Behaviorally, one can expect that Anthony will display a depressed posture, with his rebelliousness only surfacing under conditions of emotional arousal, particularly under conditions of emotionally laded negative feedback. Further, he is apt to have trouble admitting to personal problems and to hide his adjustment difficulties behind an overly masculinized, tough exterior. His overly masculinized presentation will be rather quietly expressed, as opposed to more audacious displays. His relationship difficulties with his family and his failure to overcome them has inspired some sense of futility in his relationships with people that may cause him to be initially distrustful.

SUMMARY AND CONCLUSIONS: This 16-year-old male is generally performing in a Low Average range of intellectual achievement. There is a significant discrepancy between his verbal and non-verbal performances, in favor of the latter. Further, this discrepancy is of such magnitude as to warrant a diagnosis of Learning Disability affecting verbal skills. A Mild to Moderate Depression is indicated, along with Conduct Disorder, undersocialized, aggressive type, and Sporadic Substance Abuse. Anthony's depression has been influenced by his verbal deficiency and familial conflicts which have inspired significantly negative perspectives on himself. He is evidencing a low tolerance for stress, in addition to motor restlessness that may be purely a function of his stress or may signify a possible bipolar condition.

IMPRESSIONS: Mild to Moderate Depression.

Rule out Bipolar Affective Disorder, depressed type.

Conduct Disorder, undersocialized, aggressive type.

Sporadic Substance Abuse.

Verbal Learning Disability.

This evaluation was completed on November 5, 1986. Thank you for this very interesting consult.

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Fred T. Lee, Ph.D.

Fred T. Lee, Ph.D.

IN THE CIRCUIT COURT, THIRD
JUDICIAL CIRCUIT, IN AND FOR
HAMILTON COUNTY, FLORIDA

CASE NO. SC02-1342
LOWER CASE NO. 94-150-CF-2

STATE OF FLORIDA
COUNTY OF HAMILTON

I, GREG GODWIN, CLERK OF THE CIRCUIT COURT IN AND FOR THE THIRD JUDICIAL CIRCUIT, HAMILTON COUNTY, FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE EXHIBITS ENTERED IN THE FOLLOWING CAUSE HEREIN:

ANTHONY FLOYD WAINWRIGHT,
PETITIONER/APPELLANT

VS.

STATE OF FLORIDA,
RESPONDENT/APPELLEE

MAILED OUT CERTIFIED MAIL ON THIS 11TH DAY OF SEPTEMBER, 2002.

GREG GODWIN
CLERK OF THE CIRCUIT COURT
BY: _____
KRISTY MORGAN
DEPUTY CLERK

State of Florida v. Anthony Floyd Wainwright
Order Summarily Denying Amended Eighth Successive Motion for Postconviction Relief
Case No.: 1994-150-CF
Melissa G. Olin, Circuit Judge

APPENDIX

H

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT,
IN AND FOR HAMILTON COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

V.

Case No.: 94-150-CF-2
Death Penalty Case

ANTHONY FLOYD WAINWRIGHT,
Defendant.
_____/

GREG GODWIN
CLERK OF COURTS
HAMILTON COUNTY, FLA.
2002 MAY 28 AM 11:

SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF

Comes now the Defendant, Anthony Floyd Wainwright ("Mr. Wainwright"), proceeding pro se, and hereby moves this Honorable Court, pursuant to Florida Rule of Criminal Procedure 3.851(e)(2), to vacate his sentence of death and order a new penalty phase based on the reasons detailed below. An evidentiary hearing is requested.

STATEMENT OF JUDGMENT AND SENTENCE UNDER ATTACK

On June 1, 1995, a jury impaneled in this Court found Mr. Wainwright guilty of the armed robbery, armed kidnapping, armed sexual battery and murder of Carmen Gayheart. Following a penalty phase the jury recommended that he be sentenced to death for the murder. And on June 12, 1995, the Court followed the jury's recommendation and imposed a death sentence.

STATEMENT OF ISSUES RAISED ON APPEAL

Mr. Wainwright asserted nine grounds for relief in his direct appeal, claiming that the trial court erred reversibly by: (1) admitting into evidence, over his objection, certain statements that he made to law enforcement officers., (2) allowing the State to introduce into evidence, over his objection, certain testimony regarding DNA., (3) denying his request to be tried separately from his co-defendant., (4) allowing the State to introduce into evidence, over his objection, certain evidence of other crimes, wrongs or acts., (5) removing a juror on the tenth day of trial without adequate cause., (6) allowing the State to introduce into evidence, over his objection, certain evidence concerning Gayheart routinely picking up her kids., (7) overlooking the State's failure to establish corpus delecti of sexual assault., (8) allowing the State to introduce, over his objection, a statement he made about having AIDS., and (9) imposing unlawful sentences with regard to his non-capital convictions.

The Florida Supreme Court affirmed Mr. Wainwright's convictions and sentence of death, Wainwright v. State, 704 So. 2d 511 (Fla. 1997), and the United States Supreme Court denied certiorari review. Wainwright v. Florida, 503 U.S. 1127 (1998).

Mr. Wainwright asserted fourteen grounds for relief in his initial rule 3.851 motion, claiming that he was entitled to postconviction relief because: (1) his trial counsel was

ineffective for failing to prevent the admission of certain testimony regarding DNA.,(2) his trial counsel was ineffective for failing to prevent the admission of certain statements and/or admissions that he made to law enforcement officers.,(3) his trial counsel was ineffective for failing to prevent the admission of certain evidence of other crimes, wrongs or acts,(4) his trial counsel was ineffective regarding a microphone discovered in his jail cell.,(5) his trial counsel was ineffective for failing to properly and/or adequately object to the jury's instructions regarding aggravating circumstances.,(6) his trial counsel was ineffective for failing to properly and/or adequately object to certain arguments made by the prosecutor,(7) his trial counsel was ineffective for failing to maintain a proper relationship with him, failing to ensure that he received an indicated mental health evaluation, and failing to discover and present certain mitigating evidence.,(8) his trial counsel was ineffective for failing to prevent the admission of certain victim impact testimony,(9) his trial counsel was ineffective for failing to properly and/or adequately object to a Caldwell error[1].,(10) his trial counsel was ineffective regarding certain pretrial issues.,(11) his trial counsel was ineffective for failing to properly and/or

[1] Referring to Caldwell v. Mississippi, 472 U.S. 320 (1985), where the United States Supreme Court made clear that it is improper to rest a death sentence on a determination made by a jury who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere.

adequately prepare for trial, (12) his trial counsel was ineffective for introducing certain untairly prejudicial statements that his co-defendant made, (13) his trial counsel was ineffective for committing a discovery violation, and (14) his trial counsel's illness during trial rendered him ineffective.

This Court denied relief on all claims, and the Florida Supreme Court affirmed. Wainwright v. State, 896 So. 2d 695 (Fla. 2004).[2]

Mr. Wainwright then asserted eleven grounds for relief in a federal 2254 petition, claiming that he was entitled to habeas relief because: (1) he was denied the effective assistance of trial counsel during both the guilt and penalty phases of his trial, (2) he was denied the effective assistance of trial counsel during the guilt phase of trial when his trial counsel failed to properly and/or adequately object to the admission of certain statements and/or admissions that he made to law enforcement officers, (3) he was denied the effective

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[2] The Florida Supreme Court simultaneously denied a habeas petition asserting 4 grounds for relief, claiming: (1) that Florida's capital sentencing scheme is unconstitutional under Ring v. Arizona, 536 U.S. 584 (2002), and Apprendi v. New Jersey, 530 U.S. 466 (2000), (2) that his trial counsel rendered ineffective assistance by failing to raise an issue involving the felony murder jury instructions, (3) that the trial court erred by failing to make specific findings before requiring him to wear a stun belt at trial, and (4) that the trial court erred by failing to conduct a Koon v. Dugger, 619 So. 2d 246 (Fla. 1993), inquiry. Wainwright, 896 So. 2d at 703-04.

assistance of trial counsel during the guilt phase of trial when his trial counsel failed to prevent evidence of certain other crimes, wrongs or acts from becoming a central feature of the trial., (4) he was denied the effective assistance of trial counsel during the guilt phase of trial when his trial counsel failed to properly and/or adequately object to the issue regarding a secret microphone discovered in his jail cell., (5) he was denied the effective assistance of trial counsel during the penalty phase of his trial when his trial counsel failed to effectively present certain mitigation evidence., (6) he was denied a fair and reliable adversarial testing during both the guilt and penalty phase of his trial due to a breakdown of the adversarial system., (7) the state courts erroneously refused to adjudicate his meritorious claim that his trial counsel rendered ineffective assistance regarding certain pretrial issues., (8) he was denied a fair trial when the trial court removed a juror on the tenth day of trial without adequate cause., (9) his trial counsel was ineffective for failing to properly and/or adequately object to certain issues pertaining to jury instructions, prosecutorial misconduct, and inappropriate aggravating circumstances., (10) he was denied a fair trial when the trial court admitted certain unfairly prejudicial testimony into evidence., and (11) he was denied a fair trial when the trial court forced him to be tried jointly with his co-defendant.

The United States District Court for the Middle District of Florida, Jacksonville Division, dismissed Mr. Wainwright's federal 2254 petition for being untimely, and the Eleventh Circuit Court of Appeals affirmed. Wainwright v. Sec. D.O.C., 537 F. 3d 1282 (11th Cir. 2007).

Mr. Wainwright does not now have any other petition, application, appeal, motion, etc., pending in any court, either state or federal, as to the sentence under attack.

NATURE OF RELIEF SOUGHT

Mr. Wainwright is seeking an order vacating his sentence of death and ordering a new penalty phase.

STATEMENT WHY THE WITHIN CLAIMS ARE NOT PROCEDURALLY BARRED

Mr. Wainwright acknowledges that the Court previously ruled on a postconviction motion attacking the same sentence of death he is attacking in this motion and that his sentence has been final for more than 1 year. In view of these facts, the instant motion would normally be procedurally barred from consideration on the merits. Fla. R. Crim. P. 3.851 (d)(1) and (2). However, and as more fully explained in the claims themselves, the facts on which the within claims are predicated were unknown to Mr. Wainwright or his attorney and

could not have been ascertained by the exercise of due diligence. Accordingly, the within claims are not procedurally barred. Fla. R. Crim. P. 3.851 (d)(2)(a).

ARGUMENT IN SUPPORT OF POSTCONVICTION RELIEF

GROUND I

MR. WAINWRIGHT IS ENTITLED TO POSTCONVICTION RELIEF BECAUSE NEWLY DISCOVERED EVIDENCE SHOWS THAT HIS MENTAL AGE AT THE TIME OF HIS CAPITAL CRIME WAS BELOW 18 DUE TO ORGANIC BRAIN DAMAGE AND/OR MENTAL RETARDATION, IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS AS ESTABLISHED BY ROPER v. SIMMONS, 543 U.S. 551 (2005), AND ATKINS v. VIRGINIA, 536 U.S. 304 (2002).

1. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." The provision is applicable to the States through the Fourteenth Amendment. Furman v. Georgia, 408 U.S. 238, 239 (1972) (per curium).

2. The Eighth Amendment's prohibition against "cruel and unusual punishments," like other expansive language on the constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework, the United States Supreme Court has established the propriety and affirmed the necessity of referring to "the

evolving standards of decency that mark the progress of a maturing society" to determine what punishments are so disproportionate as to be cruel and unusual. Trop v. Dulles, 356 U.S. 86, 100-01 (1958) (plurality opinion).

3. Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force. Thompson v. Oklahoma, 487 U.S. 815, 856 (1988) (O'Connor, J., concurring in judgment). Capital punishment must be limited to those offenders who commit "a narrow category of the most serious crimes" and whose extreme culpability makes them "the most deserving of execution". Atkins v. Virginia, 536 U.S. 304, 319 (2002).

4. Based on the foregoing considerations, the United States Supreme Court held in Roper v. Simmons, 543 U.S. 551 (2005), that the execution of individuals who were under 18 years of age at the time of their capital crimes is cruel and unusual punishment. In short, the court found that three general differences between individuals under 18 years of age and adults demonstrate that they cannot with reliability be classified among the worst offenders. First, their lack of maturity and undeveloped sense of responsibility, which often results in impetuous and ill-considered actions and decisions. Second, their vulnerability or susceptibility to negative influences and outside pressures, including peer pressure. And third, their character is not as well formed as that of an adult. Id. at 570-71.

5. And in Atkins v. Virginia, 536 U.S. 304 (2002), the United States Supreme Court held that a national concensus against executing the mentally retarded had developed rendering the execution of the mentally retarded cruel and unusual punishment. In addition, the court independently evaluated the issue and found that because of their disabilities in areas of reasoning, judgment, and control of their impulses, the mentally retarded do not act with the level of moral culpability that characterize the most serious adult criminal conduct, justifying a categorical rule making such offenders ineligible for the death penalty. Id. at 318-22.

6. Although he knew the difference between right and wrong and was competent to stand trial, Mr. Wainwright asserts here that newly available neuropsychological evidence shows that his mental age at the time of his capital crime was below 18 due to organic brain damage and/or mental retardation, rendering him ineligible for the death penalty under the reasoning of Roper and Atkins.

7. Mr. Wainwright requests an evidentiary hearing on this ground for relief so that he may present the extra-record evidence necessary to substantiate it. At the very least, however, he is entitled to a Huff hearing on it so that he may more fully explain to the Court why he is entitled to the relief sought.[3]

[3] See Huff v. State, 622 So. 2d 982, 983 (Fla. 1993)(" requiring the trial court to hold a

GROUND 2

MR. WAINWRIGHT IS ENTITLED TO POSTCONVICTION RELIEF BECAUSE NEWLY DISCOVERED EVIDENCE RENDERS HIS SENTENCE OF DEATH CONSTITUTIONALLY UNRELIABLE — THERE IS A REASONABLE PROBABILITY THAT A JURY WEIGHING THE EVIDENCE IN AGGRAVATION AGAINST THE TOTALITY OF NOW-AVAILABLE MITIGATION WOULD RECOMMEND A SENTENCE OF LIFE IMPRISONMENT, NOT DEATH.

8. Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force. Thompson v. Oklahoma, 487 U.S. 815, 856 (1988)(O'Conner, J., concurring in judgment). Capital punishment must be limited to those offenders who committ "a narrow category of the most serious crimes" and whose extreme culpability makes them "the most deserving of execution". Atkins, supra, 536 U.S. at 319.

9. Due to the severe and irrevocable nature of the death penalty and the attendant Eighth Amendment concerns, the United States Supreme Court has made clear that the defendant in any capital case has wide latitude to raise as a mitigating factor any aspect of his or her character or record and any of the circumstances of the crime that calls for a

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hearing on postconviction motions in capital cases to "determin[e] whether an evidentiary hearing is required and to hear legal argument related to the motion").

sentence less than death. Lockett v. Ohio, 438 U.S. 586, 604 (1978)(plurality opinion)., Eddings v. Oklahoma, 455 U.S. 104, 110-12 (1982)., see also Johnson v. Texas, 509 U.S. 350, 359-62 (1993)(Summarizing the court's jurisprudence after Furman v. Georgia, 408 U.S. 238 (1972) (per curium), with respect to a sentencer's consideration of aggravating and mitigating circumstances).

10. Mr. Wainwright proffers here as a basis for a sentence less than death newly available neuropsychological evidence that shows his mental age at the time of his capital crime was below 18 due to organic brain damage and/or mental retardation. Even if that evidence does not render him ineligible for the death penalty as he argued in ground 1, Mr. Wainwright submits that it supports a finding that he was under the influence of an extreme mental or emotional disturbance at the time of the crime, which is a powerful statutory mitigator. See § 921.141(6)(b), Fla. Stat.

In addition, Mr. Wainwright would point out that a great deal of evidence supporting non-statutory mental health mitigation was available at the time of trial but not presented to his sentencers due to the unreasonable acts and omissions of his trial counsel.

That evidence can be summarized as follows:

(a) As early as age 6, Mr. Wainwright's unusual mental department brought

him to the attention of authorities. On March 30, 1977, it was noted in a report by the Edgecombe-Nash Mental Health Center that "certain behavioral abnormalities" attended Mr. Wainwright.

(b) On August 30, 1984, according to another medical/psychological evaluation, it was noted that Mr. Wainwright suffered from an uncharacterized attention deficit disorder, which fit with his parents report from the time that he had difficulty learning at school, had had to be held back a grade, and had not responded to efforts at behavior modification and structuring.

(c) As early as 1987, Mr. Wainwright was diagnosed with a "mixed specific development disorder." Indeed, throughout Mr. Wainwright's early childhood he was repeatedly institutionalized or confined at the Edgecombe-Nash Mental Health Center.

(d) In 1986, at the age of 16, when a normal child would be in his sophomore year in high school, Mr. Wainwright was confined at the Edgecombe-Nash Mental Health Center. According to tests administered at that time, including a psycho-educational evaluation, Mr. Wainwright suffered from a "mixed developmental disorder".

(e) According to another psycho-educational evaluation administered by the Cumberland Hospital, while Mr. Wainwright was nominally within the "low average range" for his chronological age in recognition of correctly spelled words, it indicated that "he is working within the borderline educable mentally handicapped range" in many other areas, including reading comprehension, spelling, and math skills.

(f) On September 21, 1986, Mr. Wainwright sustained significant head injuries as a result of an automobile accident. Among the procedures administered to Mr. Wainwright was "psychological support".

(g) In a report based on a contact dated December 5, 1986, by the North Carolina Division of Mental Health, Retardation, and Substance Abuse Services, it was noted that Mr. Wainwright was experiencing difficulty in moving towards the end of therapeutic support. It also noted the aforementioned "mixed specific developmental disorder".

Although this Court denied his claim that his trial counsel's failure to investigate and present the above evidence of non-statutory mental health mitigation to his sentencers constitutes ineffective assistance during the initial rule 3.851 proceeding and the

Florida Supreme Court affirmed, Wainwright v. State, 896 So. 2d 698, 703 (Fla. 2004), Mr. Wainwright asks the court to reconsider the prejudice he suffered by his sentencers not receiving and weighing that evidence in conjunction with the prejudice he suffered by their not weighing the newly available neuropsychological evidence when determining the reliability of his sentence of death — it carries a much greater force when it is viewed in the light of the newly available neuropsychological evidence. See Wiggins v. Smith, 539 U.S. 534, 535-39 (2003)(holding that to assess prejudice the reviewing court must reweigh the aggravating evidence against the totality of the now-available mitigating evidence).

12. Respectfully, there is a reasonable probability that a jury weighing the evidence in aggravation against the totality of now-available mitigation would recommend a sentence of life imprisonment, not death. As a result, Mr. Wainwright is entitled to a new penalty phase.

13. Mr. Wainwright requests an evidentiary hearing on this ground for relief so that he may present the extra-record evidence necessary to substantiate it. At the very least, however, he is entitled to a Huff hearing on it so that he may more fully explain to the Court why he is entitled to the relief sought.

GROUND 3

MR. WAINWRIGHT IS ENTITLED TO POSTCONVICTION RELIEF BECAUSE THE EVIDENCE OF MITIGATION THAT HIS SENTENCERS DID NOT RECEIVE AND WEIGH IDENTIFIED BOTH HEREIN AND IN THE INITAL 3.851 PROCEEDING CUMULATIVELY, IF NOT INDIVIDUALLY, RENDERS HIS SENTENCE OF DEATH CONSTITUTIONALLY UNRELIABLE

14. All of the factual allegations and legal arguments contained in grounds 1 and 2 are incorporated by reference into this ground for relief:

15. All of the foregoing evidence and argument was relevant and not cumulative of any other evidence presented at trial. Moreover, his sentencers could not have been precluded from considering it in mitigation. Eddings v. Oklahoma, 455 U.S. 104 (1982), Lockett v. Ohio, 438 U.S. 586 (1978).

16. Respectfully, the mitigation not presented and weighed by his sentencers was substantial. If his sentencers had been presented with all of the relevant evidence and argument which calls for the less severe penalty there is a reasonable probability Mr. Wainwright would have received a sentence of life imprisonment, not death. As a result, Mr. Wainwright is entitled to a new penalty phase.

17. Mr. Wainwright requests a Huff hearing on this ground for relief so that he may more fully explain to the Court why he is entitled to the relief sought.

LIST OF WITNESSES SUPPORTING THE WITHIN CLAIMS

At the requested evidentiary hearing, Mr. Wainwright would present testimony from the following individuals, all of whom would be available to testify. Mr. Wainwright reserves the right to supplement the list.

1. Dr. Weinstein. Mr. Wainwright does not currently have either the full name or the contact information for this witness. Upon information and belief his current appointed counsel does, however, and Mr. Wainwright will provide it by amendment as soon as possible. See the accompanying Defendant's Motion for Appointment of Effective, Conflict-Free Counsel and for Leave to Amend.

2. Dr. Wu. Mr. Wainwright does not currently have either the full name or the contact information for this witness. Upon information and belief his current appointed counsel does, however, and Mr. Wainwright will provide it by amendment as soon as possible. See the accompanying Defendant's Motion for Appointment of Effective, Conflict-Free Counsel and for Leave to Amend.

3. Mrs. Rosalie Bolin, Criminal Specialist Investigations, Inc., PO BOX 75038, Tampa, FL 33675, telephone no.: 813.241.9158.[4]

[4] It must be noted here that although the above-named witnesses have been contacted by

REQUEST FOR RELIEF

Wherefore, the Defendant, Anthony Floyd Wainwright, requests this Court to:

1. Conduct an evidentiary hearing on the grounds for relief asserted herein, allowing him to present the extra-record evidence necessary to substantiate them;

2. Issue an order vacating his sentence of death and ordering a new penalty phase;

3. Grant such other relief as appears just and proper in light of the facts and circumstances of this case.

Executed on:

May 19, 2009.

Respectfully submitted,

Anthony F. Wainwright

Anthony Floyd Wainwright
#123847-P22035
Union Correctional Institution
7819 NW 228th Street
Raiford, FL 32026-4420

Defendant pro se

CERTIFICATE OF SERVICE AND VERIFICATION OF DOCUMENT

Mr. Wainwright's current appointed counsel and have agreed to appear and testify should the requested evidentiary hearing be granted, their availability is contingent upon their being compensated for their services. See the accompanying Defendant's Motion for funds for Expert and Investigatory Assistance.

I hereby certify that I have furnished accurate copies of this pleading by postage prepaid first class U.S. mail to the parties identified below., and declare under penalty of perjury that I have read this pleading and that the facts and matters stated in it are true and correct.

Anthony Floyd Wainwright

Copies furnished to:

Honorable E. Vernon Douglas
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