CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ZACHARY HOLLY,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Arkansas

APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

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Cite as 2026 Ark. 61

SUPREME COURT OF ARKANSAS

No. CR-24-703

	Opinion Delivered: April 16, 2026
ZACHARY HOLLY APPELLANT	
V.	APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. O4CR-13-1]
STATE OF ARKANSAS APPELLEE	HONORABLE BRAD KARREN, JUDGE
	AFFIRMED.

COURTNEY RAE HUDSON, Associate Justice

Appellant Zachary Holly, who was convicted of capital murder, rape, kidnapping, and residential burglary and received the death penalty, appeals from the Benton County Circuit Court's denial of his petition for postconviction relief. For reversal, Holly argues that (1) trial counsel was ineffective for failing to investigate and present evidence of the extensive sexual abuse Holly experienced as a child; (2) trial counsel was ineffective for failing to investigate, develop, and present evidence of Holly's fetal alcohol spectrum disorder (FASD) and its effect on his functioning and judgment; (3) trial counsel performed ineffectively by neglecting Holly's lack of a significant criminal history on the penalty phase verdict form; (4) trial counsel wrongly conceded Holly's guilt without his knowledge or consent; (5) trial counsel rendered ineffective assistance by failing to ensure that the jury found unanimously, and without a reasonable doubt, that Holly committed a specific type

of capital murder that satisfied a specific aggravating circumstance; and (6) Holly was prejudiced by the cumulative effect of trial counsel's multiple acts of deficient performance. We affirm.

On January 2, 2013, the State filed a criminal information charging Holly with the capital murder, kidnapping, and rape of a six-year-old neighbor girl, Minor Child (MC), on November 20, 2012. Holly was also charged with residential burglary. At the twelve-day jury trial in May 2015, the following evidence was presented in support of the charges:

> The victim, [MC], was a six-year-old girl that Holly and his wife Amanda often babysat while her mother, DesaRae Crouch, was at work. Both Holly and his wife had a key to the house where the victim lived. Holly confessed to entering the residence by an unlocked side door after [MC]'s mother had gone to sleep. He went to the child's room, woke her, picked her up, and carried her to a nearby vacant house. Holly stated that after removing the child's pants, he "tried to stick it in," meaning penetrate the victim's vagina with his penis. Holly recalled that he then tied the child's pants in a knot around her neck and twisted the pants until she stopped kicking.

Holly v. State, 2017 Ark. 201, at 2, 520 S.W.3d 677, 680. After strangling MC, Holly then dragged her by her hair and the pajama pants still wrapped around her neck into a closet, closed the closet door, and went home. Holly stated in his confession that he attempted to put his penis inside MC for approximately five minutes and that he killed her so that she would not tell anyone what he had done. The medical examiner testified that the cause of death was strangulation and that MC's vagina had been penetrated. Semen found on MC's pajama shirt matched Holly's DNA, and swabs of MC's vagina and rectum revealed semen that was consistent with Holly's DNA. After hearing the evidence, the jury convicted Holly of all charges. *Id.*

During the penalty phase of the trial, the State presented victim-impact testimony from MC's mother, grandmother, and kindergarten teacher. The defense called twelve mitigation witnesses and introduced more than six hundred pages of exhibits, primarily consisting of Department of Human Services (DHS), medical, and school records. The mitigation specialist, Karen Maus, testified that according to Holly's medical records, a group of individuals attacked him and jumped on his testicles when he was eight years old, resulting in the removal of one testicle and repair of the other. Maus stated that she discovered at least twenty-three different addresses for Holly when he lived in Bakersfield, California, as a child and that he attended nine different elementary schools there. Maus testified that Holly also attended multiple different schools after his family moved back to Northwest Arkansas when he was a teenager. Several of Holly's high-school teachers—Sheila Trinkle, Steven Johnson, and Annie Quinn—testified that Holly was in special-education classes, had a learning disability, and was a poor student.

Jana Davis, who was a DHS investigator in Kern County, California, described the family's history with DHS and Holly's abusive and traumatic childhood in Bakersfield. She testified about fifteen referrals of abuse and neglect involving Holly's family, including reports that Holly was eating out of the garbage when he was three years old; that his mother, Ginger Simmons, was addicted to methamphetamine; and that Holly was physically abused by Ginger; his older brother, Kenneth (Kenny) Keeton; and his stepfather, Joseph Blackmon. Davis also stated that when Holly was eight years old, he disclosed repeated incidents of sexual abuse by Kenny. Although the initial report mentioned oral and anal rapes, Holly stated in an interview that Kenny had "humped" him with their clothes on,

except for one occasion when they were naked. Davis testified that a detective substantiated the allegation; however, Holly would not cooperate with law enforcement, and the allegation was not pursued further. Joy Morris, a DHS investigator in Benton County, Arkansas, testified to additional reports of abuse and neglect beginning when Holly was thirteen years old—for example, Ginger regularly locked Holly out of the house, Holly appeared to be malnourished, and Ginger abused alcohol and drugs.

Christina Whitaker, Holly's stepaunt, testified that when Holly's family moved back to Arkansas, Ginger married Butch McCutcheon. Whitaker described McCutcheon as mean, violent, and angry and stated that he physically abused both Ginger and Holly. McCutcheon also used methamphetamine and marijuana in front of Holly, and Whitaker testified that on one occasion, McCutcheon injected methamphetamine in Holly's neck and made fun of him after Holly collapsed. Whitaker further stated that Ginger had confessed to her that she had prostituted herself and stolen items to support her drug habit when she lived in Bakersfield with her children.

Holly's ex-wife, Amanda, testified that she met Holly when he was thirteen or fourteen. She stated that Ginger "wasn't a good mom" and would smoke methamphetamine with Holly and Kenny. Amanda testified that she tutored Holly in high school and that she had to fill out job applications and tax forms for him when they were married because he could not read or write proficiently.

Holly's grandfather, Lonnie Guyll, testified that Ginger moved to California with Holly after he was born. Guyll stated that Ginger did not initially take Kenny because "she wasn't too stable back then, the men she stayed with and everything." However, Guyll

eventually sent Kenny to Bakersfield to live with Ginger when he was eight or nine years old. Kenny described Ginger's addiction to methamphetamine when he and Holly were children, and he confirmed that their stepfather, Blackmon, was physically abusive to them both. In addition, Kenny stated that McCutcheon taught Holly how to cook methamphetamine when Holly was fourteen or fifteen years old. Kenny testified that although Holly could read only at a third- or-fourth grade level, at best, before his arrest, he had taught himself how to read while awaiting trial. Benton County Sheriff's Deputy Randall Kelley testified that Holly had also saved another inmate's life by notifying him that the inmate was attempting to hang himself. Kelley stated that Holly had never been violent to him or to any of the other jailers.

Ginger was the final witness to testify on behalf of the defense. She explained that she left Kenny with her grandparents when she moved to California because she was "partying too much." She became addicted to methamphetamine soon after she moved, and she stated that the drug was more important to her than anything else, including her children, at that time. Ginger testified that she would trade food stamps and sexual favors for methamphetamine and that she had sold her children's Christmas presents for drug money. She stated that her ex-husband, Blackmon, is a registered sex offender and that he had been arrested for physically assaulting both her and her children. She admitted that DHS received multiple complaints about her neglect of Holly and that DHS had also investigated a claim that Kenny sexually abused Holly. Ginger further admitted that she got Holly "high" on marijuana when he was ten years old to keep him from telling on her and that she had used methamphetamine with him.

At the conclusion of the penalty phase, the jury unanimously found that three aggravating circumstances existed beyond a reasonable doubt: (1) the capital murder was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody; (2) the capital murder was committed in an especially cruel or depraved manner; and (3) the capital murder was committed against a victim whom the defendant knew or reasonably should have known was especially vulnerable to the attack because the victim was twelve years of age or younger. The defense presented forty-seven mitigating circumstances. The jury unanimously found that thirty of these mitigators probably existed, the majority of which had to do with the abuse and neglect that Holly suffered as a child. In addition, at least one juror found that nine more mitigators probably existed, including the sexual abuse of Holly as a child. At least one juror also listed under "Other mitigating circumstances" that Holly had been attacked when he was eight years old, resulting in the removal of a testicle and the repair of the other. The jury concluded that the aggravating circumstances outweighed beyond a reasonable doubt any mitigating circumstances found by any juror to exist and that the aggravating circumstances justified beyond a reasonable doubt a sentence of death for the capital murder. The jury also sentenced Holly to two life terms for the rape and the kidnapping and twenty years' imprisonment for the residential burglary. We affirmed Holly's convictions and sentences on direct appeal. *Holly*, *supra*.

Holly filed an Ark. R. Crim. P. 37 petition in May 2018 and was subsequently granted leave to file an amended petition and a second-amended petition. In his second amended petition filed on September 12, 2020, he raised multiple claims, six of which are at issue in this appeal. A hearing on the petition was held over eight days in October and

November 2023. Holly's trial counsel, Kent McLemore and Robby Golden, testified about their pretrial mitigation efforts and trial strategy. In addition to their investigation into Holly's educational background and the neglect and abuse he suffered as a child, which led to the mitigating evidence described above, counsel secured three different mental-health experts—Dr. Ashley Christiansen, Dr. Patricia Walz, and Dr. Robert Hanlon—to evaluate Holly prior to his trial. These experts testified at the hearing.

Dr. Christiansen, a clinical psychologist at the Arkansas State Hospital, examined Holly to determine his fitness to proceed and whether his capacity to appreciate the criminality of his conduct or conform his conduct to the requirements of the law was impaired when he committed the offense. Dr. Christiansen testified that, as part of her evaluation, she conducted psychological testing and interviewed Holly, Ginger, McLemore, and others. She diagnosed Holly with unspecified depressive disorder, reading disorder, amphetamine and cannabis dependence, and an unspecified personality disorder. Dr. Christiansen's testing revealed that Holly fell within the low-average range of intellectual functioning, but she did not find any significant impairment or neurocognitive or neurodevelopmental deficits. She concluded that Holly did not suffer from a mental disease or defect that impaired his capacity to appreciate the criminality of his conduct or conform his behavior to the requirements of the law.

Trial counsel then requested an independent examination by Dr. Walz, a neuropsychologist, to evaluate Holly's personality and cognitive functioning related to the criminal charges and to identify any relevant impairment. Dr. Walz testified that before issuing her report, she spoke with Holly's attorneys; reviewed the case file and Holly's

employment, educational, and medical records; interviewed Holly, Ginger, and Kenny; and conducted psychological testing. Her testing showed that Holly's IQ was in the low-average range, and she diagnosed Holly with an adjustment disorder with depressed mood; methamphetamine dependency; cannabis abuse; learning disorders in written expression, math, and reading; and an unspecified personality disorder.

McLemore testified that he discussed Dr. Christiansen's and Dr. Walz's reports with another forensic psychologist, Dr. Mark Cunningham, who did not raise any "red flags" that either of them had missed anything but recommended that McLemore seek another assessment by Dr. Hanlon, chief neuropsychologist and co-director of the forensic research lab at Northwestern University School of Medicine. McLemore testified that he did not restrain Dr. Hanlon's evaluation in any way, and Dr. Hanlon stated that he understood that trial counsel was interested in determining whether Holly had any form of brain dysfunction. Dr. Hanlon reviewed the records provided by trial counsel, including the prior evaluations by Drs. Christiansen and Walz, discussed the case with counsel, and conducted a seven-hour evaluation of Holly. Dr. Hanlon informed trial counsel after his examination that Holly did not put forth sufficient effort and had failed at least one performance-validity test. Dr. Hanlon was therefore unable to rule out malingering.

McLemore testified that after being advised that Dr. Hanlon's evaluation would not be helpful to Holly, trial counsel decided not to have him write a report that would then be discoverable by the prosecution. McLemore stated that they did not pursue another expert evaluation at that point because the trial was approaching, and they chose to focus their time and resources preparing for it. He and Golden testified that although Dr. Walz

was present and prepared to testify at trial, they decided not to call her as a witness after Ginger's testimony left the jury visibly emotional, with at least one juror in tears. Golden explained that Dr. Walz did not present well and that they made a strategic decision to rest their case with Ginger. McLemore further stated that they were concerned that if Dr. Walz testified, the prosecution would rebut that testimony by calling Dr. Christiansen, who had mentioned in her report that Holly was diagnosable as a pedophile if found guilty of the crimes.

Holly also presented testimony by expert witnesses who had examined him after his trial. Much of this testimony related to Holly's claim that trial counsel was ineffective by failing to investigate and present evidence of his FASD. Dr. Daniel Martell, a forensic neuropsychologist, performed tests to determine Holly's neurocognitive impairment. He testified that Holly was significantly impaired in six different areas: executive functioning; language functioning; academic skills involving reading, comprehension, math, and spelling; auditory attention; immediate working memory; and visuospatial/constructional abilities. Dr. Barry Crown, a neuropsychologist, testified that he also tested Holly for neuropsychological impairment. Dr. Crown concluded that Holly was impaired in the frontal and temporal areas of the brain affecting his reasoning, memory, judgment, and impulsivity. Dr. Natalie Novick Brown, a psychologist who specializes in FASD, testified that she was asked to perform a lifelong functional evaluation of Holly for suspected FASD and accompanying brain damage. She stated that FASD is equivalent to intellectual disability and impairs a person's executive functioning. She testified that Holly suffers from FASD, specifically, neurodevelopment disorder associated with prenatal alcohol exposure (ND-

PAE), and that it impaired his capacity to conform his conduct to the requirements of the law when the offenses were committed. Dr. Julian Davies, a pediatrician, testified that Holly has microcephaly, an abnormally small head, which Dr. Davies primarily attributed to fetal-alcohol exposure. He diagnosed Holly with alcohol-related neurodevelopment disorder, which he stated is equivalent to Dr. Brown's ND-PAE diagnosis.

Dr. Jonathan Lipman, a neuropharmacologist, also testified. He stated that he examined Holly to determine the effects of Holly's drug use on his neurological development. Dr. Lipman testified that Holly began using marijuana at age ten and methamphetamine at age thirteen and that his substance abuse impaired his brain development, particularly the frontal lobe, and his emotional regulation. Finally, Dr. Lisak, a clinical psychologist, testified that he was consulted as an expert in the effects of childhood trauma. Dr. Lisak stated that Holly's youngest brother, Joey, disclosed that Kenny had sexually abused him and that he had also witnessed Kenny's sexual and physical abuse of Holly. Dr. Lisak testified that the abuse Holly had suffered taught him that it was normal to sexually abuse younger people and increased the likelihood that he would later engage in violent behavior.

Dr. Hanlon testified in response to Holly's experts. He disagreed with their choice of which psychological tests to use and their interpretation of certain test results, and he stated that some of these tests did not take into consideration Holly's underlying reading disorder. Dr. Hanlon testified that the fact that Holly's IQ had increased thirteen points since his childhood was also "markedly inconsistent with a neuropsychological disorder." While Dr. Hanlon did not challenge Dr. Brown's diagnosis of FASD, he noted that she had

relied on the testing by Drs. Martell and Crown, which he described as "highly suspect." According to Dr. Hanlon, the primary factor in any neuropsychological dysfunction suffered by Holly was his chronic methamphetamine use.

The parties submitted posthearing briefs following the Rule 37 hearing. The circuit court then entered an order on July 9, 2024, denying Holly's second amended petition. Holly filed a timely notice of appeal from the circuit court's order, and he challenges the circuit court's denial of six of his claims.[1]

The circuit court's denial of a Rule 37 petition will not be reversed unless the court's findings are clearly erroneous. *Roos v. State*, 2019 Ark. 360, 588 S.W.3d 738. A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Lane*, *supra*. We have also held that the credibility of witnesses is a question for the trier of fact in Rule 37 proceedings. *Tornavacca v. State*, 2012 Ark. 224, 408 S.W.3d 727.

The benchmark for judging a claim of ineffective assistance of counsel, as derived from *Strickland v. Washington*, 466 U.S. 668 (1984), is whether counsel's conduct so undermined the proper functioning of the adversarial process that the proceeding cannot be relied upon as having produced a just result. *Roos*, *supra*. Pursuant to *Strickland*, we assess the effectiveness of counsel under a two-prong standard. First, a petitioner raising a claim of ineffective assistance must show that counsel made errors so serious that counsel was not

[1]The claims raised below that Holly does not reassert on appeal are deemed abandoned. *Lane v. State*, 2019 Ark. 5, 564 S.W.3d 524.

functioning as the "counsel" guaranteed the petitioner by the Sixth Amendment to the United States Constitution. *Woods v. State*, 2019 Ark. 62, 567 S.W.3d 494. In other words, the petitioner must show that his counsel's performance fell below an objective standard of reasonableness. *Id.* A court must indulge in a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Smith v. State*, 2020 Ark. 410. The burden is on the petitioner to overcome this presumption and to identify specific acts and omissions by counsel that could not have been the result of reasoned professional judgment. *Id.* Conclusory statements that counsel was ineffective cannot be the basis for postconviction relief. *Roos*, *supra*.

Second, the petitioner must show that counsel's deficient performance prejudiced the petitioner's defense. *Rasul v. State*, 2015 Ark. 118, 458 S.W.3d 772. The petitioner must show that there is a reasonable probability that, but for counsel's errors, the fact-finder would have had a reasonable doubt respecting guilt, i.e., the decision reached would have been different absent the errors. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Smith*, *supra*. Unless a petitioner can satisfy both prongs of the *Strickland* standard, it cannot be said that the conviction resulted from a breakdown in the adversarial process that renders the result unreliable. *Roos*, *supra*.

The constitutional guarantee of effective assistance of counsel extends to the sentencing phase of the trial. *Johnson v. State*, 2020 Ark. 168, 598 S.W.3d 515. Trial counsel's failure to investigate and present substantial mitigating evidence during the sentencing phase of a capital-murder trial can constitute ineffective assistance. *Id.* To demonstrate prejudice, the petitioner is required to establish that there was a reasonable probability that, had counsel

performed further investigation and presented the witness or witnesses, the outcome of the trial would have been different. *Reams v. State*, 2018 Ark. 324, 560 S.W.3d 441.

I. *Whether Trial Counsel Was Ineffective for Failing to Investigate and Present Evidence of Sexual Abuse*

Holly first argues that the circuit court erred by denying his claim that trial counsel was ineffective for failing to investigate and present evidence during the sentencing phase of the trial about the extensive sexual abuse that Holly experienced as a child. Although he admits that some evidence of his sexual abuse was introduced through Jana Davis, the DHS worker, Holly claims that Davis testified that the report was unsubstantiated and that trial counsel did not ask Kenny about the abuse. Holly argues that the prosecution capitalized on the lack of corroboration for the abuse in its closing argument and that, as a result, the jury did not unanimously find that this mitigating factor probably existed. He contends that trial counsel should have presented other available evidence of the sexual abuse, such as Joey's testimony and expert testimony, to help the jury understand how the abuse affected Holly's ability to function as an adult.

McLemore testified that he discussed with Ginger and Holly the sexual abuse referenced in the DHS records. Ginger denied that the abuse occurred, and Holly did not want counsel to present that issue to the jury. McLemore reminded Holly that he had mentioned the abuse in his confession and informed him that it was counsel's duty to present mitigating evidence. McLemore explained that counsel did not ask Kenny about the sexual abuse because he was a valuable mitigation witness and that they were afraid he would not cooperate if he was confronted about it. Trial counsel further testified that they had interviewed Joey, although he never mentioned the sexual abuse by Kenny, and that they

intended to call him as a mitigation witness. However, when they spoke with Joey again prior to trial, he was in prison for exposing other men to HIV and was heavily tattooed. Trial counsel decided not to have him testify at that point because they did not believe he would be a credible witness.

We hold that trial counsel was not deficient for failing to investigate or present additional evidence of the sexual abuse. Whether to call a particular witness, including an expert witness, is largely a matter of professional judgment and is trial strategy that is outside the purview of Rule 37. *Barefield v. State*, 2024 Ark. 141, 696 S.W.3d 822; *Johnson*, *supra*. "The fact that there was a witness or witnesses who could have offered beneficial testimony is not, in itself, proof of counsel's ineffectiveness." *Johnson*, 2020 Ark. at 7, 598 S.W.3d at 520. Evidence that Kenny sexually abused Holly was presented to the jury through the DHS records, Davis's testimony about those records, and Holly's confession. While Holly claims that the allegation was unsubstantiated, Davis testified that it had been substantiated by law enforcement and that it was not pursued further because Holly refused to cooperate. Given that the evidence was already before the jury, trial counsel's decision not to elicit further testimony regarding the sexual abuse, whether through Kenny, Joey, or an expert witness like Dr. Lisak, was entirely reasonable. Thus, the circuit court did not clearly err by denying this claim of ineffective assistance.

II. Whether Trial Counsel Was Ineffective for Failing to Investigate and Present Evidence of FASD

Holly next contends that trial counsel's performance was ineffective because counsel failed to investigate, develop, and present evidence of Holly's FASD and its effect on his functioning and judgment. He argues that trial counsel's failure to have him tested for FASD

was deficient performance given all of the "red flags" that should have put them on notice of the need to investigate this disorder. Specifically, Holly points to his mother's admission to drinking while pregnant, his developmental delays, his low birth weight and growth deficiency, and other secondary disabilities that are common in people with FASD, such as mental-health problems, school disruption, substance abuse, employment problems, dependent living, and inappropriate sexual behavior. Holly claims that trial counsel failed to understand or educate themselves about FASD, and as a result, they failed to specifically request that their experts evaluate him for FASD or ensure that they retained an expert who was qualified to diagnose it. Holly contends that he was prejudiced by counsel's deficient performance because, if evidence of his FASD diagnosis had been presented, it would have supported the statutory mitigator that he committed the murder while his capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired as a result of mental disease or defect. *See* Ark. Code Ann. § 5-4-605(3). According to Holly, if that mitigator had been met, it is reasonably probable that at least one juror would have voted for life instead of death.

We cannot say that the circuit court clearly erred by rejecting this ineffective-assistance claim. During an interview with the prosecutor before trial, Ginger initially denied drinking while pregnant with Holly. While she later admitted to trial counsel that she drank alcohol until she learned that she was pregnant with Holly, it was not until her interviews with the experts that Holly retained for purposes of postconviction proceedings that Ginger disclosed that she regularly drank throughout her pregnancy. McLemore testified that, based on the information they had prior to trial, "[w]e never viewed evidence of fetal alcohol

syndrome as especially strong. In fact, it seemed to be equivocal in this particular case[.]" Nonetheless, he stated that it is "inconceivable" that he would not have discussed possible prenatal alcohol and drug use with their retained experts and that he did not limit the experts' evaluations in any way.

Trial counsel had Holly evaluated by three separate psychologists, Drs. Christiansen, Walz, and Hanlon. After Dr. Christiansen concluded that Holly did not suffer from any substantial impairment, trial counsel sought a second opinion and consulted Dr. Walz, a neuropsychologist. Dr. Walz claimed that she did not remember trial counsel mentioning the issue of prenatal alcohol prior to her evaluation. However, the circuit court found McLemore's testimony on this issue to be more credible, and we defer to the circuit court's credibility determinations. *Tornavacca*, *supra*. Ginger did disclose to Dr. Walz that she had used "poppers" a few times during her pregnancy.[2] Dr. Walz found no areas of significant impairment in Holly's cognitive functioning, with the exception of his verbal fluency. Trial counsel then consulted with a forensic psychologist, Dr. Cunningham, who did not raise any "red flags" that either Dr. Christiansen or Dr. Walz missed something but nonetheless recommended that Holly be assessed by Dr. Hanlon, another neuropsychologist. Golden testified that they retained Dr. Hanlon to explore the possibility of organic brain damage, and McLemore stated that they discussed with Dr. Hanlon the possibility of "in utero disturbances" based on Ginger's drug and alcohol use. As noted earlier, however, Dr. Hanlon was unable to rule out malingering due to Holly's insufficient effort during testing,

[2]"Poppers" are a nickname for amyl nitrate, a vasodilator.

and trial counsel instructed Dr. Hanlon not to write a report that would have to be disclosed to the prosecution.

It was reasonable for trial counsel to rely on the opinions of their experts. When counsel has obtained the assistance of a qualified expert on the issue of the defendant's mental health, and nothing has happened that should have alerted counsel to any reason why the expert's advice was inadequate, counsel has no obligation to shop for a better opinion. *Marcrum v. Luebbers*, 509 F.3d 489 (8th Cir. 2007). The fact that a later expert renders an opinion that would have been more helpful to the defendant's case does not show that counsel was ineffective for failing to find and present that expert. *Id.* While Holly argues that the experts retained by his trial counsel were not qualified to diagnose FASD, none of the experts informed counsel that this was the case. Dr. Brown, Holly's expert, agreed that most psychologists are inadequately trained on FASD and often miss that diagnosis. Dr. Brown stated that although counsel has a responsibility to convey information about known prenatal alcohol exposure to an expert, the expert also has an obligation to disclose whether he or she has expertise in that area. The circuit court credited McLemore's testimony that he did, in fact, discuss this issue with their experts. Furthermore, even if neither Dr. Christiansen nor Dr. Walz was qualified to diagnosis FASD, Holly presented no evidence that Dr. Hanlon was not. In fact, the circuit court concluded that he was so qualified. Accordingly, we affirm the circuit court's denial of Holly's claim that trial counsel was ineffective for failing to investigate, develop, and present evidence of FASD.

III. *Whether Trial Counsel Was Ineffective by Failing to Include the Lack-of-Significant-Criminal-History Mitigator*

For his third point, Holly argues that trial counsel's performance was ineffective because he neglected to include Holly's lack of significant criminal history on the penalty-phase verdict form. He claims that he was entitled to this statutory mitigator because he had no criminal history as an adult, and "his juvenile contacts with the law reflect the chaos and trauma that defined his childhood." Holly contends that trial counsel's oversight prejudiced him because his limited criminal history would have shown the jury that the crime was an "aberration" and that he was likely to serve a life sentence peaceably and cooperatively.

Both trial counsel testified at the hearing that they intended to include the lack of significant criminal history as a statutory mitigator pursuant to Ark. Code Ann. § 5-4-605(6) and that their failure to do so was an oversight. As the circuit court concluded, however, Holly cannot demonstrate prejudice from this omission. The jury unanimously found that three aggravating circumstances existed beyond a reasonable doubt, and out of forty-seven mitigators, the jury unanimously found that thirty probably existed and that ten more probably existed. Holly has failed to show that the addition of one more mitigator related to his lack of significant criminal history would have altered the outcome of his sentencing. We therefore affirm the circuit court's denial of this claim.

IV. *Whether Trial Counsel Wrongly Conceded Holly's Guilt*

Holly next contends that trial counsel wrongly conceded his guilt at trial without his knowledge or consent. He claims that counsel usurped his authority under the Sixth and Fourteenth Amendments to decide whether to admit guilt or maintain innocence and deprived him of his fundamental right to hold the State to its burden of proof. Citing *McCoy*

v. Louisiana, 584 U.S. 414 (2018), Holly argues that this deprivation amounts to a structural error and that no demonstration of prejudice is required.

Holly entered a plea of not guilty to the charges, and the statement of the case that was read at the beginning of voir dire indicated that Holly denied committed the crimes. During opening statements ten days later, however, counsel conceded that Holly had removed the victim from her home, had sexual contact with her, and caused her death. McLemore testified that shortly before the trial, Holly agreed to proffer a guilty plea to the State in order to avoid the death penalty. Although the plea was rejected, McLemore believed that this would also be a good mitigator to submit during sentencing to show that Holly accepted responsibility for his actions. He testified that, while he did not discuss with Holly his plan to admit guilt during opening statements, he did not believe that he needed permission based on Holly's agreement to the guilty-plea proffer. McLemore and Golden further noted that Holly did not object to their strategy at any point.

In *Florida v. Nixon*, 543 U.S. 175 (2004), the Supreme Court held that trial counsel's failure to obtain the defendant's express consent to the strategy of conceding guilt during the guilt phase of the trial does not automatically render counsel's performance ineffective. The Court stated that counsel had informed the defendant of the proposed strategy and its potential benefits and that the defendant's silence did not suffice to render unreasonable counsel's decision to concede guilt and focus on the possibility of a death sentence. *Id.* In *McCoy*, *supra*, however, the Court reversed and remanded for a new trial where counsel, despite the defendant's express objection at every opportunity both before and during trial, conceded guilt in a capital case. The Court held that counsel's actions violated the

defendant's "Sixth Amendment-secured autonomy" to decide the objective of his defense. *Id.* at 427. The Court further concluded that the error was structural and did not require the defendant to show prejudice. *Id.* at 426.

We hold that the facts in this case are clearly distinguishable from those in *McCoy*. The defendant in *McCoy* strenuously and consistently objected to counsel's strategy of admitting guilt. Here, however, Holly agreed to proffer a guilty plea shortly before trial began, and trial counsel believed that they had his permission to concede guilt in an attempt to avoid the death penalty. Holly also did not object once this strategy became clear. Thus, the situation in this case more closely resembles that in *Nixon*, *supra*, which was analyzed under the traditional *Strickland* framework. To the extent that Holly is making a separate *Strickland* claim, he cannot show that trial counsel's performance was objectively deficient. Counsel's decision to concede Holly's guilt was intended to gain credibility with the jury during the sentencing phase of the trial and was purely strategic. As the Court in *Nixon* stated, "[a]ttorneys representing capital defendants face daunting challenges in developing trial strategies, not least because the defendant's guilt is often clear[,]" and "[i]n such cases 'avoiding execution [may be] the best and only realistic result possible.'" *Nixon*, 543 U.S. at 191 (quoting *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* § 10.9.1 cmt. (rev. ed. 2003), *reprinted in* 31 Hofstra L. Rev. 913, 1040 (2003)). "Counsel therefore may reasonably decide to focus on the trial's penalty phase, at which time counsel's mission is to persuade the trier that his client's life should be spared." *Id.* Counsel's strategy in this case was reasonable given the overwhelming evidence of Holly's

guilt, specifically, his confession to the crimes and the DNA evidence. We therefore affirm the circuit court's denial of this claim.

V. *Whether Trial Counsel Was Ineffective by Failing to Request Nonmodel Verdict Forms*

Holly argues in his fifth point on appeal that trial counsel rendered ineffective assistance by failing to ensure that the jury found unanimously and beyond a reasonable doubt that Holly committed a specific type of capital murder that satisfied a specific aggravating circumstance. He contends that he was charged with four different crimes that constitute capital murder but that the verdict form used in this case required only a general finding of guilty or not guilty. He therefore claims that the jury never reached a unanimous verdict on any of the four different crimes and that this violated his Sixth, Eighth, and Fourteenth Amendment rights. Holly further argues that the penalty-phase verdict suffered from the same infirmity because the State asserted that the jury could find any of five different definitions of the aggravator that the murder was committed in an especially cruel or depraved manner. According to Holly, counsel's failure to object to the general verdict forms amounted to structural error that does not require a demonstration of prejudice.[3] Even if the error was not structural, Holly claims that he was prejudiced by counsel's failure because the jury may not have agreed on which type of capital murder was committed or which subfinition of the aggravator applied in this case.

[3]Holly's structural-error argument regarding the guilt-phase verdict form is not preserved for appellate review because he did not raise it in his Rule 37 petition. *E.g.*, *Van Winkle v. State*, 2016 Ark. 98, 486 S.W.3d 778. Thus, we address that issue only under the *Strickland* standard.

In determining whether a nonmodel verdict form should have been submitted, we use the same standard that we apply when considering whether a nonmodel jury instruction was warranted. *Perry v. State*, 2014 Ark. 535, 453 S.W.3d 650. A nonmodel verdict form should be given only when the model verdict form does not accurately state the law or there is not a verdict form covering the offense. *Ortega v. State*, 2016 Ark. 372, 501 S.W.3d 824. We have held that model verdict forms are presumed correct and that the party challenging the model form must rebut the presumption of correctness. *E.g.*, *Kinsey v. State*, 2016 Ark. 393, 503 S.W.3d 772.

A. Model-Verdict Form for Capital Murder

The State charged Holly under four alternative theories of capital murder: (1) felony murder based on rape; (2) felony murder based on kidnapping; (3) intentional-and-premeditated murder; or (4) knowingly causing the death of someone fourteen years of age or younger under circumstances manifesting extreme indifference to the value of human life. *See* Ark. Code Ann. § 5-10-101(a)(1)(A)(ii)–(iii), (a)(4), (a)(9) (Supp. 2011). At the conclusion of the guilt phase of the trial, the circuit court instructed the jury on these alternative theories and submitted the defense's requested model-verdict form for capital murder, which stated, "We, the jury, find Zachary Holly guilty of capital murder." *See* AMI Crim. 2d 8301-VF. The jury was also instructed that the State had to prove each element of the charged offense beyond a reasonable doubt and that all twelve of the jurors had to agree on the verdict. During closing arguments, the State told the jury that, even though the evidence supported Holly's guilt on all four alternative means of committing capital murder, it only had to find him guilty of one to convict him.

While Holly is correct that jury unanimity is required to convict a defendant of a serious crime, *Ramos v. United States*, 590 U.S. 83 (2020), neither this court nor the United States Supreme Court has held that when a defendant is charged with alternative means of committing a single count of an offense, the jury is required to agree upon a single means of commission. *See, e.g.*, *Torres v. State*, 2019 Ark. 101, 571 S.W.3d 456 (explaining that a general verdict submitted under factual alternative bases may be upheld provided that at least one of the charged alternatives is supported by sufficient evidence) (citing *Griffin v. United States*, 502 U.S. 46 (1991)); *Terry v. State*, 371 Ark. 50, 263 S.W.3d 528 (2007) (reviewing a capital-murder conviction charged under both capital-felony murder and premeditated-and-deliberated murder and holding that the general guilty verdict would be upheld because there was sufficient evidence to support capital-felony murder). Holly cites *Sheppard v. State*, 120 Ark. 160, 179 S.W. 168 (1915), to support his contention that the alternative formulations of capital murder in this case were themselves different crimes requiring separate verdicts. However, the issue in *Sheppard* was whether the defendant could be charged with one type of first-degree murder and convicted of another type, when each type required different elements. That case did not involve the use of general verdict forms, and it is not applicable here.

Holly has not demonstrated that the general verdict form in this case was prohibited under either state or federal precedent. Because the model verdict form correctly stated the law, trial counsel was not deficient for failing to request a nonmodel verdict form. *E.g.*, *Douglas v. State*, 2019 Ark. 57, 567 S.W.3d 483. Accordingly, the circuit court did not clearly err by rejecting this claim.

B. Model-Verdict Form for Aggravating Circumstances

Holly also challenges trial counsel's failure to request a nonmodel verdict form for the statutory aggravating circumstance that the murder was committed in an especially cruel or depraved manner. Ark. Code Ann. § 5-4-604(8) (Repl. 2006). Consistent with the statute, the verdict form used in this case stated:

> Capital murder is committed in an especially cruel manner when, as part of a course of conduct intended to inflict mental anguish, serious physical abuse, or torture upon the victim prior to the victim's death, mental anguish, serious physical abuse, or torture is inflicted. Mental anguish is defined as the victim's uncertainty as to her ultimate fate. Serious physical abuse is defined as physical abuse that creates a substantial risk of death or that causes protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ. Torture is defined as the infliction of extreme physical pain for a prolonged period of time prior to the victim's death.
>
> A capital murder is committed in an especially depraved manner when the defendant relishes the murder, evidencing debasement or perversion, or shows an indifference to the suffering of the victim and evidences a sense of pleasure in committing the murder.

Although Holly contends that the jury was never required to unanimously find at least one specific subdefinition beyond a reasonable doubt, the jury was instructed to determine whether this aggravating circumstance existed beyond a reasonable doubt. As with the capital-murder verdict form, he has not cited any authority to support his claim that this model verdict form failed to correctly reflect existing law. Thus, Holly has not demonstrated either structural error or trial counsel's ineffectiveness for failing to request a nonmodel verdict form for this aggravating circumstance; therefore, the circuit did not clearly err by denying this claim.

VI. *Cumulative Error*

Finally, Holly argues that he is entitled to postconviction relief because the cumulative effect of counsel's errors denied him a fair trial, even if we conclude that no single claim justifies relief. As Holly admits, however, we have consistently held that we do not recognize cumulative error in allegations of ineffective assistance of counsel. *E.g.*, *Whiteside v. State*, 2024 Ark. 30, 684 S.W.3d 588; *Howard v. State*, 367 Ark. 18, 238 S.W.3d 24 (2006). While Holly contends that our precedent conflicts with *Strickland*, we have previously rejected this argument as well. *E.g.*, *Echols v. State*, 354 Ark. 530, 127 S.W.3d 486 (2003). We therefore affirm the circuit court's denial of Holly's Rule 37 petition.

Affirmed.

Special Justice TIFFANY BROWN joins.

BRONNI, J., not participating.

Short Law Firm, by: *Lee D. Short*; and *James Law Firm*, by: *William O. "Bill" James, Jr.*, for appellant.

Tim Griffin, Att'y Gen., by: *Brooke Jackson Gasaway*, Ass't Att'y Gen., and *Walker K. Hawkins*, Ass't Att'y Gen., for appellee.

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IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

DIVISION 2

STATE OF ARKANSAS RESPONDENT

V. NO. 04CR-13-1

ZACHARY HOLLY PETITIONOR

ORDER DENYING PETITIONER'S AMENDED PETITION

FOR POST-CONVICTION RELIEF

Now on this 9th day of July, 2024, comes the state of Arkansas by and through its prosecuting attorneys, Mr. Joshua Robinson and Mr. Gabriel Stultz, and the petitioner, Zachary Holly, appearing in person with his counsel, Mr. Lee Short and Mr. William James, Jr., premises considered, the court's findings follow:

FINDINGS OF FACT

That on May 27, 2015, defendant Zachary Holly was found guilty at the conclusion of a jury trial of capital murder, rape, kidnaping, and residential burglary. The defendant received the death penalty for capital murder, life sentences for rape and kidnaping, and twenty years in the Arkansas Department of Correction for residential burglary. At trial, the jury heard evidence that the defendant had confessed to the murder and rape and that his DNA was found inside the vagina of Jersey Bridgeman, the victim's body.

That on June 1, 2017, the Arkansas Supreme Court denied the defendant's appeal and issued its mandate on March 8, 2018.

That on May 18, 2018, the defendant filed his initial Rule 37 petition. Subsequently, defendant was granted leave to file an amended and enlarged Rule 37 petition without objection

from the state which was filed August 17, 2018. A second amended petition was filed on September 12, 2020.

That on October 30, 2023, the court held the Rule 37 evidentiary hearing.

CONCLUSION OF LAW

Arkansas Rule of Criminal Procedure 37.1 allows a petitioner post-conviction relief on the grounds that the petitioner received ineffective assistance of counsel. ARK. R. CRIM. P. 37.1. To prevail in an ineffective assistance of counsel claim, the petitioner must prove that their counsel's performance was 1) deficient, and 2) the deficient performance actually prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under the first prong of the *Strickland* test, the petitioner has the burden of proving trial counsel made errors so serious that their Sixth Amendment right to functional counsel was violated. *Walton v. State*, 2013 Ark. 254, at 6, 2013 WL 2460191, at *3 (per curiam). There is a "strong presumption" that defense counsel's conduct falls within a wide range of professional assistance. *Polivka v. State*, 2010 Ark. 152, at 8, 362 S.W.3d 918, 925. Overcoming this presumption requires the petitioner to identify specific acts or omissions of trial counsel which could not have been the result of reasonable professional judgment. *Walton*, 2013 Ark. 254, at 6.

ANALYSIS

I. WHETHER TRIAL COUNSEL WAS INEFFECTIVE WHEN IT FAILED TO INVESTIGATE AND PRESENT MITIGATING EVIDENCE OF DEFENDANT'S IMPAIRMENTS INCLUDING THOSE RELATED TO FETAL ALCOHOL SYNDROME DISORDER (FASD).

1. Trial counsel was not deficient but was professionally reasonable.

a. Capital counsel was not deficient in failing to share with their experts the defendant's mother abused alcohol when the defendant was in utero.

The first claim in the September 20th second amended petition is that trial counsel were ineffective for failing to investigate and present mitigating evidence of defendant's impairments, including those related to fetal alcohol syndrome disorder, or FASD. Specifically, defense counsel claims trial counsel was deficient in failing to share with their experts that the defendant's mother, Ginger Simmons, abused alcohol when the defendant was in utero.

Here, capital counsel consulted with four separate experts: Dr. Ashley Christiansen, a forensic psychologist with the Arkansas State Hospital; Dr. Patricia Walz, a clinical neuropsychologist; Dr. Mark Cunningham, a forensic psychologist; and Dr. Robert Hanlon, a clinical neuropsychologist from Northwestern University in Chicago, who specializes in murder defendant impulsivity. At the Rule 37 hearing on October 30, 2023, capital counsel, Kent McLemore, testified that upon direct examination that it is inconceivable that he would not have shared such important information. Kent McLemore Tr. 97:18. He further testified upon cross examination that he was reasonably confident he had advised Dr. Walz and Dr. Hanlon about Ms. Simmons' gestational drinking. McLemore Tr. 228:23. This court finds Kent McLemore to be a highly credible witness. He was cooperative. He was not argumentative. He was not evasive. He spoke in conversational tones. He was calm. He was a neutral and unbiased witness with no stake in the outcome of this hearing. Prior to trial, Mr. McLemore moved for the defendant to have both prongs for mental competency, fitness to proceed, and criminal responsibility. Counsel also made a rational trial strategy decision in omitting certain findings from trial.

b. Trial Counsel sought the appropriate experts to investigate defendant's impairments and used their findings with prudence.

Dr. Christiansen, a board-certified forensic psychologist, performed the court-ordered mental evaluations. She interviewed the defendant's mother, Ginger Simmons, and she reviewed

the defendant's DHS and school records gathered by capital counsel. Dr. Christiansen's forensic evaluation found the defendant did not suffer from mental disease or defect. She also found the defendant had the mental capacity to appreciate the illegality of his conduct, to conform his conduct to the requirements of the law, and the ability to form the culpable mental state required of the crime. Overall, she did not find significant impairment during her interviews, evaluations, and records. Dr. Ashley Christiansen Tr. 17:15.

Capital counsel next sought an independent evaluation from Dr. Patricia Walz, a clinical neuropsychologist. Capital counsel requested Dr. Walz to evaluate the defendant's personality, cognitive function, and his ability to assist in his defense. Dr. Walz reviewed the defendant's work history, criminal history, medical records, educational records, and other mitigation documents provided to her by capital counsel. She conducted two interviews with the defendant, and she took five hours to administer tests to the defendant. She also interviewed his mother, Ms. Ginger Simmons, and his brother, Kenny Keaton. Dr. Walz testified that she asked Ginger Simmons if she used drugs when she was pregnant with the defendant to determine the defendant's prenatal development. Specifically, Ms. Simmons admitted to using poppers, which is a form of speed, during her pregnancy. Dr. Patricia Walz Tr. 11:15. Dr. Walz diagnosed the defendant with adjustment disorder, which is stress and depression, meth dependence, cannabis dependence. She also diagnosed the defendant with a learning disorder in reading, writing, and math. Dr. Walz testified that although she had knowledge of the facial features associated with FASD – widespread eyes, thin lips, and elf-like features – she did not recognize these features to be consistent with the defendant. She did not refer capital counsel to an expert who is specialized in FASD. There has been no evidence presented that either Dr. Christiansen or Dr. Walz documented any evidence that Ms. Simmons abused alcohol during her pregnancy.

This court finds Dr. Walz to be less credible than Kent McLemore. Dr. Walz was argumentative with her answers. She seemed to be put out to have to be here to testify at all. She had a stake in the outcome. It was obvious to the court that she was concerned that she could be blamed or be held liable for not identifying the FASD in the defendant or for not referring Kent McLemore to another evaluator. When Josh Robinson asked Dr. Walz on direct examination, she first stated that she did not remember talking about FASD to Kent McLemore. Then, upon cross examination by Lee Short, she stated that if Kent McLemore had spoken to her about FASD, it would have been in her notes. She was quick to put the blame on Kent McLemore. Moreover, Kent McLemore testified that although capital counsel had issued a subpoena for Dr. Walz to testify, at trial they made a tactical trial strategy decision not to call her as a witness. He testified that the IQ tests performed on the defendant by Dr. Walz and Dr. Christiansen were not inconsistent and therefore would have been putative. Also, capital counsel was concerned that because Dr. Walz had not identified defendant as a pedophile that Dr. Christiansen would have been able to testify that she opined the defendant was a pedophile, which would have been extremely detrimental to the defendant's case. Moreover, the defendant's mother, Ms. Simmons, and brother, Kenny Keaton, testified as to the defendant's childhood, which left the jury emotional and visibly crying. Capital counsel concluded that the previous emotional appeal elicited by these lay witnesses would have been diluted with the scientific testimony of Patricia Walz.

Although Dr. Walz did not recommend that capital counsel seek any additional opinions, capital counsel Robby Golden testified that it was important to seek assistance from a neuropsychologist because Ms. Simmons was using and drinking during pregnancy. Robert Golden Tr. 37:25. Mr. McLemore testified that he consulted with Dr. Mark Cunningham because of his familiarity with him in other cases, who is also a forensic psychologist who reviewed Dr.

Walz's forensic report. Dr. Cunningham reported to Mr. McLemore that he did not have any concern that Dr. Walz had missed something.

Dr. Cunningham referred trial counsel to Dr. Robert Hanlon. Dr. Hanlon, the clinical neuropsychologist at Northwestern University in Chicago, testified that Mr. McLemore contacted him to perform a neurological evaluation on the defendant to determine if the defendant had a form of brain dysfunction. He also testified that on February 27, 2015, he spent seven hours evaluating the defendant's records, forensic reports, scoring and analyzing test data. *See* State Ex. 5. He advised Mr. McLemore that the defendant failed one of the three performance validity tests and that the defendant simply didn't care. Dr. Hanlon spent an addition two and a half hours and in total, nine hours analyzing Mr. Holly's tests. Dr. Hanlon testified that because the defendant failed validity tests, he was unable to rule out that the defendant was malingering. Mr. McLemore then informed Dr. Hanlon his testimony would not be useful at trial. He also requested that Dr. Hanlon refrain from documenting his findings in a report, aiming to prevent the State from discovering the testing during trial and potentially utilizing it against the defendant.

Dr. Hanlon further testified that to determine whether the defendant had structural brain damage, one would have to perform neuro-imagining such as a MRI or CT scan of the defendant's brain. Hanlon Tr. 18-21. He explained those imaging tools are highly complementary and may help confirm or deny the functional observations made by practitioners. He further testified that the data found by defense experts was insufficient to constitute a diagnosis of brain damage. He testified that the defendant's IQ increased by almost an entire standard deviation which is grossly inconsistent with the neuro disorder. Dr. Hanlon testified that the defendant's claim that the defendant's impulsivity was due to excessive dysfunction to be unfounded. The defendant left his home to Jersey Bridgeman's home, took her to another house, attempted to penetrate her multiple

times, mitigated his risk by strangling her, and left her body in the closet in an effort to avoid detection after the crime had occurred.

Dr. Hanlon further testified that from July 3, 2019, to August 12, 2019, Mr. Joseph Luby, a public defender from the Capital Habeas Corpus Unit, in Philadelphia, Pennsylvania, and a member of the defendant's legal team, contacted Dr. Hanlon by e-mail and said as follows:

> *I'm one of the attorneys who represents Arkansas defendant – or death sentence prisoner Zach Holly. It is my understanding that you consulted with Zach's trial attorneys and also evaluated Zach at some point before trial, probably in late 2014 or early 2015.*

State's Ex. 9. On September 12, 2020, Defendant's amended petition for post-conviction relief under Arkansas Rule of Criminal Procedure 37. The above petition states in part, although Zachary Holly's trial counsel presented some evidence of his difficult childhood through lay witnesses, they were ineffective because they failed to present any expert testimony that could contextualize and explains Zach's traumatic life history from a mitigated mental health prospective. Appellant's Amended Pet. at 10. The amended petition also states that had counsel investigated Zach's mental health problems, retained the appropriate experts, and properly consulted with the experts they did hire, they would have presented evidence that Zach's adult function is impaired by brain damage cause primarily by his prenatal alcohol exposure.

Here, the defendant's second amended petition is devoid and silent as to any testing, evaluation, or involvement by Dr. Hanlon in this matter. Arkansas Rules of Criminal Procedure 37(a) states in part, "if the petitioner, the files, and the records of the case conclusively show that the petitioner is entitled to no relief, the trial court shall make written findings to that effect specifying any parts of the files or records that are relied upon to sustain the court's findings." ARK. R. CRIM. P. 37.3(a).

It is evident to this court that the defendant believed Dr. Hanlon was qualified to test for FASD. The defense asked Dr. Hanlon, "Are you taking issue with a medical doctor's diagnosis that Zach Holly has FASD?" Dr. Hanlon responded, "no." Hanlon Tr. 22: It's evident that, why ask the question of Dr. Hanlon if he's not a qualified expert to test for FASD, because his answer doesn't matter unless it's yes, because he is qualified. Dr. Hanlon's responded "no" to the question without qualification, as opposed to "no," like Patricia Walz, who stated, "I am not qualified to test for FASD." Also, if the defendant truly believed that Dr. Hanlon was not specialized or was not qualified to test for FASD, then why did the defense choose not to include Dr. Hanlon's evaluation of the defendant in their second amended petition? The answer is because they know he's qualified and it would have severely weakened their claim.

Dr. Hanlon's evaluation could potentially satisfy Justice Rhonda Wood's concern that the manner in which trial counsel dealt with the defendant's mental competency is troubling and that Holly's second mental evaluation was never filed in the record. *Holly v. State,* 2017 Ark. 201, at 26, 520 S.W.3d 677, 693 (2017). Justice Wood's hope was that any outstanding issues concerning the defendant's competency and counsel's adequacy of reputation on those issues will be fully developed and resolved in the criminal procedure Rule 37 proceeding. *Id.* 26. This court finds the defense has failed to overcome the strong presumption that capital counsel's conduct provided reasonable professional assistance. This court finds that capital counsel's conduct was not deficient but was professionally reasonable.

Here, capital counsel initially requested a forensic evaluation to determine the defendant's criminal responsibility and fitness, then retained independent forensic evaluation by Dr. Patricia Walz, a clinical neuropsychologist. They then hired a forensic psychologist, Dr. Mark Cunningham, to review Dr. Walz's findings. Additionally on top of that, they then hired a

neuropsychologist specializing in detection of brain damage in murder defendants' impulsivity to determine whether the defendant in fact, had brain damage. However, the defendant did not pass a validity test, which included that he may have been malingering. This court finds that capital counsel relied upon Dr. Hanlon that no additional testing was required. Capital counsel then abandoned any further pursuit of a brain damage claim to avoid the State from discovering this finding. Defense counsel's own expert, Dr. Novick Brown, testified that most forensic psychologists do not have expertise in FASD. She added it's rare to find someone to have any kind of training in FASD and that not many people actually evaluated a person for FASD.

2. Defendant was not actually prejudiced by capital counsel's conduct and the defendant received a fair trial and that the confidence in that outcome of the trial was not undermined.

Here, the jury heard evidence at trial that the defendant had fully confessed to both the murder and rape of Jersey Bridgeman. His DNA was found inside Jersey's Bridgeman's vagina. Capital counsel's decision to not call Dr. Walz was a sound jury trial strategy. Capital counsel called lay witnesses Ginger Simmons and Kenny Keaton to testify to the defendant's sexual and physical abuse, neglect, poverty, the defendant's use of marijuana at the age of ten, the defendant's use of methamphetamine at the age of thirteen, and that he was taught to cook methamphetamine by his stepfather. The jury's reaction to this testimony was emotional, with evidence of some jurors crying. Trial counsel chose not to call Dr. Walz to avoid a sterile, non-emotional clinical explanation. Also, Dr. Walz's testimony that the defendant was not a pedophile could have resulted in conflicting testimony from Dr. Christiansen that the defendant was a pedophile. This court finds this decision was a general trial strategy decision made outside the purview of Rule 37.1.

This court finds capital counsel conducted salient facts through investigation of defendant's social history, medical history, educational records, and DHS records. Also, these records were

provided to mental health experts to assist those experts of these salient facts to aid in their diagnosis. Dr. Christiansen noted relatively more records were available in this case than for a lot of other cases. Specifically, capital counsel provided DHS records from Jana Davis, a DHS agent from California; Joy Morris, a DHS agent from Arkansas; and Sheila Trickle, a SPED teacher. Additionally, this court finds defendant suffered no actual prejudice and that all jurors agreed with the following mitigators: number fourteen, Zachary Holly had an abusive home and his stepfather physically abused Ginger Simmons; twenty-one, Butch McCutcheon, his stepfather, taught Zach Holly to inject meth; number two, Butch McCutcheon injected Zach Holly in the neck with methamphetamine; number twenty-three, that Butch McCutcheon taught Zach Holly to cook meth; and number twenty-nine, Zach Holly had a learning disability.

This court finds that defendant failed to meet its burden, that defendant's petition for Rule 37 on this issue is denied.

II. WHETHER TRIAL COUNSEL WAS INEFFECTIVE BY NOT SEEKING TO EXCLUDE SIGNIFICANT PIECES OF AGGRAVATING EVIDENCE THAT WERE INADMISSIBLE.

Trial counsel was not ineffective by not seeking to exclude significant pieces of aggravating evidence that were inadmissible. It is clear in Arkansas case law that a petitioner is prohibited from raising an issue on this Rule 37 petition if it could have been raised on appeal. Also, the petition must show the motion or argument would have been meritorious. Stating the failure to make an argument that is meritorious is not ineffective counsel. *State v. Rainier*, 2014 Ark. 306, at 8, 440 S.W.3d 315, 320.

Here, Dr. Christiansen and Dr. Walz found defendant was fit to proceed and criminally responsible. It would have been meritless to argue at trial that defendant lacked criminal responsibility due to mental disease or defect with these already being determined. Here, petitioner

claims that Detective Stigall testified as to various forms of mental illness. This court has discretion as to evidence admissibility and to the weight to be given. Stigall testified he hadn't developed any concerns as to defendant's demeanor. Whether capital counsel should have objected to the content of this testimony is up to the tactical consideration of capital counsel. *Lemaster v. State* 2015 Ark. 167, at 4, 459 S.W.3d 802, 805. The petition also claims that Dr. Moffett's testimony that defendant named other suspects is inadmissible. Moffett found some of defendant's statements to be true and others not to be true. The court finds this to be a tactical decision under *Lemaster*.

Next, the petition claims the emotional statements and prior bad acts should have been excluded, inadmissibility and weight to be given at the discretion of this court. Also, testimony of pre-teen and prepubescent girls would have been available or could quite possibly be admitted through the pedophile exception. The issue of whether Zach Holly re-initiated the interview in November 2023 was already decided in the motion to suppress by this court. Therefore, this claim, too, is subsequently denied.

III. WHETHER TRIAL COUNSEL WRONGLY CONCEDED HOLLY'S GUILT WITHOUT HIS KNOWLEDGE OR CONSENT.

Zach Holly proffered a guilty plea. Also, evidence against Zach Holly was overwhelming. Zach Holly fully confessed to the murder and rape of Jersey Bridgeman. His DNA was found inside Jersey Bridgeman's vagina. He was a caretaker of Jersey Bridgeman. He had a relationship with Jersey Bridgeman and their family. This court finds it is a trial strategy decision to challenge the guilt of a defendant in a capital murder with such overwhelming evidence that could have a direct impact, letting the jury consider the acceptance of responsibility to avoid an execution. *Florida v. Nixon*, 543 U.S. 175, 191 (2004). For these reasons, petitioner's claim is denied.

IV. WHETHER TRIAL COUNSEL FAILED TO ADEQUATLEY QUESTION WITNESSES DURING BOTH PHASES OF TRIAL BY ELICITING HARMFUL INFORMATION.

Defendant claims that trial counsel failed to adequately question witnesses during both phases of trial by eliciting harmful information. Detective Stigall testified that Zach Holly faked tears, and testimony elicited from Detective Moffett was that the crime was Zach Holly's fault. School records show Zach Holly's lack of effort, and a DHS worker stated Holly as a child tried to order females into his trailer. Capital counsel's decisions as to this claim were reasonable, professional in judgment, and there is no deficiency or actual prejudice found to the defendant on these matters. This claim is also denied.

V. WHETHER TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO OBJECT TO THE GENERAL VERDICT OF CAPTIAL MURDER WITHOUT SPECIFYING WHICH OF FOUR TYPES OF CAPITAL MURDER WAS COMMITTED.

Trial counsel was not ineffective by failing to object to the general verdict of capital murder without specifying which of four types of capital murder was committed. Non-model jury instructions are only given if trial court found the model instruction did not accurately state the law. *Perry v. State*, 2014 Ark. 534, at 7, 453 S.W.3d 650, 654; *Torres v. State*, 2019 Ark. 101, at 1, 571 S.W.3d 456, 456. This court finds the general verdict form to be a correct statement of law. Any objections to that would have been overruled. Therefore, claim five is denied.

VI. WHETHER TRIAL COUNSEL WAS INEFFECTIVE WHEN IT FAILED TO MONITOR JURORS' ATTENTIVENESS AND TO OBJECT WHEN JURORS EXPRESSIED WEARINESS DURING THE TRIAL.

The sixth claim is that trial counsel was ineffective because it failed to monitor juror's attentiveness and failed to object when jurors expressed weariness during trial. There's no indication that any jurors were sleeping or unable to observe the entire trial in this matter. The Court was attentive and mindful of jurors' weariness. The court allowed jurors to stretch and stand. The court took appropriate breaks along with hour and a half lunches. There's no indication

that these jurors were weary or unable to hear the testimony. For these reasons, counsel was not deficient, and there was no actual prejudice. Therefore, claim six is denied.

VII. WHETHER TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT ZACH HOLLY'S LACK OF SIGNIFICANT CRIMINAL HISTORY TO THE JURY DURING PENALTY EFFECTIVLY DENYING THE STATUTORY MITIGATOR.

Claim seven is that trial counsel was ineffective for failing to present Zach Holly's lack of significant criminal history to the jury during the penalty phase, denying the statutory mitigator. The statutory mitigator states the defendant has no significant history of prior criminal activity. Neither party introduced any evidence of the defendant's criminal history. If the defendant had significant criminal history, it is reasonable to believe the State would have presented it. However, to have this mitigator would have been inconsistent with the trial strategy that was already presented because the defense had already presented testimony that Zach Holly was using marijuana at age 10, which is a criminal activity, that Zach Holly was injecting methamphetamine at age 13, and that he was cooking methamphetamine. Here defendant presented 47 mitigators. All jurors found 30 mitigators probably existed. One or more found 10 additional mitigators existed. Defendant failed to meet his burden that one additional mitigator of prior criminal activity would have altered the outcome of the trial. For this reason, the claim is denied.

VIII. WHETHER TRIAL COUNSEL WAS INFFECTIVE BY FAILING TO OBJECT TO GENERAL VERDICT OF CAPITAL MURDER WITHOUT SPECIFYING WHICH OF FOUR TYPES OF CAPITAL MURDER WAS COMMITTED.

Trial counsel was not ineffective when it objected to a general verdict form and aggravated circumstances, whether capital murder was committed in an especially cruel and depraved manner without specifying whether any of the four definitions of that term were found unanimously or proven beyond a reasonable doubt. The Arkansas Supreme Court has held that the exact language

of the especially cruel and depraved manner aggravator is not vague or overbroad. *Johnson v. State*, 326 Ark. 430, 448 (1996); *Greene v. State*, 317 Ark. 350, 360 (1994). This court would have found that the general verdict form correctly reflected the law, and any objection that would have been denied. For these reasons the court finds trial counsel was not deficient and that the defendant was not actually prejudiced. Therefore, the claim is denied.

IX. WHETHER TRIAL COUNSEL CONDUCTED AN INEFFECTIVE JURY SELECTION PROCESS

It was found that all jurors are presumed to be unbiased and qualified. Defendant claims that juror Ragland was biased. Ragland stated under oath that she would consider life. The defendant failed to overcome the presumption that Ragland is fair, unbiased, and qualified. As to defendant's claim that multiple jurors were not life-qualified, specifically as to juror Austin, she was never asked whether her stance on life versus the death penalty. Here, trial counsel specifically defined capital murder, and the prosecuting attorney explained criteria the jurors would have to weigh when choosing life versus death. The State also life-qualified multiple jurors in this case. As to juror Bauer, he was asked if he could have an equal eye on whether death penalty or life without parole, and he stated, "I think so." R. 932. This court finds that Bauer was unbiased and qualified. The claim also states that Brothers strongly favored the death penalty, but juror Bauer said he could be open to either sentence. He stated one of the factors would have been whether defendant had a horrible childhood, which of course were the facts in this particular case. This court finds that defendants failed to overcome the presumption that Brothers is unbiased and is qualified. Therefore, the claim is denied.

CONCLUSION

This court finds that the defendant has failed to meet its burden as to whether there is deficient conduct or actual prejudice with all the cumulative evidence. For the reasons stated above, Petitioner's amended petition for post-conviction relief is hereby denied.

IT IS SO ORDERED.

Brad Karren

BRAD KARREN, Circuit Judge

Date: 7-9-24

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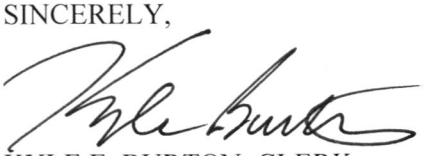
JUNE 4, 2026

RE: SUPREME COURT CASE NO. CR-24-703
ZACHARY HOLLY V. STATE OF ARKANSAS

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE ABOVE STYLED CASE:

"APPELLANT'S PETITION FOR REHEARING IS DENIED. SPECIAL JUSTICE TIFFANY BROWN AGREES. APPELLANT'S MOTION FOR LEAVE TO FILE A REPLY IN SUPPORT OF PETITION FOR REHEARING IS DENIED. HUDSON, J., AND SPECIAL JUSTICE TIFFANY BROWN WOULD GRANT. WEBB AND BRONNI, JJ., NOT PARTICIPATING."

SINCERELY,



KYLE E. BURTON, CLERK

CC: LEE D. SHORT
WILLIAM O. "BILL" JAMES, JR.
BROOKE JACKSON GASAWAY AND WALKER K. HAWKINS, ASSISTANT ATTORNEYS GENERAL
BENTON COUNTY CIRCUIT COURT
(CASE NO. 04CR-13-1)

3789

Fayetteville Public Schools
Fayetteville, AR 72701

PSYCHOEDUCATIONAL ASSESSMENT

Name: Zach Holly
Grade: 6th
School: Jefferson
Date of Birth: 10/8/84
Age: 13-1

Parent: Ginger Blackman
Address: Salvation Army Shelter
Phone: N/A
Date of Evaluation: 11/10/97
Examiner: Sarah Peterson

I. REASON FOR REFERRAL

Zach was referred by his teacher, Mrs. Cowan because Zach is experiencing limited academic success. Mrs. Cowan raised her concerns about Zach's language expression and reading skills.

II. BACKGROUND INFORMATION

A. Social History

Background information was obtained from a review of Zach's records and a brief interview with Ms. Blackman at the referral conference. Zach lives with his mother, Ginger Blackman, who is a 36 year-old cab driver. At the time of the referral, Zach and his mother were living at the Salvation Army Shelter. The family has moved often, and Ms. Blackman indicated that about three years ago, she and Zach's stepfather split up. During the testing session, Zach mentioned that his step-father and his half-siblings (or step-siblings) lived in Lowell, AR. He said that his step-dad used to beat him. He also talked about a brother that he has who lives in California.

B. Medical History

Zach was reportedly born after a normal full-term pregnancy. There were no complications during delivery and Zach weighed 5 pounds and 13 ounces. He was jaundiced during the first few days of life, but experienced no other problems. Zach's developmental history was said to be within normal limits. In the past, Zach had to have emergency surgery to relieve internal bleeding. No other details were given about this incident. At home, Zach is described as being overactive and having occasional temper tantrums.

Zach passed hearing and vision screenings on 10/2/97 and 10/3/97, respectively.

C. School History

Zach attended kindergarten through fourth grades at Hort Elementary School in Bakersfield, CA. According to Ms. Blackman, Zach repeated kindergarten and second grades. For fifth grade, Zach attended Jefferson Elementary in Bakersfield. In fifth grade, Zach received D's and F's and had poor attendance and many tardies. Zach spent the first part of sixth grade at Old High Middle School in Bentonville, AR, where his attendance

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was minimal. He currently attends Jefferson Elementary in Fayetteville, AR. Since he has been at Jefferson, he has missed 7 1/2 days of school and Zach is tardy nearly everyday. Zach has demonstrated consistent difficulties in reading and language arts. Zach reportedly enjoys computers. While in Bakersfield, Zach received special tutoring in reading. He also received counseling for 30 minutes per week. His relationships with his classmates and teachers are good. Zach is very enthusiastic about sports. He enjoys collecting baseball and football cards and other sports memorabilia.

III. BEHAVIORAL OBSERVATIONS

A. Classroom Observation

Zach was observed by Brian Manire, school counselor, on Tuesday, 11/25/97. At this time, the class was filling out progress reports. Zach did not do his. Zach was cued twice by his teacher, Ms. Cowan, before he began the report. Zach finished part of the report and then listened quietly while the directions were given to the class. Zach then left the room to sharpen his pencil and returned within the allotted time. When he returned, he did not follow the directions but instead began talking to a 9th grade Woodland student whom he asked for help. Zach was given a different assignment from the rest of the class. The class was working on a reading quiz, but Zach was instructed to write in his journal and use five new words. Zach enlisted the help of two Junior High girls and the teacher gave him more directions. Zach was easily distracted by the other activities in the classroom. With the help of the Junior High students, Zach thought outloud about what to write, but he never wrote a word down. The older student tried to help Zach and he cooperated slowly. Zach took a long time to find the words in his book that he was supposed to find. The Junior High girl instructed Zach to get the dictionary, which he did, but he did not use it. The Junior High girl looked up the word and Zach paid attention to her as she explained it to him. The older student tried to get Zach to think of a sentence, but by the end of the 30 minutes, Zach did not write one word.

B. Testing Observations

Zach came to the testing room with a somewhat sluggish attitude and appeared to be sad. He had messy hair and bad breath, which made it seem as if he had just crawled out of bed. He also yawned constantly through out the testing. When asked when he had gone to bed, he said that it was early, but he kept waking up in the night. As the examiner and Zach conversed, Zach began to warm up and talk openly. Zach constantly talked about his girlfriend who lived in another town. He also told many stories that seemed to be embellished or made up. At one point, Zach asked the examiner if she believed in aliens. He said that he did and that he had been chased by some. The aliens almost abducted him, but he said that he outran them. Zach also talked about an ex-girlfriend and that they had wanted to have a kid together. He stated that his teacher helped him through that time and he made the decision not to have a kid. When actually working on the testing tasks, Zach was very focused and worked hard. He seemed-to try his best on most things, but on a couple of tasks where Zach appeared to be frustrated, he wanted to give up easily. When testing the limits, Zach was coaxed and encouraged to go on with his tasks. When encouraged, Zach did keep trying as he seemed to want to please the examiner. The following test results are felt to be a valid measure of Zach's abilities due to his cooperative attitude and his effort.

IV. TESTS ADMINISTERED

A. Wechsler Intelligence Scale for Children - Third Edition (WISC-III)

Verbal Subtests		Performance Subtests	
Information	6	Picture Completion	6
Similarities	3	Coding	7
Arithmetic	6	Picture Arrangement	8
Vocabulary	5	Block Design	6
Comprehension	6	Object Assembly	9
(Digit Span)	5	(Symbol Search)	

IQ's	
Verbal IQ	73
Performance IQ	82
Full Scale IQ	76

B. Wechsler Individual Achievement Test (WIAT)

Reading Composite	62
Basic Reading	64
Reading Comprehension	79
Mathematics Composite	66
Mathematics Reasoning	82
Numerical Operations	60
Writing Composite	54
Spelling	61
Written Expression	65

C. Woodcock Reading Mastery Test - Revised

Word Identification	48	Passage Comprehension	63
Word Attack	52	Basic Skills	47
Word Comprehension	59	Reading Comprehension	59
Total Reading	50		

D. Key Math - Revised

Basic Concepts	95	Operations	56
Applications	83	Total Math	76

E. Test of Written Spelling - Second Edition

Predictable	58	Unpredictable	57
Total Words	57		

F. Bender Gestalt Visual Motor Test

Errors = 7
Age score = 6-6 to 6-11

G. Social Skills Rating System - Teacher Form - Elementary Level

Social Skills	61
Problem Behaviors	123
Academic Competence	70

H. Clinical Evaluation of Language Fundamentals - Third Edition (CELF-3)

V. EVALUATION DATA

A. Intellectual

On the Wechsler Intelligence Scale for Children - Third Edition (WISC-III), Zach received a Full Scale IQ of 76 which places him overall in the borderline range of intelligence. Chances are 95 out of 100 that his true Full Scale IQ would range between 71 - 83. Within the Verbal Scale, Zach displayed weaknesses in verbal reasoning and verbal conceptualization. He also had difficulty handling abstract concepts. Zach's fund of information learned from school and life experiences falls in the low average range. Zach's acquired knowledge and culture-loaded knowledge are also in the low average range. Within the Performance Scale, Zach displayed average nonverbal reasoning and visual sequencing abilities. Zach seems to be able to handle information better when it is presented visually rather than orally. Zach's nonverbal reasoning skills are stronger than his verbal reasoning skills as well.

B. Academic

On the Wechsler Individual Achievement Test (WIAT), Zach's achievement ranged from low average to deficient. In the areas of Reading, Math, and Writing, Zach is achieving way below his current sixth grade level and according to the regression analysis, all three areas differ significantly from his measured ability level. In the area of Reading, Zach showed very weak basic reading skills. In some of the errors that he made, it appears as though he visually perceived the letters incorrectly and therefore said the wrong word. For example, Zach said "when" for "then" and "show" for "slow". In the area of reading comprehension, Zach did a good job a utilizing context clues to figure out the meaning of the passages. Although he could not read many words, he seemed to understand what message was being conveyed. In the area of Math, Zach did better on math reasoning tasks than basic operations. Zach tended to make some simple errors and confuse addition with subtraction. In the area of Writing, Zach displayed deficient spelling and written expression skills. Overall, this is his weakest area. Zach appeared to try and use his phonics skills, but they are weak. When given a prompt to write about, Zach showed weak idea development and organization. He had very poor sentence structure and incorrect use of punctuation and capitalization. He also used poor grammar.

In order to substantiate Zach's performance on the WIAT, the following tests were given: Woodcock Reading Mastery Test, Key Math, and the TWS-2. On the Woodcock Reading Mastery Test, Zach's achievement fell in the deficient range. Zach displayed weak phonic skills and identification of sight words. Zach's strongest area was in passage comprehension, which suggests that even though he is not able to correctly read every word, he is able to use context clues and personal experiences to determine the written message. This is consistent with the WIAT. His reading level fell on a first to beginning second grade level. On the Key Math, Zach's achievement varied. When math skills were broken done specifically, Zach demonstrated a strong knowledge of basic concepts, such as time and money. Zach was very weak in performing basic operations. This is also consistent with the WIAT results. On the TWS-2, Zach once again displayed deficient spelling skills.

C. Perceptual

On the Bender, Zach made 7 errors which gives him an age score of 6-6 to 6-11 years. This suggests that Zach's visual-motor and visual-perceptual skills are extremely weak. Zach tended to rotate shapes and draw incorrect angels. This may affect Zach's writing skills in that he may tend to be slow when he is writing information. Zach may also have some difficulty copying information from the board or from a book.

D. Social-Emotional Adaptive Behavior

Zach's classroom behavior was assessed by Ms. Cowan, using the Social Skills Rating System. In the area of Social Skills, Zach exhibits some weaknesses. Zach has some trouble controlling his temper with adults and peers. He has difficulty making friends and initiating conversations with his peers. Zach has problems producing correct school work and ignoring classroom distractions, which may be because Zach is so far behind his grade level and has difficulty understanding the classroom content . In the area of Problem Behaviors, Zach exhibits many deficits. Zach seems to have a low self-esteem. He also appears lonely and often acts sad or depressed. He sometimes fights and argues with others and seems to be anxious when in a group of peers. In the area of Academic Competence, Zach is in the lowest 10% of his class for his overall academic performance. Zach seems to be struggling in all areas and may lack motivation as well as parental encouragement. Overall, his classroom behaviors is like that of many others in the classroom.

E. Language

Zach's language abilities were screened using the CELF-3 screener. Zach received a score of 27, which surpassed the criterion score of 26 set for his age. This suggests that Zach has adequate skills to effectively communicate with others.

VI. SUMMARY

Zach is a 13 year-old 6th grader who is way below his current grade level in most academic areas. Zach also has extremely weak visual-perceptual skills which may affect his reading and writing ability. Zach has been enrolled in several different schools and until this year, he has had poor attendance. Zach's attendance problems may have hindered him from

learning many basic skills that he needs to learn from and build upon. Zach seems very eager to please adults and when encouraged, Zach tends to work hard. Zach seems to be craving attention and approval from others by telling stories and embellishing upon them. Zach seems to have trouble staying focused in the classroom, which may because the information is too difficult for him to understand. Zach's problem behaviors may also stem from Zach's frustration with school. Zach needs to experience success in school to boost his self-esteem and make school a positive place to be.

VII. RECOMMENDATIONS

1. Results of this evaluation should be combined with other relevant information at the evaluation conference to determine eligibility for special education services.

2. Zach is extremely far behind in reading and basically reads at a beginning second grade level. Zach needs extensive help in reading to strengthen his reading ability.

3. Zach's spelling and math are also weak and fall below the sixth grade level. Zach needs special tutoring in these areas as well.

4. Zach seems to need some guidance in school and in his personal life. If at all possible, it would greatly benefit Zach to become involved in a Big Brothers Program or something similar. This may help Zach to become motivated and boost his self-esteem if he has a special friend who cares about him.

5. Zach also seems to lack appropriate social skills and social knowledge. Zach may benefit from a social skills program or a Circle of Friends group at school. If this is not available, counseling with the school counselor would be appropriate.

6. Zach's poor visual-motor visual-perceptual skills need to be accommodated for. Zach may need alternative ways to express himself, since writing is difficult for him. It may be helpful for Zach to tape-record stories and other written materials and then to dictate the information later.

7. Because Zach's visual-motor/visual-perceptual skills are deficient, if there is a lot of information that is to be copied from the board, it would help Zach if he was given an outline of the information or teacher notes. This would also reduce Zach's chances of copying information incorrectly. If it is necessary for Zach to copy the information himself, then make sure that Zach is given enough time to do so.

8. To encourage Zach to keep coming to school and to enjoy school, as well as boost Zach's self-esteem, provide as many success for him as possible. Compliment Zach when he has tried his best and also when he does a good job on his school work and behavior.

Sarah J. Peterson

Sarah J. Peterson, Ed.S.
School Psychology Specialist

Arkansas Department of Human Services
Division of Mental Health Services
Arkansas State Hospital

Forensic Report

IDENTIFYING INFORMATION:

DEFENDANT: HOLLY, ZACHARY
DATE OF BIRTH: 10/08/1984 (28 years-old)
DOCKET NUMBER AND CHARGE(S): CR-2013-0001-2 (Capital Murder, Kidnapping, Rape, Residential Burglary)
DATE OF REFERRAL: 02/21/13
DATES OF EXAMINATION: 04/09/13
PLACE OF EXAMINATION: Arkansas State Hospital
DATE REPORT SUBMITTED: 05/02/13

REFERRED BY: Circuit Court of Benton County (Division Two), Arkansas

REFFERAL ISSUES: Pursuant to ACA 5-2-305, Mr. Holly was referred for an evaluation of his current mental status, his present ability to rationally assist in his own defense, and his factual and rational understanding of the proceedings against him. The court also inquired, separately, as to whether he may have been suffering from a mental disease or defect at the time of the alleged offenses that rendered him incapable of appreciating the criminality of his conduct or of conforming his conduct to the requirements of the law. Additionally, the court ordered an opinion as to whether Mr. Holly was able to form the culpable mental state that is required to establish an element of the offenses charged.

SUMMARY OF OPINIONS:

1) At the time of this examination, Mr. Holly did not manifest symptoms of mental disease or defect. His diagnoses are as follows:

Axis I:	Depressive Disorder, Not Otherwise Specified	311.00
	Reading Disorder (provisional)	315.00
	Amphetamine Dependence, Sustained Full Remission	304.40
	Cannabis Dependence, Early Full Remission	304.30
Axis II:	Personality Disorder, Not Otherwise Specified With Cluster B Traits	301.90

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2) It is my opinion that Mr. Holly possesses an adequate rational and factual understanding of the nature of the charges and proceedings against him, and is capable of assisting in his own defense.

3) It is my opinion that Mr. Holly did not suffer from a mental disease or mental defect at the time of the alleged offenses. His diagnoses are as follows:

Axis I: Depressive Disorder, Not Otherwise Specified	311.00
Reading Disorder (provisional)	315.00
Amphetamine Dependence, Early Full Remission	304.40
Cannabis Dependence, Early Full Remission	304.30
Axis II: Personality Disorder, Not Otherwise Specified With Cluster B Traits	301.90

4) It is my opinion that Mr. Holly, at the time of the alleged offenses, possessed the capacity to appreciate the illegality of his conduct.

5) It is my opinion that Mr. Holly, at the time of the alleged offenses, possessed the capacity to conform his behavior to the requirements of the law.

6) It is my opinion that Mr. Holly, at the time of the alleged offense, possessed the capacity to knowingly and purposefully engage in the alleged behaviors and was able to form the culpable mental state that is required to establish an element of the offenses charged.

NATURE OF THE EXAMINATION:

SOURCES OF INFORMATION:

1. Face-to-face interview of Mr. Zachary Holly by Ashley Christiansen, Ph.D., on 04/09/13 at the Arkansas State Hospital for a total of approximately six hours.

2. Administration of the following psychometric tests on 04/09/13:
   a. Mini-Mental State Examination- Second Edition (MMSE-2)
   b. Miller Forensic Assessment of Symptoms- Test (M-FAST)
   c. Test of Memory Malingering (TOMM)
   d. Validity Indicator Profile (VIP)
   e. Wechsler Adult Intelligence Scale- Fourth Edition (WAIS-IV)
   f. Personality Assessment Inventory (PAI)
   g. Evaluation of Competency to Stand Trial-Revised (ECST-R)

3. The following records were available for review:
   a. Legal File for Mr. Holly

i. Order for Mental Health Evaluation of Defendant, dated 02/21/13
ii. DVD including:
    1. Criminal Information, filed 01/02/13
    2. Affidavit of Probable Cause
    3. Bentonville Police Dept. Case #2012-31859, Including Narrative Report
    4. Arkansas State Crime Lab Medical Examiner Report #1199-12
    5. Law Enforcement Interview Transcripts
    6. Prosecutor Subpoena Interview Transcripts
    7. Interview Transcripts from Interviews Conducted with Huntsville High School Teachers (9)
    8. DHS Reports on Juvenile, Zachary Holly and Adult, Zachary Holly
    9. Prior Law Enforcement Incident Reports, Zachary Holly
    10. School Records, Zachary Holly
    11. Medical Records from Northwest Medical Center, Zachary Holly
    12. AR Driver Control Records, Zachary Holly
    13. Bentonville Library Records, Zachary Holly
    14. Polygraph Report from Benton County Sheriff's Office, Zachary Holly

b. Collateral Interviews
    i. Defense Attorney Kent McLemore, 04/24/13
    ii. Prosecuting Attorney Van Stone, 04/24/13
    iii. Detective Kris Moffit, 04/24/13
    iv. Ms. Ginger Simmons, 04/24/13

DISCLOSURE OF PURPOSE AND THE VOLUNTARY, NON-CONFIDENTIAL NATURE OF THE EXAMINATION:

At the outset of the examination, Mr. Holly was informed of the nature and purpose of the evaluation, that his participation in the evaluation was voluntary, that the information he gave the evaluator was not confidential, that a report of the evaluation would be made to the Court and sent to his attorney and the prosecutor, and that the evaluator's testimony may be required in any court proceedings in his case. He was additionally informed that he did not have to answer questions or make any self-incriminatory statements. He indicated that he understood and was willing to be interviewed.

HISTORY:

SOCIAL HISTORY:

Mr. Holly reported he was born in Rogers, AR and raised "all over." Specifically, he indicated he lived in Bakersfield, CA from the age of ten months to approximately age 13 and then returned to Northwest Arkansas where he continued to live until his arrest for the present charges. Mr. Holly stated he was

raised by his mother and two different stepfathers. He reportedly has two brothers and indicated he is the middle child. He denied having a relationship with his biological father, stating he met him only once when he was roughly 13 years of age. He reported his biological father passed away when Mr. Holly was approximately 17 years of age. Mr. Holly indicated his mother was married to Joe Blackman until Mr. Holly was approximately eight years of age and stated he views Mr. Blackman as a father. He indicated his mother married Butch McCutcheon when Mr. Holly was approximately 13 years of age and estimated this marriage ended when he was approximately age 17.

Mr. Holly described his childhood and family life as "constantly moving" and wrought with consistent drug use by his caretakers. He also indicated he and his mother were homeless and did not have adequate food, at times, after they returned to Arkansas from California. He described his mother as "distant" and "methed out" and recalled having very few rules or expectations. He stated his mother and both of his stepfathers used methamphetamine and marijuana on a consistent basis; and indicated his stepfathers also consumed alcohol regularly, at times to excess. He endorsed a history of physical abuse, which he indicated generally occurred after Mr. Blackman became drunk. He also reported both Mr. Blackman and Mr. McCutcheon were violent towards his mother. Furthermore, Mr. Holly endorsed a history of sexual abuse which occurred at approximately eight or nine years of age. He indicated he was unsure of the perpetrator's identity but indicated he reported the abuse to his mother and that she subsequently filed a police report. Collateral records reflect Mr. Holly also reported being sexually abused by his older brother during an interview with the police but he did not report this abuse during the present evaluation.

Mr. Holly described himself as a "loner" and a "follower." He indicated he and his older brother engaged in impulsive and dangerous behavior, but claimed these activities were rarely his idea. For instance, he described jumping off of a roof but stated he was simply going along with others. He also reported stealing small items and vandalizing property with his older brother.

Mr. Holly described having a close and positive relationship with his mother currently and indicated he is also close to his older brother. He noted he would likely have a closer relationship with his younger brother if his brother did not live in California. Mr. Holly indicated his brother lived with him prior to returning to California in November 2012 and stated they got along well; however, Mr. Holly stated he has not heard from his brother since the latter moved from Arkansas. Mr. Holly described his mother as helpful and supportive, and indicated she "looks out for [his] best interest." He reportedly designated his mother as his Power of Attorney after his arrest.

Mr. Holly reported experiencing two significant romantic relationships in the past. He recalled living with a girlfriend for approximately six months at the age of 24 and indicated he has been in a relationship with his estranged wife for approximately three years. He described his wife as his junior high and high

school sweetheart and repeatedly stated she was his true love. When asked to describe his wife he stated she was "sweet in high school, but now she is strict." When asked to elaborate, he indicated she "kept [him] in line." He further stated she "allowed" him to be a father to her son and expressed his love for his wife He also indicated she was "mean" and "bossy" but denied arguments or fights within the relationship. He denied the presence of domestic violence in either of his significant romantic relationships but acknowledged being unfaithful to his wife shortly before his arrest for the present charges. He acknowledged he and his wife are currently separated due to the present charges and noted she has filed a no contact order against him. He expressed disappointment that his wife did not "stand behind" him like a "wife is supposed to." Nevertheless, he verbalized hope that he and his wife may reconcile in the future.

Regarding children, Mr. Holly denied having fathered any biological children. However, he indicated he views his estranged wife's son as his child and also viewed Jersey and Leah Bridgeman as his daughters. He noted he was the primary father-figure in his stepson's life for approximately three years and was a primary caretaker to Jersey and Leah Bridgeman for the year prior to his arrest. Mr. Holly expressed hope that he may have contact with his stepson again in the future.

Mr. Holly's account of his social background was consistent with his mother, Ginger Simmons', report. Ms. Simmons acknowledged being addicted to drugs for the majority of Mr. Holly's childhood and indicated her addiction was the impetus behind their frequent relocations. She also described significant physical violence and mental abuse in the home. Ms. Simmons described her relationship with Mr. Holly as "very close" and indicated she "mollycoddled" him. Specifically, she stated she assisted him in completing multiple tasks such as completing forms and applications, paying bills, and going grocery shopping. Additionally, she currently functions as his Power of Attorney.

EDUCATIONAL HISTORY:

Mr. Holly reported he enjoyed school until the second grade when he had a teacher who did not like him. He indicated this teacher would unfairly punish him and generally treated him poorly. Mr. Holly described apprising his parents of the situation, but indicated no one believed him until his brother witnessed him standing in the hallway and confirmed his report. Mr. Holly indicated after his experience with this teacher he "figured if one teacher would do that, then more will," and stopped putting forth effort into in his education. He explained he disliked school because he had to get up early; his peers tried to "start trouble;" and, largely, because he found school "boring." He described missing school frequently and reportedly slept the majority of time he attended class.

Furthermore, Mr. Holly endorsed a history of special education placement beginning in elementary school and indicated he struggled with "attention, reading, writing, and spelling." He indicated he was diagnosed with a Learning Disorder but denied having been diagnosed with Mental Retardation. He recalled

earning C's and D's until he reached the tenth grade in which he earned "straight F's." He attributed his poor performance to his lack of care and concern about school and noted he was about to turn 18 and was planning on dropping out. He estimated he missed approximately 25 percent of school days and recalled partying and "[walking] around town" instead of attending school. He recalled the last two schools he attended being Rogers High School and Huntsville High School. As mentioned above, Mr. Holly stopped attending school in the tenth grade and has not yet earned his GED. He stated he intended to earn his GED in the past but attributed his failure to do so to methamphetamine dependence. He indicated after he earns his GED he would like to become a video-game tester.

Regarding behavioral problems, Mr. Holly indicated he was in trouble on a nearly daily basis for issues including back-talking, fighting, refusing to work, excessive tardiness, and absences. He also reported fighting approximately every-other-day in high school. When asked about the impetus of the altercations, he indicated he fought when others "talked crap" or when he simply "woke up on the wrong side of the bed." He endorsed being suspending frequently and recalled being expelled once at the age of 13 after he displayed white supremacist material at school. He indicated his behavioral difficulties increased in severity in the ninth grade and continued until he stopped attending school the next year.

Academic records from were provided within Mr. Holly's legal file. Records indicate Mr. Holly was educated in the Bakersfield, CA school district until the sixth grade. A standardized test record dated April 1992 indicated he attended Rogers Public Schools for at least part of first grade as well, however. The results of this test indicate Mr. Holly performed in the average range in verbal comprehension, verbal reasoning, and pictorial reasoning; and in the low range in figural reasoning. Records from Siloam Springs Middle School which Mr. Holly attended for the seventh grade during the 1998/1999 school year indicate Mr. Holly was absent frequently, including 40.5 absences between December 1998 and May 1999. Additionally, disciplinary records reflect five incident reports for inappropriate behavior including using profanity, disregarding instructions, picking on peers, hitting peers, throwing spit wads, and stealing between August 1998 and June 1999. Academically, records reflect Mr. Holly was enrolled in resource classes and earned grades including C's, D's, and F's. Records from the following school year indicate that he attended Siloam Springs Middle School until 02/24/00. At the time he transferred to the Fayetteville School System due to his family's relocation; he was earning grades ranging from A to D in his courses. Records indicate he was absent 44 days during that school year. He then reportedly transferred to Woodland Junior High School in the Fayetteville School District. However, records indicate he only attended this school for approximately one month.

Records from Huntsville High School indicate Mr. Holly enrolled after completing eighth grade, proceeded to complete the ninth grade, and then withdrew from classes on 01/15/02. He earned semester grades ranging from B to F. Records from Huntsville High School include a report of Mr. Holly's performance on a

standardized achievement test which was administered when Mr. Holly was in the tenth grade. Mr. Holly performed in the low to average range across subjects. Records from Rogers High School indicate Mr. Holly enrolled in Rogers High School Sophomore Campus on 03/11/02 and stopped attending high school on 09/11/2002. His transcript reflects enrollment in resource classes for English and Mathematics but it appears he was educated in mainstream classrooms for Health, Biology, World History, US History, and Science classes. He earned semester grades ranging from B to F.

Disciplinary records reflect continuing behavioral difficulty throughout high school for Mr. Holly. Records indicate he refused to work, broke classroom rules, had excessive tardies and unexcused absences, refused to follow instructions, lied, and possessed tobacco on school grounds. He received disciplinary actions ranging from warnings to suspensions. Prosecutors interviewed several former teachers of Mr. Holly and transcripts of the interviews were provided during the present evaluation. His teachers described him as having a "chip on his shoulder," "bitter," lazy, unwilling to listen, and a discipline problem when asked to do work. His learning difficulties were also confirmed by his instructors, although his difficulties were generally described as being confounded by his lack of interest and effort. One educator stated he did not believe Mr. Holly would have a problem functioning in life and multiple teachers stated they believed Mr. Holly would be able to maintain employment. Although his teachers described learning difficulties, Mr. Holly's teachers did not describe him as mentally retarded or express concern that his learning difficulties were severe enough to warrant such a diagnosis. Mr. Holly was also described as clean and reasonably well-groomed.

Ms. Simmons confirmed Mr. Holly's report of a negative educational experience in second grade. She stated after this experience Mr. Holly did not enjoy or exert effort in academic tasks. She indicated Mr. Holly entered special education in elementary school and also received tutoring. Although school systems recommended educational testing for Mr. Holly, Ms. Simmons reported he never underwent an educational evaluation due to the family's frequent moves. Ms. Simmons indicated Mr. Holly's primary area of academic difficulty was in reading, and stated he continues to struggle with reading. She illustrated this point by stating she would not eat anything Mr. Holly had cooked if he was required to read directions in order to prepare the meal. However, she noted he was able to prepare some meals which do not require written instruction.

OCCUPATIONAL HISTORY:
When asked about his employment history, Mr. Holly stated he has held more jobs than he can count, most within the fast food industry. He reported his longest employment occurred from age 22 to 24 at Firehouse Subs. He recalled his briefest period of employment lasted approximately two hours, and involved his walking from the job during his first break.

When asked about his work performance, Mr. Holly indicated he is a different employee currently than he was in the past, which he attributed to his significant use of substances in the past. He described his current work performance as average and indicated he gets along well with bosses and co-workers. He acknowledged being disciplined in the past for "no-call, no-shows," being late, and coming to work under the influence of substances. He indicated his employment generally lasted approximately two to six months before he was terminated or quit. He recalled being unemployed intermittently, with the longest period of unemployment lasting approximately six months. He indicated he relied on his mother, friends, and wife to support him during periods of unemployment. Mr. Holly described getting "stoned" and "kind of looking" for jobs during periods of unemployment but said he was never highly concerned with obtaining work. He explained he does not like working and stated "lazy is the best way to put it." However, he indicated he has recently come to the realization that he needs to work in order to pay his bills. Most recently, Mr. Holly was employed at the Flying Burrito restaurant as a dishwasher for approximately six months. He indicated he "walked out" of this job shortly before his arrest due to not receiving a raise he believed he was owed. In spite of this, he identified his position at Flying Burrito as his favorite.

Employment records included in the legal file are largely consistent with Mr. Holly's report. Records reflect employment in various fast food restaurants and include descriptions of infractions including attending work while under the influence, not following rules, unexcused absences, and poor work performance. Notably, although many of Mr. Holly's applications for employment appear to have been completed with assistance, he appears to have personally written several forms or applications. Although he made frequent spelling errors, he appeared adequately able to communicate his work history or provide written statements. Moreover, Mr. Holly indicated he was able to learn job tasks adequately, including operating cash registers and following sequential instructions for completing tasks. Ms. Simmons confirmed that she frequently assisted Mr. Holly to complete employment applications and other paperwork.

RELEVANT MEDICAL HISTORY:

Mr. Holly reported losing consciousness twice as a child but was unable to provide any additional information regarding the type or severity of possible injury. He denied being hospitalized or experiencing any related difficulties after regaining consciousness. Mr. Holly also reported experiencing chest pains after smoking "spice" (i.e., synthetic cannabis) as an adult. He indicated these chest pains were ultimately diagnosed as anxiety caused by his substance use (see paragraph below). He denied a history of seizures and any additional relevant medical history.

Medical records from Northwest Medical Center, Bentonville were reviewed. Records indicated Mr. Holly presented to the emergency room complaining of shortness of breath on 03/28/12. He reported to emergency room personnel he had been at a bachelor party and smoked synthetic cannabis. Mr. Holly was

noted to be alert, oriented, able to learn, able to communicate, and able to perform activities of daily living independently. He was administered Vistaril 50mg intramuscularly to address his symptoms. He was discharged a short time later and his symptoms were noted to be present, but decreased.

Mr. Holly again presented to the emergency room on 08/02/12 complaining of dental pain. He was discharged a short time later and instructed to follow-up with a dentist of his choosing. He was provided prescriptions for Penicillin VK 250mg (two pills, four times daily) and Ketorolac 10mg (one pill every six hours, as needed for pain).

Mr. Holly presented to the emergency department on 10/17/12 complaining of chest pain. Records indicate his symptoms were similar to those described by Mr. Holly in March 2012, although he denied having used any substances at the time of the October admission. An EKG was administered and was interpreted to reflect normal functioning. He was discharged a short time later and agreed to seek outpatient follow-up care.

Ms. Simmons did not report any additional relevant medical history for Mr. Holly.

LEGAL HISTORY:
Mr. Holly reported he was arrested twice for vandalism, once at age 13 and once at age 17; and reportedly received probation for each offense. He also reported being arrested for stealing as a juvenile but was unsure of the disposition. He reported being arrested only once as an adult, and related to Public Intoxication at age 23. He reportedly spent one night in jail and paid a fine for this offense. Regarding the present alleged offenses, Mr. Holly was arrested on 11/26/12 and charged with Capital Murder, Kidnapping, Rape, and Residential Burglary. He has been detained in the Benton County Jail since that time. He expressly denied any previous arrests for sexual offenses.

Records contained in the legal file reflect additional arrests than those reported by Mr. Holly, however. Regarding juvenile offenses, Mr. Holly was charged with Sexual Misconduct on 07/19/99 after being accused of engaging in sexual acts with a twelve-year-old female. Mr. Holly was 14 years of age at the time of the charge. The disposition of this charge is unclear. Mr. Holly was charged with Residential Burglary and Criminal Mischief in the 2nd Degree on 11/26/98. Records indicate Mr. Holly pled guilty to these charges. On 01/22/99 Mr. Holly was cited for Disorderly Conduct after he assaulted another student at school. He was subsequently suspended from school. He was next cited for Juvenile Harassment on 01/30/99 after he allegedly made threats of a sexual nature to a ten year old. Records further indicate Mr. Holly was suspected of Theft of Property on 05/29/99 but the victim declined to press charges. Finally, on 10/14/99 Mr. Holly was charged with Battery in the 3rd Degree after he allegedly assaulted a student at school. The disposition of this charge is unclear.

Mr. Holly's driving record was also provided. Records indicate Mr. Holly had several driving violations which resulted in his license being suspended. He reported his license remained suspended at the time of his present evaluation.

MENTAL HEALTH TREATMENT HISTORY:

Regarding mental health treatment, Mr. Holly reported he participated in court-ordered treatment for anger management at the age of 15 or 16 as a condition of probation. He recalled attending treatment for approximately six months and stated he "learned to tell the counselor what they wanted to hear" in order to be "let off." He further stated he did not believe treatment was necessary for him but believed it was ordered because of the frequency with which he engaged in physical fighting. He denied any additional mental health treatment. As described above, Mr. Holly experienced symptoms of anxiety after smoking synthetic cannabis in March 2012 and reported similar symptoms in October 2012. During the present evaluation, he described experiencing symptoms including being "fidgety" and moving frequently. He hypothesized he used marijuana in order to address his symptoms but did not indicate his symptoms have increased in severity or frequency since his cessation of use. Mr. Holly also stated he became depressed in the past due to difficult life events including fighting with his wife and his unstable upbringing. He was unable to provide a more detailed description of specific symptoms aside from experiencing a depressed mood. Mr. Holly denied a history of suicidal or homicidal ideation, intent, or attempt. He further denied experiencing auditory or visual hallucinations or symptoms of mania (e.g., elevated mood across consecutive days).

Ms. Simmons confirmed Mr. Holly's report that he had only received treated for anger management problems as an adolescent. She also described intermittent periods of depression for Mr. Holly and noted depression runs in her family. When asked to describe Mr. Holly's presentation when depressed, Ms. Simmons stated, "He just isn't his happy go-lucky self." She was unable to provide any further description of symptoms or observable functional impairment (e.g., appetite changes). Ms. Simmons opined that Mr. Holly's depressive symptoms began during adolescence and continue to the present time. She indicated she has noticed his depressive symptoms persist for approximately three to four days at a time. Since his arrest for the present charges, Ms. Simmons indicated Mr. Holly has continued to appear depressed to her on approximately six occasions when she has visited and occasionally during their daily phone calls. She denied any additional observed mental health difficulties or concerns for Mr. Holly.

DRUG AND ALCOHOL HISTORY:

Mr. Holly endorsed a significant history of substance abuse. He reportedly began using marijuana at the age of ten and recalled his mother initially provided him with this substance. Ms. Simmons admitted she allowed him to smoke marijuana with her because she was "afraid he would call the police on her" otherwise. He described smoking marijuana multiple times daily until approximately six months prior to the present evaluation.

Mr. Holly reportedly began using methamphetamine at the age of 13 and was first provided this substance by his stepfather, who he indicated also cooked methamphetamine. He indicated he snorted, smoked, or intravenously used methamphetamine multiple times daily until approximately 15 months prior to the present evaluation. Mr. Holly stated he stopped using methamphetamine and marijuana after his wife stated she would not tolerate his substance use. Mr. Holly acknowledged several unsuccessful previous attempts to stop abusing substances. He attributed his recent successful cessation of use to his motivation to remain in a relationship with his wife. He described ceasing to use substances "cold-turkey" and denied ever having participated in substance abuse treatment.

Upon questioning regarding the impact of his substance use, Mr. Holly indicated his substance use contributed to his difficulty obtaining and maintaining employment, including being terminated from multiple jobs due as described above. He also admitted that his substance use impaired his ability to maintain meaningful interpersonal relationships as he was more interested in obtaining drugs or using drugs than he was in his relationships. He acknowledged increasing his use, across time, of both methamphetamine and marijuana in order to achieve the desired effect; and noted he exerted a significant amount of effort to obtain drugs, including pawning or selling his possessions. Mr. Holly described himself as being "addicted" to marijuana and methamphetamine and also noted he is uncertain whether he will be successful in maintaining his sobriety should he be released.

***MENTAL STATUS EXAMINATION*:**
Mr. Zachary Holly is a Caucasian male of average height and weight. He presented to Arkansas State Hospital dressed in jail-issued clothing. His grooming and hygiene were adequate and he appeared his stated age. Mr. Holly was friendly and adequately cooperative throughout the evaluation. He appeared to respond to evaluator inquiries in a generally open and honest manner but appeared to engage in a mild level of impression management in order present a positive image to the evaluator. Although he appeared to evade certain questions regarding his past behavior to minimize past negative behaviors or to exaggerate certain positive attributes at times; these tendencies did not appear of sufficient severity or frequency such that his report was considered unreliable. He appeared to report facts accurately but his perception and communication of a given situation often seemed communicated in such a manner so as to portray him in a more positive light than the facts would suggest. For instance, although he acknowledged being only an average worker at best and discussed several instances of poor job performance, Mr. Holly described himself as a good, reliable employee. He also appeared to place the majority of responsibility for his past legal infractions onto others, though records reflect he acted autonomously during at least a portion of his infractions. Further, Mr. Holly denied ever having been accused of inappropriate sexual behavior prior to the present charges in spite of having two allegations of inappropriate sexual interactions made against him as a juvenile. Finally, although he maintained appropriate behavior throughout the evaluation, Mr. Holly's interactions were overly-familiar at times.

He frequently joked with the evaluator, described himself as a "flirt," and appeared apathetic with regard to the seriousness of his charges and the evaluation context. In spite of this, his report was considered generally reliable, particularly that which was collaborated by collateral information.

Mr. Holly appeared to understand evaluator inquiries adequately and requested additional explanation or repetition when needed. His speech was normal in rate, rhythm, and volume and no fine or gross motor impairment was reported or observed. Mr. Holly's attention, concentration, and memory appeared intact. Thought processes appeared organized and goal-directed and no evidence of perceptual abnormalities was reported or observed. Mr. Holly denied the presence of auditory and visual hallucinations. Thought content was rational and no overtly delusional content was apparent or reported. His reported mood was "ok" and his affect ranged from euthymic to happy; which at times appeared inappropriate to the evaluation context. Notably, he was briefly tearful when discussing his grief over Jersey's death.

Regarding his functional ability, Mr. Holly acknowledged that although he does not learn as easily or quickly as others, if he is taught a concept or shown a task, he is generally able to retain information. He described living independently and managing his own affairs intermittently throughout his adult life, including paying rent, repaying loans, following prescription instructions, purchasing and providing food, and counting money. He denied any difficulty in managing the daily affairs of life including cooking, cleaning, and tending to his activities of daily living. He noted he continues to struggle with reading and writing, but these impairments do not generally impact his daily functioning. Notably, he reported completing crossword puzzles to "pass time" while detained.

Mr. Holly's mother, Ginger Simmons, described assisting Mr. Holly frequently and indicated she "mollycoddled" him. She stated she ensured he paid his rent in a timely manner, assisted him in grocery shopping, and in filling out paperwork. She indicated she does not believe Mr. Holly comprehends the responsibilities of life adequately. However, the extent to which Mr. Holly required assistance to complete these tasks is unclear given his report that he is able to do so independently and his self-described tendency to become "lazy" and allow others to assist him even if assistance is unneeded.

Contrary to his observed affect, Mr. Holly reported experiencing an increase in depressive symptoms since his arrest. He described frequent episodes of tearfulness, "constant pacing," increased sleep, ruminative thoughts regarding his current legal difficulties, and feelings of hopelessness and helplessness regarding his legal situation. He denied experiencing a decrease in his ability to enjoy activities and cited several which he continues to engage in and enjoy. He attributed his symptoms to his legal situation, the end of his marriage, and being unable to see his family as frequently as he would like. He denied the presence of symptoms lasting without relief for extended periods and indicated he has "good days" at least weekly. He denied suicidal ideation, intent, or plan. Mr. Holly

also indicated he experienced frequent feelings of worry regarding his legal situation. Notably, Mr. Holly's description of his concern regarding his legal difficulties appeared to fall within the normative range (i.e., concern not excessive in light of the seriousness of his circumstances).

Mr. Holly was administered the Mini-Mental State Examination- Second Edition (MMSE-2) in order to grossly estimate his cognitive functioning. Mr. Holly appeared to provide adequate effort and results are judged to be an accurate estimate of his functioning. Results did not reveal any areas of concern for Mr. Holly. He was well-oriented, as he was able to identify the year, season, month, day, date, state, city, building, and floor correctly. This is notable especially given that Mr. Holly had never visited the facility and did not reside in Central Arkansas at any point in his life. He also correctly identified the current president and three states that border Arkansas. His immediate recall was intact but he was able to recall only one of three items after a delay. His attention and concentration was intact as he completed four out of five serial seven subtraction tasks correctly. He was also able to count backwards from 20 to one without difficulty. Language fluency and basic comprehension were also intact and Mr. Holly was able to follow a three-step command correctly. Reading and writing were also adequate, as he was able to write a sentence including a subject and a verb and was able to read and respond correctly to a written stimulus. Finally, he was able to copy a figure correctly indicating grossly intact visuo-spatial skills. Overall, his performance on the MMSE-2 revealed gross cognitive functioning in the Average Range.

PSYCHOLOGICAL TESTING:

Effort and Motivation: Mr. Holly was administered The Validity Indicator Profile (VIP), an assessment designed to identify valid and invalid responding to psychological test stimuli. The VIP results can also be used as a validity indicator for concurrently administered tests of intellectual and cognitive ability. Mr. Holly's performance on the Nonverbal subtest indicated that he exerted good effort and intended to respond correctly. These results indicate that tests covering similar content areas (e.g., abstract reasoning, perceptual accuracy, and attention to detail) can likely be interpreted with confidence.

However, the results of the Verbal subtest indicate he was providing inconsistent effort and similar measures (e.g., word knowledge, reading ability, and general language skills) may not be an accurate reflection of his ability and should be interpreted with caution. These tests are likely subject to the same influences that produced invalid results for the Verbal subtest. Such influences may include distracting internal factors, fatigue, or insufficient investment in the testing process.

Given the differing results of the VIP Nonverbal and Verbal subtests, an additional test of effort and malingering was administered in order to further evaluate Mr. Holly's approach to testing. He was administered the Test of Memory Malingering (TOMM), a 50-item forced-choice recognition test that

includes two learning trials and an optional retention trial. This instrument is designed to help distinguish between actual memory impairment and malingered memory impairment indicative of seeking personal gain. Typically, scores on the Second Trial of this test are very high for non-malingerers, regardless of age, neurological dysfunction, or psychological symptoms. More than 95% of adults in normative studies obtained a score of 49 or 50 (out of 50) on the second trial, with most non-demented individuals obtaining a perfect score. Any score lower than 45 on the Second Trial should raise concern that an individual is not putting forth maximum effort and is likely malingering. Mr. Holly's score of 50 on the Second Trial indicate that he was likely putting forth adequate effort and was not attempting to appear cognitively impaired.

When interpreting test results, consideration should be given to results from all administered tests of effort and motivation, including free-standing, embedded measures, calculated indices, and behavioral observations. Overall, Mr. Holly's performances fell generally within expectation such that concurrently administered cognitive measures are likely to provide a reasonably accurate depiction of his actual cognitive functioning. Moreover, Mr. Holly was encouraged to provide adequate effort prior to commencing a test of his intellectual abilities. He responded appropriately to this admonishment and appeared to provide adequate effort.

Assessment of Feigned Psychopathology: Mr. Holly was administered the Miller Forensic Assessment of Symptoms Test (M-FAST), a structured interview designed to screen for feigned or exaggerated psychopathology. Mr. Holly's symptom endorsements on the M-FAST were within acceptable range, and indicated he was not feigning or exaggerating psychopathology.

Academic Achievement: The Wide Range Achievement Test-Fourth Edition (WRAT-4) was utilized to assess Mr. Holly's basic reading skills in order to provide for the valid administration of a multiple choice personality inventory. On a basic word reading test, Mr. Holly's performance was equivalent to a 4.9 grade level (Standard Score = 75). Notably, this score is reasonably consistent with what would be expected given collateral information regarding his educational difficulties and deemed adequate for purposes of completing the Personality Assessment Inventory (discussed below).

Intellectual Assessment: Per court order and based upon Mr. Holly's reported history of learning difficulties and special education placement, Mr. Holly was also administered the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV), which is an individually administered test of a person's intellectual ability and cognitive strengths and weaknesses. On the WAIS-IV, Mr. Holly earned a Full Scale IQ of 83 (13th percentile, Low Average range). He obtained a score of 83 on the Verbal Comprehension Index (efficiency for generally verbally mediated tasks, in the Low Average range, 13th percentile); a score of 86 on the Perceptual Reasoning Index (efficiency for generally visually mediated tasks, low average range, 18th percentile); a score of 80 on the Working Memory Index (efficiency for

number ability and sequential processing, in the Low Average range, 9th percentile); and a score of 97 on the Processing Speed Index (efficiency for response speed in problem solving, in the Average range, 42nd percentile). Further examination of the composite scores indicated a relative strength for Mr. Holly in the processing speed domain relative to his abilities in the verbal, visuo-spatial, and working memory domains. No additional relative strengths or weaknesses were noted among the composite score.

Overall, the results of the WAIS-IV suggest Mr. Holly is functioning within the Low Average range in each domain assessed. However, his performance is considerably better than what may be expected given his performance on a test of basic word reading, discussed above, and his academic history and performance. As such, although Mr. Holly's intellectual and cognitive functioning is not impaired; his ability to decode words appears impaired. This impairment, combined with an unstable home and significant substance use from an early age, likely contributed significantly to Mr. Holly's reported academic difficulty and underachievement in reading ability.

Personality and Mood Assessment: Mr. Holly completed the Personality Assessment Inventory (PAI), an objective measure of personality characteristics, symptom presentation, and emotional functioning. Based upon Mr. Holly's performance on a test of basic word reading (i.e., WRAT-4 discussed above), he met the recommended reading level requirements suggested by the test developers. However, he was also provided assistance by this evaluator in reading any word he had difficulty decoding. The PAI contains several validity scales to aid in assessing test-taking attitude and approach to the test. Mr. Holly's pattern of responding on the PAI Validity Scales suggested he may not have provided full attention to all items, as he provided inconsistent responses to similar items. As such, the results of the PAI should be interpreted with caution.

The degree to which Mr. Holly's response style may have affected or distorted his symptom profile was also assessed. The nature of Mr. Holly's responses suggest he may not have responded in a completely forthright manner and are reflective of defensive responding regarding personal shortcomings as well as an exaggeration of certain problems. As such, his clinical profile may not be a wholly accurate reflection of his psychological functioning. Although there is no evidence Mr. Holly responded in such a way so as to portray himself in an unrealistically positive manner, his response pattern is suggestive of possible minimization of problems with drinking or drug use. Overall, there are subtle suggestions that Mr. Holly may have attempted to portray himself in a negative manner in certain areas but denied problems in others, which may distort the clinical interpretation. However, his pattern of responding and possible impression management was not sufficiently severe so as to render the test results uninterpretable. Rather, the results of the PAI should be interpreted with caution and confidence should only be placed on interpretive statements corroborated by additional data or information.

Mr. Holly's clinical profile included elevations across several scales. His pattern of responding is reflective of substance abuse difficulties leading to negative consequences including strained interpersonal relationships, vocational and legal problems, and possible medical complications. Regarding Mr. Holly's view of himself, the results of the PAI suggest Mr. Holly holds a rather negative view of himself, is self-critical, and may focus upon past failures. Mr. Holly's responses suggest he may be uncomfortable in social situations, may have little need for interaction with others, and likely displays passivity in relationships. Further, his responses suggest he does not feel supported by his social relationships, perceives his family relationships to be distant or conflictual, and experiences stress as a result of these relationship issues. This profile is generally consistent with Mr. Holly's self-report and collateral documentation.

FORENSIC EXAMINATION AND OPINIONS:

STATE'S ACCOUNT OF THE OFFENSE CR 2013-0001-2 (Capital Murder, Kidnapping, Rape, Residential Burglary):

Information obtained from Bentonville Police Department Affidavit of Probable Cause (Detective Kris Moffit), 11/28/12.

"The records of the Bentonville Police Department reflect that on Tuesday, November 20, 2012, at approximately 0643 hours, officers responded to 608 SE 'A' Street in Bentonville in reference to a missing six year old child. Upon arrival, officers made contact with the child's mother, DesaRae Bridgeman. DesaRae stated her daughter, Jersey Bridgeman, had been at her next-door neighbor, Amanda Holly's house, 702 SE 'A' Street, last night (Monday, November 19, 2012) while she was at work. Amanda Holly and Amanda's husband Zachary Holly would often babysit Jersey and Jersey's younger sister when DesaRae and her boyfriend were at work. When DesaRae returned from work at approximately 2300 hours on November 19, 2012, she went to Amanda and Zachary's house and visited with them for a short time. Afterwards, Zachary Holly carried Jersey home to DesaRae's house, while DesaRae carried Jersey's younger sister, and they placed the two children into the same bed. When DesaRae woke on Tuesday morning, shortly after 0630 hours, she discovered Jersey was missing from the bed. Jersey's two year old sister was still sleeping in the bed they shared.

Officers searched DesaRae's house and Amanda and Zach's house without locating Jersey. While searching the immediate area, Officer Travis Nichols noticed the back door to 704 SE 'A' Street was open. Officer Nichols and Officer Mike Henson walked to this open door and looked inside. The residence appeared to be a vacant house with a few items of trash on the floor, but no furniture or signs of anyone living there. The officers entered this residence and began looking for Jersey.

While looking for Jersey, they looked in the bedroom closet in the southwest corner of the house and saw a small white female lying dead on the floor. She was on her stomach with her head turned slightly to the left. Shortly thereafter, all personnel exited the residence and secured it for a search warrant. It was determined that 704 SE 'A' Street was in fact a vacant house.

While waiting for the search warrant, Detective Corporal JC Wiseman interviewed DesaRae and learned that when she woke this morning at approximately 0638 hours, she went into Jersey's bedroom, but Jersey was not in bed. She checked the kitchen and Jersey was not there either. DesaRae then contacted her neighbors, Amanda and Zachary Holly, at 702 SE 'A' Street and asked for help locating Jersey. DesaRae then called 9-1-1 to report Jersey missing.

Also while waiting for the search warrant on Tuesday morning, Detective Corporal Mike Stegall interviewed Zachary Holly. During that interview, Zachary said he woke early Tuesday morning at 0335 hours with an upset stomach. He decided to walk the short distance from his house to the EZ Mart located at SW 8th & SW 'A' Street, to get some medicine for his stomach. He told Detective Stegall he returned at 0338 hours and went back to sleep. Detectives obtained video from the EZ-Mart and sales tape. The video showed Zachary Holly inside the store making a purchase of medicine at approximately the time he provided. It was also confirmed that DesaRae Bridgeman's live-in boyfriend, Brandon Crouch, worked the overnight shift from Monday evening to Tuesday morning at the same EZ-Mart.

Later that morning on Tuesday, November 20, 2012, detectives from the Bentonville Police Department executed a search warrant at 704 SE 'A' Street in Bentonville. During that search, detectives recovered several items along with Jersey's body. Her body was sent to the Arkansas State Crime Laboratory later that day where forensic examiners immediately began their investigation. An autopsy was performing on Wednesday morning, November 21, 2012.

Detectives executed two more search warrants on Tuesday, November 20, 2012. One search warrant was executed on DesaRae's residence at 608 SE 'A' Street in Bentonville and another on Zachary and Amanda Holly's residence at 702 SE 'A' Street in Bentonville.

Later in the day on Tuesday, November 20, 2012, Detective Wiseman and I interviewed Zachary "Zach" Holly again. Zach stated he and his wife, Amanda, babysit Jersey and her two year old sister when DesaRae has to work since they were her next door neighbors. On the night of Monday, November 19, 2012, they babysat Jersey and her sister until DesaRae returned home from work at approximately 2300 hours. At approximately midnight, Zach carried Jersey home and DesaRae carried Jersey's sister; both girls were asleep. After putting the girls in bed, Zach went back to his residence while DesaRae stayed at her house.

Zach further stated that after he went to bed with Amanda he awoke at approximately 0330 hours with an upset stomach. He told Amanda he was going to walk to the EZ Mart to get some Pepto Bismol. Zach stated he remembered the exact time he left as being 0335 hours because he looked at a clock.

After walking the short distance to the convenience store (approximately 150 yards), Zach remembered the time as being 0338 hours when he returned and went back to bed. When he woke the next morning at approximately 0630 hours, he started getting his six year old stepson ready for school. Zach stated that at approximately 0640 hours, DesaRae called Amanda and told her she could not find Jersey. When they could not find Jersey outside, DesaRae called

9-1-1 extremely upset and apparently handed the phone to Amanda as she was too upset to talk. DesaRae went over to the EZ Mart Store to tell her boyfriend Brandon Crouch that Jersey was missing. Shortly after the officers arrived, Jersey's body was found in the vacant house beside Zach's house.

During this interview, Zach denied having anything to do with Jersey's disappearance or death. During the investigation on Tuesday, Zach was cooperative and consented to provide detectives with cheek swabs for DNA comparison purposes. Zach also consented to giving detectives the clothing that he said he had been wearing since he went to bed on Monday evening.

On the morning of November 21, 2012, Dr. Frank Peretti of state medical examiner's office in Little Rock conducted an autopsy on Jersey's body. The medical examiner determined the cause of death as asphyxia. Detectives learned from the crime lab that a vaginal swab was obtained from Jersey's body and that a preliminary test revealed the presence of a small number of sperm cells. Detectives submitted DNA samples from Zach Holly and other persons of interest to the crime lab on Wednesday for comparison...

...On the afternoon of Wednesday, November 21, 2012, Zach was contacted by Detective Stegall about the possibility of conducting a polygraph examination. Zach declined to cooperate further at that time. Meanwhile, detectives continued to interview numerous other people, collect DNA samples from persons of interest, and pursue leads in the case.

On Friday, November 23, 2012, at 1609 hours Zach reinitiated contact with me by placing a phone call to my cell phone. He requested that I pick him up and take him to perform a polygraph exam. It should be noted that Zach's wife Amanda had agreed to and underwent a polygraph examination by Benton County Sheriff's Detective Giovanni Serrano on Thursday, November 22. I confirmed with Zach that this was his decision to take the polygraph and he stated yes. A short time later, Detective Wiseman and I picked Zach up at his residence and we drove to the Benton County Sheriff's Office where the polygraph examination was administered by Sgt. Jeremy Felton of the Sheriff's Office. Afterwards, Zach was told that the results of this exam were pending.

On the morning of Monday, November 26, 2012, we were informed that the preliminary DNA testing of the sperms (sic) cells could not exclude Zach Holly as being a contributor. However, the DNA samples of other persons submitted to the crime lab were excluded as a contributor to the DNA from the sperm cells. The crime lab informed detectives that further testing would be conducted on the sperm cells.

At 1529 hours on Monday, November 26, I called Amanda Holly and advised her that Zach's polygraph results were being delivered to the police department. I asked if she and Zach would come to the department, so I could provide the results. Amanda said she and Zach were traveling to Springdale and she would call me when they returned. Shortly afterwards, Amanda contacted me via text messages and advised they were on their way.

When Zach and Amanda arrived at the police department, Zach was escorted to a recorded interview room at approximately 1646 hours. I read Zach his Miranda rights, and he waived his rights and agreed to speak to me and Detective Wiseman. During the interview, I informed Zach that sperm cells were

discovered inside Jersey, and I informed him of the DNA results and the polygraph results. Zach denied that he had anything to do with Jersey's death.

Later in the interview, Zach admitted to taking Jersey from her home and to the vacant house next to his. Zach stated that he went into Jersey's home through an unlocked door, carried her from her bedroom and to the vacant house with the intent to engage in sexual activity with her. He stated that for a few minutes he attempted to place his penis inside her vagina. He stated that he then caused her death and described how he did so in a manner consistent with the autopsy results. He stated that he then placed Jersey inside the bedroom closet.

Following his statement to me and Detective Wiseman, Zachary Holly was arrested at approximately 1815 hours for the offenses of Capital Murder, Kidnapping, Rape, and Residential Burglary."

DEFENDANT'S ACCOUNT OF THE OFFENSES:

Mr. Holly provided a detailed, coherent account of the events of 11/19/12, 11/20/12, and the subsequent period of investigation prior to his arrest. His account was partially consistent with his account provided to investigators previously. Mr. Holly began his narrative on 11/19/12 after the school day ended. He stated he picked up his stepson and Jersey Bridgeman from the school bus and was also watching Jersey's younger sister. He recalled Jersey had been in trouble earlier in the morning and had also been disciplined at school. In order to address these issues, he indicated he had placed her in "time-out." Mr. Holly recalled after Jersey finished her "time-out," she and his stepson completed their homework, had a snack, and began watching the *Tinkerbelle 4* movie Jersey had recently received as a birthday present. He recalled two other children were present for a short period of time but were picked up by their uncle relatively early in the evening. He indicated after the movie ended the children went outside to play while he began cooking dinner. Mr. Holly recalled he began to boil chicken but noticed roaches in the water, so he subsequently ordered pizza. He stated his stepson showered prior to the pizza being delivered, everyone ate, and then Jersey and her younger sister showered after eating. He indicated Jersey assisted her three-year-old sister with showering and neither he nor his wife assisted them. Mr. Holly reported he then tucked the three children in to bed. Specifically, he recalled putting Jersey's younger sister to bed in the game room and putting Jersey and his stepson to bed in his stepson's room. Mr. Holly indicated after the children went to bed, he and his wife watched *Men in Black* and then showered. He recalled Jersey's mother, DesaRae, arrived at approximately midnight to pick up her children. He indicated she talked with him and his wife until approximately 12:30am and then he assisted her in carrying Jersey and her sister next door to their home. He stated he always carried Jersey because she was heavier and recalled placing her in bed, kissing her on the forehead, and telling her he would see her in the morning.

Mr. Holly indicated he returned home and took two Tylenol PM pills, which he stated he took on a daily basis for sleep. He recalled his wife took three Tylenol PM pills and got into bed on the side of bed nearest the wall. He indicated they turned the movie *The Mummy* on and fell asleep. Mr. Holly reported he was

wakened at 3:00am by his stepson coming into the bedroom and indicated he returned his stepson to bed at that time and again a short time later. Upon returning to bed, Mr. Holly indicated his stomach began hurting. He stated he woke his wife to inform her he was going to the corner store to purchase Pepto Bismol. He reported the time was exactly 3:35am, as he indicated he was required to keep track of the time due recent infidelity. He stated he returned at exactly 3:38am and again woke his wife to inform her of his return. Mr. Holly stated he then went to sleep and woke to his alarm at 6:00am. He reportedly smoked a cigarette, woke his stepson, and began to prepare snacks for school. Mr. Holly recalled he woke his wife at 6:30am to ask her to call Jersey's mother to ensure Jersey was ready to go to school on time. He noted Jersey generally accompanied him and his stepson to the bus stop. Mr. Holly recalled Jersey's mother called approximately 15 minutes later inquiring as to whether Jersey was in his home. Mr. Holly reported he finished readying his stepson for school, walked him to the bus stop at 6:50am, and returned home to "find out what was going on." He stated his wife and Jersey's mother called the police and Jersey's mother also went to the corner store to apprise her boyfriend who was working at the store that Jersey was missing. Mr. Holly stated he and DesaRae's boyfriend walked up the block looking for Jersey but were unable to locate her. He indicated when they returned home the police had begun their search. Mr. Holly recalled the police located Jersey's body in a nearby vacant house within 15 minutes of beginning their search. He described becoming tearful over this news. He then stated "everything blew up." He reportedly agreed to allow the police to obtain a DNA sample, consented to a search of his home, and allowed them to take the clothing he was wearing. He indicated he agreed to these aspects of the investigation because he "had nothing to hide."

Mr. Holly denied having used any substance other than Tylenol PM during this time period and also denied experiencing any amnesia for the alleged events. He also denied a history of sleepwalking. Furthermore, he denied experiencing any mental health symptoms of sufficient intensity such that his perception of reality was altered. He indicated he was able to recall events clearly and nothing unusual had occurred, nor had he experienced any unusual symptoms or difficulties. His general recollection of details has remained grossly consistent across time excepting his wavering on denying any involvement and confessing to the crimes. He denied the presence of auditory hallucinations or visual hallucinations and there is no evidence that he has ever experienced such symptoms.

COLLATERAL INFORMATION:

Ms. Simmons was indicated regarding her observations of Mr. Holly during the days prior to the alleged offenses and after the alleged offenses. She indicated she and Mr. Holly had been somewhat estranged during the time period prior to the alleged offenses. She stated Mr. Holly's wife had distanced him from his family and did not allow him to spend significant time with his mother. However, Ms. Simmons reportedly spoke with him a "couple" days prior to the alleged offenses. She described their conversation as "normal" and stated he did not

sound depressed, upset, or unable to recognize reality at that time. She confirmed he had been abstinent from drugs and alcohol for several months at the time of the alleged offenses. Ms. Simmons reportedly spoke to Mr. Holly again the day after the alleged offenses and indicated he was overwhelmed by grief at that time. She described his expressions of sadness and asserted his love for the children.

The lead investigator, Detective Sergeant Kris Moffit, was interviewed regarding his observations of Mr. Holly shortly after the alleged offenses. Detective Moffit recalled Mr. Holly remained near the scene while officers were searching for Jersey. He described Mr. Holly as emotional and crying. Detective Moffit estimated he first spoke with Mr. Holly approximately three hours after Jersey's body was located. He noted Mr. Holly was open and cooperative during this interview and during a second interview which occurred shortly thereafter. However, Detective Moffit recalled Mr. Holly became slightly agitated near the conclusion of the second interview and subsequently invoked his right to an attorney two days after the alleged offenses. As such, Detective Moffit indicated he was unable to speak with Mr. Holly until Mr. Holly made contact with him later in the week. Detective Moffit described Mr. Holly as "street savvy" and noted that although Mr. Holly had some difficulty writing, no other impairment in functioning was apparent and Mr. Holly appeared to be well-aware of the nature of the investigation. Detective Moffit indicated Mr. Holly was able to communicate well and understood the questions asked of him. Detective Moffit denied observing any unusual behavior suggestive of psychosis, loss of ability to recognize reality, or any other mental health symptoms for Mr. Holly during the course of the investigation.

OPINION ON THE CURRENT MENTAL CONDITION OF THE DEFENDANT: According to the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, (DSM-IV-TR)*, by the American Psychiatric Association, Mr. Holly's diagnoses are as follows:

Axis I:	Depressive Disorder, Not Otherwise Specified	311.00
	Reading Disorder (provisional)	315.00
	Amphetamine Dependence, Sustained Full Remission	304.40
	Cannabis Dependence, Early Full Remission	304.30
Axis II:	Personality Disorder, Not Otherwise Specified With Cluster B Traits	301.90

Based on collateral data, behavioral observation, psychological test data, collateral interviews, and Mr. Holly's self-report, it is my opinion that Mr. Holly most closely meets criteria for Depressive Disorder, Not Otherwise Specified. This diagnosis is provided when depressive features are present but are not of sufficient severity or duration to meet full criteria for Major Depressive Disorder. Based on Mr. Holly's self-report he has experienced depressive symptoms intermittently since his adolescent years and his symptoms may have increased in severity and frequency since his arrest. Specifically, Mr. Holly reported

symptoms including tearfulness, "constant pacing," increased sleep, ruminative thoughts regarding his current legal difficulties, and feelings of hopelessness and helplessness regarding his legal situation. This increase in symptom severity notwithstanding, his description and presentation during the present evaluation indicate his depressive symptoms are not of sufficient duration or severity to meet full criteria for Major Depressive Disorder. Rather, his symptoms appear to occur with some consistency for less than a full week's time before typically being noted to abate and while his symptoms appear to cause Mr. Holly a mild level of distress, there is no evidence of any true functional impairment related to his depressive symptoms. As such, the diagnosis of Depressive Disorder, Not Otherwise Specified is most appropriate in light of his symptom report and history.

Mr. Holly has also been provided a provisional diagnosis of Reading Disorder. Provisional diagnoses are provided when a degree of uncertainty exists regarding whether an individual meets criteria for a given disorder and adequate information regarding symptoms is not available. Mr. Holly has an extensive history of learning difficulties which appear primarily focused within the reading domain. He was placed in special education curriculum for the majority of his education and performed poorly in most classes. Although records regarding a specific diagnosis or areas of difficulty were unavailable, the cause of Mr. Holly's academic difficulties are somewhat difficult to identify given his unstable childhood and admitted poor effort and motivation for academic pursuits. Nonetheless, a review of collateral information provides evidence that Mr. Holly struggled in tasks requiring a high level of reading. For instance, his mother reportedly assisted him in filling out paperwork due to this difficulty. Moreover, Mr. Holly performed in the Borderline range on a test of basic word reading skills administered during the present evaluation, which is significantly below his performance on a measure of intellectual functioning. All available evidence is reflective of a Reading Disorder for Mr. Holly. However, additional testing across a range of academic achievement domains is necessary to confirm this diagnosis.

It should be noted that Mr. Holly's learning difficulties are not universal and his intellectual functioning is not impaired. There is no evidence Mr. Holly was ever classified or diagnosed with Mental Retardation and results of standardized testing indicate he performed within the Low Average to Average range in multiple domains at various times throughout his education. These results provide evidence that his difficulties were not universal and his intellectual capacity was not impaired. During the present evaluation, Mr. Holly was administered a comprehensive test of intellectual functioning. The results reflect he is functioning in the Low Average range of intellect. Moreover, Mr. Holly does not exhibit functional impairment in daily life indicative of problematic intellectual functioning. Although he experiences difficulty decoding written material, his intellectual functioning is adequate and his impairment does not impact his competency related abilities at this time. In other words, if written information is re-iterated in verbal form or if he is provided ample time to read and inquire about

written materials, Mr. Holly is capable of adequate comprehension and understanding.

Given Mr. Holly's extensive abuse of substances in the past, he has also been assigned diagnoses of Amphetamine Dependence and Cannabis Dependence. Substance Dependence disorders include cognitive, behavioral, and physiological symptoms indicating an individual continues to use substances despite significant substance-related problems. Mr. Holly reported using methamphetamine on a daily basis from the age of 13 until approximately 15 months ago and admitted using marijuana daily until approximately six months ago. He endorsed experiencing increased tolerance for these substances (i.e., need for higher levels of consumption to achieve desired intoxication), unsuccessful attempts to stop using, impairment in vocational functioning and interpersonal relationships, and exerting significant effort in order to obtain substances. Mr. Holly's substance dependence diagnoses are noted to be in sustained remission due to his claimed period of abstinence across the past six months.

Finally, a diagnosis of Personality Disorder, Not Otherwise Specified, with Cluster B Traits was assigned based upon Mr. Holly's longstanding problematic behavior and interpersonal patterns. A personality disorder reflects an ingrained pattern of behavior and inner experience that deviates markedly from the expectations of an individual's culture. This pattern is manifested in an individual's cognition, affect, interpersonal functioning, and impulse control. The enduring pattern is inflexible, pervasive across a range of personal and social situations, and leads to distress or impairment in social or occupational functioning. The specifier Cluster B Traits is noted due to Mr. Holly's history of affective instability, volatile interpersonal relationships, and repeated behavior which demonstrates a disregard for the rights of others. Mr. Holly's developmental history involving fighting, truancy, criminal activity, interpersonal aggression, and sexual misconduct is consistent with the histories of children and adolescents diagnosed with DSM-IV-TR Conduct Disorder. In fact, Mr. Holly appeared quite aware of his history of antisocial conduct and was somewhat eager to discuss aspects of his externalizing psychopathology with this examiner. Akin to his inconsistent and almost contradictory self-descriptions (e.g., "lazy" but also "good worker") and relational descriptions, Mr. Holly openly discussed much of his history of misbehavior while minimizing or shirking personal responsibility; and, at other points, readily admitted to being "lazy" and parasitic (i.e., allows others to care for him when he is capable and is expected to care for himself). He also endorsed significant irresponsible behavior throughout his adult life which negatively impacted his vocational and interpersonal functioning on numerous occasions according both to employment records and his self-report.

Mr. Holly reported affective instability which appeared significantly related to his interpersonal relationships and other situational contexts, such as his employment. Although his dysphoria may be partially attributable to genuine depressive symptoms, the rapidity with which his symptoms wax and wane are

reflective of an inability to regulate emotions as they relate to an his environmental context. That is, Mr. Holly is highly reactive to situational factors. Moreover, Mr. Holly exhibited a pattern of unstable, volatile relationships, particularly with his mother and wife, which he alternatively described in positive and negative terms. In addition to unstable interpersonal relationships, Mr. Holly also exhibited an unstable self-identity. He revealed a rather negative self-concept at times as he described himself as unintelligent, a follower, and lazy; however, he also made statements that were positive and seemed to minimize objectively negative traits or behaviors. Given the above, Mr. Holly exhibited significant traits consistent with personality pathology but did not meet full criteria for any single diagnosis. He primarily exhibited antisocial traits but also exhibited affective, interpersonal, and intrapersonal difficulties. Given his self-reported characterological difficulties, Personality Disorder, Not Otherwise Specified, with Cluster B Traits, was considered an appropriate reflection of his personality functioning.

Collateral information also indicates Mr. Holly engaged in deviant sexual activity in the past with female minors under the age of 13. Although he has not been assigned a diagnosis reflecting a paraphilic sexual disorder, in light of the present allegations, the diagnosis of Pedophilia, Nonexclusive Type was considered. Pedophilia is characterized by recurrent sexually arousing fantasies, urges, or behaviors involving sexual activity with a prepubescent child. The individual has either acted on these sexual urges, or the urges cause distress or interpersonal difficulty. Documentation of Mr. Holly's past inappropriate sexual behavior is not sufficient to warrant a diagnosis of Pedophilia at this time. However, should Mr. Holly be found to have committed the alleged offenses, he would likely meet criteria for this disorder. In that case, the specifier Nonexclusive Type would be appropriate given Mr. Holly's engagement in age-appropriate sexual relationships.

EXAMINATION OF FITNESS TO PROCEED

As described above, Mr. Holly's clinical presentation is most consistent with DSM-IV-TR diagnoses Depressive Disorder, Not Otherwise Specified (NOS); Reading Disorder (Provisional), Pedophilia (Provisional), Amphetamine Dependence, Cannabis Dependence, and Personality Disorder, NOS, with Cluster B Traits. Mr. Holly's constellation of symptoms and difficulties do not produce substantial impairment in his functioning in any psychological domain, and do not impair his ability to factually and rationally understand the nature of the charges and proceedings against him. Likewise, Mr. Holly's symptoms do not impair his ability rationally assist his attorneys in preparing a defense[1].

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[1] A telephone interview was conducted on 04/24/13 with Mr. Holly's attorney, Kent McLemore. Mr. McLemore denied harboring any specific concerns with regard to Mr. Holly's competency aside from possible intellectual impairment. However, he did assert concern regarding the impact of Mr. Holly's unstable childhood on his mental state, both at the time of the offenses and currently. While it is likely Mr. Holly's difficult upbringing and social history have contributed to his present constellation of symptoms, described above, these symptoms and difficulties do not affect Mr. Holly's fitness to proceed at this time.

Information regarding Mr. Holly's fitness to proceed was obtained via clinical interview and the administration of the Evaluation of Competency to Stand Trial-Revised (ECST-R). The ECST-R is a standardized interview designed to assess the psycholegal domains relevant to the legal standard for competency to stand trial. (Dusky v. United States, 1960): (1) Factual Understanding of the Courtroom Proceedings; (2) Rational Understanding of the Courtroom Proceedings; and ability to (3) Consult with Counsel. The ECST-R also contains an Atypical Presentation scale that screens for feigned incompetency. Results of the validity scales indicated Mr. Holly was not likely exaggerating psychotic or non-psychotic problems. These results are consistent with additional testing which also indicated Mr. Holly provided adequate effort and responded in a generally forthright manner.

Results indicated Mr. Holly's understanding of general information related to the law and the courtroom is not impaired. He correctly identified the roles and responsibilities of the judge, defense counsel, prosecutor, and jury. He stated defense counsel's job is to convince the judge or jury the defendant is innocent and also identified that defense counsel plans the defense and attempts to minimize any potential punishment. Mr. Holly indicated the judge's responsibilities include ruling on evidence, "[deciding] whether I'm found guilty," and assigning a sentence. He noted if he were to be found guilty of the present charges he is eligible for either a sentence of Death or Life Without Parole. However, he noted there is an appeals process in place should he be found guilty. Finally, Mr. Holly was aware the judge is in charge of the court.

Mr. Holly identified the prosecutor by name and described the prosecutor's responsibilities as "find me guilty, convince the judge and jury." He further noted the prosecutor will seek to maximize his punishment. When asked about the role of the jury, Mr. Holly indicated the jury considers "the evidence and decides guilty or not guilty." He further stated the jury is supposed to be a neutral body. Mr. Holly was able to identify and describe the charges against him and also discussed the relative severity of his charges. Finally, when asked why he should refrain from speaking to the prosecutor without his attorney present he stated, because the "prosecutor could take what you say out of context and use it against you."

Mr. Holly's rational understanding of the meaning and consequences of the proceedings against him is likewise intact. In response to inquiries regarding how he would make a decision about whether or not to testify in a trial, he indicated he would likely abide by his attorneys' recommendations. He noted he would "tell the truth" if he were to testify on his own behalf. When asked about how he would decide whether to accept a plea agreement, he stated he would discuss the plea offer with his attorney but noted the ultimate decision was his. Mr. Holly was able to describe the best, worst, and most likely outcome in his case as well as the reasoning behind his conclusions. He identified the worst outcome as being a Life sentence, as he identified he would "go to heaven" if he received a sentence of Death. He identified the best outcome as being found not guilty and able to

return home and indicated he believed this was the most likely outcome as he asserted his innocence of the present charges. He stated although he has not been provided with the discovery file, he does not believe the prosecutors have good evidence against him, despite his recognition that he acknowledged involvement in the alleged offenses during the investigation. Mr. Holly described these statements as "lies" precipitated by his desire to go home. Mr. Holly denied any unusual or bizarre courtroom experiences as well as any inappropriate courtroom behavior. Further, there was no evidence of delusional thinking or psychotic symptoms that may impair his rational ability to understand his legal proceedings.

Mr. Holly also demonstrated an adequate rational ability to consult with his attorney. He was able to provide the names of each of his defense attorneys, describe the context under which he met his attorneys, the relative time period in which each attorney began to represent him, as well as an estimate of the frequency of contact between himself and his attorneys. When asked to describe his attorneys he described them as "nice lawyers, pretty good legal team, to the point. I think they will do their job, but no more." He noted he values their opinions and believes they will represent him adequately. Regarding his expectations for his attorneys, Mr. Holly stated his attorneys should "get the truth out." When asked how they might accomplish this, he stated "interview people, talk for me in court, defend me." He further stated he expects his attorneys to explain things to him and keep both him and his mother "in the loop." With regard to his attorneys' expectations of him, Mr. Holly stated his attorneys expect him to not "talk about the case," to tell the truth, "give them all of the information I have," and not get into trouble. He asserted his attorneys' would apprise him of any additional expectations they may have. When asked about agreements and disagreements, Mr. Holly noted he and his attorneys have always agreed to this point in their relationship. When asked for examples, Mr. Holly noted he and his attorneys agreed to plead not guilty and to seek the present evaluation. He attributed the high rate of agreement to his belief his attorneys are looking out for his best interests. When asked about how he may handle possible future disagreements, Mr. Holly stated he may agree with his attorneys, may pray about a decision, and would speak with his attorneys about his concerns. Finally, Mr. Holly did not evidence any mental health symptoms that would impair his ability to rationally consult with his attorneys.

Finally, Mr. Holly revealed an adequate understanding of competency related concepts during a clinical interview in which specific functional elements of competency were assessed. During this interview he described factual concepts including the allegations leading to the present charges, discussed possible consequences, identified and described various plea options available to him, and described the general process of trials. He also discussed concepts related to his rational understanding and decisional abilities. He discussed his perception of the charges against him and expressed the belief he will receive a fair trial. He appeared motivated to assist in his own defense and expressed the intention to

do so. Finally, he demonstrated reasoning ability sufficient to process relevant information during decision making.

Mr. Holly also displayed an adequate capacity to consult with and assist his attorneys. As discussed above, he noted his defense attorneys are working for him and he exhibited no difficulty understanding and responding to inquiries during the present evaluation. He also displayed an adequate ability to provide a detailed, coherent account of the events leading to the present allegation. Finally, he displayed an adequate ability to comport himself appropriately in court as evidenced by his appropriate behavior across this six hour evaluation.

Overall, Mr. Holly displayed an adequate factual and rational understanding of charges and proceedings against him as well as an adequate ability to consult with his attorneys. Although Mr. Holly has experienced symptoms of depression and has learning difficulties, at the time of this evaluation, his competency related abilities are not impaired. Importantly, results of a comprehensive measure of intellectual functioning indicated Mr. Holly is functioning in the Low Average range of intellect and records suggest only minimal functional impairment, ruling out a diagnosis of Mental Retardation. As such, Mr. Holly does not meet criteria for any mental disease or defect which impairs his judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life. It is my opinion that Mr. Holly has the capacity to proceed to trial at this time.

OPINION ON DEFENDANT'S MENTAL STATE AT THE TIME OF THE ALLEGED OFFENSES:

There is no evidence that Mr. Holly has ever suffered from any substantial impairment in perception, thinking, reasoning, judgment, mood, or intellect that would rise to the level of a mental disease or defect. However, several of the diagnoses discussed in detail above are chronic conditions that would reasonably be expected to have been present at the time of the alleged offenses. Mr. Holly reported experiencing mild depressive symptoms intermittently during the time period of the alleged offenses. His mother indicated he did not seem depressed when she spoke with him a few days prior to the alleged offenses; however, she confirmed his report of intermittent depression since adolescence. Similarly, Mr. Holly has exhibited learning difficulties since elementary school, exhibited personality pathology for an extended period, and at the time of the alleged offenses had recently ceased abusing marijuana and methamphetamine.

As stated above, there is nothing to suggest that, at the time of the alleged offenses, Mr. Holly suffered from any mental disease or mental defect that impaired his judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life. All available evidence, including Mr. Holly's self-report and collateral documentation and interviews, indicates Mr. Holly was functioning with intact cognitive capacity, was aware of reality, and behaved in a purposeful, goal-directed manner. It appears that amongst four adults, Mr. Holly was selected to provide a majority of caretaking duties for three young children in the days and weeks preceding the alleged offenses.

Mr. Holly reported taking two Tylenol PM pills the evening prior to the alleged offenses as a sleep aid; there is no evidence that this medication impaired his functioning to such an extent that he was unable to recognize the illegality of his actions. He stated during the present evaluation that he took this medication on a nightly basis and with no adverse effects. As such, his body was acclimated to the effects of this medication. Moreover, Mr. Holly reported waking to put his stepson back to bed twice that night and also walked to the corner store to buy Pepto Bismol. This indicates Mr. Holly was rousable and able to complete tasks in a goal-oriented manner. Further, Mr. Holly was able to recall the exact time he left for the store as well as the time he returned. If the medication had impaired his functioning it is unlikely his memory for these details would have remained intact and as consistent across time as he has reported. Finally, psychiatric consultation was sought at ASH and confirmed that it would be highly unlikely that two Tylenol PM pills would impair an individual to such an extent that they were unable to recognize reality and act in a purposeful and knowing manner.

In further support of Mr. Holly's intact mental status is his excellent recall and ability to provide a detailed account of the events of the afternoon prior to the alleged offenses, including the fact that Jersey had been in trouble that morning and at school and that the children had watched *Tinkerbelle 4*. According to all accounts, Mr. Holly's behavior in the days and evening prior to the alleged offenses was within the normal range and he did not exhibit any strange or unusual behaviors or verbalizations. The day following the alleged offenses Mr. Holly was observed to be emotional and grief-stricken, but continued to behave and communicate in a rational manner. Mr. Holly, his mother, and Detective Moffit all denied the presence of psychotic symptoms or any other concerning mental health issues during this time period. Detective Moffit further noted that Mr. Holly was able to communicate adequately and continued to engage in goal-directed behaviors. As such, there is no evidence Mr. Holly was suffering from any symptoms of mental disease or defect immediately before or after the alleged offenses.

As stated above, should Mr. Holly be found guilty of the alleged offenses, the diagnosis of Pedophilia may also apply at the time of the alleged offenses. It is my opinion that Mr. Holly's most closely met criteria for the following DSM-IV-TR diagnoses at the time of the alleged offenses:

Axis I:	Depressive Disorder, Not Otherwise Specified	311.00
	Reading Disorder (provisional)	315.00
	Amphetamine Dependence, Early Full Remission	304.40
	Cannabis Dependence, Early Full Remission	304.30
Axis II:	Personality Disorder, Not Otherwise Specified With Cluster B Traits	301.90

OPINION ON THE DEFENDANT'S CAPACITY TO APPRECIATE THE ILLEGALITY OF HIS ALLEGED ACTIONS:

It should be noted that Mr. Holly asserted his innocence of the alleged offenses during the present evaluation. It should be further noted the analysis of Mr. Holly's responsibility for the alleged offenses is predicated on the assumption that he in fact, committed the alleged offenses. As he denied culpability, the forthcoming analysis is based upon the State's account of the offenses.

According to the official account, Mr. Holly entered DesaRae Bridgeman's home, retrieved Jersey, took her to the unlocked and vacant home next door, raped her, strangled her, and then moved her body to a closet. Provided the official account of the alleged offenses is accurate, Mr. Holly's behaviors while committing the alleged offenses are also reflective of an intact mental status and reflect an understanding that his alleged actions were illegal. First, it was necessary for him to quietly enter DesaRae Bridgeman's home and retrieve Jersey. Had he been unable to appreciate his actions were illegal, he likely would not have felt the need to sneak into Jersey's bedroom in the middle of the night in order to kidnap her. Moreover, he allegedly brought Jersey to a home which he was aware was vacant. This may be interpreted as an attempt to remain undetected, which suggests he was aware his behavior was illegal. Finally, Mr. Holly allegedly moved Jersey's body from the room in which he assaulted her to a closet in another room, presumably to hide her body. His effort to avoid detection in this regard is further evidence that he appreciated the possibility of legal sanctions for his actions.

Finally, during the investigation Mr. Holly reported two different versions of events to the investigators, and ultimately confessed to committing the alleged offenses. Mr. Holly asserted during his confession that he did not mean to harm Jersey and described it as an impulsive decision. He also described attempting to talk himself out of the offenses and put Jersey back to bed. He repeatedly stated he believed he would go to prison for the alleged offenses. These statements reflect that although Mr. Holly may not have planned the alleged offenses, he appreciated the illegality of the alleged offenses and was aware he may be punished.

Mr. Holly also disclosed previous sexual abuse during the interview with investigators when asked why he believed he committed the alleged offenses. Although childhood sexual abuse may contribute to a multitude of difficulties and psychopathology for some victims, there is no evidence that childhood sexual abuse renders an individual unable to appreciate the illegality of their actions. Similarly, an unstable childhood such as Mr. Holly experienced may contribute to a variety of difficulties, including impulsive behavior; however, there is no evidence that an increase in impulsivity impairs an individuals' ability to appreciate the illegality of their actions.

Based on all available evidence, Mr. Holly was functioning with an intact mental state before, during, and immediately following the alleged offenses. He did not behave in a bizarre, irrational, or otherwise substantially impaired manner at any time. There is no evidence he was suffering from any mental disease or defect

that would impair his capacity to appreciate the illegality of his actions at the time of the alleged offenses.

OPINION ON THE DEFENDANT'S CAPACITY TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF THE LAW AT THE TIME OF HIS ALLEGED OFFENSES:

Again, there is no evidence that Mr. Holly suffered from any substantially impairing symptoms of mental disease or defect at the time of the alleged offenses such that his ability to conform his conduct to the requirements of the law was impaired. As described above, Mr. Holly reported taking two Tylenol PM pills on the night of the alleged offenses. However, he denied any adverse effects of this medication, exhibited an intact mental state, and exhibited purposeful behavior throughout the night. He was able to address his stomach ache in a rational manner by walking to the store and purchasing medicine, indicating successful completion of a multiple-component task. He also returned his stepson to bed on two occasions. These behaviors suggest Mr. Holly was well in control of his behavior and able to rationally address problems.

Mr. Holly's behavior the previous evening and after the alleged offenses was also rational and goal-directed. The previous evening, Mr. Holly reportedly noticed roaches in the family's dinner and ordered pizza in response to the health hazard. The following day, he reportedly assisted in the search for Jersey, was interviewed by investigators, and although emotionally distraught, did not exhibit any bizarre behavior. Mr. Holly denied, consistent with the observations of collateral sources, the presence of any command hallucinations that may have influence his behavior. Rather, he appears to have maintained a reasonable routine for the time periods immediately before and after the alleged offenses.

Elements of the alleged offenses also provide evidence Mr. Holly possessed the capacity to conform his behavior to the requirements of the law. As described above, Mr. Holly is accused of kidnapping, raping, and strangling Jersey Bridgeman. During his confession, he indicated he kidnapped Jersey on impulse and attempted to talk himself into returning her to her bed. However, he proceeded to take her to a vacant house and reported removing her pants and attempting to rape her. However, he indicated he was unsuccessful and attempted to insert his penis for approximately five minutes. Although impulsivity is not equivalent to the inability to conform ones behavior to the law, this period of time is sufficient for an impulse to have passed or been controlled. Rather, it appears that Mr. Holly continued to engage in purposeful, goal-directed behavior in attempting to insert his penis. In describing how he strangled Jersey, Mr. Holly indicated he sat on Jersey's chest with her arms underneath his legs and wrapped her pajama pants around her neck. His position on top of Jersey demonstrates a certain level of rationality, in that it may be interpreted as a position taken in order to prevent her from struggling. He acknowledged Jersey began kicking and gasping for air when he began to strangle her and described strangling her for a "couple minutes." He then dragged her body to the closet. This sequence of events is indicative of rational, organized, persistent, and

purposeful behavior. Mr. Holly described himself as "scared" and "panicked," but remained able to manage his behavior in order to prevent Jersey from reporting him, as stated in his confession.

Based on all available evidence, Mr. Holly was functioning in a rational, purposeful manner and no evidence of impaired or bizarre behavior was reported or observed. There is no evidence he was suffering from any mental disease or defect that would impair his capacity to conform his behavior to the requirements of the law.

OPINION ON DEFENDANT'S CAPACITY TO HAVE THE CULPABLE MENTAL STATE REQUIRED TO ESTABLISH AN ELEMENT OF THE OFFENSES CHARGED:

As discussed above, there is no evidence in the record that would indicate the presence of any substantially impairing symptoms of a mental disease or a mental defect that would have impaired Mr. Holly's capacity to knowingly and purposefully engage in the alleged behaviors (i.e., his ability to form the culpable mental state required to establish an element of the offenses charged). All reports indicate that although his actions may have been predicated on an impulse, he behaved in a logical and purposeful manner both during and immediately after he allegedly committed the charged offenses. He recalled considering whether or not to return Jersey to her home after he had taken her and also described two periods of several minutes that elapsed while he was attempting to insert his penis and later, while strangling her. As such, Mr. Holly had ample time to consider his alleged actions and chose to proceed with the intent of raping and killing Jersey Bridgeman. Mr. Holly was not under the influence of any substantially impairing substances, nor was he suffering from any mental health or cognitive impairment that may have prevented him from forming the requisite mental state. Thus, all available evidence indicates that Mr. Holly was functioning with an intact capacity for forming a purposeful and/or knowledgeable mental state.

Respectfully Submitted,

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Forensic Evaluation

Defendant: Zachary Dwayne Holly
DOB: 10/8/84
Age: 28
Referral Source: Pat Aydelott, Attorney at Law
Charge: Capital Murder, Kidnapping, Rape, Residential Burglary
Place of Examination: Benton County Detention Center
Dates of Examination: 6/21 and 7/26/2013
Date Report Submitted: 8/23/13

Referral Issues: Mr. Holly was referred by his attorney for an evaluation of his current personality and cognitive functioning related to the above charges. He was also referred to assess his ability to assist his attorney with his defense and his understanding of the legal system.

FORENSIC OPINIONS:

Opinion on the current mental condition of the defendant:

Axis I: Adjustment Disorder with Depressed Mood
Methamphetamine Dependence, In Sustained Remission
Cannabis Abuse, In Sustained Remission
Axis II: Learning Disorder in written expression, mathematics and reading
Personality Disorder, Not Otherwise Specified with Dependent Traits
Axis III: History of Orchicotomy
Axis IV: Incarceration, Recent Divorce, Serious Criminal Charges
Axis V: 55-60

At the time of the evaluation, he demonstrated significant distress related to incarceration, recent divorce and the seriousness of the charges against him. He evidenced depressed mood, excessive sleeping, and fleeting thoughts of suicide. He has a very strong history of methamphetamine dependence, dating back to his early teens, which had been in remission since about a year before his incarceration, but that affected his development and stability. His antisocial behavior in the past has, in large part, been related to drug use. He demonstrated much lower academic achievement than his intellectual ability would predict, and has a history of poor academic functioning and resource placement in school consistent with a diagnosis of learning disorder in written expression, mathematics

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and reading.

Opinion on the Defendant's capacity to understand the proceedings against him and to assist effectively in his own defense: It is my opinion that at the time of the examination the defendant had a factual and rational understanding of the proceedings against him and he had the capacity to assist effectively in his own defense. This opinion is based on the following:

1. On the Competency Assessment to Stand Trial-MR, he scored 100 percent correct on basic legal concepts, 87 correct on skills to assist offence, and 100 percent correct on understanding case events with an overall score of 96 percent.
2. His intellectual functioning is in the low average range.

The Nature of the Examination: Mr. Holly was informed at the onset of the examination of the nature and purpose of the exam, that his participation in the exam was voluntary and that the information he gave the examiner was not confidential. He was informed that a report of the examination would be made to his attorney and that the examiner's testimony may be required in any court proceedings regarding the case. He was informed that he didn't have to answer questions or making any self-incriminatory statements. He indicated that he understood and was willing to participate in the evaluation. Additionally, since he was charged with a capital offense, he was told that the information he gave the examiner could be used in sentencing determination at his trial.

Sources of Information:

1. Face to face interview with Mr. Holly on 6/21/13 for 5 hours and 7/26/13 for 1 hour.
2. Personal Interview with defendant's Mother, Ginger Simmons, on 7/12/13 for 1 hour
3. Interview with defendant's brother, Kenneth Keeton, on 7/12/13 for 1 hour
4. Probable Cause Affidavit (Redacted)
5. Arkansas Department of Human Services Division of Mental Health Services Arkansas State Hospital Forensic Report dated 4/19/13
6. Employment records
7. Legal history records
8. Transcript of an interview with Van Stone, prosecuting attorney, Stephanie McLemore, deputy prosecuting attorney, and David Reading, deputy prosecuting attorney and Annette Crow, dated January 9, 2013
9. Medical records from Kern County Medical Center
10. Medical Records from Northwest Medical Center
11. Educational records

History: Mr. Holly reported that he grew up in California and Arkansas. He started kindergarten at the age of 7 because of his birthday. He finished 10th grade and didn't

start 11th grade. He earned D's and F's in school. His best subjects were history and science and he struggled in reading and writing. He believes he repeated 2nd grade which he said was a long story. He said his 2nd grade teacher had a problem with him and sent him out of the classroom when she taught reading and he had to stand in the hallway. He tried to tell his mother but she didn't believe him until his brother actually saw him standing in the hallway. His dad went to school and picked the principal up by his neck. He had to repeat 2nd grade and the principal transferred to a different school. Afterward, he had a bad feeling about school because of his teacher and Ms. Bell. He had some good teachers as well. He believes he had special education classes in most subjects after 2nd grade. He enjoyed science he said his mom's ex-husband taught him to make meth and that was science. He liked history a lot. When asked about his reading ability he said he can read but there are a lot of things he doesn't understand. He will skip words when he reads. The last time he was tested he believes he was at the 3rd grade level in reading and 2nd grade level in spelling. When he was in school his girlfriend, who he eventually married, helped him a lot. She would read problems for him and sometimes did his homework for him. He did pretty well in math until he got to division and algebra. He can only do a little bit of multiplication. He managed money on the job using a cash register but said that the register told him how much change to give back. He didn't really want to mess with the money though. His drawer was balanced at the end of the day although it was sometimes a little bit off. When asked if he knew how to manage money he said if he has money in his pocket he would spend it. He does know how to pay bills and he has paid his bills in the past but he was living in a housing project and had inexpensive rent. He would pay his electric bill. The rest of the money he spent on drugs, movies and games. He finished the 10th grade but he refused to do his work. He would ask for help sometimes and the teachers didn't want to help him. He had better things to do. When asked if he could do the work he said sometimes he wasn't able to and so he wouldn't try. He would go to school after all night binges but he never had drugs on him at school. He hasn't had further education. He hasn't earned a GED. He hasn't gone to Job Corsp or had technical training. He hasn't had sheltered workshop training. He hasn't applied for Social Security disability benefits. He thought about it but his wife said no.

Relevant work has been in fast food. He worked a little bit with his stepdad tearing up floors and walls. He can't really read a tape measure. He knows how to read the feet but not the inches. He has never read blueprints. When he worked in fast food he washed dishes or cooked. He could keep up, although he was fired when he didn't show up or was late. Sometimes he just wouldn't care about it and he would quit. He was more focused on drugs.

He got married last year to his only wife, who was his high school sweetheart. They started to date in 8th grade and then dated all through high school. They had 8 years off when they dated other people. They got back together again 2 ½ years ago when they talked on Facebook. They married on 3/27/11 and he just signed divorce papers two weeks ago. He said, "I can't really blame her." He has no children of his own. He has had other dating relationships but the longest was six months. When asked why the relationships would end, he said that he would cheat on them or leave them or they were

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just one night stands.

He hasn't been in the service. He never tried to join.

When asked about his health, he said he has chest pain because he smoked "spice." He said it almost killed him last summer and since then he has had chest pain. Sometimes it just hurts to breathe. When he was 8 or 9 years old he was jumped by some other boys and was bleeding internally and they had to remove a testicle. He used to be self conscious about it but now he has gotten used to it. He is not ashamed of it. He got teased by his older brother. He didn't tell people about it at school. When asked if he had a head injury he said that when he was here in Arkansas he tried to do a back flip into a pool and hit the concrete. He got 9 stitches and he might have been unconscious under water. He was treated in the emergency room. He was just a little kid at the time in elementary school. He is not aware of cognitive changes afterward. He reported no history of seizure, stroke, meningitis, and encephalitis. He doesn't believe he has been in a coma.

He grew up between Bakersfield, California and Northwest Arkansas. He was raised initially with a stepdad named Joe who was his little brother's dad. He has two half brothers with his mother (all with different fathers). His natural father has some other children and he has met a couple of them but there are some he has never met. He met his natural father once when he was 13 years old. He stayed the summer with him but said, "He broke a 2x4 over me three times in one beating." When asked why he went to live with him he said he had never met him and wanted to get to know him. His mom let him stay the summer with him but he went home early. His father didn't pay child support until after he died when the Social Security department paid it. He believes he was physically abusive to his mother. His mom didn't really talk about his natural dad. His older brother had never met his dad and so they all called Joe dad. His older brother's name is Kenny Keeting and his younger brother's name is Joey Blackman. He was basically an only child when he and his mother moved back to Northwest Arkansas when he was 13. Kenny had been arrested and was locked up and Joey was taken away and was living with his natural father, Joe. He didn't see Joey until two years ago. His mother and Joe split up when Zachary was 8 years old. He said there were happy times with Joe unless he was drinking and then they we all got "our asses beat." Joe would make Belgian waffles for Sunday breakfast. If they got in trouble they would have to do yard work. When asked about his relationship with his older brother Kenny, he said that he used to beat him up every day and Kenny hated him. They are best friends now. He said he used a belt and choked him and if he wasn't getting beat up by his dad he was getting beat up by Kenny. Mom would get beat up by dad as well. Kenny would beat him up when his mom went to pick up dad at work. He would tell her and sometimes she would take him with her but sometimes Joe didn't want him along. At some point his mom left Joe and he, Mom and Joey came back to Northwest Arkansas but Joe accused her of kidnapping Joey and they had to go back to California. He remembers Kenny being hit with a broomstick by Joe. He thinks that Kenny and his mother got it worse than he did from Joe. Kenny was a runaway and stole things and got arrested. Zachary and his mother moved back to Northwest Arkansas area in 1997 and stayed there until his

mother met and married Butch. Butch went back to prison for violation of parole and cooking dope. Butch was his mother's second husband. She met him in Northwest Arkansas at the Salvation Army. After Butch went to prison they lived in Siloam Springs. He said things were good with Butch for the first four years. Butch and his mother were together about five years but toward the end they didn't get along. He said Butch beat him up one night and his mom left him. His mom's current husband is Bob. Zachary described him as a good guy and said they had been together 7 or 8 years.

When his mother was with Joe they had a stable home and lived in a double wide trailer with three bedrooms. He remembers it. After Mom and Joe broke up they were sometimes homeless. They would stay in women's shelters in California or the Salvation Army in Northwest Arkansas. There were always drugs around. He started smoking marijuana at the age of 10. His mother was in the back room and he was hungry and threatened to call DHS and she gave him two hits of marijuana. When he was 13 Butch gave him his first line of methamphetamines and he had done it since then. He has done mushrooms a few times. He smoked a lot of incense or spice which he described as legal weed. He said, "It is like K-2. If it would give me a buzz, I'd try it." He used acid twice. He huffed Glade air freshener and air dusters. He abused whippets (canned whipped cream) as well. He didn't really abuse over-the-counter medication although he might take 2 or 3 Tylenol PM to sleep at night. He took Hydrocodone for tooth pain. He tried methamphetamines intravenously a couple of times. He liked it too much and it scared him. He said he thought it was pretty cool to do drugs. He said, "I was young and dumb." He liked doing drugs with his mother but said he has grown up and realized that's not cool. His wife helped him get off drugs. He said he was doing well but then he got back on meth. She caught him at his brother's house and made him choose so he chose her. He only quit using the meth. He quit using spice two days before their wedding because the spice tried to give him a heart attack. Three months later he quit marijuana as well. He said, "I loved smoking weed." He quit until October 2012 on his stepson, Danny's birthday. His wife told him it was okay for him to get high so he got high on his son's 6th birthday and he wanted to use after that but he was trying to do the right thing by his family. He ended up having an affair on his wife when he was high.

When asked about the sexual atmosphere when he was growing up he said he didn't really know about what his mom and Joe did but there were a few times that he accidentally saw Butch and his mom having sex. He was molested once in California by a guy who went to jail for it. He thinks he was 10 or 11 years old at the time. He said the man did it a couple of times before he told somebody. The man told him he just wanted to see the scar where his testicle had been removed and he would touch it. When asked if he was ever molested by a family member he said he didn't want to talk about it. He then said that his brother, Kenny, would "hump my stomach when mom would go pick up dad." When asked how he felt about that, he said it didn't hurt. One time Kenny peed on the floor and made him lick it up. He said Kenny hated him. He threw a rock in the air and told him to look up and it hit him in the mouth. Zachary reported no cruelty to animals on his part. He has always loved animals. He started a fire once in California. He tried to start a little fire and he went to get some water to put it out and it was too late and the whole field had caught fire. He didn't get caught.

He got in trouble before they moved here before Butch got arrested and was sent back to prison. He threw rocks into some windows next door. He was about 13 at the time. He got 5 years probation for breaking and entering and vandalizing. He said it was the day before Thanksgiving and they didn't get caught the first time but they broke in the second time and got caught doing it. When asked about sexual misconduct, he said he was sleeping with his girlfriend and his friend was sleeping with her too and his mom found out. He was on probation. He did two weeks in juvenile and was told to stay away from the girl. He had sexual intercourse for the first time at the age of 13 with a friend who was about the same age. When asked if he thought that was too young he said it might have been a little young. He said the rules were different in California. He considers himself to be heterosexual. He and his wife had a good sexual relationship. He said that's what he doesn't understand why he had an affair on her. He constantly wanted sex and it was normal for them to have sex two or three times a day but at least every day.

When asked about mental health history he said he was never diagnosed with mental illness but he has been smoking weed and it kept him calm. Now he notices that he is constantly fidgeting. He said depression and anxiety run in his family and he was supposed to get tested at some point for ADD or ADHD. He never took Ritalin but his half brother, Joey, did. He hasn't had a psychiatric hospitalization. He had anger management counseling when he was on probation. He was supposed to have a year and they discharged him after six months. When asked if he thought he had an anger issue, he said that in high school he fought and he would hold it in until he blew up. He would yell and scream. Sometimes his mother would give him Xanax, which helped him sleep. She only gave it to him if he asked for it. He would need it to keep himself from blowing up on somebody when he didn't want to get in a fight. A few years ago if he couldn't find weed he would get an attitude. He was stoned all the time. He thinks that if he was still smoking weed this wouldn't happened because it kept him from doing stupid stuff. He said, "I was living the American Dream. I had a job and was taking care of three kids and I had a dog and I was fixing to buy a car and a place." When he got a public intoxication charge his mom sent him to an outpatient program at Decision Point. He wanted to look good for the court. He went three Saturdays in a month and passed the program. He said alcohol was never a big thing for him. The only substance abuse related arrest he has had is a public intoxication. He has never been in prison.

Before this, the longest he was in jail was 8 hours for a public intoxication arrest. He was just there long enough to sober up and go home.

Current Functioning: He reported that he had been in the jail for 7 months. He is in a cell by himself. He sleeps all the time or if he is up, he is pacing or rocking. He does push-ups once in awhile for exercise. He has gone outside a few times but said it is just a really high wall and there is not anything to do. He doesn't feel safe in jail. He claims to have been threatened by a few guards and inmates. He is considered "high profile" and is kept separate from other inmates. He has been told to kill himself by other inmates. He keeps busy by reading the Bible and thinking about his mom, nieces and nephews. His mom and brother, Kenny, visit. He said that when Kenny got out of jail when he was 17

or 18 years old they started to do drugs together. He talks on the phone with Kenny and his mom. They are supportive. He reported no current suicidal ideation. He has thought about it but he doesn't want to go to hell. He reported occasional panic attacks. He might start crying for no reason. Then he might be happy and look out the window and then cry again. He tries to go to sleep or pray to manage this. He wasn't really religious until he got in jail. He reported a phobia of spiders. When asked about obsessive-compulsive symptoms he said his mom said he has "ADD" and has to have all his things organized. It is not really a problem in terms of his functioning. He reported no paranoid thinking. If he reads a book for a long time he might see a shadow out of the corner of his eye but he reported no other hallucinatory type experiences. He hasn't gotten in trouble while in jail. To pass the time he reads the books his mother brought him which are Christian fantasy books.

Second interview: I interviewed Mr. Holly again on 7/26/13. At that time he said he was sleeping a lot. He had good and bad days with his mood. He reported no suicidal ideation. His appetite was off and on. He hadn't been outside lately because it was hot. He wasn't getting exercise. He sleeps all day and most of the night. He doesn't have nightmares.

I asked him more questions about his childhood. He said that Joe was mean when he drank. He might have had Playboy magazines lying around but he doesn't remember. Butch taught him to make methamphetamines. He was mean all the time and was a general for the Arian Circle which he described as a racist group. He liked Butch. He thought he was a cool guy because he had a bunch of tattoos and was teaching him about tattoos. Zachary got his first tattoo when he was 13 years old. He got a mushroom on his shoulder because his mom has one. He also has barbed wire on his wrist. Butch did the tattoos for him. He added that he went to school with a swastika and somebody saw it and the cops were called because it was considered racist in California. Back in the day he belonged to the Arian group as well. When he was arrested, his head was shaved but he said that was more because he doesn't like to mess with long hair. He said Butch wasn't physically abusive to him until the end when he picked him up by his hair. He wasn't emotionally abusive to him but he was to his mother. He said, "We were all doped up most of the time. I was gone most of the time." He was about 13 years old at the time and they were together until he was 17. When asked more about Joe he said that he misses the trailer. He remembers Joe drinking but not all the time. They could tell he was drinking because he was mean.

The worst thing Joe did to him was to throw him against the dresser and kick him in the ribs a few times. They didn't go to the doctor. He said nobody went to the doctor because Joe was a lab technician and would know if you were really bad. He heard Joe kicking his mother one time and found out he had broken three ribs. They were in the bedroom and he heard it but he didn't go in. He called the police a couple of times and Joe would go to jail for a day but then he'd be back out. They just didn't talk about it after that. The family really still doesn't talk much about it. The worst Joe did to Kenny was to beat him with a broom handle. Zachary didn't see this but he was outside and he heard it. He said Kenny got it more than he did. He knows that Butch hurt the cat one

time because later the cat had gone to the vet and had tubes coming out of it.

When asked about his relationship with Kenny when he was younger he said Kenny put him in the dryer. He said it kind of hurt and he remembers it. I asked him about the school investigating Kenny for "peeing in his mouth" and he said he just remembers Kenny peeing on the floor and making him lick it up. He doesn't remember Kenny peeing in his mouth. He does remember Kenny rubbing against him a couple of times. He tries not to think about it. He told his wife about it but said it is kind of fuzzy. He doesn't remember Kenny making him drink soap. He got Kenny back by breaking his GI Joes and ripping up his comic books. One time he locked Kenny out of the house which was his mom's idea because she couldn't take him along in the car to pick up Joe from work. Zachary broke the bedroom window thinking that somehow that would keep Kenny out. He reported no sexual interaction with his mother. The only one who teased him about his lost testicle was Kenny. The kids in school didn't know about it. They didn't tease him.

Interview with Ginger Simmons: I interviewed Ginger Simmons at the law offices of Kent McLemore, on 7/12/13. Ms. Simmons is a 52 years old. She quit school to marry Kenny's dad, which only lasted a year and then he took off. She got a GED later. She thinks she has learning problems. She tended to daydream but she later did better. Her father had learning problems. She completed cosmetology school but barely passed. She said that Zachary's younger half brother Joey is very smart but he has a "dual personality and HIV." His older half brother, Kenny, had no learning problems but didn't finish high school. He had a scholarship to college but got in trouble and didn't go. Ginger has been married three times. The first marriage was Kenny's dad, Kenny Keeton, and they were together a year. She was with Zachary's dad for five years but he died of cancer when Zach was 14 years old. His name was James Holly and he was only there until Zach was 10 months old. He has other children. She doesn't know if James had learning problems but he did mostly manual labor jobs. She met him when he was a maintenance person at a nursing home and she was a CNA. She described him as volatile and abusive. He would drag her across the carpet. Zach didn't have a relationship with his dad until he went to stay with them one summer and his stepmom was mean to him so he didn't go back.

After breaking up with James she moved to California and became a drug addict. She met Joe, who introduced her to meth within six weeks of moving there. She said she has an addictive personality and when she tried it, she was hooked. She and Joe were together 10 ½ years. She described him as very manipulative. He would make the boys go out and move rock piles back and forth to punish them. He would wake them up at 4:00 am to pick up lint from the carpet. His grandmother painted a picture for them and he got mad and put his fist through it. He would rearrange things like the pictures on the wall to make her feel crazy and tell me that she had done it. She got pregnant three times and two times he made her have an abortion because he didn't want the baby. When she got pregnant with Joey she told his mother and grandmother about it and they were happy about it and then she was able to keep the baby. One time during an argument she pulled a knife on him because she was scared. He called the police and he made her say that she

was on medicine and had made a false police report. She feels that the boys were afraid of him. She said he tried to throw her on the freeway once when she was taking him to work. He would sell things that she bought with money from a motor vehicle settlement. She left him and came back to Fayetteville but two weeks later he said that she had kidnapped Joey and she had to go back to California. At that time Zach was 9 or 10 years old. When they lived here briefly she was working at Braum's and had gotten an apartment and things were peaceful between her and Zach because there was no fussing and fighting. Interestingly, she brought a 20 year old male friend back with her but she kicked him out after awhile.

The worst thing she observed Joe doing to Zachary was whippings and humiliation. She feels that she molly-coddled Zach. She would fill out work applications for him because he couldn't take care of things very well himself. She saw Joe bust a broomstick over Kenneth and that he was mean and beat the kids. He used a belt. He was a 6 foot tall man. She said Zach wet the bed until he was 10 years old. Joe would get aggravated and humiliate him. They never took him to the doctor about it. They didn't go to the doctor after the whippings because they weren't allowed to. When asked if DHS had ever been involved in the family she said that she went to jail for 15 days once and Zach was at a friend's house. Somehow DHS got involved but she claims that when she got out of jail they gave him back to her. Somebody said he had been eating out of trash cans but she doesn't think he was. She admitted that didn't make him go to school because he didn't like it.

She told the story about Ms. Bell making him stand in the hallway during reading times and she feels that this ruined school for Zach. She related a story that one time she was holding Zach when he was 11 months old. He was sick and she feels that he quit breathing. He had a high temperature. She took him to the emergency room. He didn't talk until he was 2 years old. He walked about a year and a half old. He didn't receive special services until before school started. She said living with Joe was the most stable situation they had. She feels that the sexual atmosphere there was normal. They had parties and they would play poker and board games. Sometimes the boys would be sent to their rooms. After she left Joe they lived in hotel rooms and one room places. One time they lived in a big house with two male roommates, who would babysit Zach. They were in shelters. They were homeless but they were never living in the streets. They always had somewhere to go. She feels upset about some of the things that she was doing because of her drug use. She doesn't feel that Zach was ever injured when she left him with people. She related the story about the attack which caused Zachary to lose his testicle. She said this happened on the way to school when he was beaten up by some boys. She said that Zach got in trouble in school for fighting one time when he was taking up for a kid who was disabled. He didn't like school. When asked about Zach's sexual development she said he was like a child. He has played video games like a little kid, even since he has grown. She thinks he thinks like a little kid and acts like a child. She said he can't take care of himself. She cited the video games and work history. She and Kenny have always taken care of him. She feels that his wife was quite bossy to him.

When asked about the relationship between Kenny and Zach she said she didn't think that

they would ever be as close as they are now. She related the story about Kenny putting Zachary in the dryer once although she said that he felt sorry for him and put a pillow in with him. She related the story about Zachary throwing something outside the window to protect himself from Kenny coming in the window and thought that was funny and an example of his immaturity. When asked if she was aware of any sexual behavior between Kenny and Zachary she said there was a rumor of it but Kenny denies it. When Zachary was in third grade she heard from the school and got a visit from them and they investigated it but nothing came of it. Kenny would have been 12 or 13 years old and Zachary 8 or 9. She asked Zach about it and he said something about Kenny peeing in his mouth. If she asks Kenny about it, he just shuts down. She thought that Kenny was cruel to Zachary. Kenny had a collection of comic books and he would let Joey the younger half brother play with them but not Zachary. He was left to babysit at the age of 11 or 12 when she would pick Joe up from work but not for long periods of time. She feels that her second husband, Butch was abusive to Zach toward the end of their relationship. He had jerked Zach up and was choking him. That's why he went back to jail. He tried to kill both of them. Zach had hid in the bushes and she locked herself in the car. She related a story of Butch spearing the cat with a broken broomstick.

She admitted that she got Zachary high on marijuana when he was 10 or 11 years old. She said it was a one-time thing. She doesn't remember how old he was when they first did meth together. She smoked it with him. When asked if she used drugs when she was pregnant she said she didn't know she was pregnant with Zachary so she used poppers a few times. When she found out she was pregnant she stopped using. She only gained about 13 pounds during her pregnancy with Zachary. He was 5 lbs 13 oz when he was born. He was a full term baby and there was no apparent birth trauma. He was jaundiced for three weeks. He got pneumonia and she had to use a dehumidifier and keep him on her chest.

Interview with Kenneth Keeton: Kenneth was interviewed at the law offices of Kent McLemore on 7/12/13 for one hour. He reported that he had no relationship with his father and that when his mom moved to California she didn't take him. He had been taken away from her by his grandparents. When he was 8 years old he told his grandparents he wanted to see his mother and his grandfather sent him off to California. She was with Joe at the time and he stayed there until he was locked up until the age of 17. Joey was born a year after he moved there. He lived with mom, Joe and Zach. When asked what it was like he said that from the outside they looked like an everyday family. They would go to the movies but behind closed doors it was dysfunctional. They gave him rum and Coke to put them to sleep at night. One or two months after he got to California he started getting beaten. Nothing like that had happened at his grandmother's house. He remembers his own beatings but when somebody else was getting beaten he didn't want to get into it. Sometimes he and Zachary both got it. One time they were up talking when they were supposed to be sleeping and Joe slammed their heads together to put them to sleep. He doesn't know if they were knocked unconscious. Sometimes he would wake them up with a flyswatter. He would beat them with extension cords and he remembers being hit by a burn stick. He said "I got my butt kicked like a man when I was 9 or 10 years old." He said Joe punched him, kicked him in the stomach and all

kinds of stuff. When he was being beaten, Zachary was usually in another room but at the breakfast table if they wouldn't eat, Joe would smack him on the head with the fat end of a butter knife. He said he has seen Zach get hit plenty of times in the head like that. He can't remember seeing bruises on Zachary. He admitted that he used to beat on Zachary and took his aggression out on him. He put him through a window face first and he put him in the dryer once. They might argue but he was bigger and he would beat him up. He doesn't feel that he tortured Zachary.

When asked about the sexual atmosphere, he said Joe had Playboys and let the boys look at them. Joe would walk around in his Speedo underwear. He said the kids eventually realized the adults were doing drugs because they would play cards all night long and into the morning and wouldn't sleep. He remembers his mother leaving Joe and coming to Northwest Arkansas. They lived in a trailer when they first got there and there was some guy who was there about three months. He remembers his mother kicking him out of the house one time. She dropped him off at the top of a hill with a mattress. He said she ended up moving back to California and didn't even tell him she was going. They came back and were all drunk and kicked in his door because his mom wanted to see him. He wasn't around Zach much during those years. He remembers pushing Zach against the wall. Now he sticks up for him if he has a problem. When asked about the living situations, he said that when they were with Joe it was a stable environment and things were clean. The bills were paid but after mom broke up with Joe he wasn't with her much. He said it was hard to get hold of them because they were so transient. When asked about if he had sexually abused Zachary he said he doesn't remember doing that. He does remember messing around with a cousin but not with Zachary. He mixed up some dish soap and cayenne pepper concoction once and made Zach drink it. He doesn't know about Zach's sexual development or if he was ever sexually abused. He does remember that Zach liked heavier girls. He stated that he trust Zach 100 percent around his children and doesn't believe that he is guilty of what he was charged with. He remembers calling Zachary "one nut" and demeaning him. He remembers not feeling safe when they lived with Joe. He saw his mother take bad beatings as well as Zach. Oftentimes they would be locked out at 7:00 in the morning and were told to come back at dark. Sometimes his mother would leave a peanut butter and jelly sandwich on the step at lunch time for them. They did yard work on the weekends. They never knew if they would get it or not. He remembers that in California, Zach's mother was letting him shoot up because Zach told him that. That's when they were with Butch. Butch taught him how to cook meth when he was a youngster and they lived in a hotel room. He feels that Zach has been clean for awhile. He noted that he smoked pot one time on Joey's birthday and he was drinking, but not regularly.

Defendant's Account of the Offense: Mr. Holly, at the advice of his attorney, did not discuss his account of the offense with me.

Record Review: Work Records: Records indicate he was written up many times for taking breaks without asking at the Flying Burrito. He quit a job at Restore It because they asked him to take a drug test and he knew he would fail. He was terminated from a job at K-MAC for failing to call in when he didn't go to work.

Legal records indicate juvenile arrests for burglary/criminal mischief, and battery. On 2/2/99 (14 years old) he was accused of harassment by a 10 year old girl. A juvenile citation was for harassment was issued. There is a record of charges that Mr. Holly was engaged in sexual misconduct with a 12 year old girl along with a 16 year old boy. The summary/recommendation states: "this child agreed to engage in sexual relations with both boys ages 14 and 16 years old The prosecutor has not filed any charges at this time. Child received two medicals, no evidence. The boys were not the caretakers of this child. The law clearly states anyone under 18 years old engaging in sex with anyone under 14 years old is a violation. Criminal code 5-14-104, carnal abuse. There is no evidence of child maltreatment naming the 14 year old male since there is less than 2 years age difference between he and the victim, but there is evidence of child maltreatment against the 16 year old male."

Medical Records: Records from Kern county Medical Center dated 6/3/93 indicate he was seen for follow up after left testicular orchicotomy (surgery to remove undescended testicle) after being kicked in the groin by a bully. He was eight years old at the time. Medical records from the emergency department of Northwest Medical Center indicated he was seen on 10/17/12 for shortness of breath and chest pain. He was discharged home the same day with diagnosis of palpitations. He was seen on 8/2/12 for dental pain and discharged home with orders to contact a dentist. He was seen on 3/28/12 with shortness of breath and was sent home with diagnosis of anxiety reaction to Spice smoking. He was seen on 12/20/2010 with complaint of headache for 2 days. CT scan was normal and assessment was of acute severe migraine headache. He was seen on 11/14/10 with cough. He was seen on 7/9/9 with ear pain. He was seen on 1/30/9 with abdominal pain and diagnosed with epidiymitis. He was seen on 1/30/07 for cough. He was seen on 6/16/06 for dental pain.

Department of Human Services Report to Prosecuting Attorney: There is a report with referral date of 10/15/1998 indicating that a caller had reported that Zachary's mother repeatedly locked him out of the house at night and that he went to the neighbor's houses looking for food. This was investigated and ended in DHS assisting his mother in obtaining HUD housing and a local church providing a donation to turn electricity on. The recommendation was that the case be marked unsubstantiated.

Educational records: there are Stanford Test of Academic Skills 4th Edition scores dated 09/2001 (16 years 11 months old) indicating the he scored below the 10th percentile in areas of English usage/mechanics, English rhetorical skills, mathematics pre-algebra/algebra, geometry, and science reasoning. His best ability was in reading which was at the 29th percentile. This means that 71 percent of children who took the test did better than he did in reading. There are records from Huntsville high School indicating that he was written up repeatedly for excessive tardiness, missing classes and refusing to do his work. Grades ranged from C's to F's. A record on 6/3/91 from Kindergarten stated, "daydreams, easily distracted, needs prodding." Achievement testing in first grade indicate a Total Reading percentile of 27; Total Math percentile of 34; and total Language percentile of 35 On 4/6/92, Otis-Lennon School Ability Test scores indicated a

verbal subtest percentile score of 47 and nonverbal percentile of 10 with a total of 19. Verbal comprehension verbal reasoning, and pictoral reasoning were considered average but figural reasoning was below average. Records from Huntsville High School for the 2001-2002 school year indicate he was in resource classes for English and possibly another class.

Tests Administered:

Wechsler Adult Intelligence Scale, 4th Revision (WAIS-IV)
Wechsler Individual Achievement Test, Revised (WIAT-2)
Reitan Indiana Aphasia Screen
Trail Making A and B
Advanced Clinical Solutions Verbal Fluency Test
Advanced Clinical Solutions Social Perception Test
Advanced Clinical Solutions Word Choice Test
Rey 15 Items Test
Gudjonsson Suggestibility Scales
Structure Interview of Reported Symptoms, 2nd edition (SIRS-2)
Competency Assessment to Stand Trial – MR (CAST-MR)
Beck Depression Inventory-II
Beck Anxiety Inventory

Test Results: Effort assessment using the Word Choice Test was within normal limits with a raw score of 50 out of 50. On the Rey 15 items test he was able to replicate all 15 items. The SIRS-2 was suggestive of genuine responding. He had two scales which were in the probable feigning range but no scales in the definite range.

On the Wechsler Adult Intelligence Scale, Zachary earned scores ranging from the borderline to average range. His Full Scale IQ was 82 which was in the low average range. He did the best on tasks measuring processing speed and the worst on tasks which require attention and concentration. Scores were as follows:

Scale	Composite Score	Qualitative Description
Verbal Comprehension	83	
Perceptual Reasoning	84	
Working Memory	77	
Processing Speed	100	
Full Scale IQ	82	

Scaled scores ranged from a low of 5 to a high of 12. He demonstrated an individual strength in visual scanning but no individual weaknesses. Scores were as follows:

Verbal Comprehension Subtest
Similarities 6
Vocabulary 6
Information 9
Perceptual Reasoning Subtest

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Block Design	8
Matrix Reasoning	6
Visual Puzzles	8
Working Memory Subtest	
Digit Span	7
Arithmetic	5
Processing Speed Subtest	
Symbol Search	12
Coding	8

Achievement, as measured by the WIAT-2, was lower than would be predicted based on IQ scores. Scores were as follows:

Subtest	Standard Score	Grade Equivalent
Word Reading	57	5:0
Reading Comprehension	68	7:7
Numerical Operations	64	3:3
Math Reasoning	71	5:8
Spelling	42	2:1
Listening Comprehension	76	7:2

Social cognition was in the average range with a scaled score of 9 on affect naming.

Verbal fluency was significantly impaired for letter fluency but in the average range for category fluency which often suggests left hemisphere impairment. He actually scored very well on category switching. On the Aphasia Screen, he earned an error score of 14, which is consistent with a T-score of 35 and is in the mildly impaired range.

On a task on numeric sequencing (Trails A) which measures attention and concentration, he worked in average time and made no errors. On a more complex, alpha-numeric sequencing task (Trails B) he worked in above average time and made no errors.

On the CAST-MR, he scored 100 percent correct on basic legal concepts, 87 correct on skills to assist offence, and 100 percent correct on understanding case events with an overall score of 96 percent.

His Gudjonsson Suggestibility Scale scores was not suggestive of excessive suggestibility. His scores were within the average range compared to other court referred defendants.

On the Beck Depression Inventory-2, he earned a total score of 46, which is in the severely depressed range. He endorsed the following symptoms in the severe range: hopelessness, feeling guilty, feeling he is being punished, having trouble making decisions, feeling worthless, lacking energy, excessive sleep, and fatigue.

On the Beck Anxiety Inventory he earned a total score of 24 which is in the moderately

anxious range. He endorsed only two symptoms in the severe range; fearing the worst, and being scared.

Summary: There was no indication of feigning of either cognitive or psychological deficits. Test results are considered valid. Mr. Holly's overall intellectual functioning was in the low average range with his best ability being in processing speed and the worst ability in working memory which suggests problems with attention and concentration. On other measures of attention (Trails tasks) he did very well. He does not qualify for a diagnosis of mental retardation. His academic scores were lower than would be predicted based on intellectual scores in all areas. His best academic ability was in listening comprehension but he scored especially poorly in areas of numerical operations and spelling. Social cognition (ability to recognize emotions in others) was in the average range. He did not demonstrate easy suggestibility on the Gudjonsson Scale. On the Beck Scales, he demonstrated moderate anxiety and severe depression.

Zachary reported an extensive history of childhood abuse; largely physical but also sexual in nature. His coping mechanisms included using drugs and "just not thinking about it." He did not report flashbacks or nightmares or other symptoms suggestive of PTSD. He does not qualify for a diagnosis of Post Traumatic Stress Disorder. He qualifies for a DSM-IV-TR diagnosis of Adjustment Disorder with Depressed Mood manifested by feelings of hopelessness, sadness, tearfulness in response to the stress of being in jail and the seriousness of his charges. He has had episodes of depression in the past as well; precipitated by situational stress. In the past, he has self-medicated with drugs when depressed. He was raised in chaos and was only briefly able to maintain a stable lifestyle.

His extensive drug use contributed strongly to his instability, but he has limited coping skills and has not been able to maintain employment or relationships, especially while abusing drugs. There was only a brief window during which he maintained sobriety, and during that time he was more reliable in employment and in relationships but he was very dependent on others to make life decisions. In fact, his mother and brother both described him as someone who needed to be taken care of. His relationship with his wife was one of dependency. He even asked her permission to get "high" at one point. In my opinion, he does not qualify for a diagnosis of borderline personality disorder. While he demonstrated instability in relationships, he does not have the other patterns of instability in self-image and affect. He has been impulsive but this is more related to substance abuse than to personality disorder. During the brief time that he was abstinent from drugs he was more stable in his personal relationship with his wife, and in his ability to maintain employment. While he has engaged in antisocial behavior as an adult, it is my opinion that the majority of this behavior was drug related and therefore, I don't feel he qualifies for a diagnosis of Antisocial Personality Disorder.

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Diagnosis:
Axis I: Adjustment Disorder with Depressed Mood
Methamphetamine Dependence, In Sustained Remission
Cannabis Abuse, In Sustained Remission
Axis II: Learning Disorder in Written Expression, Mathematics And Reading
Personality Disorder, Not Otherwise Specified with Dependent Traits
Axis III: History of Orchicotomy
Axis IV: Incarceration, Recent Divorce, Serious Criminal Charges
Axis V: 55-60

Respectfully submitted,

Patricia J. Watz, Ph.D.
Psychologist 90-18P Arkansas
SOD: 13P

County of Sebastian
State of Arkansas

Acknowledged before me, this 27th day of August, 2013.

Notary Public

My Commission Expires: 5-19-15

BRAD SWAFFORD
NOTARY PUBLIC-STATE OF ARKANSAS
SEBASTIAN COUNTY
My Commission Expires 05-19-2015

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Hay momma I got your
Latter today & Elizabeth &
Noah's Latter's to tell him
I siad thxu & I Love &
miss him too as today
I have Ben here 4 52 Days
& still got a yr 2 go I
Love u & miss u so much
I miss talking to u on
the phone plz tell Joey
to cum & sav his Borther
& that I Love him & tell
him to wright me I Lov to
hir from him & I miss him
tell kenny to wright me to
I Love all u guys so
much & miss u guys too
cant whit to cum home
will I will see u guys
Friday & I'll talk to u
to moro I Love & miss u
guys so much Love u
Hugs & Kisses to u guys

LOVE



Zachary

Holly