

No. 25A1235

In the Supreme Court of the United States

Eric Guerrero, Director, Texas Department of Criminal Justice,
Correctional Institutions Division,
Petitioner

v.

Edward Lee Busby,
Respondent

SUPPLEMENTAL APPENDIX

David R. Dow
Texas Bar No. 06064900
University of Houston Law Center
4170 Martin Luther King Blvd.
Houston, Texas 77204-6060
Tel. (713) 743-2171
Fax (832) 842-4671
Email ddow@central.uh.edu

Jeffrey R. Newberry
Texas Bar No. 24060966
University of Houston Law Center
4170 Martin Luther King Blvd.
Houston, Texas 77204-6060
Tel. (713) 743-6843
Fax (832) 842-4671
Email jrnewber@central.uh.edu

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GILBERT MARTINEZ, PH.D., ABPP-CN
LICENSED PSYCHOLOGIST
BOARD CERTIFIED IN CLINICAL NEUROPSYCHOLOGY

16014 VIA SHAVANO
SAN ANTONIO, TX 78249
FAX (210) 615 – 6906
PH (210) 614 – 3011

**REPORT OF INTELLECTUAL
AND ADAPTIVE FUNCTIONING ASSESSMENT**

Name: Edward Busby

Date of Birth: 7/25/72

Examiners: Gilbert Martinez, Ph.D., ABPP-CN
Alisa Zinsmeyer Young, M.A., LPC
Verenice D’Santiago-Eastman, Ph.D., L.P

Assessment Date(s): 06/15/22

Current Age: 49 years, 11 months

Report Date: 7/11/22

Referral Source: Jeff R. Newberry
David R. Dow

Re: Cause No. CDC2-W011911-00 *Ex Parte Edward Lee Busby, Jr., Applicant.* In the Criminal District Court Number Two, of Tarrant County, Texas

Disclosure Statement: The information contained in this report is strictly confidential and protected. This information should generally only be interpreted the presence of a qualified psychologist. This report is not for release to the applicant or family and is intended for professional use only.

Training/Experience: I am a licensed psychologist and board-certified clinical neuropsychologist with a specialty in the evaluation and treatment of neurological and psychological conditions in adults and children, including brain injury, dementia, intellectual disability, depression, and posttraumatic stress. I am board certified in Clinical Neuropsychology by the American Board of Professional Psychology. A major portion of my training and experience has been in the area of psychological testing. I have more than 30 years of experience in conducting neuropsychological and psychological assessment and intervention with individuals suffering from a broad range of neurological, intellectual, behavioral, and emotional disorders, with a specialty in standardized test interpretation. In addition to my independent practice and staff and directorship appointments with several major hospital systems, I am also regularly appointed by courts in the field of clinical psychology and clinical neuropsychology in both civil and criminal matters. I am licensed in Texas and Louisiana and also serve as an examiner with the Texas State Board of Examiners of Psychologists, and have previously served as President of the Hispanic Neuropsychological Society. Please refer to my curriculum vitae for greater detail.

Reason for Referral: Attorneys representing Mr. Busby, Jeff R. Newberry, and Mr. David R. Dow, requested an evaluation of Mr. Edward Busby’s intellectual and adaptive functioning to

assist in his legal proceedings. Mr. Busby has been convicted of capital murder and has been sentenced to death.

Methodology: The following methodologies were employed in the current assessment to evaluate Mr. Busby's intellectual and adaptive functioning:

1. Administration of standardized intelligence testing with performance validity testing on February 11, 2010.
2. A clinical interview and the re-administration of standardized intelligence testing with performance validity testing on February 25, 2022.
3. A review of written affidavits by individuals who are familiar with Mr. Busby's development and functioning.
4. The administration of standardized assessment of adaptive functioning to Mr. Busby's sisters who are familiar with his development and functioning.
5. A review of available academic records.

Affidavits were previously collected by members of Mr. Busby's defense team, as well as academic records from his schooling. The information above was integrated in the following written report. This report is not meant to provide a comprehensive account of the statements gathered in the affidavits. Please refer to the affidavit exhibits for specific details.

INTELLIGENCE TESTING ON FEBRUARY 11, 2010:

Test Results: Mr. Busby underwent standardized assessment of intellectual functioning using the Wechsler Adult Intelligence Scale-Fourth Edition on February 11, 2010. Testing was administered face-to-face and without obstructions under appropriate and controlled conditions in his detention facility. Mr. Busby was fully cooperative and an assessment was completed. During this assessment he was also administered the Test of Memory Malingering (TOMM) to establish the presence of optimal effort and motivation to perform to the best of one's abilities on standardized testing. Generally, scores above 45/50 on the TOMM are indicative of positive effort and credible responding. Mr. Busby's scores on the TOMM during this assessment were within the recommended cutoffs and consistent with good effort on cognitive testing (T1=50/50; T2=49/50). The administration and test results were determined to be a reliable estimate of Mr. Busby's abilities and functioning.

To evaluate his intellectual ability, Mr. Busby was also administered the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) during his assessment on February 11, 2010. He obtained a Full Scale IQ score of 74 (70-79 at 95% Confidence Interval), which falls within the Borderline range of intelligence. His scores on the WAIS-IV were as follows:

WAIS-IV Composite Score Summary (2010)

Scale	Sum of Scaled Scores	Composite Score		Percentile Rank	95% Confidence Interval	Qualitative Description
Verbal Comprehension	15	VCI	72	3	67-79	Borderline
Perceptual Reasoning	20	PRI	81	10	76-88	Low Average
Working Memory	13	WMI	80	9	74-88	Low Average
Processing Speed	14	PSI	84	14	77-94	Low Average
Full Scale	62	FSIQ	74	4	70-79	Borderline

**Confidence Intervals are based on the Overall Average SEMs. Values reported in the SEM column are based on the examinee's age.*

INTELLIGENCE TESTING ON FEBRUARY 25, 2022:

Clinical Diagnostic Interview: As part of the current assessment, Mr. Busby was interviewed to obtain information and his perspectives regarding his personal history. *It is important to note the information in this interview section is based solely on self-reporting by Mr. Busby and does not reflect the findings or opinions of the examiners.*

When asked about his birth history, Mr. Busby reported being born in Amarillo but noted his birth certificate says he was born in Pampa, Texas. He reported being unaware of any problems with his mother's gestation or his delivery. Mr. Busby reported his family "moved around quite a bit" but he was unsure why. He reported being raised by his mother and having occasional contact with his father, who never lived at home. His mother, Laverne Busby, was reportedly an LVN and died from complications of diabetes in 2012. When asked if he had a good relationship with his mother, Mr. Busby stated "somewhat". Mr. Busby also reported being raised in part from age 7 to 16 by a man he considers his stepfather, Jerome Bradshaw. Mr. Bradshaw and his mother were reportedly never legally married. When asked about his relationship with his stepfather, Mr. Busby stated "We got along some, he was in and out of the penitentiary." When asked if he was abused, Mr. Busby stated "We got major butt-whippings", mostly by his mother because his stepfather was usually working. He reported being emotionally abused "all the time," stating his mother would hit him often. Mr. Busby denied having a history of sexual abuse.

When asked if he had a happy childhood, Mr. Busby stated "sometimes happy, sometimes not." He reported he was hit more than his siblings because "I was a bad kid." Mr. Busby reported having two sisters and five adopted siblings. He reported having some contact with some of his sisters and indicated they were closer when they were growing up. Mr. Busby reported being married at age 19 for about eight months but was divorced because she reportedly cheated on him and was "unfaithful." He denied having any other marriages. When asked if he has any children, Mr. Busby stated "Five I know of and five possibilities." He denied having any regular contact with any of his children.

When asked about his educational history, Mr. Busby denied being aware of any educational or therapy services prior to his attending school. He reported attending the first and second grade in Amarillo, followed by grade school in Pampa up to the ninth grade. When asked why he left

school, Mr. Busby stated "Nobody was interested in teaching me to read or write. They just passed me because I played sports." Mr. Busby reported he never learned how to fully read or write, but indicated he is able to spell some words. He reported being enrolled in special education services in all subjects throughout his schooling. He denied ever being held back or repeating a grade. Mr. Busby recalled being embarrassed because he was unable to read or write, prompting him to leave school in the middle of the ninth grade. He denied earning a GED or attempting to earn a GED, and denied attending any other formal training or college coursework.

When asked about his occupational history, Mr. Busby reported he began working in unskilled jobs at an early age, mostly dishwashing at fast food restaurants. He then earned a lifeguard certificate and work as a lifeguard for one summer. When asked if he was ever terminated from unemployment, he reported he was fired from a Steak and Ale restaurant because he was unable to read the work schedule. He also reported being fired from a beef packing company after overdosing on drugs at age 19. He otherwise described a sporadic work history which included working for temp services.

When asked about his medical history, Mr. Busby reported being diagnosed with type II diabetes in March of last year, for which he takes metformin. He also reported being diagnosed with hypertension 18 years ago, but was unable to recall the name of his blood pressure medication, stating, "The pill looks like a little football." He denied currently taking any psychotropic medication but reported being prescribed medication in the past, stating "They sent me a white and tan pill. I saw a doctor and he said it was for depression. I told him I'm not depressed. I have anger issues." When asked about his psychiatric history, Mr. Busby reported being taken to a psychiatrist as a child by his mother for emotional problems but stated "I don't remember much about it." He also reported being in a "mental hospital" in Fort Worth several times at age 31 or 32. When asked about the reason for these hospitalizations, he stated "they say I attempted suicide several times." When asked to elaborate, he stated "I remember once I was trying to kill myself. I was walking down the street and was zoned out. They took me to the hospital." He also described an incident where he crashed a truck into a light pole, stating "I was trying to kill myself that day." He reported he was angry because someone owed him money. He reported being discharged several days later after he told his doctors "I was okay."

When asked about history of head trauma, Mr. Busby reported being injured in a bicycling accident at age 9 or 10. He reported losing consciousness for a brief period but was unable to recall the duration, other than remembering he woke up in his mother's arms. He reported being taken to a hospital at the time but does not recall any of his treatment or how long he was there. He denied having any awareness of any cognitive difficulty after this accident. Mr. Busby also reported being injured in a car accident in 2003, after which he "woke up in the hospital." He reported he believes he woke up in the hospital the same day of the accident and leaving against medical advice. He denied having other history of head trauma. However, Mr. Busby reported having a heart attack at age 19 after he mixed cocaine and alcohol. He reported being told he was having a heart attack and was hospitalized for 7 to 14 days, including 3 ½ days in ICU. He reported having a pacemaker put in at that time, and indicated he has had "three or four heart attacks" since his incarceration, for which he has been hospitalized twice. He reported believing he may have been having a heart attack three days ago because he was having pain in his arm and chest. He denied having other major medical problems or hospitalizations. When asked

about his substance use history, Mr. Busby reported having a history of using cocaine, marijuana, crack cocaine, and alcohol.

When asked about his daily activities, Mr. Busby reported being incarcerated in the current facility since his conviction for capital murder in 2005. When asked about his daily activities, he reported being in his cell "24-7", with the exception of one hour of recreation per day. He reported his activities in the cell include drawing, looking at comic books, and reading "graphic novels." He reported having several pen pals whom he corresponds with about 20 to 25 times per year. When asked about sleep, Mr. Busby reported having some difficulty sleeping due to being in the prison environment where there are "lots of noises." When asked about his appetite, he jokingly stated "I'm fat. I eat a lot." Mr. Busby denied having depression but reported having anxiety "constantly." He attributed his anxiety to being unable to move around and "being in the cell all the time." He described his belief that he has "bad claustrophobia."

Behavioral Observations: Mr. Busby was evaluated in a small contact room within the Polunsky Detention Center. He was escorted by prison guards and the room was locked from the outside. His handcuffs were removed and he wore ankle shackles during the assessment. He was evaluated as he sat in a chair and no one else was present in the room, although a guard positioned 3 feet outside of the room observed through a large window with bars. The evaluation was conducted face-to-face on a wooden table without obstructions. The room was well lit and otherwise relatively free from distracting noise or movement. Mr. Busby wore a face mask during the assessment in accordance with pandemic guidelines and facility requirements.

Mr. Busby ambulated independently, with no observable problems with gait or mobility upon casual inspection. Mr. Busby is African American and he appeared moderately overweight. He had several tattoos about the arms bilaterally, and a visible scar in the area of the left upper forehead. He wore a white prison jumpsuit and there were no observable problems with grooming or personal hygiene. He appeared his age, and his general physical presentation was otherwise unremarkable.

Mr. Busby's vision and hearing appeared to be adequate for testing purposes upon casual inspection. He used his right hand for all writing and drawing tasks and his upper extremity motor speed and dexterity were grossly within normal limits bilaterally upon casual inspection, with no grossly observable problems with motor movement. The assessment was conducted in English, which was determined to be his primary language. Mr. Busby's speech was loud throughout the assessment. Intelligibility was adequate although there were occasional paraphasic errors, such as mispronouncing words or using word approximations. He was very inattentive during the assessment and required frequent redirection to maintain topic on task.

Mr. Busby's mood during the assessment was euthymic and his affect was broad. He laughed loudly several times during the interview and assessment. He was generally compliant and polite and appeared to put forth his best effort on all tasks presented to him. Insight and awareness regarding his test performance range from fair to poor. However, the following test results

appear to be an accurate assessment of Mr. Busby's ' current intellectual and academic functioning.

Testing Tools and Techniques:

- Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV)
- Advanced Clinical Solutions Word Choice/Effort
- Wide Range Achievement Test-Fifth Edition (WRAT-5)
- Test of Memory Malingering (TOMM)

TEST RESULTS:

Performance Validity: Mr. Busby was administered a standardized measure to evaluate his cognitive effort and motivation (TOMM). His score profile on the TOMM was within normal limits and indicative of positive effort on cognitive testing. Mr. Busby was also administered the Advanced Clinical Solutions Word Choice/Effort test to evaluate his effort on verbal recall tasks. His performance was within normal limits for the word choice task and imbedded measures of effort on intelligence tasks. The performance validity test profile was indicative of positive effort and motivation to perform to the best of one's abilities on cognitive testing.

Test of Memory Malingering Score Summary

	Raw Score	Clinical Cutoff	Qualitative Description
Trial 1	47	<45	Above Cutoff
Trial 2	50	< 45	Above Cutoff
Retention	50	< 45	Above Cutoff
Additional Measures	Raw Score	Clinical Cutoff	Qualitative Description
Albany Consistency	47	< 45	Above Cutoff
IFFI Sum	50	< 45	Above Cutoff
Tomme Ten	10	< 10	Above Cutoff

ACS Word Choice/Effort Score Summary

Subtest	Raw Score	Clinical Sample Base Rate
Word Choice	49	> 25%
Reliable Digit Span	9	> 25%

Academic Functioning: Mr. Busby was also administered a screening measure of academic achievement, the Wide Range Achievement Test-Fifth Edition (WRAT-5). Mr. Busby's scores on a test of reading skills were in the extremely low range, within the third grade level. Mr.

Busby was able to read most single syllable words, but struggled with more complex multi-syllable words. Mr. Busby’s sentence comprehension scores were in the very low range, within the fourth grade level. His reading composite score was 69, in the 2nd percentile. This places his overall reading ability within the extremely low range when compared to others his age in the general population. Spelling scores were in the very low range, within the fourth grade level. Mr. Busby was able to spell most single syllable words, but struggled with more complex multi-syllable words. Math computation abilities were in the low average range, within the fifth grade level. Mr. Busby was able to complete written arithmetic problems involving addition, subtraction, multiplication, and division, but struggled with problems involving fractions, decimals, and percentages.

WRAT-5 Scores Summary

Subtest	Raw Score	Scaled Score	Percentile	Grade Equivalent	Qualitative Description
Word Reading	34	66	1	3.0	Extremely Low
Sentence Comprehension	31	73	4	4.2	Very Low
Spelling	32	84	14	5.0	Low Average
Math Computation	24	75	5	4.5	Very Low
Reading Composite	141	69	2	N/A	Extremely Low

Intellectual Functioning: Mr. Busby was administered the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) as a measure of intelligence, information processing efficiency, and attention. Mr. Busby obtained the following scores on the Mr. Busby obtained the following scores on the recent administration (2022) of the Wechsler Intelligence Scales:

WAIS Composite Score Summary

Scale	Sum of Scaled Scores	Composite Score	Percentile Rank	95% Confidence Interval	Qualitative Description
Verbal Comprehension	20	VCI 81	10	76-87	Low Average
Perceptual Reasoning	23	PRI 86	18	80-93	Low Average
Working Memory	14	WMI 83	13	77-91	Low Average
Processing Speed	16	PSI 89	23	82-98	Low Average
Full Scale	73	FSIQ 81	10	77-85	Low Average

****Confidence Intervals are based on the Overall Average SEMs. Values reported in the SEM column are based on the examinee’s age.***

ADAPTIVE FUNCTIONING TESTING AND REVIEW:

Available Records:

Academic Report Card from Pampa Elementary and High School
Declaration of Ms. Busby Busby
Declaration of Kimiko Coleman
Declaration of James Bybee
Declaration of Steve Porter
Declaration of Eddy Pouncy
Declaration of Raquel Farr
Declaration of Pamela Harris
Declaration of Merlyn Rogers
Declaration of Renee Boyd
Declaration of William Farr

Adaptive Functioning Interviews: Ms. Tarsharn Busby and Kimiko Coleman were interviewed separately to provide an account of their perceptions of Mr. Busby's functional capacities. These findings should be interpreted within context as individuals' perceptions differ across functioning levels, cultural background, and expectations.

Tarsharn Busby

Ms. Busby was interviewed to provide a recollection of Mr. Busby's adaptive skills. She identified herself as the older sister of Mr. Busby, with a 2-year age difference, living in the same home as Mr. Busby in their youth. Ms. Busby indicated that she recalls bits and pieces of their childhood. She recalled that Mr. Busby left home at the age of 14 and her contact with him became limited. Ms. Busby reported that she completed the 10th grade and is currently a home health provider.

Ms. Busby was asked to comment on Mr. Busby's communication. She denied remembering when her brother first started speaking his first words or sentences. She gave an estimate that it was around the time he began elementary school. Ms. Busby reported that Mr. Busby's pronunciation was not "very good." She did not recall if he received speech services but did remember that Mr. Busby participated in a resource class. Ms. Busby indicated that her brother demonstrated difficulty expressing himself throughout his lifespan. She noted that his language deficits constrained his ability to "get his needs met." She denied observing her brother have a stuttering problem. With regard to receptive language, or the ability to understand language, Mr. Busby was reported to demonstrate a greater deficit in this area. He was reported to be able to understand simple sentences but needed clarification with more complex sentences and phrases. Similarly, when asked questions, Mr. Busby was often observed to appear confused, requiring the question being asked again or rephrased. She noted that his receptive language deficits were also observed until his adulthood. Furthermore, Ms. Busby reported that he did not like to carry conversations and kept to himself in middle and high school. When he did participate in a conversation, his responses were not appropriate. In addition to verbal language, nonverbal

language is critical to conveying and understanding a message. Ms. Busby indicated that Mr. Busby did not appear to understand non-verbal cues as both a child and an adult.

Basic skills are necessary to navigate one's environment. These include academic tasks such as reading and writing for independent functioning. Ms. Busby was unable to recall Mr. Busby's reading and writing ability. She did recall that he did not learn to count and perform basic mathematics tasks until the 3rd grade. By the 4th grade, he was reported to be able to tell time from an analog clock, however, he was unable to apply its meaning to real time. Thus, he was unable to complete a routine. She denied observing him draw shapes before Kindergarten and use units of measurement. Ms. Busby described her brother as an outdoors child.

Self-Direction skills are those that are needed for independence, responsibility, and self-control. Ms. Busby described Mr. Busby as a child who frequently was in "trouble" and did not apologize even when others were hurt. She noted that her brother appeared to experience behavioral issues more than others, and at times he was unable to understand the significance of his behavior choices. She indicated that he showed poor impulse control, which affected his ability to make good choices. She observed this tendency from childhood to adulthood and others helped him when making decisions. While he once persisted and taught himself to fix a radio, Ms. Busby recalled that her brother typically was prompted to initiate and complete tasks and needed individual guidance. Mr. Busby was reported to be unable to follow directions because of comprehension deficits, as well as due to his willingness.

With regard to leisure, Ms. Busby reported that Mr. Busby did not engage in creative or imaginative play. Mr. Busby reportedly did not like to share. Typically, his mother prompted playdates. However, at around the age of 14, he began to socialize independently. She described her brother's ability to get along with others appropriate at times and other times he was verbal and physically aggressive. Mr. Busby was reported to play some football in the 9th grade before he dropped out of school. He appeared to get along with other teammates.

In addition to relating with others, social skills include social responsiveness and reciprocity, as well as gullibility. Mr. Busby was described by his sister as affectionate at a young age (around the age of 6). He was reported to express his love for individuals and showed his affection through hugs. At the age of 9, other children bullied him for being slow, and participating in a resource class. Mr. Busby was reported to not have many friends in school and not show his emotions unless the emotion was of great intensity. He was observed to identify emotions in others since he was a child and into his adulthood. Ms. Busby described her brother's manners as okay and mostly applied them. When given feedback on improving his manners, Ms. Busby reported that her brother appeared confused. In middle school, Mr. Busby was reported to begin initiating outings with peers and walked to navigate to meet up locations or arranged transportation. Ms. Busby described her relationship with her little brother as good.

With regard to basic living skills, Ms. Busby reported that her brother rarely helped with chores in the home due to poor motivation. He was reported to have limited understanding of home maintenance. At school, he was never asked to help a teacher, according to Ms. Busby. She indicated that her mother and herself washed Mr. Busby's clothes. In fact, she indicated that her

brother also relied on women to take care of him when he was older. As an adult, he mostly walked to commute and Ms. Busby denied observing her brother take public transportation. At the age of 16, he learned to drive and owned a car at the age of 20. Prior to that, he called individuals to provide him with transportation.

Mr. Busby was reported to demonstrate difficulty managing his own finances and Ms. Busby indicated that her mother generally managed his finances, including paying his bills, until she passed on. He did not make his own medical appointments, reportedly, as he demonstrated difficulty understanding the concept of time. He was able to shop for his groceries, but was reported to have a poor sense of budgeting and needed assistance. For example, she indicated that Mr. Busby would just make random unnecessary purchases when he was without the assistance of another adult.

Health and safety skills refers to one's ability to protect health by following safety rules. Ms. Busby reported that Mr. Busby indicated that in general, he did not play with dangerous objects, such as knives and sockets. When he was injured or hurt, he was reported to communicate to others but not if he was sick. On one occasion, at the age of 14, he was reported to overdose on medication. Ms. Busby also recalled that at the age of 7 or 8, Mr. Busby played with small rattle snakes and placed them inside their home.

With regard to motor skills, Ms. Busby did not have the opportunity to observe when her brother began to reach his infant motor milestones as she was younger. However, she reported that her brother began to grasp and eat independently at the age of 3. During that age, he began to walk, as well, reportedly.

Ms. Busby reported that Mr. Busby had one job in his lifetime as a dishwasher at a steakhouse. His career there was reported to end quickly and he did not share the reason why with her. She reported feeling uncertain if it was due to inability to complete tasks or his relationship with his supervisors. She recalled that he missed a lot of shifts due to his inability to follow a schedule.

Kimiko Coleman

Kimiko Coleman, sister of Mr. Busby, was also interviewed with specific regard to her brother's adaptive skills. She reported being 8 years older than him and lived with him until she moved to Dallas at the age of 18, after which they occasionally saw each other. She perceived her relationship with him to be "good." Ms. Coleman was cooperative but appeared to be somewhat reluctant to participate in the interview. However, she appeared to provide reliable information about his development.

Ms. Coleman recalled that her brother began to speak somewhat later than normal. While he was reported to not really babble, he began to speak in sentences. His words were "slurred" and she indicated that his mother attempted to enroll him in speech services at the age of 8. She denied witnessing other articulation problems. Ms. Coleman indicated that Mr. Busby understood language and nonverbal cues, however, she indicated that her brother's responses depended on his mood. These mood-based responses occurred both as a child and an adult. He reportedly

engaged in conversation more with women rather than men. With peers, she reported that he spoke “in code” to evade other’s listening to their conversation. Ms. Coleman indicated that in general her brother’s communication was below average with greater deficits in expressive and vocabulary.

With regard to academics, Ms. Coleman indicated that her brother was in special education classes. She does not recall the onset or duration of his participation of his educational assistance. She noticed that he was able to identify signs of restaurants, like McDonalds and Pizza Inn. She recalls that reading was challenging for him. In terms of writing, he began to draw in Kindergarten and she perceived him to identify letters and shapes. Ms. Coleman recalls him counting at the age of two and identifying the time on an analog clock in first grade. In general, she recalls him taking a longer time than his peers to learn.

While Mr. Busby desired to be independent, according to Ms. Coleman, he needed guidance from others. She indicated that Mr. Busby’s ability to take responsibility for his actions was dependent on his mood. He often did not perceive that he did anything wrong when he misbehaved. She described his self-control as “zero.” Ms. Coleman reported that starting at age two, he would have tantrums where he would appear upset, and “it was all over.” Because of his temper, he engaged in altercations with boys but did avoid hitting women. His ability to make choices, reportedly, depended on his mood as well. Ms. Coleman reported that his bad choices were observed to escalate in middle and high school. While he was able to follow simple directions, it was challenging for him to follow complex instructions. Mr. Busby was able to initiate tasks, according to Ms. Coleman, however, it was difficult for him complete tasks. She noted that while he was able to complete chores, for examples, he was unmotivated to follow through.

With respect to leisure, Ms. Coleman recalled that her brother did not engage in creative play. She indicated that he played with others, with prompting, for a limited time. Because of his decreased attention span, Mr. Busby was unable to sit through a movie, even when he chose the film. She does not recall him asking permission to engage in activities, such as visiting a neighbor, and would just do it without notifying anyone. When he played board games, he cheated or quit because he did not understand the rules, according to Ms. Coleman. In high school, he was a wide receiver and perhaps a running back, according to Ms. Coleman. She recalled him playing well. In general, Ms. Coleman reported her perception that Mr. Busby’s engagement and orientation in leisure activities was age appropriate.

Socially, Ms. Coleman recalls Mr. Busby being more immature than peers his age. She described him as childlike throughout his development. She recalls him having two friends, and spending time with one cousin. Ms. Coleman reported that he showed affection as a child, particularly to his sisters, mother, and his friend. Jokes were reported to be rare for Mr. Busby as he did not find them humorous. She described him as wanting to be “the protector” when he was young. After his friend passed away, showing affection became more difficult for him. Emotionally, Ms. Coleman reported that her brother rarely showed a normal variety of emotions, as he was either very happy or angry. She reported that she perceived Mr. Busby to be able to identify emotions

in other people but he did not appear to care for them. It was unlikely that he helped others, according to Ms. Coleman. Similarly, his manners depended on his mood.

Ms. Coleman indicated that Mr. Busby navigated his neighborhood adequately but that he never went too far from home. At the age 4 or 5, he was reportedly able to identify familiar places. She recalled that at the age of 10 years, he was caught stealing at a pharmacy store and his mother asked him to find his way home.

Ms. Coleman reported that Mr. Busby he did not initiate chores. She indicated she did not perceive this behavior as related to a skill deficit, but rather motivational, as he reportedly thought it was the role of women. This behavior was also reported by Ms. Coleman to be similar in the classroom. Personally, Ms. Coleman reported that he "somewhat" cared for personal items. Around middle school, he began to care for his appearance.

In terms of healthy safety, Ms. Coleman reported that Mr. Busby tended to avoid some danger as a child. For example, he knew not to place his hand in the electric socket. However, when he was dared, he rode his bike and engaged in stunts. Additionally, he collected snakes and brought them home in suitcase. He was reported to stay away from medications as a child. However, at the age of 16, he reportedly attempted suicide by consuming medication. At this same age of 16, Ms. Coleman indicated that Mr. Busby came home with new shoes and money during a time where he was accompanied by an older woman in her 30s. When asked, Mr. Busby indicated that he was her "gigolo," according to Ms. Coleman. He attempted to stay out of danger unless he was provoked, Ms. Coleman reported. She indicated that after his first child was born, he reverted to his old behaviors and relocated from Florida to Texas.

Motor abilities were reported to be within normal limits by Ms. Coleman. She shared that he played football in an organized team and basketball in the neighborhood. He played when he was 11-12 years old, and she indicated that she perceived he played adequately and sought after. He also reportedly taught himself to swim when he was 7 or 8 years old and he swam mostly solo, on occasion with others.

Ms. Coleman reported that the only job that he knows that her brother had was at the age of 17 or 18, where he was a lifeguard for three years. She indicated that he loved the job and that he was dependable because the hours were consistent, and his friend worked him and likely helped him. He walked to work most of the time.

When asked about Mr. Busby's ability to live independently, Ms. Coleman indicated that her brother was "smooth with women," and they "took care of him." Specifically, she indicated that they did not want him to work. She continued by saying that he did not need to work as they cooked, cleaned, and paid his bills. Ms. Coleman indicated that he did not have a bank account. Because he had difficulty with budgeting, he spent all the money he had with him that was less than \$500 at once. When he needed food, he relied on others to place an order. Similarly, other people bought him his clothes. His wife, or others, were reported to make medical appointments and travel plans for him. Hygiene improved, reportedly, in high school and he began to care for his appearance. However, he reportedly took the longest to get ready in a home of girls.

Summary of Affidavits: Several individuals familiar with Mr. Busby completed affidavits. A summary of the affidavits is included below the respondent information. As noted earlier, this summary is not intended to provide a comprehensive account of the statements gathered in the affidavits. Please refer to the affidavit exhibits for specific details. The summary is organized by skill area and across respondents as follows:

Respondents

Pamela Harris was a special education teacher at Pampa Junior High School and Pampa High School and taught Mr. Busby three classes a day. Currently, she reported working for MH/MR and travels to numerous surrounding counties.

Merlyn Rogers met Mr. Busby at a club in 1988 and dated him for a year. She reported seeing him every day and living with him for a month. She indicated that they have a daughter together.

Renee Boyd reported meeting Mr. Busby in 2000 and seeing him often until his arrest in 2005.

William Farr indicated that he met Mr. Busby in 2000 and were neighbors until his arrest in 2005. He lived upstairs and Mr. Farr reported living downstairs in Forth Worth. He indicated that he would see him every day as Mr. Busby would come up to eat or socialize.

Raquel Farr knew Mr. Busby when he lived downstairs from their home in Forth Worth. She reported seeing him every day.

Eddy Pouncy indicated that Mr. Busby was his uncle and is related to him through his mother's brother, Donald Mason. He indicated that his uncles Mr. Mason and Mr. Busby raised him as a teenager.

Steve Porter stated his relationship with Mr. Busby as his football coach in the 8th grade at Pampa Junior High School.

James Bybee indicated that he attended high school with Mr. Busby. He reported that after high school, they did not have contact. He described their relationship as acquaintances who spoke at school every day.

Kimiko Coleman also provided an affidavit. She identified herself as the older sister of Mr. Busby by 8 years. She indicated that she moved out when she was 18 years old, and Mr. Busby was 10 years old.

Tarsharn Busby provided an affidavit in addition to participating in this interview. She reported that she was the older sister of Mr. Busby by two years. She indicated that she lived with Mr. Busby and took care of him when she became the "head of the household" at the age of 12 years and Mr. Busby was 10 years old.

Summary Findings of Adaptive Functioning from Affidavits:

Communication is defined by the following skills, speech, language, and listening skills needed to communicate with others. Included in these communication skills is vocabulary, responding to questions, conversation skills, and nonverbal cues.

A review of the affidavits noted a few specific examples of deficits in communication. Mrs. Farr reported that Mr. Busby took a minute to understand when he was spoken to. She described him as “slow” and reported that he could not always “immediately” understand what was going on around him. Mr. Farr similarly reported that Mr. Busby did not appear to understand what he was saying and perceived him to be “retarded.” He reported that Mr. Busby would just sit out on the porch and stare out. Mr. Bybee, acquaintance from high school, reported that he felt like Mr. Busby understood what he was saying but was slow to comprehend.

Functional Academics includes basic skills needed for reading, writing, and mathematics as for independent functioning. Additionally, counting, drawing, telling time, measuring, writing notes and letters construe this category.

Problems in academic learning and schooling were noted across respondents. Mr. Busby’s teacher, Mrs. Harris, reported that Mr. Busby was in prevocational classes, which was curriculum intended for “IQ’s between 70 and 82.” These classes, she continued, were intended to teach basic living skills, such as cooking and balancing a checkbook. She indicated that grades did not play a role in passing courses and that if students put their name on the class work, they would “pass.” Mrs. Harris reported that while most of her students possessed a talent to compensate for their deficits, Mr. Busby did not. She reported that he appeared to have an auditory or visual deficit, a low IQ, and mental health issues. His previous girlfriend, Ms. Rogers, reported that Mr. Busby could not read or write. She indicated that on one occasion, she observed Mr. Busby complete only his name on a job application and she perceived that he could not understand it- she later found the application in the trash can with only his name. She reported that she did not offer help because she did not want to embarrass him. Mr. Busby’s neighbor reported that she helped him read the Bible and witnessed him have a difficult time reading and understanding the content. She reported that he would read the same sentence 4-5 times and ask for help. Mr. Farr indicated that Mr. Busby was not very good with numbers and could not count very well. He indicated that if he had money, he would give it to someone else to count. Mrs. Farr, similarly, reported that Mr. Busby would ask for her help to count his monetary change. Mr. Bybee indicated that Mr. Busby could not read very well. His sister, Mrs. Busby, reported that she never saw his brother read. She indicated that she tried to help him, but he could not “get it.” She indicated that Mr. Busby he dropped out in 10th grade. Mr. Busby’s nephew, Mr. Pouncy reported that his uncle could not count and he didn’t perceive him to be able to read street signs. Hi previous football coach, Mr. Porter, shared that Mr. Busby appeared to have a lack of exposure, family direction, and education. He continued to say that Mr. Busby appeared that he had been denied any educational opportunity, including, special education. He noted that Mr. Busby’s grades improved in the 8th grade after being admitted into special education. Mr. Porter stated that although he was in the 8th grade when he knew him, Mr. Busby appeared to have an education level closer to a 2nd grader.

Self-Direction skills are those needed for independence, responsibility, and self-control. Examples include making choices, starting and completing tasks, following a routine and directions.

Mr. Pouncy indicated that Mr. Busby was a follower, and he did not make plans about “anything,” such as where to eat or daily plans. He reported that Mr. Busby did not have to worry about food or transportation as these things were taken care of by other people. Mr. Busby, according to Mr. Pouncy, “hated” being alone and when he was, he did not do “anything”. While he said that it did not appear that his uncle was depressed, Mr. Porter reported that it was like there was a “hole” and that Mr. Busby did not appear to have self-orientation- he perceived his uncle to feel afraid of solitude. Mr. Porter stated that he did not think his uncle was capable of being “a pimp” as he did not have the organizational skills or the ability to count money. Others also saw Mr. Busby as having difficulty with independence. For example, Ms. Coleman indicated that their Derrick, a cousin, looked after Mr. Busby when he was alive, and Mr. Farr commented that the girls he had around him made decisions for him. Moreover, Mr. Busby demonstrated difficulty completing tasks. For example, Ms. Coleman reported that he was easily distracted and would leave in the “middle of something,” such as playing with his dog when he was supposed to be cleaning the yard.

Skills related to leisure include engaging and organizing recreational activities and hobbies, for example playing with others and toys, and following rules of games.

Football was Mr. Busby’s reported preferred leisure activity. His coach, Mr. Porter, reported that Mr. Busby appeared to really enjoy football and he had the impression that this was the first time Mr. Busby had really succeeded in any organized task. He was reported to sometimes seem frustrated while playing football, though. This frustration did not appear to be related to his physical abilities, rather his “intellect.” Mr. Porter indicated that Mr. Busby could not understand the more complex plays. For example, he was reported to look confused as to whom to block, which route to run, or to go left or right. In comparison, his playmates were reported to find these plays simple and easy to follow.

Social skills refers to interacting socially and getting along with other people, expressing affection, expressing and recognizing affection, having friends, helping others, and using manners.

Mrs. Rogers also described Mr. Busby as a “follower.” She indicated she organized and planned outings. Across most respondents, it was reported that his girlfriends “manipulated” him and took advantage of Mr. Busby. Inclusively, his sister Ms. Coleman and Mrs. Reed reported that he was “gullible”. Ms. Coleman reported that he would do whatever was asked of him, and he believed everything that was told to him without questioning. He was reported to sit alone and be a victim of bullying. Ms. Coleman indicated that others teased him and called him names. Despite being victimized, Ms. Coleman reported that Mr. Busby did not immediately react, and it took “a lot” of teasing for him to “blow up.” Similarly, Mr. Pouncy reported that Mr. Busby was calm in general, but would rise when others teased him about being slow, or when he felt he had to protect women. As an adult, individuals also reportedly took advantage of him. Mr. Pouncy,

Mr. and Mrs. Farr reported that his girlfriends took advantage of him and told him what to do. Mr. Pouncy reported that the girls around him would take money from him before he could finish counting it, as he was slow in counting. Additionally, he elaborated that the girls, whom he reported worked as prostitutes, were always in control of Mr. Busby and made decisions for him. Similarly, Mrs. Reed reported that in addition to being “easily intimidated,” she would sometimes help him get his ID back from individuals or girls in a motel room who had stolen his wallet. She indicated that while it was not uncommon for individuals to have their wallet stolen in the streets, it occurred more with Mr. Busby.

With regard to friendships, Ms. Coleman and Mr. Porter, football coach, reported that Mr. Busby did not have any close friends. Mr. Porter and Mr. Bybee both described him as a “loner.” Ms. Coleman reported that the friends that came around “used” him and their presence was conditional- Ms. Coleman reported that “everyone” observed this pattern but Mr. Busby. Despite her attempts to tell him, Mr. Busby did not perceive the manipulation, as he just wanted a “family so bad.” Ms. Coleman reported that if others gave him attention, he followed them around despite placing himself in “harmful” situations. His friends were reported to use him as their “front man” to do all the “dirty” work. She speculated that perhaps it was because he was big but also because he was “slow.” She provided an example of an incident when there was a fight, and he ended up being the only one fighting, “protecting” them. Likewise, Ms. Coleman described poor judgement in relationships. She reported that if a woman gave him attention, he immediately “fell in love.” She described him as “butter” in a woman’s hand. She indicated that by saying they loved him, Mr. Busby would do anything a girl requested. Ms. Coleman reported that her brother was not a talker and that he would feel very frustrated when many questions were asked of him.

Emotionally, Mr. Busby was reported to demonstrate difficulty regulating his sadness across most respondents. Specifically, Mr. Bybee reported that he remembered him to be an emotional guy, who always wore his heart on his shoulder, and cried. Mr. Busby’s special education teacher also noted that his moods often appeared depressed and frustrated. Mr. Busby was reported to exhibit sadness related to his low abilities, based on reports. For example, Mr. Farr indicated that Mr. Busby would sometimes get depressed and say that he was tired of living “this life” and he wanted to die. Mr. Pouncy also observed Mr. Busby make these statements and he speculated that he said he was tired of living his lifestyle. Additionally, Mr. Pouncy, like Mrs. Rogers, reported that Mr. Busby cried often. Mr. Pouncy reported that he cried more than others, and at times, in a room full of people. Mrs. Rogers and Ms. Coleman both reported that they attempted to talk to him about his feelings, but Mr. Busby evaded.

Community use refers to skills needed for functioning in neighborhood, such as navigating the area, participating in activities outside the home, and recognizing facilities.

Mr. Busby’s ability to navigate his environment was challenging for him based on reports collected from the affidavits. He would reportedly get lost when driving. Mrs. Rogers indicated that he would not drive alone often but he asked for directions to places in their small town, which confused her because he had lived his entire life in Pampa. She reported she attempted to give him directions using street signs but resorted to using landmarks and building as he was

unable to follow them. Mr. Busby was reported to be late when driving alone because he would get lost. His sister, Ms. Busby, shared that he totaled the first car she owned and told her that he had gone too fast over railroad tracks. Furthermore, Ms. Coleman stated that Derrick, their cousin, took Mr. Busby's driver license test for him.

Home and school loving includes the skills to take basic care of one's home, school, or living space. This includes straightening out, cleaning, helping adults with household or classroom tasks and taking care of one's own possessions.

Mrs. Rogers reported that Mr. Busby could not complete simple tasks that most people are able to do, such as turning on a furnace. To help him, she reported that she avoided putting him in situations where he looked "bad". She reported she completed errands for him and when Mr. Busby was with her, she pointed out tasks so that he could learn. However, Mrs. Rogers reported that regardless of how many times she showed him, Mr. Busby could not "figure out" how to complete basic, daily tasks. Emotionally, Mr. Busby was observed to become very frustrated when he could not complete simple tasks, such as opening the hood of the car. Mrs. Rogers and Mr. Farr both reported that this would happen frequently when he was attempting to complete simple and easy tasks. Because of his difficulty with daily living tasks, Mrs. Rogers reported that his sisters took care of him as they would with a child, providing him food, drink, and solving simple problems for him. She indicated that Mr. Busby did not have to figure out problems for himself. Likewise, girlfriends in his life were reported to cook and pay his bills because he needed their help. His sister, Ms. Coleman, indicated that Mr. Busby always lived in the homes of the women he dated and never leased his own apartment. Without his girlfriends, he was reported to appear confused by Mr. Farr. She labeled Mr. Busby's latest girlfriend as serving a "mother role." These issues appear to have developed when he was a child. Ms. Busby reported that she cooked and cleaned for them both. Both of his sisters indicated that that his room always looked "junky" and to clean up, he placed everything under the bed or all his dirty clothes in the closet. They shared that his chore was to maintain the lawn; however, Ms. Coleman indicated that she never saw him do it and that he would spread the leaves out again after raking them. When he did wash dishes or sweep, according to Ms. Busby, the tasks were not completed adequately.

Mr. Busby was reported to demonstrate difficulty managing his own money. Mr. Farr reported that Mr. Busby did not manage his own money. Mrs. Rogers indicated that on one occasion, Mr. Busby went into Burger King to buy food and said that he did not have enough money, although he did. Mrs. Rogers speculated that he could not read the menu and add up the amount. Similarly, he was unable to locate how much he owed on a paper bill when asked. Mrs. Boyd also reported that Mr. Busby asked her to count his money when buying cigarettes and purchase items of him. His sister, Ms. Busby, reported that he also had difficult managing his money when he was young. For example, she indicated that when he received money, he would spend it quickly. She recalled jokingly referring to him as the "candy man," because he would "blow" his money on candy or buy it when his mom sent him to buy something else. He also showed poor judgement with money. For example, when receiving money at Christmas, he spent it on a

single outfit, according to Ms. Busby, while she was able to purchase 3-4 outfits and perhaps a pair of shoes.

Health and safety skills refers to following safety rules, using medicines, showing caution, and keeping out of danger.

A specific instance included in the affidavits regarding safety behaviors was provided by Ms. Coleman. She reported that her brother, Mr. Busby, at the age of 8 or 9, collected snakes with a peer and brought them home in a picked-up suitcase. He proceeded to let them loose inside their home and placed one at the foot of his sister. She indicated that he did not know how dangerous that situation was. While other respondents did not provide information regarding health and safety, more instances of Mr. Busby's ability in this area are included in the interviews, as well as in the analysis of the completed questionnaires.

Skills related to self-care include taking care of one's own hygiene, such as dressing, grooming, bathing, toileting, grooming, and hygiene.

Mr. Busby's sisters observed his difficulty with hygiene as he was growing up. Ms. Coleman reported that Mr. Busby was "filthy" from playing and stayed in the same clothes as he would easily become dirty again. She reported that he always had dirt underneath his fingernails and when he showered there was a ring of dirt around the tub. His other sister reported that as a child, Mr. Busby did not like to bathe, needed reminders, would go days without bathing, and did not brush his teeth as needed. Like Ms. Coleman, Ms. Busby reported that he did not change his clothes and speculated that he did not know how to wash his clothes. At school, Mr. Busby's poor hygiene was also noticed. Both his previous acquaintance, Mr. Bybee, and his football coach, Mr. Porter, reported that Mr. Busby "always" appeared as if he had not showered in days. They both believed that Mr. Busby's family as poor due to the clothes he was wearing and their condition. Mrs. Harris reported also reported that his clothes did not appear washed.

Adaptive functioning skills related to motor abilities includes fine and gross movements needed for manipulating the environment, and the development of more complex skills needed for sports.

Issues with motor abilities were not reported by respondents. As noted above, Mr. Busby's coach indicated that it was Mr. Busby's intellect rather than physical abilities that created a barrier for him. Mr. Bybee reported that Mr. Busby played mostly defensive and thus, it was basic and straightforward.

Lastly, work skills include completion of tasks, collaboration with supervisors, following schedules and routines with sufficiency to successfully function at the workplace.

Reports related to Mr. Busby's skills at work were not addressed in the affidavits.

Summary of Academic Records

Academic records from Pampa Public Schools were also available for review. Elementary school records indicate that Mr. Busby repeated first grade. During his first year of first grade he earned

D's and F's in core subjects and Satisfactory in electives (i.e., music, art, and physical education). During his second year of first grade, his grades varied by quarter, earning an A in spelling on one occasion and F the following quarter. In reading and mathematics, he earned mostly C-'s and one B-. He continued to earn Satisfactory his second year of first grade. Mr. Busby's attendance was poor the first year of first grade (i.e., 19 absences) and improved the second one (i.e., 6 absences). Mr. Busby's High School records were also provided. These records show that he completed 9th grade and repeated 10th grade. His second year of 10th grade he withdrew before the second semester grades were released. Attendance was poor, especially his two years of 10th grade, missing 46 and 57 days of school, respectively. Mr. Busby earned 60s and 70s in his core classes 9th grade and first year of 10th grade. The first semester of his second year of 10th grade he earned 50 in each class. Mr. Busby was exempted from taking standardized tests, per decision of his special education team. Students in special education are sometimes dismissed from taking these tests, like Mr. Busby, as the stress that it causes a student with learning disabilities exceeds the gains of taking a progress measure. An additional documentation from Mr. Busby's high school indicated that he was taking pre-vocational classes, instruction in special education rather than general education classes. However, the date on this document was illegible. In Ms. Busby's affidavits, she indicated that her family, including her brother, moved frequently from Pampa and Amarillo. Records from schooling in Amarillo were not available.

Adaptive Behavior Assessment System-Third Edition (ABAS-3)

Ms. Coleman and Ms. Busby both completed the ABAS-3 independently, a standard questionnaire designed to elicit and quantify information about a person's adaptive functioning. Listed below are tables of ABAS-3 results. The following *italicized* section also contains excerpts from a computer-generated report based on the results of the administration of the ABAS-3 (Harrison and Oakland, 2015):

Rater: Mrs. Tarsharn Busby

	Sum of Scaled Scores	Standard Score	Percentile Rank	Confidence Interval 95%
General Adaptive Composite (GAC)	10	53	0.1	50-56
Conceptual	3	54	0.1	48-60
Social	3	58	0.3	53-63
Practical	4	54	0.1	49-59

Interpretation of ABAS-3 Results Adaptive Behavior Standard Scores (Tarsharn Busby):

The General Adaptive Composite (GAC) summarizes performance across all skill areas. Mr. Busby obtained a GAC score of 53. His true score is likely to fall within the range of 50 - 56 at a 95% level of confidence. Mr. Busby's current overall level of adaptive behavior is in the Extremely Low range, as high as or higher than 0.1% of individuals of the same age. Because the GAC provides the most complete measure of adaptive behavior, it is likely to be the most reliable and accurate estimate of overall adaptive functioning. However, more detailed information about Mr. Busby's unique profile of adaptive functioning may be obtained by reviewing performance within adaptive domains and skill areas if significant differences exist between adaptive domain standard scores or skill area scaled scores.

The Conceptual domain standard score summarizes performance across the Communication, Functional Academics, and Self-Direction skill areas. Mr. Busby's Conceptual domain standard score of 54 (95% confidence interval of 48 - 60) is in the Extremely Low range, as high as or higher than 0.1% of individuals of the same age.

The Social domain standard score summarizes performance across the Leisure and Social skill areas. Mr. Busby's Social domain standard score of 58 (95% confidence interval of 53 - 63) is in the Extremely Low range, as high as or higher than 0.3% of individuals of the same age.

The Practical domain standard score summarizes performance across the Community Use, Home Living, Health and Safety, Self-Care, and Work skill areas. Mr. Busby's Practical domain standard score of 54 (95% confidence interval of 49 - 59) is in the Extremely Low range, as high as or higher than 0.1% of individuals of the same age.

Adaptive Domain Comparisons

A comparison of performance between the adaptive behavior domains also provides useful information for interpretation. No significant differences were found between Mr. Busby's overall functioning in the areas of communication, academics, and self-direction (conceptual adaptive behavior), his general ability to participate in social and leisure activities (social adaptive behavior), and his community and home living, health and safety, and self-care skills (practical adaptive behavior).

Scatter in Adaptive Skill Area Scaled Scores

An individual's adaptive skill area scaled scores may be relatively consistent or may show considerable variability. The scatter analysis allows you to determine whether the degree of scatter (i.e., the range between the person's highest and lowest scaled scores) warrants clinical attention. The degree of scatter in the GAC is neither statistically significant nor unusual (i.e., it has a high base rate). Thus, the GAC may be considered a robust measure of adaptive functioning for this individual.

Adaptive Skill Area Results

Adaptive skill areas within the Conceptual domain provide a more detailed view of Mr. Busby's functioning. Mr. Busby's communication abilities, including speech, vocabulary, listening, conversation, and nonverbal communication skills, are in the Extremely Low range. He functions in the Extremely Low range when performing basic academic skills such as reading, writing, and mathematics, as well as functional skills such as taking measurements and telling time. His ability to make independent choices, exhibit self-control and take responsibility when appropriate is in the Extremely Low range.

A more in-depth look at Mr. Busby's specific skill sets within the Social domain may be obtained by examining the adaptive skill areas. The leisure skills needed for engaging in play and planning recreational activities are in the Extremely Low range for Mr. Busby. His ability to interact socially, initiate and maintain friendships, express and recognize emotions, and assist others when needed is in the Extremely Low range.

Adaptive skill areas within the Practical domain offer a more specific picture of Mr. Busby's capabilities. His ability to function and get around in the community, including shopping and using community resources, is in the Extremely Low range. Mr. Busby's level of functioning inside the home, including cleaning, food preparation, performing chores, and taking care of personal possessions, is in the Extremely Low range. Mr. Busby's ability to protect his physical well-being and prevent and respond to injuries, including following safety rules, showing caution, and using medicine when appropriate, is in the Extremely Low range. His ability to perform self-care activities such as eating, dressing, and taking care of personal hygiene is in the Extremely Low range.

Strengths and Weaknesses in Adaptive Skill Areas

It is important to look at the relative strengths and areas for improvement within an individual's adaptive skills profile for the purposes of assessment, treatment and intervention planning, and progress monitoring. In order to determine the areas of personal strength and weakness within Mr. Busby's profile, each skill area scaled score was compared to his average scaled score across all adaptive skill areas to look for differences at the .05 level of statistical significance. In Mr. Busby's case, no skill area scaled score differences from his average across all skill areas were significant enough to be considered strengths or weaknesses within his profile.

Summary of ABAS-3 Results (Tarsharn Busby):

Mr. Busby's overall adaptive behavior can be characterized as lower functioning than that of almost all individuals his age. Mr. Busby's conceptual adaptive behavior can be characterized as lower functioning than that of almost all individuals his age. Mr. Busby's social adaptive behavior can be characterized as lower functioning than that of almost all individuals his age. Mr. Busby's practical adaptive behavior can be characterized as lower functioning than that of almost all individuals his age.

Rater: Mrs. Kimiko Coleman

	Sum of Scaled Scores	Standard Score	Percentile Rank	Confidence Interval 95%
General Adaptive Composite (GAC)	9	52	0.1	49-55
Conceptual	3	54	0.1	48-60
Social	2	56	0.2	51-61
Practical	4	54	0.1	49-59

Interpretation of ABAS-3 Results (Kimiko Coleman):

Adaptive Behavior Standard Scores

The General Adaptive Composite (GAC) summarizes performance across all skill areas. Mr. Busby obtained a GAC score of 52. His true score is likely to fall within the range of 49 - 55 at a 95% level of confidence. Mr. Busby's current overall level of adaptive behavior is in the Extremely Low range, as high as or higher than 0.1% of individuals of the same age. Because the GAC provides the most complete measure of adaptive behavior, it is likely to be the most reliable and accurate estimate of overall adaptive functioning. However, more detailed information about Mr. Busby's unique profile of adaptive functioning may be obtained by reviewing performance within adaptive domains and skill areas if significant differences exist between adaptive domain standard scores or skill area scaled scores.

The Conceptual domain standard score summarizes performance across the Communication, Functional Academics, and Self-Direction skill areas. Mr. Busby's Conceptual domain standard score of 54 (95% confidence interval of 48 - 60) is in the Extremely Low range, as high as or higher than 0.1% of individuals of the same age.

The Social domain standard score summarizes performance across the Leisure and Social skill areas. Mr. Busby's Social domain standard score of 56 (95% confidence interval of 51 - 61) is in the Extremely Low range, as high as or higher than 0.2% of individuals of the same age.

The Practical domain standard score summarizes performance across the Community Use, Home Living, Health and Safety, Self-Care, and Work skill areas. Mr. Busby's Practical domain standard score of 54 (95% confidence interval of 49 - 59) is in the Extremely Low range, as high as or higher than 0.1% of individuals of the same age.

Adaptive Domain Comparisons

A comparison of performance between the adaptive behavior domains also provides useful information for interpretation. No significant differences were found between Mr. Busby's overall functioning in the areas of communication, academics, and self-direction (conceptual

adaptive behavior), his general ability to participate in social and leisure activities (social adaptive behavior), and his community and home living, health and safety, and self-care skills (practical adaptive behavior).

Scatter in Adaptive Skill Area Scaled Scores

An individual's adaptive skill area scaled scores may be relatively consistent or may show considerable variability. The scatter analysis allows you to determine whether the degree of scatter (i.e., the range between the person's highest and lowest scaled scores) warrants clinical attention.

The degree of scatter in the GAC is neither statistically significant nor unusual (i.e., it has a high base rate). Thus, the GAC may be considered a robust measure of adaptive functioning for this individual.

Adaptive Skill Area Results

Adaptive skill areas within the Conceptual domain provide a more detailed view of Mr. Busby's functioning. Mr. Busby's communication abilities, including speech, vocabulary, listening, conversation, and nonverbal communication skills, are in the Extremely Low range. He functions in the Extremely Low range when performing basic academic skills such as reading, writing, and mathematics, as well as functional skills such as taking measurements and telling time. His ability to make independent choices, exhibit self-control and take responsibility when appropriate is in the Extremely Low range.

A more in-depth look at Mr. Busby's specific skill sets within the Social domain may be obtained by examining the adaptive skill areas. The leisure skills needed for engaging in play and planning recreational activities are in the Extremely Low range for Mr. Busby. His ability to interact socially, initiate and maintain friendships, express and recognize emotions, and assist others when needed is in the Extremely Low range.

Adaptive skill areas within the Practical domain offer a more specific picture of Mr. Busby's capabilities. His ability to function and get around in the community, including shopping and using community resources, is in the Extremely Low range. Mr. Busby's level of functioning inside the home, including cleaning, food preparation, performing chores, and taking care of personal possessions, is in the Extremely Low range. Mr. Busby's ability to protect his physical well-being and prevent and respond to injuries, including following safety rules, showing caution, and using medicine when appropriate, is in the Extremely Low range. His ability to perform self-care activities such as eating, dressing, and taking care of personal hygiene is in the Extremely Low range.

Strengths and Weaknesses in Adaptive Skill Areas

It is important to look at the relative strengths and areas for improvement within an individual's adaptive skills profile for the purposes of assessment, treatment and intervention planning, and progress monitoring. In order to determine the areas of personal strength and weakness within Mr. Busby's profile, each skill area scaled score was compared to his average scaled score

across all adaptive skill areas to look for differences at the .05 level of statistical significance. In Mr. Busby's case, no skill area scaled score differences from his average across all skill areas were significant enough to be considered strengths or weaknesses within his profile.

Summary of ABAS-3 Results (Kimiko Coleman):

Mr. Busby's overall adaptive behavior can be characterized as lower functioning than that of almost all individuals his age. Mr. Busby's conceptual adaptive behavior can be characterized as lower functioning than that of almost all individuals his age. Mr. Busby's social adaptive behavior can be characterized as lower functioning than that of almost all individuals his age. Mr. Busby's practical adaptive behavior can be characterized as lower functioning than that of almost all individuals his age.

Definitions of Intellectual Disability: The DSM-5 defines intellectual disabilities as neurodevelopmental disorders that begin in childhood and are characterized by intellectual difficulties as well as difficulties in conceptual, social, and practical areas of living. The American Association for Intellectual and Developmental Disability (AAIDD) and the International Classification of Diseases (10th Edition) embrace a similar definition. Specifically, the DSM-5 diagnosis of ID requires the satisfaction of three criteria:

1. Deficits in intellectual functioning—“reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience”—confirmed by clinical evaluation and individualized standard IQ testing (APA, 2013, p. 33);
2. Deficits in adaptive functioning that significantly hamper conforming to developmental and sociocultural standards for the individual's independence and ability to meet their social responsibility; and
3. The onset of these deficits during childhood.

Inclusively, the DSM-5 provides descriptors of the severity of the intellectual disability as mild, moderate, and severe. It is important to note that individuals with mild severity continue to have difficulty functioning in society; though their adaptation may appear adequate at the surface level (APA, 2013). Furthermore, it is critical to acknowledge that a diagnosis of ID and other mental health can not be considered independently as the intersectionality between them speaks to adaptive functioning of an individual.

Definition of Adaptive Behavior: Adaptive Behavior includes conceptual, social, and practical skills that are necessary to function in everyday life. These learned behaviors are specific to the environment and culture of the individual. Additionally, they are constantly changing. For example, making a phone call now is different than the skills necessary to make a phone call decades ago. Below are skill areas to define these three domains:

1. Conceptual skills: Literacy; self-direction; concepts of number, money and time
2. Social skills: interpersonal skills, social responsibility, self-esteem, gullibility, naivete, social problem solving, following rules, obeying laws, and avoid being victimized
3. Practical skills: activities of daily living (personal care), occupational skills, money,

safety, health care, travel/transportation, schedules/routines, and use of telephone

Tasse et al., 2009 developed behavioral indicators in each domain to assist in diagnosis of ID. These behavioral indicators are useful part to when appropriate standardized tests or professionals trained to administer such instruments are unavailable or limited. In these situations, a diagnosis of disorders of ID might be possible through the assessment of behavioral indicators to inform the professional's clinical judgement regarding the presence and severity of impairments in both intellectual functioning and adaptive behavior across conceptual, social and practical skills.

Assessment Summary and Interpretation: Mr. Busby obtained a Full Scale IQ score of 74 on the Wechsler Adult Intelligence Scale- Fourth Edition (WAIS-IV) in 2010, at the age of 37 years. The WAIS-IV was selected for re-administration due to the robust statistical properties and well-established validity and reliability profiles of this measure for estimating intelligence. The planned revision of this test (WAIS-V) was hampered by the effects of the COVID-19 pandemic on data collection studies (Pearson, Personal Communication, 2021), and as such, an updated version has not been made available.

During the more recent administration of the WAIS-IV in February, 2022, Mr. Busby obtained a Full Scale IQ score of 81, at the age of 49. Both scores were obtained with confirmation of optimal effort using standardized testing, and the score discrepancy between the two administrations (2010 and 2022) is likely due to the combined effects of several factors that are known to increase intelligence test scores over time, including the Flynn effect and "practice effects." The Flynn effect refers to the tendency for standardized intelligence test scores to increase over time, apparently due to changes in characteristics of the population (Flynn 1984, 1985, 1998). IQ test score increases have found to be generally continuous and approximately linear over time, with a proposed test score increase of .3 standard score points per year for most tests, or about one point every three years. Since the WAIS-IV was published in 2008, the application of the Flynn effect for an administration in 2022 (14 years) would result in a proposed score adjustment of approximately four points. This adjustment would result in a current Flynn adjusted IQ score of 77.

Practice effects refer to gains in standardized test scores that result from a person being tested a second time using the same instrument or similar methodology (Kaufman, 1994). This is believed to be due to several factors, including familiarity with test questions and stimuli, as well as gained experience with test taking in general. Although there is no universally agreed-upon quantitative score adjustment that can be applied to account for the increase in test scores due to practice effects in a particular case, there is an indication that there are initial gains of about 2.5 points in verbal IQ scores for adults age 16 to 54, and up to eight points in performance IQ scores for subjects and ages range from 16 to 54 (Kaufman and Lichtenberger, 2006). In analyzing the discrepancy in Mr. Busby's full scale IQ scores (74 in 2010; 81 in 2022), the potential influence of practice effects must be considered, likely contributing several points to the observed increase in IQ composite scores. Applying an adjustment for the Flynn effect and considering a possible increase of several Full Scale IQ points, the results of the more recent administration of the WAIS-IV (2022) are consistent with the prior first administration in 2010,

when Mr. Busby obtained a Full Scale IQ score of 74 (SEM = 70-79 at 95% confidence interval).

As part of his more recent assessment, Mr. Busby was also administered a measure of his academic skills, the Wide Range Achievement Test-Fifth Edition, as a supportive measure to evaluate his academic attainment and abilities. His scores on this measure were consistent with his low intelligence test scores and indicative of lifelong adaptive deficits in academic acquisition. His scores on reading tasks were in the Extremely Low range, while scores on a measure of sentence comprehension were in the Very Low range. Math computation skills were also Very Low, while spelling skills were Low Average.

With respect to adaptive functioning, information provided from multiple sources through affidavits, in-person interviews, and standardized assessment documents significant deficits in most functional areas beginning at an early age and persisting through adulthood. Mr. Busby's adaptive functioning assessment was indicative of significant deficiencies in communication, academic skills, self-direction, leisure engagement and organization, social skills, community/home skills, health and safety skills, and self-care. Gross motor skills were not reported as deficient by informants and test subjects. Information obtained through standardized testing (ABAS-3) completed by Mr. Busby's sisters regarding his adaptive functioning was consistent with that obtained through affidavits and interviewing, with low General Adaptive Composite scores reflecting adaptive deficits in all domains, including Conceptual, Social, and Practical skills. Mr. Busby's academic history was also indicative of difficulty with learning and acquisition, including repeating grades, exemptions from national standardized testing, and enrollment in special education services.

Opinions: The following opinions are based upon standardized testing, interviewing of Mr. Busby and his family members, and a review of pertinent records and documents. All opinions will be based on reasonable psychological and neuropsychological probability and are limited to my areas of expertise, and the referral question to examine Mr. Busby's intellectual functioning.

Based on information obtained through records, interviewing, and standardized testing, Mr. Busby has deficits in adaptive functioning that have been present throughout his development and meet AAIDD and DSM-5 diagnostic criteria for Intellectual Disability. His adjusted IQ scores also fall within the range of Intellectual Disability in the context of a documented history of adaptive deficits in multiple functional domains.

The opinions described in this report represent my conclusions based on information available to me as of July 11, 2022. I reserve the right to review or modify my opinions if other information becomes available. Thank you for allowing me to work with Mr. Busby. Please do not hesitate to contact me if I can be of further assistance.



Gilbert Martinez, PhD, ABPP-CN
Licensed Psychologist: *Texas 30743 Louisiana 1249*
Board Certified Clinical Neuropsychologist

Forensic Record Review and Intellectual Disability Analysis

Examinee Identifying Information:

Inmate Name: Edward Lee Busby, Jr.
Date of Birth: 7/25/1972
Age: 50
TDCJ #: 999506
Trial Court Cause #: C-2-009761-0920589-C
CCA Cause #: WR-70, 747-06
Style of Case: Ex Parte Edward Lee Busby, Jr., Applicant
Date of Report: 4/21/2023
Referral Source: Ms. Fredericka Sargent
Assistant Criminal District Attorney, Postconviction
Tarrant County Criminal District Attorney's Office

Reason for Referral and Legal Status:

Mr. Edward Busby, Jr. is a 50-year-old male who is currently on Texas' death row, having been convicted of capital murder in Tarrant County and sentenced to death on 11/17/2005. Mr. Busby, through his counsel, asserts that he is intellectually disabled and thus, per the Supreme Court of the United States, not eligible for execution. Counsel for the State, Ms. Fredericka Sargent, requested this examiner conduct a review of records in this matter and provide an opinion on whether Mr. Busby is intellectually disabled per current diagnostic standards and/or whether an in-person examination is necessary to determine such. It should be noted that this examiner did not conduct a face-to-face evaluation of Mr. Busby and, as such, the opinions provided herein may be limited as a result and could be different if one were to be performed.

Sources of Information:

The following is a list of sources relied upon in gathering information for, and forming the opinions contained in, this report:

1. Raw psychological test data from a pre-trial psychological examination of Mr. Busby by Tim Proctor, Ph.D. on 10/14/2005 and 11/4/2005;
2. Affidavit of Gilda Kessner, Psy.D., dated 3/21/2008;
3. Report of Assessment of Effort and Test Results by Gilbert Martinez, Ph.D., dated 2/11/2010;
4. Report of Intellectual and Adaptive Functioning Assessment by Gilbert Martinez, Ph.D., dated 7/11/2022;
5. Declaration of Bekh Bradley-Davino, Ph.D., dated 5/19/2010, and Dr. Bradley-Davino's Curriculum Vitae;
6. TDCJ Windham School District educational records;
7. TDCJ I-60 Requests; and

8. Subsequent Application for Post-Conviction Writ of Habeas Corpus and Exhibits 1-18, filed in Tarrant County on 1/29/2021.

Intellectual Disability Criteria:

The Diagnostic and Statistical Manual of Mental Disorders-5-Text Revision (DSM-5-TR) and the American Association on Intellectual Developmental Disabilities (AAIDD) are similar in their definition of intellectual developmental disorder/intellectual disability and list the following diagnostic criteria:

1. Significant limitations in intellectual functioning, confirmed by both clinical assessment and individualized, standardized testing. Both the DSM-5-TR and the AAIDD define intellectual deficits as scores falling approximately two standard deviations below the mean, including a margin for measurement error (generally ± 5 points). On tests with a mean of 100 and a standard deviation of 15, this would involve scores ranging from 65 to 75 (i.e., 70 ± 5). Practice effects (learning from repeated testing) and the “Flynn effect” (inflated scores due to out-of-date test norms) can affect test scores and should be considered when interpreting IQ scores;
2. Deficits in adaptive behavior that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility; and
3. Onset of intellectual and adaptive deficits during the developmental period, which is not specifically defined in the DSM-5-TR and states only that the condition is present “during childhood or adolescence.” The AAIDD specifies the developmental period as occurring before the age of 22.

Each of the three criteria are considered for Mr. Busby below:

Intellectual Deficits: IQ Testing of Mr. Busby (in chronological order):

Mr. Busby has undergone several intelligence tests. The following is a summary of those assessments.

Date & Examiner	Test Given & Year Normed	FSIQ	Percentile Rank	95% Confidence Interval	Considering Flynn Effect (.3 points per year)
1/1/2001 (Unknown examiner)	Unknown test in TDCJ	96	39 th	Approximately 91-101	Unknown
10/14/2005 (Dr. Tim Proctor)	WAIS-III (1995)	77	6 th	73-82	74 (.3 x 10 = 3)
11/4/2005 (Dr. Tim Proctor)	Beta-III (1997)	81	10 th	72-90	78.6 (.3 x 8 = 2.4)
Unknown date but said was given “weeks” after Dr. Proctor’s WAIS-III (Dr. Sven Helge)	WAIS-III (1995)	79	8 th	75-83	76 (.3 x 10 = 3)
2/11/2010 (Dr. Gilbert Martinez)	WAIS-IV (2007)	74	4 th	70-79	73.1 (.3 x 3 = .9)
2/25/2022 (Dr. Gilbert Martinez)	WAIS-IV (2007)	81	10 th	77-85	76.5 (.3 x 15 = 4.5)

The earliest available IQ test score in the file reviewed is a 96, administered by the Texas Department of Criminal Justice on 1/1/2001. The name of the test is not listed but from this examiner's experience with such testing, it is most likely a group (not individually) administered instrument. It is believed that this is the same IQ score referenced in the defense writ regarding "an unidentified IQ test" administered to Mr. Busby on 1/1/2001 by an unknown individual and under unknown conditions. This score was said to have been considered unreliable and disregarded at the trial level. It is also a substantial outlier compared to multiple individually administered, well-regarded IQ measures (described below).

On 10/14/2005, Dr. Tim Proctor, psychologist hired by the defense at trial, administered the Wechsler Adult Intelligence Scale-III (WAIS-III), which was normed in 1995, to Mr. Busby. He obtained a Full Scale IQ of 77 (6th percentile rank; 95% confidence interval = 73-82). The confidence interval, at the lower end, is in the intellectual disability range referenced above (generally 65-75), even without adjusting for or considering the Flynn effect, which would be 3 points (.3 per year x 10 years since being normed = 3). If applied, this would reduce the overall IQ score to 74. An embedded performance validity indicator was within normal limits, suggesting sufficient effort put forth by Mr. Busby, with no indication of malingering.

On 11/4/2005, Dr. Proctor administered another IQ test, the Beta-III, normed in the late 1990's, and obtained a Full Scale IQ of 81 (10th percentile rank; 95 % confidence interval = 72-90). Again, the confidence interval, at the lower end, is in the intellectual disability range referenced above (generally 65-75), even without adjusting for the Flynn effect. If a Flynn correction were to be applied or considered, the IQ score would be 2.4 points lower (i.e., 78.6). A stand-alone performance validity measure on this date was within normal limits and not indicative of faking or poor effort by Mr. Busby.

The State's psychological expert at trial, Dr. Sven Helge, also conducted an intellectual evaluation of Mr. Busby. Although Dr. Helge did not testify at trial, other trial testimony revealed that Dr. Helge administered the WAIS-III "just weeks" after Dr. Proctor's administration of the WAIS-III. This same testimony indicated that Dr. Helge's testing resulted in a Full Scale IQ score of 79 (8th percentile; 95% confidence interval = 75-83). Considering the Flynn effect, this Full Scale IQ would be 76. Attempts by this examiner to locate the raw data from Dr. Helge's IQ testing were unsuccessful.

After the conclusion of Mr. Busby's trial and sentencing, Dr. Gilda Kessner, psychologist, was asked by appellate counsel to review records and opine on the psychological mitigation evidence put forth by the defense in the punishment phase of trial. In a signed affidavit, dated 3/21/2008, Dr. Kessner concluded, among other things, that her review of materials demonstrated IQ scores in the "borderline" or "mentally retarded range" and that the documentation did "not rule out a diagnosis of mental retardation," particularly if the Flynn effect were to have been considered at the trial level. She recommended updated testing with the newest available instrument, which was set to be published later that same year.

Two years after the Wechsler Adult Intelligence Scale-IV (WAIS-IV) was published, Dr. Gilbert Martinez, neuropsychologist, administered it to Mr. Busby. Results from his 2/11/2010 assessment demonstrated that Mr. Busby's Full Scale IQ was 74 (4th percentile rank; 95% confidence interval = 70-79). Consideration of the Flynn effect would be less than 1 point since the test had recently been normed and published. Performance validity assessment, conducted on the same date as IQ testing, indicated that Mr. Busby gave sufficient effort such that the results were seen as a valid representation of his intellectual functioning at that time. Thus, there was no evidence of malingering or that Mr. Busby was attempting to present an inaccurate picture of his functioning. On 5/19/2010, Dr. Bradley-Davino, psychologist, per defense counsel request, outlined her findings from her extensive review of records and multi-hour interview with Mr. Busby, the latter of which occurred on 3/11/2010 and 3/12/2010. Among her many

conclusions, she opined that Mr. Busby had “significant limitations in intellectual functioning.” Dr. Martinez repeated the WAIS-IV with Mr. Busby on 2/25/2022. Performance validity testing was again within normal ranges and indicative of good effort and no malingering. The WAIS-IV Full Scale IQ score was 81 (10th percentile rank; 95% confidence interval = 77-85). When considering the Flynn effect (15 years x .3 points per year = 4.5 point), the IQ score would be 76.5.

Deficits in Adaptive Functioning in One or More Area of Activities of Daily Living:

The earliest standardized achievement testing available in the file is in the TDCJ Windham School District records. While the name of the test is not indicated, Mr. Busby obtained 4th grade equivalent scores on measures of reading on two dates, 7/7/1998 and 4/18/2001 (ages 25 and 28, respectively).

On 10/14/2005, at the trial stage, Dr. Proctor administered the Wide Range Achievement Test -3 (WRAT-3), which assessed Mr. Busby’s skills of word reading, spelling, and arithmetic. Mr. Busby obtained the following scores: Reading Standard Score of 67 (1st percentile rank; 4th grade equivalent); Spelling Standard Score of 63 (1st percentile rank; 3rd grade equivalent), and Arithmetic Standard Score of 84 (4th percentile rank; 6th grade equivalent).

On 2/25/2022, Dr. Martinez administered the Wide Range Achievement Test-5 (WRAT-5), the most recent reiteration of this test. Mr. Busby obtained the following scores: Word Reading Standard Score of 66 (1st percentile rank; 3rd grade equivalent), Sentence Comprehension Standard Score of 73 (4th percentile rank; 4th grade equivalent); Reading Composite Standard Score of 69 (2nd percentile rank); Spelling Standard Score of 84 (14th percentile rank; 5th grade equivalent), and Math Computation Standard Score of 75 (5th percentile rank; 4th grade equivalent). Dr. Martinez’s scores are highly consistent with testing on the same instrument approximately 17 years earlier by Dr. Proctor and similar testing in TDCJ prior to trial for the instant offense.

Dr. Martinez also conducted the Adaptive Behavior Assessment System- Third Education (ABAS-3), a standardized questionnaire of adaptive functions completed by individuals who were familiar with the examinee during the developmental period. Results from Mr. Busby’s sister demonstrated the following substantially low scores: Conceptual Domain Standard Score of 58 (<1st percentile rank), Social Domain Standard Score of 58 (<1st percentile rank), and Practical Domain Standard Score of 54 (<1st percentile rank), resulting in a General Adaptive Composite Standard Score of 53 (<1st percentile rank). Results from a former teacher were nearly identical to those of his sister, with the following scores: Conceptual Domain Standard Score of 54 (<1st percentile rank), Social Domain Standard Score of 56 (<1st percentile rank), and Practical Domain Standard Score of 54 (<1st percentile rank), resulting in a General Adaptive Composite Standard Score of 52 (<1st percentile rank). All of these scores, across multiple domains, are clearly within the range to be considered as substantially deficient.

Onset of Intellectual and Adaptive Deficits During the Developmental Period:

School records from the Pampa School District showed that, in the 1st grade, Mr. Busby did not do well in basic skills, such as reading, arithmetic, spelling and handwriting. These records also showed that he had to repeat the 1st grade, likely as a result of his poor marks. His high school records demonstrated that he was in special education and was ARD (Admission, Review, and Dismissal committee) exempt from the State of Texas standardized testing for promotion to subsequent grades. A 2/4/2020 declaration by Pamela Harris, a prior special education teacher of Mr. Busby in the Pampa School District, revealed that Mr. Busby was in “prevocational classes” for individuals with reduced intellectual functioning, in order to help him develop basic living skills. Consistent with this, a prior girlfriend of Mr. Busby indicated in her

2/5/2010 declaration that when she dated Mr. Busby, both were aged 17 at the time, he could not read or write and had difficulty carrying out basic tasks such as filling out a job application and paying bills. Mr. Busby's junior high school football coach described Mr. Busby as "physically like a grown man" but mentally lacking. He also noted that Mr. Busby demonstrated educational skills more on par with a 2nd grader even though he was in the 8th grade. He added that Mr. Busby could not grasp certain concepts and plays, even simple ones, and his confusion worsened with the complexity of player routes he was expected to learn and know. A former high school football team member reiterated the coach's sentiment regarding Mr. Busby's cognitive limitations and impairments.

Declarations of others who knew Mr. Busby in his early to mid 20's, such as his neighbors, indicated that he continued to struggle with the same basic tasks as those during his younger years. They used terms such as "slow" in describing Mr. Busby and all reported that he struggled to understand information. These declarations also showed that Mr. Busby had a lot of help from others to function and make decisions, both during his childhood and into his young adulthood. Further, these declarations revealed that he had significant mood dysregulation, poor personal hygiene, social deficits, lacked friends, and never really established independent living. Based on the declarations, administration of adaptive behavior questionnaires of a family member and teacher by Dr. Martinez, school records, achievement testing across his lifespan, and interviews by Dr. Martinez, it is apparent that Mr. Busby's intellectual and adaptive behavior deficits were present during the developmental period.

Additional Testing:

It is not believed that updated or additional intellectual and adaptive behavior testing is warranted in this matter. Mr. Busby has undergone numerous IQ assessments over many years, which were conducted by qualified individuals and using well-regarded and most recent measures available. There was no indication of faking or malingering during these examinations as indicated by the results of performance validity measures. The IQ scores obtained were valid and demonstrated a highly consistent pattern of results, with scores falling within the range considered to represent substantial intellectual deficits (generally 65 to 75). One IQ score, said to have been conducted in TDCJ in 2001 by an unknown individual, using an unknown instrument, and under unknown conditions appears to be an outlier and not seen as a valid indication of Mr. Busby's intellectual functioning. Thus, there is no further need for IQ testing. Similarly, achievement testing (aspects of adaptive behavior skills, such as mathematics, reading, comprehension, and spelling) during a prior period of incarceration (several years before trial), at the trial level, and post-trial has demonstrated highly consistent and substantially deficient scores over time. Further, the achievement assessment results have been commensurate with his school records, declarations from people involved in different aspects of his life (sports, relationships, academics), and Dr. Martinez's administration of standardized questionnaires to a family member and former teacher, all of which revealed significant deficits in these skills across his lifespan. As such, no further testing or assessment is needed in this area. Finally, the data available in the file are sufficient to document that the onset of Mr. Busby's intellectual and adaptive behavior deficits occurred during the developmental period, and there is no need for further exploration of the timing of the onset of his difficulties.

Conclusions:

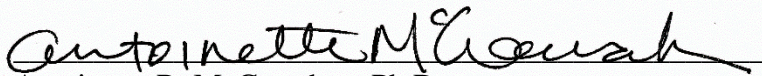
Mr. Busby has consistently demonstrated substantially reduced intellectual abilities. He has also consistently demonstrated significant deficits in several areas of adaptive behavior. Finally, based on all of the material reviewed, it appears that the onset of his intellectual and adaptive deficits occurred during the developmental period.

Opinion:

Considering in total Mr. Busby's IQ deficits, adaptive functioning impairments, and onset of these difficulties during the developmental period, this examiner cannot controvert the conclusion and opinion of Dr. Martinez that Mr. Busby meets the full diagnostic criteria for intellectual disability according to current standards (DSM-5-TR and AAIDD).

It should be noted that this examiner reserves the right to make changes to the above conclusions and opinions if new information becomes available that warrants such changes. Any such changes would be presented in the form of an addendum or supplement to this report.

If I can be of further assistance in this matter, please do not hesitate to contact me.



Antoinette R. McGarrahan, Ph.D.

Psychologist, Specializing in Forensic Psychology and Neuropsychology

3. On November 11, 2005, a Tarrant County jury found Applicant guilty of the capital murder of Laura Crane. SHCR-01 at 406.
4. On November 17, 2005, the jury answered the special issues set forth in Texas Code of Criminal Procedure Article 37.071 in a manner that required a death sentence. SHCR-01 at 406–07.
5. Direct appeal to the CCA was automatic. The judgment was affirmed, and the Supreme Court denied certiorari review. *Busby v. State*, 253 S.W.3d 661 (Tex. Crim. App. 2008), *cert. denied*, 555 U.S. 1050 (2008).

B. Initial State Habeas Proceedings

6. On July 28, 2008, while his direct appeal was pending, Applicant filed an initial application for post-conviction writ of habeas corpus raising 12 claims, but he did not include a claim that he was ineligible for the death penalty because he is intellectually disabled. *Ex parte Busby*, Cause No. C-2-008387-0920589-A (WR-70,747-01); *see* Tex. Code Crim. Proc. art. 11.071.
7. The trial court entered findings of fact and conclusions of law, including supplemental findings and conclusions, and recommended that relief be denied. SHCR-01 at 386–404. The CCA denied Applicant’s first writ on February 25, 2009. *Ex parte Busby*, No. WR-70,747-01.

C. Initial Federal Habeas Proceedings

8. Applicant filed a federal petition for writ of habeas corpus, which the United States District Court for the Northern District of Texas stayed to permit exhaustion of claims that had not previously been presented to the state court. *Busby v. Thaler*, No. 4:09-CV-160-Y (N.D. Tex. August 17, 2012) (unpublished order).

D. First Subsequent State Habeas Proceedings

10. Applicant returned to state court and filed a subsequent application for writ of habeas corpus, in which he raised three claims, including a claim that his death sentence violates the Eighth and Fourteenth Amendments because

he is intellectually disabled. *Ex parte Busby*, Cause No. C-2-009761-0920589-B (WR-70,747-02).

11. The CCA dismissed Applicant's first subsequent application as an abuse of the writ. *Ex parte Busby*, No. WR-70,747-02 (Tex. Crim. App. March 6, 2013) (per curiam) (unpublished order).

E. Subsequent Federal Habeas Proceedings

12. Applicant filed a second amended petition in the federal district court, which was denied on March 10, 2015. Among the claims raised was a claim that he is intellectually disabled. *Busby v. Stephens*, No. 4:09-CV-160-O, 2015 WL 1037460 (N.D. Tex.) (unpublished).
13. The United States Court of Appeals for the Fifth Circuit granted Applicant's application for a certificate of appealability on January 27, 2017, in part, as to his claim that he is intellectually disabled. *Busby v. Davis*, 677 Fed. App'x 884 (5th Cir.) (per curiam) (unpublished). Ultimately, the Fifth Circuit affirmed the district court's judgment, and the Supreme court denied certiorari review. *Busby v. Davis*, 925 F.3d 699 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 897 (2020).

F. Third through Sixth Subsequent State Habeas Proceedings

14. At the conclusion of the subsequent federal habeas proceedings, an execution date was set for May 6, 2020. The CCA stayed the execution in light of the COVID-19 pandemic. *Ex parte Busby*, WR-70,747-03 (April 7, 2020).
15. On January 29, 2021, Applicant filed his sixth subsequent state habeas application, in which he asserted that he was intellectually disabled. The CCA remanded the application so that this Court could review the merits of that claim. *Ex parte Busby*, WR-70,747-06 (Tex. Crim. App. Feb. 3, 2021).²

² Applicant's third and fourth subsequent state habeas applications were denied without written order this same day. *See Ex parte Busby*, Nos. WR-70,747-04, 05.

II. FINDINGS OF FACT

1. In *Moore v. Texas*, the Supreme Court held that legal determinations of intellectual disability “must be ‘informed by the medical community’s diagnostic framework.’” 137 S. Ct. 1039, 1048 (2017) (*Moore I*) (quoting *Hall v. Florida*, 572 U.S. 701, 721 (2014); see *id.* at 1053 (“Reflecting improved understanding over time . . . current manuals offer the best available description of how mental disorders are expressed and can be recognized by trained clinicians.”) (internal quotation marks and citation omitted).
2. As recognized in *Moore I*, the two main diagnostic authorities in the field of intellectual disability are the American Psychiatric Association (APA), which has most recently set forth its definition of intellectual disability in *The Diagnostic and Statistical Manual of Mental Disorders* 33 (Am. Psychiatric Ass’n, 5th ed. 2013) (DSM-5), and the American Association on Intellectual & Developmental Disabilities’ *Intellectual Disability: Definition, Classification, and System of Supports* 10 (11th ed. 2010) (AAIDD Manual). 137 S. Ct. at 1048. The standards in the DMS-5 and the AAIDD Manual “are largely the same”, with the AAIDD Manual examining “the issue of intellectual disability in greater detail.” See *Ex parte Moore*, 548 S.W.3d 552, 560 n.50 (Tex. Crim. App. 2018) (*Ex parte Moore II*), overruled by *Moore v. Texas*, 139 S. Ct. 666 (2019) (*Moore II*).
3. In *Ex parte Moore II*, the CCA “adopt[ed] the framework set forth in the DSM-5” for adjudicating claims on intellectual disability. 548 S.W.3d at 555. The CCA has since reaffirmed that Texas courts should rely on the DSM-5 in assessing intellectual disability claims, reasing that “the approach taken by the DSM-5 hews closer to the original justification set out by the Supreme Court than the AAIDD-11.” *Petetan v. State*, 622 S.W.3d 321, 332 (Tex. Crim. App. 2021). The CCA also clarified, however, that it was not “prohibiting considering of or reliance upon the AAIDD-11.” *Id.*; see *Ex parte Moore II*, 548 S.W.3d at 560 n.50 (allowing reliance on AAIDD Manual to the extent that it amplifies or clarifies standards contained in the DSM-5; but if there is a conflict, the DSM-5 controls).

4. The DSM-5's diagnostic standards are controlling in assessing Applicant's claim of intellectual disability, but the AAIDD Manual's standards may also be relied on to the extent they are not inconsistent with the DSM-5.
5. Under both the DSM-5 and the AAIDD Manual, the diagnostic criteria for intellectual disability are: (A) deficits in intellectual functioning (Criterion A); (B) deficits in adaptive functioning (Criterion B); and (C) onset of intellectual and adaptive deficits during the developmental period (Criterion C). DSM-5 at 33; AAIDD Manual at 4. A "diagnosis of intellectual disability should be made whenever Criteria A, B, and C are met." *Id.*
6. As demonstrated in the record and set forth below, the preponderance of the evidence demonstrates that Applicant meets all three criteria. Therefore, he is intellectually disabled under the prevailing clinical standards set out in the DSM-5 and the AAIDD Manual.
7. Two expert witnesses have evaluated whether Applicant displays deficits in intellectual and adaptive functioning, and if so, whether his deficits occurred during the developmental period as directed by the new *Moore* framework, including Dr. Antoinette McGarrahan, the State's expert, and Dr. Gilbert Martinez, Applicant's expert. Both experts concluded that Applicant is intellectually disabled. Exhibit A (McGarrahan Report); Exhibit B (Martinez Report).

A. Sub-average Intellectual Functioning (Criterion A)

1. Intellectual functioning includes reasoning, problem solving, planning, abstract thinking, judgment, learning from instruction and experience, and practical understanding. *See* DSM-5 at 37. The typical method of assessing these functions is through individually administered and "psychometrically valid, comprehensive, culturally appropriate, psychometrically sound tests of intelligence" (or IQ tests). *Id.* at 37. A score is indicative of intellectual disability if it is approximately two standard deviations or more below the population mean, including a margin for error (generally +/- 5 points). *Id.*
2. Under the classification schemes outlined by both the DSM-5 and the AAIDD Manual, deficient intellectual functioning is defined as an IQ of

approximately 70 with a confidence interval of plus or minus 5 points, derived from the standard error of measurement. *Id.*; AAIDD Manual at 36. This range, which is two standard deviations below the mean gives experts a 95% probability that the obtained score is within the five-point confidence interval. *See* AAIDD Manual at 36. Therefore, scores of 75 and below fall within the range for intellectual disability under both the DSM-5 and the AAIDD Manual.

3. From 2001 to the present, Applicant was administered six IQ tests, and he scored within the range for intellectual disability on four of them.
4. The first test was administered to Applicant while he was incarcerated in the Texas Department of Criminal Justice (TDCJ). Exhibit A at 2, 3. Applicant scored a 96, but this score was considered unreliable and disregarded at the trial. 36 Reporter's Record (RR) 48–49, 64; *see also* Exhibit A at 2, 3. Dr. McGarrahan describes it as a “substantial outlier compared to multiple individually administered, well-regarded IQ measure.” Exhibit A at 3.
5. Dr. Tim Proctor, the expert hired by defense at trial, administered the Weschler Adult Intelligence Scale-Third Edition (WAIS-III). Exhibit A at 2, 3. Applicant obtained a full-scale IQ score of 77, 36 RR 53, 56, putting the confidence interval of 73–82 at the lower end and in the intellectual disability range. Exhibit at 3. Applying the Flynn Effect reduces Applicant's score to a 74. Exhibit A at 3.
6. Dr. Proctor also administered the BETA-III to Applicant, on which he achieved a score of 81. 36 RR 53.
7. The State's expert at trial, Dr. Steven Helge, also administered the WAIS-III to Applicant. Exhibit A at 2, 3. Applicant obtained a full-scale IQ score of 79, with a confidence interval of 75–83. Applying the Flynn Effect reduces Applicant's score to a 76. Exhibit A at 2, 3.

8. On February 11, 2010, Dr. Martinez administered the WAIS-IV to Applicant. Applicant obtained a full-scale IQ score of 74, with a confidence interval of 70–79. Exhibit A at 2, 3; Exhibit B at 2–3.
9. Dr. Martinez again administered the WAIS-IV to Applicant on February 25, 2022. Exhibit A at 4; Exhibit B at 7. Applicant obtained a full-scale IQ score of 81, with a confidence interval of 77–85. Exhibit A at 4; Exhibit B at 7. Applying the Flynn Effect reduces Applicant’s score to 76.5. Exhibit A at 4.
10. Applicant’s performance on neuropsychological tests and his academic performance support the finding that he has deficits in intellectual functioning. Both the DSM-5 and the AAIDD Manual emphasize the value of neuropsychological testing when determining whether deficits in intellectual functioning exist, explaining that “[i]ndividual cognitive profiles based on neuropsychological testing are more useful for understanding intellectual abilities than a single IQ score.” DSM-5 at 37. Likewise, “academic learning” is included as a component of intellectual functioning. DSM-5 at 33.
11. Having considered the results of these evaluations and reports, the Court finds that Drs. Martinez and McGarrahan are credible and persuasive on the issue of Applicant’s significant deficits in intellectual functioning.
12. Having considered the testimony, comments, and conclusions of Drs. Martinez and McGarrahan, this Court finds that, based on a preponderance of the evidence, that Applicant has sub-average intellectual functioning indicated by an IQ score approximately two standard deviations below the mean.

B. Significant Deficits in Adaptive Functioning (Criterion B)

1. The Diagnostic Standard

1. Criterion B of an intellectual disability diagnosis—deficits in adaptive functioning—refers to a person’s ability to “cope, adjust, and appropriately respond to everyday demands of life.” The DSM-5 defines adaptive functioning as “how well a person meets community standards of personal

independence and social responsibility in comparison to others of similar age and sociocultural background.” At 37. The AAIDD Manual defines adaptive behavior as “the collection of conceptual, social, and practical skills that has been learned and are performed by people in their everyday lives.” At 43. Both professional definitions further divide adaptive functioning into three areas: conceptual, social, and practical. DMS-5 at 37.

2. According to the DSM-5, conceptual skills involve “competence in memory, language, reading, writing, math, reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others.” At 37. The social skills involve “awareness of others’ thoughts, feelings, and experiences; empathy; interpersonal communication skills; friendship abilities; and social judgment among others.” DSM-5 at 37. The practical skills involve “learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behavior, and school and work task organization, among others.” DSM-5 at 37.
3. To qualify as intellectually disabled, the DSM-5 states that an individual must have deficits in at least one domain of adaptive functioning to the degree that “ongoing support is needed in order for the person to perform adequately in one or more life settings at school, at work, at home, or in the community.” At 37. Further, the DSM-5 requires that adaptive deficits be related to the deficits in intellectual functioning. At 38. Both the DSM-5 and the AAIDD Manual specify several parameters to be followed in the process of assessing adaptive behavior.
4. First, the assessment should be comprehensive and broad-based, including data such as clinical interviews with third-party reporters and record review. DSM-5 at 38.
5. Second, the diagnostician must employ “clinical judgment,” which is defined as a “special type of judgment rooted in a high level of clinical expertise and experience and judgment that emerges directly from extensive training, experience with the person, and extensive data.” AAIDD Manual at 217. When data is collected through informal interviews, “significant

limitations' can be identified when the nature of the adaptive deficits has had a major impact on the subject's functioning that clearly deviates from the standards of personal independence and social responsibility expected of the subject's age and cultural group." AAIDD Manual at 46, 48.

6. Third, as it is expected that strengths co-exist with weaknesses, analysis of adaptive behavior is based on the presence of weaknesses, not the absence of strengths. *See Moore I*, 137 S. Ct. at 1050 ("[T]he medical community focuses the adaptive-functioning inquiry on adaptive *deficits*." (emphasis in original)); *Petetan*, 622 S.W.3d at 358 ("[E]mphasizing Appellant's adaptive strengths to undermine reliance on an expert diagnosis repeats the problem identified by the Supreme Court in *Moore I* and *Moore II*.").
7. Finally, it is critical to avoid the use of lay stereotypes in assessing adaptive functioning. *See Moore I*, 137 S. Ct. at 1052 ("the medical profession has endeavored to counter lay stereotypes of the intellectually disabled"); *Petetan*, 622 S.W.3d at 359 (factfinder must not "rely upon lay stereotypes regarding intellectual disabilities to reject a clinical diagnosis").

2. Applicant displays significant deficits in adaptive functioning.

1. Both Dr. Martinez and Dr. McGarrahan concluded that Applicant meets the second criterion of intellectual disability because he displays significant impairments or deficits in at least one domain of adaptive functioning.

a. The conceptual domain

2. Conceptual skills involve "competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations, among others. DSM-5 at 37.
3. Both Dr. Martinez and Dr. McGarrahan agree that Applicant suffers from adaptive deficits in the conceptual domain. Exhibit A at 4; Exhibit B at 26. Specifically, Dr. Martinez states that Applicant's "adaptive functioning assessment was indicative of significant deficiencies in communication and academic skills." Exhibit B at 26.

4. On October 14, 2005, during the trial, Dr. Proctor administered the Wide Range Achievement Test-3 (WRAT-3), which assesses word reading, spelling, and arithmetic. Applicant obtained a Reading Standard Score of 67 (1st percentile; 4th grade equivalent), a Spelling Standard Score of 63 (1st percentile; 3rd grade equivalent), and an Arithmetic Standard Score of 84 (4th percentile; 6th grade equivalent). 36 RR 50. 51.
5. On February 25, 2022, Dr. Martinez administered the Wide Range Achievement Test-5 (WRAT-5), the most recent version of this test. Exhibit A at 4; Exhibit B at 7. Applicant obtained a Word Reading Score of 66 (1st percentile; 3rd grade equivalent), a Sentence Comprehension Standard Score of 73 (4th percentile; 4th grade equivalent), a Reading Composite Standard Score of 69 (2nd percentile), a Spelling Standard Score of 84 (14th percentile; 5th grade equivalent), and a Math Computation Standard Score of 75 (5th percentile; 4th grade equivalent). Exhibit A at 4; Exhibit B at 7.
6. Dr. McGarrahan concluded that the testing in 2005 and the testing in 2022 resulted in “highly consistent” scores. She also noted that these scores were also consistent with the testing done at TDCJ prior to the trial for the instant offense. Exhibit A at 4.
7. School records from the Pampa School District establish that in the first grade, Applicant did not do well in such skills as reading, arithmetic, spelling, and handwriting, so much so that he had to repeat first grade. Applicant’s Writ Exhibit 4, Exhibit 5.
8. High school records establish that Applicant had been placed in special education classes and was ARD (Admission, Review, and Dismissal Committee) exempt from the state’s standardized testing for promotion between grades. Applicant’s Writ Exhibit 4, Exhibit 5; *see also* 35 RR 27–29.
9. Mrs. Pamela Harris, one of Applicant’s teachers, stated that Applicant was in “prevocational classes” for individuals with reduced intellectual functioning to help them develop basic living skills, such as cooking and

balancing a checkbook. Mrs. Harris said that grades did not play a role in whether the student passed the class. Applicant's Writ Exhibit 5 at 1 (¶ 3).

10. One of Applicant's former girlfriends, Merlyn Rogers, stated that, at 17, Applicant could not read or write and had difficulty filling out job applications—she once found one in the trash can with only his name on it—and paying bills. Applicant's Writ Exhibit 6 at 1 (¶¶ 6–7).
11. Steve Porter, Applicant's junior high school football coach, said that Applicant's educational skills were more on par with that of a second grader even though he was in eighth grade. Applicant's Writ Exhibit 11 at 1 (¶ 8). He said further that Applicant could not grasp certain concepts and plays, even simple ones, and his confusion worsened with the complexity of the routes he was expected to learn and know. Applicant's Writ Exhibit 11 at 1 (¶ 9).
12. Renee Boyd, a friend, stated that Applicant had a difficult time reading and understanding *The Bible*. She said he would read the same sentence four or five times. Applicant's Writ Exhibit 7 at 1 (¶ 7). Raquel Farr, a neighbor, said that Applicant would ask her to count his change. Applicant's Writ Exhibit 9 at 1 (¶ 5).
13. Willard Farr, a neighbor, said that Applicant was not very good with numbers and counting—if Applicant had money, he would give it to someone else to count. Applicant's Writ Exhibit 8 at 1 (¶ 4). Applicant's nephew, Eddy Pouncy, also said Applicant could not count. Applicant's Writ Exhibit 10 at 1 (¶ 3).
14. James Bybee, a friend from high school, said that Applicant could not read very well. Applicant's Writ Exhibit 12 at 1 (¶ 7). And his sister, Tarsharn Busby, reported that she never saw her brother read; she tried to help him, but he could not "get it." Applicant's Writ Exhibit 14 at 6 (¶ 56).

b. The Social domain

1. Social skills involve “empathy, social judgment, interpersonal communication skills, the ability to make and retain friendships, and similar capacities. DSM-5 at 37.
2. Both Dr. Martinez and Dr. McGarrahan agree that Applicant suffers from adaptive deficits in the social domain. Exhibit A at 4; Exhibit B at 26. Specifically, Dr. Martinez states that Applicant’s “adaptive functioning assessment was indicative of significant deficiencies in . . . leisure engagement and organization and social skills.” Exhibit B at 26.
3. Mr. Pouncy described Applicant as a follower, saying that he did not make plans about “anything,” including where to eat, but he said further that Applicant did not have to worry about these things like food or transportation because these things were taken care of by other people. Applicant’s Writ Exhibit 10 at 1 (¶ 2). Mr. Farr echoed this sentiment, stating that Applicant always had girls around to make decisions for him. Applicant’s Writ Exhibit 8 at 1 (¶ 8). Ms. Rogers concurred, stating that she organized and planned their outings. Applicant’s Writ Exhibit 6 at 3 (¶ 18). Mr. Pouncy said the girls around Applicant, whom he believed to be prostitutes, were always in control and made all the decisions. Applicant’s Writ Exhibit 10 at 1–2 (¶ 9).
4. Applicant’s sister, Kimiko Coleman, reported that Applicant was easily distracted and would leave in the “middle of something,” such as playing with his dog when he was supposed to cleaning the yard. Applicant’s Writ Exhibit 13 at 6 (¶¶ 50–51).
5. Mr. Porter said that while Applicant appeared to really enjoy football, he could not understand the more complex plays; he looked confused as to whom to block, which route to run, or whether to go left or right. Applicant’s Writ Exhibit 11 at 1 (¶ 9).

6. Ms. Coleman and described Applicant as “gullible,” stating that he would do whatever was asked of him and that he believed everything he was told without question. Applicant’s Writ Exhibit 13 at 7 (¶¶ 58–59).
7. Ms. Coleman and Mr. Pouncy both said that Applicant was the victim of bullying, but it took “a lot” for him to “blow up.” Applicant’s Writ Exhibit at 13 at 1 (¶ 6). Mr. Pouncy said that this happened when he was teased about being slow or when he felt he had to protect women. Applicant’s Writ Exhibit 10 at 2 (¶¶ 11–12).
8. Mr. Pouncy and Mr. Farr both stated that Applicant was taken advantage of as an adult. Specifically, Mr. Pouncy said that the girls around him would take money from him before he could finish counting it. Applicant’s Writ Exhibit 10 at 1 (¶ 8). And Mr. Farr said that he was “very easily manipulated by women.” Applicant’s Writ Exhibit 8 at 1 (¶ 7).
9. Finally, Applicant has demonstrated difficulty regulating sadness. Mr. Bybee said that Applicant always has his heart on his shoulder and that he cried often. Applicant’s Writ Exhibit 12 at 1 (¶ 3). Mr. Pouncy stated that Applicant cried more than others, often in a room full of people. Applicant’s Writ Exhibit 10 at 2 (¶ 7). Ms. Harris noted that his two moods were “frustrated” and “depressed.” Applicant’s Writ Exhibit 5 at 1 (¶ 7). Both Mr. Pouncy and Mr. Farr reported that Applicant’s depression and sadness stemmed from his low abilities and that he said he was tired of living “this life.” Applicant’s Writ Exhibit 8 at 2 (¶ 12), Exhibit 10 at 1 (¶ 5),

c. The practical domain

1. Practical skills center on “self-management in areas such as personal care, job responsibilities, money management, recreation, and organizing school and work tasks.” DSM-5 at 37.
2. Both Dr. Martinez and Dr. McGarrahan agree that Applicant suffers from adaptive deficits in the practical domain. Exhibit A at 4; Exhibit B at 26. Specifically, Dr. Martinez states that Applicant’s “adaptive functioning

assessment was indicative of significant deficiencies in . . . community/home skills, health and safety skills, and self-care.” Exhibit B at 26.

3. Ms. Rogers said that Applicant would ask for directions when driving and this confused her because he had always lived in Pampa. Helping him by using street signs did not work because Applicant could not follow them, so she used landmarks and buildings. Applicant’s Writ Exhibit 6 at 2 (¶ 11). Ms. Coleman reported that their cousin Derrick took Applicant’s driver’s test for him. Applicant’s Writ Exhibit 13 at 5 (¶ 6).
4. Ms. Rogers ran errands for Applicant, and when he was with her, she tried to help him learn, but no matter how many times she showed him how to do something, Applicant “could not” figure out how to complete basic, daily tasks. Things like being unable to open the hood of a car made him frustrated. Applicant’s Writ Exhibit 6 at 2 (¶¶ 10, 12).
5. Because of Applicant’s inability to learn daily living tasks, Ms. Rogers and Applicant’s other sisters took care of him; therefore, he never had to solve problems for himself. *See generally*, Applicant’s Writ Exhibit 6, Exhibit 13 at 5 (¶ 39), Exhibit 14 at 6. Ms. Coleman reported that Applicant always lived the women he dated; he never leased his own apartment. Applicant’s Writ Exhibit 13 at 8 (¶ 64). Mr. Farr reported that without his girlfriends, Applicant appeared confused. Applicant’s Writ Exhibit 8 at 2 (¶ 9)
6. Both of his sisters stated that when Applicant “cleaned his room” by placing everything under the bed or in his closet. Applicant’s Writ Exhibit 13 at 6 (¶ 48), Exhibit 14 at 5 (¶ 49). They also said that his chore was to mow the lawn, but Ms. Coleman never saw him do this, and after raking the leaves, he would spread them out across the lawn. Applicant’s Writ Exhibit 13 at 6 (¶ 49). Tasks such as washing dishes or sweeping were not completed adequately. Applicant’s Writ Exhibit 14 at 6 (¶ 51).
7. Applicant had difficulty managing money. Ms. Rogers mentioned a time when Applicant went to Burger King to buy food but then said he did not have enough money. She knew this not to be true, and she speculated that Applicant could not read the menu and add up the amount his choices

would have cost. Applicant's Writ Exhibit 6 at 1 (¶ 8). Ms. Rogers also said that he could not find the amount due on a paper bill. Applicant's Writ Exhibit 6 at 1 (¶ 7).

8. At the same time, Ms. Busby reported that when he was young, she called him the "Candy Man" because he would spend all his money on candy or buy it when his mother sent him to buy something else. Applicant's Writ Exhibit 14 at 6 (¶ 59). She remembered a time when he spent all his Christmas money on a single outfit, while she was as able to purchase three or four outfits with the same amount of money. Applicant's Writ Exhibit 14 at 6 (¶ 60).
9. Ms. Coleman reported that Applicant, at eight or nine years old, collected snakes and brought them home in a suitcase. He then let them loose in the house. Applicant's Exhibit 13 at 6 (¶ 54).
10. Both Ms. Busby and Ms. Coleman reported that Applicant had difficulty with hygiene. There was always dirt underneath his fingernails, and when he showered, there was a ring of dirt around the tub. Applicant's Exhibit 13 at 6 (¶ 52). Indeed, he did not like to bathe—he would go days without doing so—and had to be reminded to do so. Applicant's Writ Exhibit 14 at 6 (¶ 52). Applicant also did not brush his teeth regularly. Applicant's Writ Exhibit 14 at 6 (¶ 53). Both also reported that he did not change his clothes. Applicant's Writ Exhibit 13 at 6 (¶ 52), Exhibit 14 at 6 (¶ 54). Mr. Bybee and Mr. Porter said that his poor hygiene was noticed at school, with both stating that it appeared as if Applicant had not showered in days. Applicant's Writ Exhibit 11 at 1 (¶ 5), Exhibit 12 at 1 (¶ 5).

III. CONCLUSIONS OF LAW

1. In *Atkins v. Virginia*, the United States Supreme Court held that the Eighth Amendment categorically bars the execution of intellectually disabled individuals. 536 U.S. 304, 321 (2002). The Court cited with approval the then-current editions of the DSM and AAIDD. *Id.* at 308 n.3, 317. Twelve years later, in *Hall v. Florida*, the Court made clear that assessments of intellectual disability must be "informed by the medical community's diagnostic

framework.” 572 U.S. 701, 721–22 (2014) (striking down Florida’s “rigid rule” prohibiting inquiry into adaptive functioning unless the IQ score was 70 or below as inconsistent with the consensus of medical and scientific authority). The Court reaffirmed this requirement in *Moore I*. 137 S. Ct. at 1051 (striking down Texas’s framework for analyzing adaptive functioning, including its use of the *Briseño* factors, because it deviated from the prevailing clinical standards and created “an unacceptable risk that persons with intellectual disability will be executed”).

2. On remand following *Moore I*, the CCA adopted the framework set out in the DSM-5 for assessing claims of intellectual disability. *Ex parte Moore II*, 548 S.W.3d at 555, 559–60; *Petetan*, 622 S.W.3d at 325 (“we apply contemporary clinical standards—the framework set forth in the DSM-5—for assessing intellectual disability”). Texas courts adjudicating claims of intellectual disability may also rely on the AAIDD Manual to the extent it does not conflict with the DSM-5 and where its standards “amplify or clarify standards contained in the DSM-5.” *Ex parte Moore II*, 548 S.W.3d at 560 n.50; *see also Petetan*, 622 S.W.3d at 332 (providing that courts may still consider and/or rely on the AAIDD Manual).
3. In analyzing the evidence in support of Applicant’s intellectual disability claim, this Court is bound by *Atkins*, *Hall*, *Moore I*, *Moore II*, the DSM-5, and the AAIDD Manual.
4. Criterion A requires “intellectual-functioning deficits (indicated by an IQ score ‘approximately two standard deviations below the mean’—i.e., a score of roughly 70—adjusted for the standard error of measurement[.]” *Moore I*, 137 S. Ct. at 1045 (quoting AAIDD Manual at 27); *see also Petetan*, 622 S.W.3d at 338; DSM-5 at 33 (“Deficits in intellectual functions” include “reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience.”).
5. This Court concludes that Applicant has established by a preponderance of the evidence that he has sufficient deficits in intellectual functioning. First, as described above, Applicant has scored within the range of subaverage intellectual functioning on multiple “psychometrically valid,

comprehensive, culturally appropriate tests of intelligence” (full-scale IQ tests). Second, he also scored in the impaired range on a series of additional tests designed to measure intellectual and neuropsychological functioning. Third, his history of poor academic performance also supports the conclusion that Applicant has deficits in intellectual functioning. Finally, psychologists for both Applicant and the State agree that the evidence is sufficient to conclude that Applicant has significantly sub-average intellectual functioning.

6. Criterion B requires a showing of adaptive deficits, defined as “an evaluation of the individual’s ability to function across a variety of dimensions.” *Petetan*, 622 S.W.3d at 339. This criterion is met where there are “[d]eficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility.” *Id.*; see also *Moore I*, 137 S. Ct. at 1045 (adaptive deficits are “the inability to learn basic skills and adjust behavior to changing circumstances”). This inquiry “involves three domains of adaptive reasoning: conceptual, social, and practical.” *Petetan*, 622 S.W.3d at 339. And there must be a showing “that adaptive deficits are related to sub-average intellectual functioning.” *Id.* at 332. However, “while the relational requirement found in the DSM-5 is currently a necessary legal requirement under *Atkins*, it is not a vehicle to undermine an otherwise clinical diagnosis through consideration of lay stereotypes, adaptive strengths, and alternative disorders.” *Id.* at 333.
7. Regarding this criterion, this Court concludes that Applicant has established by a preponderance of the evidence that he has significant adaptive deficits in all three domains of adaptive functioning. This conclusion is supported by the results of Applicant’s neuropsychological testing, the nature of Applicant’s adaptive impairments, and the reports of Dr. McGarrahan and Dr. Martinez, who each assessed evidence of Applicant’s adaptive behavior using current diagnostic criteria and clinical judgment to evaluate testing, interviews, records, and lay-witness evidence.
8. This Court further concludes that Applicant has established that his adaptive deficits are related to his intellectual impairments.

9. Criterion C requires onset of intellectual and adaptive deficits during the developmental period. *Moore I*, 137 S. Ct. at 1045; DSM-5 at 33. The Court concludes that Applicant has established that his intellectual and adaptive deficits began during the developmental period. This is supported by Applicant's school records, the absence of any intervening or post-developmental events that would explain his deficits and lay witness reports describing his impaired functioning from an early age.
10. In *Moore I*, the Supreme Court reiterated that as "instructed in *Hall*, adjudications of intellectual disability should be 'informed by the views of medical experts.'" 137 S. Ct. at 1044 (quoting *Hall*, 572 U.S. at 721). Here, medical experts for Applicant and the State concluded that he suffers from deficits in intellectual functioning. Additionally, these experts, who conducted or reviewed valid adaptive behavior assessments, found that Applicant suffers from significant deficits in adaptive functioning. Finally, both experts opined that both the intellectual deficits and the adaptive deficits were present during developmental period.
11. The Court concludes that Applicant has established by a preponderance of the evidence that he is a person with intellectual disability based on the legal criteria set out in *Atkins*, *Hall*, *Moore I*, and *Ex parte Moore II*.
12. Having reconsidered the case as directed by the CCA and considering the evidence presented at trial, the evidence presented in connection with Applicant's subsequent state habeas application, and Dr. McGarrahan's report, this Court concludes that Applicant is entitled to relief.
13. Accordingly, considering the foregoing findings of fact and conclusions of law, this Court recommends that Applicant's sentence of death be reformed to a sentence of life in prison.

WHEREFORE, the State prays that this Court adopt these Proposed Findings of Fact and Conclusions of Law and recommend that Applicant's sentence of death be reformed to a sentence of life in prison.

Respectfully submitted,

PHIL SORRELLS
Criminal District Attorney
Tarrant County, Texas

STEVEN W. CONDER
Assistant Criminal District Attorney
Chief, Post-Conviction

/s/ Fredericka Sargent
FREDERICKA SARGENT
Assistant Criminal District Attorney
State Bar No. 24027829
Tim Curry Criminal Justice Center
401 W. Belknap, 4th Floor
Fort Worth, Texas 76196-0201
(817) 884-3109
fsargent@tarrantcountytexas.gov

CERTIFICATE OF SERVICE

A true copy of the State's Proposed Findings of Fact and Conclusions of Law
has been e-served to counsel listed below on this, the 25th day of July 2023:

David R. Dow
University of Houston Law Center
4170 Martin Luther King Blvd.
Houston, Texas 77204-6060
ddow@central.uh.edu

Jeffrey R. Newberry
University of Houston Law Center
4170 Martin Luther King Blvd.
Houston, Texas 77024-6060
jrnewberry@central.uh.edu

/s/ Fredericka Sargent
FREDERICKA SARGENT

WRIT NO. 70,747-06
CAUSE NO. CDC2-W011911-00

EX PARTE	§	IN THE CRIMINAL DISTRICT
	§	
EDWARD LEE BUSBY, JR.	§	COURT NO. 2
	§	
	§	TARRANT COUNTY, TEXAS

ORDER

The Court adopts the State’s Proposed Findings of Fact and Conclusions of Law as its own and recommends that the relief Edward Lee Busby, Jr., requests should be **GRANTED** and that his sentence of death be reformed to a sentence of life in prison.

The Court further orders and directs the Clerk of this County to furnish a copy of the Court’s findings to Applicant through his attorneys Jeffrey R. Newberry, jnewberry@central.uh.edu , and David R. Dow, ddow@central.uh.edu, and to the Post Conviction Section of the Criminal District Attorney’s Office at COAappellatealerts@tarrantcountytexas.gov.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2023.

Judge Wayne Salvant
Criminal District Court No. 2