

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant/Cross-Appellee,

v.

CASE NO. SC12-132

L.T. No. CF97-00047A-XX

THOMAS DAVIS WODEL,

Appellee/Cross-Appellant.

**ON APPEAL FROM THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT,
IN AND FOR POLK COUNTY, FLORIDA**

INITIAL BRIEF OF APPELLANT

**PAMELA JO BONDI
ATTORNEY GENERAL**

**CAROL M. DITTMAR
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0503843
Concourse Center 4
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
Carol.Dittmar@myfloridalegal.com
COUNSEL FOR APPELLANT**

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 103

ARGUMENT 104

 ISSUE I - IAC AS TO MITIGATION 104

 ISSUE II - IAC AS TO MENTAL HEALTH ASSISTANCE..... 124

 ISSUE III - IAC AS TO TESTIMONY BY ARTHUR WHITE 129

CONCLUSION 132

CERTIFICATE OF SERVICE 132

CERTIFICATE OF FONT COMPLIANCE 132

TABLE OF AUTHORITIES

Federal Cases

<u>Armstrong v. Dugger</u> , 833 F.2d 1430 (11th Cir. 1987).....	117
<u>Bobby v. Van Hook</u> , 130 S. Ct. 13 (2009)	109, 110
<u>Chandler v. U.S.</u> , 218 F.3d 1305 (11th Cir. 2000).....	107, 111
<u>Davis v. Singletary</u> , 119 F.3d 1471 (11th Cir. 1997).....	127
<u>Grayson v. Thompson</u> , 257 F.3d 1194 (11th Cir. 2001).....	114
<u>Lockhart v. Fretwell</u> , 506 U.S. 364 (1993)	131
<u>Porter v. McCollum</u> , 130 S. Ct. 447 (2009)	115
<u>Robinson v. Moore</u> , 300 F.2d 1320 (11th Cir. 2002).....	117
<u>Rogers v. Zant</u> , 13 F.3d 384 (11th Cir. 1994).....	111
<u>Rompilla v. Beard</u> , 545 U.S. 374 (2005)	117
<u>Rutherford v. Crosby</u> , 385 F.3d 1300 (11th Cir. 2004).....	116, 117
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984)	105, 106, 110, 131
<u>Tompkins v. Moore</u> , 193 F.3d 1327 (11th Cir. 1999).....	115

<u>Waters v. Thomas,</u> 46 F.3d 1506 (11th Cir. 1995).....	106
<u>White v. Singletary,</u> 972 F.2d 1218 (11th Cir. 1992).....	107
<u>Wiggins v. Smith,</u> 539 U.S. 510 (2003)	111, 112
<u>Williams v. Head,</u> 185 F.3d 1223 (11th Cir. 1999).....	106
<u>Williams v. Taylor,</u> 529 U.S. 362 (2000)	117
<u>Wong v. Belmontes,</u> 130 S. Ct. 383 (2009)	116
State Cases	
<u>Anderson v. State,</u> 18 So. 3d 501 (Fla. 2009).....	121, 122
<u>Asay v. State,</u> 769 So. 2d 974 (Fla. 2000).....	127
<u>Chandler v. State,</u> 848 So. 2d 1031 (Fla. 2003).....	130, 131
<u>Davis v. State,</u> 875 So. 2d 359 (Fla. 2003).....	127
<u>Johnson v. State,</u> 921 So. 2d 490 (Fla. 2005).....	106
<u>Jones v. State,</u> 732 So. 2d 313 (Fla. 1999).....	127
<u>Jones v. State,</u> 928 So. 2d 1178 (Fla. 2006).....	127
<u>Nelson v. State,</u> 875 So. 2d 579 (Fla. 2004).....	119

<u>Pace v. State,</u> 854 So. 2d 167 (Fla. 2003)	127
<u>Peede v. State,</u> 955 So. 2d 480 (Fla. 2007)	121, 122
<u>Pietri v. State,</u> 885 So. 2d 245 (Fla. 2004)	127
<u>Raleigh v. State,</u> 932 So. 2d 1054 (Fla. 2006)	126
<u>Rivera v. State,</u> 859 So. 2d 495 (Fla. 2003)	127
<u>State v. Sireci,</u> 502 So. 2d 1221 (Fla. 1987)	126
<u>Stephens v. State,</u> 748 So. 2d 1028 (Fla. 1999)	104, 122, 124, 129
<u>Stephens v. State,</u> 975 So. 2d 405 (Fla. 2007)	121
<u>Stewart v. State,</u> 37 So. 3d 243 (Fla. 2010)	125, 126
<u>Woodel v. State,</u> 804 So. 2d 316 (Fla. 2001)	1
<u>Woodel v. State,</u> 985 So. 2d 524 (Fla.), <u>cert. denied</u> , 555 U.S. 1036 (2008).....	1, 68, 130

STATEMENT OF THE CASE AND FACTS

Appellee Woodel was granted a new sentencing proceeding when the court below found Woodel's resentencing attorney, Gil Colon, provided ineffective assistance of counsel (36/6074).¹ Woodel was initially sentenced to death for the murders of Clifford and Bernice Moody in 1999. On appeal, this Court affirmed Woodel's convictions, but remanded the case for entry of a new sentencing order, because the sentencing judge failed to properly evaluate the mitigating evidence. Woodel v. State, 804 So. 2d 316 (Fla. 2001). Upon remand, the case was assigned to the Hon. Susan Roberts and a new jury proceeding was directed, as the original judge was not available to enter a new order (RS2/327). Woodel was resentenced to death for Mrs. Moody's murder and this Court affirmed the sentence. Woodel v. State, 985 So. 2d 524 (Fla.), cert. denied, 555 U.S. 1036 (2008).

The Moodys were killed on 12/31/96 (RS12/1781-82). Their bodies were found in a mobile home unit which they were preparing to rent out (RS10/1326-27; RS12/1726-27, 1730, 1781). Woodel spent the night before working at Pizza Hut, and drinking with friends after getting off work (RS11/1531; RS13/1846-48). Early

¹ Record citations are provided with a volume and page number (Vol#/Page#); citations with a "DA" designation refer to the initial record on appeal in Woodel v. State, Florida Supreme Court Case No. 95,110; citations with a "RS" designation refer to the record on appeal in Woodel's resentencing, Woodel v. State, Florida Supreme Court Case No. SC05-1336; citations noted only with a volume and page number refer to the record on appeal in the instant postconviction appeal, State v. Woodel, Florida Supreme Court Case No. SC12-132.

in the morning he walked back to the trailer he rented at Outdoor Resorts and chanced upon the victims as he walked through the park (RS13/1836, 1848-49).

Mrs. Moody was found lying on a bed, nude, having been stabbed 56 times and hit repeatedly over the head with a porcelain toilet tank lid (RS12/1791, 1795; RS13/1796-98, 1820-21, 1852-70). Her panties had been cut off and tied in a knot (RS13/1897-98). Mr. Moody was on the floor in the living room; of his eight stab wounds, several were deep enough to damage his internal organs (RS13/1809-12, 1819). Items from the crime scene recovered in a dumpster led the police to Woodel, and DNA evidence placed him at the scene, and tied items in his possession to the crime (RS11/1591-RS12/1619, 1633-34; RS13/1826-27). He also provided a written statement and an extensive taped interview with detectives, acknowledging his involvement and describing his actions before, during, and after the murders (RS13/1833-38, 1842-95).

Allen Smith and Gil Colon were appointed to represent Woodel (DA1/17-20). Dr. Thomas McClane was appointed as a confidential advisor; McClane's notes and records were admitted at the hearing (DA1/31-33; 24/3953-63). A month after McClane's office advised Colon that McClane did not think neuropsychological testing would yield much, Dr. Henry Dee was appointed, producing a report on 10/20/98 (DA1/34-36, 127-133, 24/3964-80). Toni Maloney was appointed as a forensic specialist investigator on 11/12/98 (DA1/134-36).

Trial began 11/9/98 and Woodel was convicted as charged 12/4/98 (DA2/188-91). At the penalty phase, Woodel presented testimony from his friend, Jessica Wallace (DA18/2816-22); a co-worker, Leola Kilbourn (DA18/2823-29); Ms. Kilbourn's daughter, Lisa Kilbourn (DA18/2831-36); trial attorney Allen Smith (DA18/2841-50); his father, Albert Woodel (DA18/2857-72); his aunt, Margaret Russell (DA18/2880-2900); his sister, Bobbi Woodel (DA18/2906-38); and Dr. Dee, a clinical neuropsychologist (DA19/2959-96). The jury recommended death sentences by votes of 12 to 0 for Bernice Moody and 9 to 3 for Clifford Moody, and the court followed the recommendations (DA2/213-14).

For the July, 2004 resentencing, Colon and Dee were reappointed (RS2/328-29). Woodel presented seven of the witnesses that testified at his initial penalty phase, and also testified in his own behalf (RS13/1937-80; RS14/2046-RS16/2456). Photographs of Woodel and other family members were admitted (RS13/1953-57, RS14/2111-13, RS15/2171-72, 2175-78).

Margaret Russell's brother is Woodel's father, Albert; Albert and Margaret also have a half-sister, Barbara Jean, in Maryland. Albert has been deaf since he was about six months old and contracted meningitis (RS13/1969). Woodel's mother, Jackie, is also deaf and had a son when she married Albert (RS13/1939-40). Woodel was born in April 1970, and Jackie was ill and became pregnant with Woodel's sister, Bobbi, so Russell took Woodel back to Maryland with her for

about three months (RS13/1937-39, 1943-44). Woodel was not on any regular schedule and it was difficult getting him to sleep; he would bang his head against the headboard on the crib, and rocked himself so much in the crib they had to take the rollers off of it (RS13/1939).

Woodel and Bobbi spent their early years in North Carolina and were financially poor . They ran around without shoes and did not have meals but would just reach in the refrigerator for a piece of baloney or a hot dog, and then walk around eating it. Albert was a mechanic and old cars were scattered over the yard, with oil spills and no motors, where the kids played -- but the kids were usually happy and smiling (RS13/1941). The kids were baptized by Jim and Tammy Faye, and spent weekends at the church, which had money to help people buy groceries; Jackie would get paid for taking them and the kids had a great time (RS13/1961).

When Woodel was about three, Jackie left the children with Albert and no one knew where she was; Woodel went to live with Russell for about six weeks (RS13/1944). Then for a while, Albert's grandmother [Ella] took care of Woodel and Bobbi; it was a happy time as Ella provided a normal pattern with a nice home, school, and regular meals (RS13/1944-46, 1956-57). Ella became ill and it was decided the kids would be better in a children's home nearby so Ella could visit them (RS13/1944-45). The children had a strong bond with Ella, but she passed away (RS13/1945).

After about two years, Jackie got the kids out of the children's home and took them to Michigan. For a period of time they were shuffled back and forth between their mother and father, as in the typical divorce where custody is being established. When Jackie first took them to Michigan, she got a restraining order against Albert, so he could not go to Michigan and see them (RS13/1946). For about ten years, Woodel lived in Michigan with Jackie, half-brother Scott, and Bobbi, and Woodel and Bobbi would spend summers and holidays with Russell and her family in Pennsylvania (RS13/1970). While with Russell, Woodel and Bobbi attended vacation bible school in the summer (RS13/1961). During those years, the kids seemed to miss out, as they never played sports, joined Boy Scouts or Girl Scouts or any clubs, or attended any events (RS13/1971).

Woodel and Bobbi spent most of their lives on a roller coaster of ups and downs, getting shuffled from home to home between their mother, father, aunt, grandmother, and the children's home. Russell recalled getting a letter from Jackie, asking Russell which of Jackie's children Russell wanted. Since Russell already had three boys of her own, she didn't need any more, but Woodel and Bobbi would come spend the summers with her (RS13/1952). It just seemed like Jackie was normally trying to get rid of her children (RS13/1953).

Russell felt Jackie was not into motherhood, but was more interested spending time selfishly on herself. She would hand the kids off to anyone that

would take them, and do whatever she could do to make things easier for herself (RS13/1940). When asked if Jackie had a drinking problem, Russell responded that she didn't see Jackie drinking, but noted sometimes when you're around someone, you can smell alcohol on them occasionally; since Russell lived in another state, she could not answer the question (RS13/1941). Jackie did not nurture Woodel or Bobbi; she did not hold them or play with them. Jackie may have loved her children, she did not know how to show it. She wasn't mean to them, but the children learned from an early age that they were there to wait on their mother. They became her communication with the world, so they took on the role of parent figure (RS13/1942). Woodel's parents had trouble communicating, but Russell didn't see that in the kids until they were older (RS13/1943).

When Woodel lived in Michigan, the home did not have any doors and the bedroom was very sparse. Jackie told Russell that she didn't need any doors in the house because she wanted to see what was going on; even the bathroom only had a curtain (RS13/1949). Once Woodel and Bobbi had come for a visit, and the bathroom had just been remodeled with sliding glass doors for the tub, and Bobbi asked if she could have the curtain rod, so she could put it up at home to take a shower (RS13/1949-50). Russell thought Jackie wanted the doors gone due to being deaf, but she knew other deaf people that did not take their doors down so she attributed it to Jackie just wanting to know everything going on (RS13/1950).

Woodel and Bobbi did not have toys, and Russell would take them toys but Jackie would clean house and throw everything away (RS13/1942). Once Russell's son Todd was celebrating his birthday with Woodel and Bobbi, and Russell brought a cake and set it on the table, giving blow horns and party hats to the kids (RS13/1950-51). As soon as the cake was cut, Jackie was rolling everything up and throwing it in the garbage, because she didn't like the mess, so the party was over before it really started (RS13/1951). Another time, the families went camping, and in the night Russell found Jackie burning Bobbi's jacket and a pillow in the campfire. There was no reason for it, it was just the kind of bizarre thing Jackie did; she'd burn or trash anything that wasn't "in season" (RS13/1951-52).

Woodel, Bobbi and Albert came to live with Russell again when Woodel was a teenager and Albert was going through another divorce. Woodel was just starting to drive a car, and had made some "wrong" decisions involving school. Woodel would take Albert to work but then instead of going to school, he would just drive around the countryside, and he got expelled (RS13/1958). After that, Russell put him on a bus and sent him to Jackie, but a couple of days later he was back in Pennsylvania, because Jackie just put him on the bus and sent him back (RS13/1959). Russell took Woodel to a recruiting station and he joined the Navy (RS13/1959). He did well in basic training, but there was an incident where he was supposed to be running, and instead he went to a store and got cigarettes and a

deck of cards, and they kicked him out of the Navy. He asked if he could start over, but they wouldn't let him. At that point, Woodel returned to Michigan and got married (RS13/1960). Russell saw him once after that, at a family reunion in 1990, and he seemed happy and was very good with his little boy (RS13/1977-78).

As a young boy, Woodel was very sweet and played well with Russell's sons; even when Bobbi beat him up, he never fought (RS13/1947-48). She never saw any anger issues in Woodel, and noted he was quiet and withdrawn, so you never knew what he was thinking (RS13/1948). Woodel attended school and passed from grade to grade; Russell thought he had intelligence but he didn't use it, he would just do enough to get through and did not take part in school activities (RS13/1971). He was not the type to engage in any sort of confrontation. Russell described him as a lost little lamb who had no direction in life and just wandered from day to day, from paycheck to paycheck, from situation to situation. News of the murders came as a surprise, as she never would have thought of him harming or killing anyone, especially an older person; most of the people that Woodel loved were elderly, including both of his grandmothers (RS13/1963).

Russell was asked about Woodel's communication skills, and noted that Woodel likes to think things out and to do "figurations" on his hands as if he were talking to his mother or father, and that Woodel and Bobbi communicated with their hands (RS13/1961). When you asked Woodel a question, you often saw him

using his hands before he answered. Sometimes even when Woodel felt bad about something he would laugh, like a nervous laughter because he didn't want to show any sadness (RS13/1962).

Russell saw Woodel in jail after his arrest and he told her he was surprised to hear he had killed Mr. Moody, that he was sorry it happened, he had gotten what he deserved and he would have to live with it the rest of his life; he looked away as if ashamed (RS13/1964). Russell could not think of anything from Woodel's childhood or upbringing that would provide any explanation for the murders, everyone had been asking why this happened ever since. The only thing they could think of was Woodel drank too much, and must have totally cracked emotionally (RS13/1965).

Jessica Wallace was 15 years old in Dec. 1996; she knew Woodel because Jessica's mother, Pat Mueller, was the manager of the restaurant where Woodel worked (RS14/2046-47). She saw Woodel daily, just hanging out and talking with him. Woodel acted normal around other people, and was a friendly, outgoing, talkative, and kind person. She never saw him get angry or be violent (RS14/2047). The night before the murders, Woodel got off work around 10:00 and he and Jessica bought a quart of malt liquor from the 7-11 store across the street (RS14/2048). They walked back near the Pizza Hut, sharing the beer, and met three other young people who had alcohol in their book bags; neither Jessica nor

Woodel knew them (RS14/2048-50, 2059). They sat around, talking, drinking, and smoking cigarettes for a couple of hours (RS14/2050-51). Jessica stayed until her mother got off work at about 1:00. After the quart they bought was consumed, Woodel drank about four or five more beers; Jessica did not recall anyone going to buy another case of beer and thought that happened after she had left (RS14/2051). Jessica was a “sipper” but Woodel was a “guzzler” and that night he drank a whole lot more than she did (RS14/2066-67).

Jessica had seen Woodel drink before, and knew it took about a 12-pack before he showed signs such as loss of balance, slurring speech, and singing (RS14/2051-52). That night, Woodel was showing these signs; he “wasn’t in the proper state of mind” but was slurring his words, singing “Green Acres,” and was “overly joyed” (RS14/2052). Although Jessica’s mother usually gave Woodel a ride home after work, when Ms. Mueller called for them to leave that night, Jessica hurried to the car because she didn’t want to get in trouble for drinking; she told her mom that Woodel was all right and would walk home (RS14/2048, 2056).

Jessica never had trouble communicating with Woodel, although he mumbled and talked with his hands a lot (RS14/2065). He never talked about his parents or his past (RS14/2066). Jessica did not know about the murders until Woodel was arrested; when she heard Woodel had confessed, it was a big shock, because this wasn’t something he would have done; Woodel was very easy to get

along with, and never angry or hostile (RS14/2053-54, 2063-64).

Leola Kilbourn knew Woodel and Bobbi from working at Pizza Hut and often gave them rides (RS14/2067-68, 2074). Woodel was a dishwasher and had other general duties; he was always very helpful and did a little of everything (RS14/2069). He was conscientious, dependable, and kind; he never swore and was always very polite (RS14/2069-70). She had a trailer she let Woodel and Bobbi rent, and they were good renters (RS14/2070-71). Woodel was really good with Bobbi's baby (RS14/2071).

Mrs. Kilbourn described Woodel as quiet, soft-spoken, and very intelligent; he read a lot, and would be a good neighbor or just a friend (RS14/2076). Woodel never talked much about his parents or other family members besides Bobbi (RS14/2082). She never had difficulty communicating verbally with Woodel, and recalled seeing him signing to deaf people in the restaurant at times, helping take their orders (RS14/2083). After the murders, no one at work made negative comments about Woodel, everyone was just very much in shock (RS14/2075-76).

Mrs. Kilbourn's daughter Lisa met Woodel when he moved into the trailer and saw him pretty much every day (RS14/2085-87). Woodel was very friendly and never violent; he would do anything for anybody, and was always asking to help. At the time, Lisa was not working and drove Woodel and the others to work, to the grocery store, the doctor, or anywhere they needed to go. Woodel and Bobbi

were very close, and he was very helpful with the baby (RS14/2087). He kept the trailer clean and got along well with his girlfriend, Christina; there was nothing negative in the relationship she had seen (RS14/2088). When she saw him in jail after his arrest, he asked her to tell everyone that he was sorry, and he knew he had ruined his image; he was reluctant to see Bobbi because he thought he would cry the whole time, and was upset that everyone would think badly of him (RS14/2088-89). In her visit at the jail, Woodel was trying to get her to laugh, to keep her from crying. That was typical of the way he was, worried about others and concerned with their feelings over his own (RS14/2089). Woodel and Bobbi became like family, coming to her house for dinners and holidays (RS14/2091). Woodel never talked about his prior military history, or his mother or father (RS14/2093). He seemed like a typical 26-year-old with a girlfriend and a job, trying to make ends meet (RS14/2094).

Woodel had been living alone in the trailer for about a week at the time of the murders (RS14/2096). Lisa had been with Bobbi and the baby up in North Carolina visiting friends, and Christina had gone to Michigan (RS14/2095). Bobbi and Lisa returned to Florida before Woodel's arrest (RS14/2096). Lisa was at their trailer before the arrest, meeting Woodel's ex-wife and son, who had come down a day or two earlier. Woodel appeared to be just the same as always (RS14/2097).

Woodel's father, Albert, testified through two sign language interpreters

(RS14/2098-99, 2101). Albert lived in North Carolina and had worked for the Caterpillar company about five years, after having been a mechanic on Cadillac cars for 37 years (RS14/2101). Jackie was Albert's first wife and had recently passed away; they were married in 1969 (RS14/2102, 2126-27). She was hard of hearing, and communicated by signing; she was good at signing because her brother was deaf (RS14/2102). Jackie usually ignored and neglected the children (RS14/2102). She would throw dirty diapers in the trash instead of washing them out, so they would have to buy new ones all the time. Once the kids were potty-trained, they were "on their own." The kids did not use a crib but stayed in bed with their parents. Jackie could hear them cry, but she only responded some of the time, and other times she called Albert to handle it (RS14/2103).

Albert missed a lot of work to take care of the kids; Jackie refused to do anything for them about much of the time. He would come home and have to cook because the children hadn't eaten (RS14/2104). Sometimes when he got home, Jackie would be out drinking with the neighbors; she would drink every night, at times not coming home until the bars were closed, and sometimes being gone for days (RS14/2105). One time Albert came home from work to find the police at his house; while Jackie was supposed to be watching Woodel and Bobbi, they went across the street and started playing on a train that was stopped there (RS14/2116-17). Before they knew it, the train started moving, and the police ended up having

to bring them home (RS14/2118).

When the children were toddlers, Jackie's drinking led to problems in the marriage; Albert and Jackie would argue, and he would have to get physical to get Jackie to stop (RS14/2106). Albert drank socially before the children were born, but not after. They also argued about her failure to take care of the children. There was shared responsibility and a constant exchange as the children went from Aunt Becky, to Jackie, and to Albert, back and forth; the children may have been moved a hundred times (RS14/2107). Jackie would sometimes take the children without his knowledge. After having to get them from another state repeatedly, he started thinking they would be better off in a children's home (RS14/2108-09). Albert even damaged Jackie's car one time, trying to get her to stop taking the kids away (RS14/2108).

Albert wanted to move the family to Winston-Salem, where his mother lived and could help with the children (RS14/2105). Jackie did not want to go, but he ended up going for about two years, and his mother helped him during that time (RS14/2106). There was a children's home across the street from Grandma, who took care of them, and when she became ill, it was easier to have the kids in the home so Albert could work (RS14/2109). The children could not be with Jackie because of her drinking; they loved being around Albert, but had a "very different" bond with their mother (RS14/2110-12). He thought the children were in the home

about ten months, but it could have been two years. He and the grandmother would visit them together (RS14/2110). They seemed happy to be at the home; Albert recalled them winning an award while there (RS14/2112). When Albert was in the hospital getting his appendix out, Jackie took the children and moved to Michigan, and he wasn't able to go there (RS14/2108, 2114-15). The children's home told him that they had been taken to Michigan, but he didn't even know where in Michigan they were, and it would be impossible to find them (RS14/2115). He did not see the children for another eight years. Bobbi would write him letters, but they were never sent because Jackie would tear them up; Jackie took his money for child support but kept the children from him (RS14/2116).

Woodel was always a good boy growing up, and Albert never had any problems with him. Albert took him fishing, made model cars with him, and was always teaching him new things (RS14/2117). They did things normal fathers and sons did; Woodel like to play with his tools, and was an obedient child (RS14/2117-18). However, Woodel did not always listen to Jackie, because they did not get along well. She was hard of hearing, but she could speak, so she and Woodel could talk, while Albert could only sign with Woodel (RS14/2118).

Eight years after Woodel left the children's home, Albert saw him at Aunt Becky's house at Christmas. Becky called and told him that the kids were there and wanted to see him, so he went and stayed a few days; he went up again to see them

at Easter (RS14/2118-19). He stayed for a few days then had to go back to work. He went up to see them again at Easter (RS14/2119). When Woodel was 15, he wanted to come live with Albert (RS14/2119). Woodel was tired of having Jackie throw everything away. She threw everything in the garbage, they didn't even have knobs on the television (RS14/2120). Woodel came to live with Albert and Albert's wife, Linda, and attended the neighborhood high school. Woodel wanted to learn how to drive, and Albert told him if he did well in school Albert would teach him (RS14/2119). Everything seemed fine that year, but Woodel did not get along well with Linda (RS14/2128). After about a year, Woodel was lonely and bored and wanted to move back to Michigan (RS14/2120, 2130). Woodel got his driver's license when he turned 16 in April, and moved to Michigan when school was out for the summer (RS14/2130-31). There may also have been a girlfriend involved -- but it was fully Woodel's decision to return (RS14/2129-30).

As a teenager, Woodel was very polite and a very good boy. After Woodel returned to Jackie, Albert saw him every so often. Bobbi told Albert that Woodel had a new baby girl, and Albert went to meet Woodel's wife, Gayle, and to see the baby (RS14/2121). Woodel loved children and was a good father, but Albert had the impression Gayle was "cold" with the children (RS14/2122). Woodel was always happy and in later years he seemed more educated in terms of communication and more developed. Albert never saw Woodel drink (RS14/2123).

The last time Albert saw Woodel before the murders was when Woodel and his family came to visit Albert in North Carolina, on their way to Florida; Albert and Woodel were thrilled to see each other. Albert thought Woodel looked cute, holding his son's hand. Albert also later heard that Woodel had had a child that he lost to leukemia. When Albert heard about the murders, he was shocked; he could not believe it (RS14/2124). He went to visit Woodel a few months later; they didn't talk about the murders, although Woodel said he was very sorry and seemed disappointed in himself (RS14/2125).

Woodel's sister Bobbi testified that her earliest memories start when she was about five or six years old, living with her Grandmother Ella, her father, and Woodel (RS14/2143-44). She and Woodel ended up at the children's home because Ella became ill and their father had to work and couldn't take care of them (RS14/2145). Their father drove them to the home, and told them he'd be right back; they had no idea they would be left there to stay (RS14/2145-46). They were at the children's home about two years; the environment was very strict, and kids were spanked with a large wooden paddle (RS14/2148). Boys and girls were kept in separate buildings and not allowed any contact. Bobbi and Woodel were very close, but they'd be punished, usually spanked, if they talked (RS14/2146). They had the help of a little boy who acted as a lookout so they could talk (RS14/2146-47). Bobbi knew Woodel got spanked a lot, because she could hear him at night

(RS14/2148). Bobbi did not recall any visits from Jackie, but Albert visited them twice, and they were happy to see him. Then one day Jackie showed up and told them to get in the car, and they went to her house (RS14/2150).

Jackie was living in the same rental trailer she lived in before the children went into the home. There were two bedrooms, and Woodel and their half-brother Scott slept in bunk beds in one room and Bobbi and Jackie slept in the other bedroom. Albert was not around but there were other people there quite frequently (RS14/2151). Jackie liked to party, and her friends would come and she would drink and use drugs in front of the children. It seemed the kids were in the way, as if Jackie wanted them there, but didn't have time for them; Jackie did not sit and have meals with them and she complained that Woodel drank too much milk (RS14/2152). Jackie only ever hugged and kissed them when she was drunk, never when she was sober. She never told them that she loved them or tucked them in at night, but would just tell them to go to bed (RS14/2157).

Jackie would drop the children off at the roller skating rink and leave them there all night while she went out partying. She would be drunk and high when she picked them up then they would go home and go to bed. When it was convenient for Jackie, she would cook for the children, but if she had something else to do, they were on their own. The kids were not allowed in the home if Jackie was not there, and Bobbi recalled getting home from school and being locked out because

Jackie was out running errands, sometimes for long periods of time (RS14/2153).

When they lived in Michigan, Jackie would get welfare checks and child support on the first of the month, and she would take the checks and leave for hours or days at a time. The children would do what they did anyway, which was to take care of themselves (RS14/2154). When Bobbi was ten or eleven years old the children would watch the neighbors come home with groceries, and then steal food from the trunk of the car when the neighbors were taking other bags inside. They did it because Jackie was gone and Albert was out of the picture (RS14/2155).

Jackie had obsessive cleaning habits, and things had to be exactly where she wanted them to be. For example, they were only allowed to keep one season of clothes and one pair of shoes in the closet; if it was wintertime, all the summer clothes would be removed and sold or thrown away, even if it was something that could be worn another year (RS14/2155-56). If they came into a second pair of shoes, the first pair would be discarded. Typically Aunt Becky was the one to buy them clothes, and she would buy new coats every year because Jackie got rid of them out of season. Jackie also had a thing about doors and knobs. She always thought people were talking about her (RS14/2156). Once the kids came back from Aunt Becky's to find the only doors left on the house were the front door, the back door, and Jackie's bedroom door (RS14/2156-57). Jackie was also in the process of

tearing down a wall between the kitchen and dining area so she could make sure no one was talking about her (RS14/2157).

The children saw Jackie and Albert fight (RS14/2157). Bobbi described incidents where Albert hit Jackie repeatedly and where Jackie and Albert started throwing cast iron frying pans at each other in front of the children (RS14/2157-58). Bobbi also witnessed Albert being violent with Woodel; Albert had a temper, and one time he picked Woodel up and threw him across the room (RS14/2158).

Bobbi described being shuffled back and forth between Jackie and Albert. Albert would come get them for the weekend and not take them back, and the police would have to get them from school, arrest Albert, and take Bobbi and Woodel back to Jackie. Albert would come get them again, and they would be in a new place with a new school on Monday. It went on like that for years. At one point, Jackie and Albert were arguing, probably about Albert wanting to take the kids, and Albert took a crow bar to Jackie's yellow station wagon. Bobbi noted that Albert had discussed it in his testimony, and he totally destroyed the car, smashing the windshield and lights; that same night Albert told Jackie that he was going to kill her (RS14/2159). Bobbi and Woodel both heard it, and Jackie told Bobbi to call the police (RS14/2160).

When Bobbi was eight, she was sexually abused by one of Jackie's boyfriends (RS14/2160-66, RS15/2197). The abuse continued, with Jackie's

knowledge, for about a year (RS14/2160-61). It was never reported to law enforcement, but it came up during an argument between Bobbi and Jackie when Bobbi was 13; Bobbi attempted suicide, attended court-ordered counseling, and after about six months, the counselor convinced Jackie that Bobbi should go live with an aunt, so Bobbi moved out but Woodel stayed with Jackie (RS14/2160-66, RS15/2199). Although Bobbi never discussed the abuse with Woodel, she thought he must have known about it because she suspected the man was abusing her brothers, too (RS14/2161-62, RS15/2198-99).

From then until Bobbi was 21, she lived with Aunt Becky and saw Woodel every Christmas and Easter (RS15/2166). When Woodel was 15, he lived with Albert and Bobbi didn't see him for about a year (RS15/2167-68). Then Woodel lived with Jackie, and Albert moved to Aunt Becky's, and later Woodel came to live at Becky's too (RS15/2168). Woodel was excited to have his driver's license, and he had made some friends and was going out on dates, normal teenage stuff (RS15/2168-69).

Bobbi discussed Woodel's personality through the years. Woodel was always difficult to read, so it was hard to say how his parents' actions affected him. He doesn't show his feelings but remains flat unless putting on a front, where he's laughing and joking and having a good time. Woodel's been that way since he was about nine, before they moved to Michigan (RS14/2160). After Bobbi's sexual

abuse, both Bobbi and Woodel changed (RS14/2162-63). They used to be kind of happy up to that point, but Bobbi got quiet and Woodel got even quieter than he already had been; he just “went inside himself,” and “never came back out” (RS14/2163). When they all lived in Pennsylvania with Becky, Woodel was the same, and he was trying to figure out what he was going to do with himself; he talked with Bobbi about that (RS15/2168). When Woodel was 21 or 22, he seemed a little better as far as being happy; he had a family and seemed to have found something good (RS15/2171-72).

Bobbi and Woodel communicated by signing because it was easier, since they signed with their parents (RS14/2163). Bobbi explained that even though she and Woodel both can speak, they don’t think like hearing people. Their thought processes are different, and they don’t struggle with words when they sign; it just comes naturally, while talking is harder. There is no way to express an emotion with signing, you just use your facial and body expressions (RS14/2164).

Both Bobbi and Woodel believed that Jackie favored her first son, Scott, over them. Jackie and Scott were very tight, and Jackie kept Scott all the time, rather than moving him around the way she did with Bobbi and Woodel. Jackie told them it was because Scott did not have a father (RS14/2162). Bobbi does not recall moving around a lot, but she remembers that Woodel was gone often (RS14/2146). Bobbi loved her mother, but she did not like her as a person at all.

Jackie was a hateful person, and most of her hatred was directed at Woodel (RS15/2172).

When Bobbi was asked to describe her childhood, she testified that Jackie's drinking and drug use deprived her of any childhood. She saw it as very negative, but noted that Woodel didn't see it that way, as he would only talk about the good stuff if asked (RS14/2164). He will hide the bad stuff, as he does not deal well with emotions (RS14/2164-65). He will defend his mother forever. They didn't even have toys, at least not that they were allowed to keep for any time. An aunt would buy them things to open for Christmas, but then they would wake up one morning and everything would be gone, with no explanation (RS14/2165).

Bobbi testified that she and Woodel both started drinking at an early age (RS15/2167). She did not remember how she started, but for her 13th birthday her mother gave her a case of beer, and she and Woodel had been drinking long before that (RS15/2167-68). Bobbi had not seen Woodel get angry or violent. It was part of the front he put on - you could tease him and call him names and it didn't bother him because he had heard it all before from his mother. Jackie rejected Woodel and was always asking him why he couldn't be like Scott, or Bobbi, or the neighbor kids, or anyone other than himself (RS15/2169). Jackie loved Woodel, but she had problems and didn't know how to show her love (RS15/2170).

Bobbi discussed Woodel going into the Navy when they lived with Aunt

Becky in Pennsylvania, from Russell's unsuccessful attempt to send Woodel to Jackie to Woodel's excitement during boot camp and feeling good about himself for the first time and the circumstances of his discharge (RS15/2173-75). After the Navy, Woodel went back to Michigan and she did not see him for maybe a year; he had gotten married and his son Christopher had been born when she saw him again (RS15/2175). He was very excited and proud of his son. He treated his son very differently from the way his mother and father treated him (RS15/2176). Woodel's relationship with Gayle lasted at least two or three years (RS15/2200).

Around 1991 or 1992, Bobbi noticed another change in Woodel; he had gone back to the way he was before, quiet and depressed, sleeping all the time (RS15/2177). Between 1990 and 1995, Woodel separated from Gayle and started dating Christina Stogner, a relationship that lasted about four or five years, until the murders (RS15/2177, 2203). There was a period of about four years when Bobbi did not see Woodel at all, but they talked on the phone frequently (RS15/2177). He seemed to be the same Woodel she knew in those conversations (RS15/2178).

Bobbi called Woodel in early 1996; she had moved to Florida and was pregnant and scared (RS15/2179). Woodel and Christina were living in Flint, Michigan, with Jackie, and there were no job opportunities there (RS15/2179, 2201). Bobbi asked Woodel to move to Florida and make it easier on her

(RS15/2179). It did not seem to her that Woodel was happy to be with Christina in 1996; Woodel did not mention any problem, but Bobbi suspected there was one. Woodel and Christina came down together and both got jobs, then they moved with Bobbi out by Highway 192 and Woodel and Bobbi both got jobs at Pizza Hut (RS15/2180).

At Pizza Hut, Woodel worked the dinner shift, from around 4:00 to 6:00 and staying through closing. He sometimes went in early or stayed late to make some extra money, as he was helping Bobbi financially too, especially after she had to take off work to have her baby. Shortly after Bobbi went back to work, Christina learned she was pregnant (RS15/2182). Bobbi's impression was that Woodel was not happy about Christina's pregnancy, because the timing was bad; they were just starting to get somewhere and didn't really have anything (RS15/2183-84). In Florida, Woodel was excited to have a new place and get a fresh start. He drank occasionally, and when he was drunk, he would get very sentimental and "lovey-dovey." The way Jessica described Woodel singing "Green Acres" was typical (RS15/2182-83).

Before the murders, maybe the day before Christmas, Bobbi left the state; Christina had left a few days earlier. After Christina left, Woodel was not upset, depressed, or angry; he was just working a lot. Woodel was working two jobs then, because he was also a bag boy at Publix (RS15/2184). He did not work at Publix

long because he had a problem with his hands breaking out in a rash from opening boxes. Bobbi did not talk to Woodel when she was gone, but when she got back he seemed more withdrawn (RS15/2185). She had seen him act that way before and didn't ask him what was wrong (RS15/2186).

When Bobbi returned to Florida on Jan. 2, Gayle, Christopher, and some friends had come down to visit, and Woodel was at work (RS15/2206). Gayle and her friends were not there at the time, although they had been in town and spent that night there (RS15/2207). Bobbi was asleep by the time Woodel got home, and the next morning, everything seemed normal (RS15/2207-08). Woodel and Bobbi discussed keeping Christopher there with them (RS15/2208). A detective came around asking if she had heard anything or knew anything about the murders, and Bobbi told him she had been out of town. But she pointed out Woodel, who was walking over by the bridge, and told the detective that he had been there (RS15/2208). So the detective went to talk to Woodel and Bobbi went with George Kilbourn to the grocery store (RS15/2186, 2208). When they got back, Woodel had been arrested and the police asked her to sign a consent for them to search the trailer, and she did (RS15/2208). The police came back later that evening and said Woodel had confessed and told them where he had hidden the weapon, and obtained permission to retrieve it (RS15/2209).

Bobbi tried to go see him on the next scheduled visiting day, but he wouldn't

see her; he told her later that he couldn't face her (RS15/2186). He did talk to her on a later visit. At the time, she had not heard his statement or any news accounts, and she wanted to find out what happened (RS15/2211). Woodel told her that after he got off work, he hung around drinking, then walked back to the trailer park and saw a light on in the trailer and wanted to know what time it was. He told her that he had taken Mr. Moody's wallet out of his pants in order to divert suspicion away from himself (RS15/2212).

Woodel wrote her two letters, which Bobbi read to the jury (RS15/2186-90). In the letters, Woodel apologizes for what he's done, tells Bobbi what to do with his belongings, and asks how his father and Beverly are doing. He expresses regret for letting Bobbi down, and for the pain he's caused the victims' family and his own family (RS15/2187-90). He explains that he's "guilty because I was drunk and not in the right frame of mind," but willing to accept responsibility and the consequences of his actions (RS15/2188). Bobbi thought Woodel's remorse was sincere (RS15/2189). Woodel expressed his love for Bobbi, his father, and Beverly, and tells Bobbi that he hopes she can find "comfort and understanding" in his words about having been involved in the church when they were young, noting it made a difference in their lives as it will for Bobbi's daughter (RS15/2190). Bobbi remembered when she and Woodel went to church, there was a van that came and picked them up on Sunday mornings, Sunday nights and Wednesday

nights (RS15/2190-91). She considered it just another way for Jackie to get rid of them, but they had a lot of fun and learned about faith, which she and Woodel embraced back then. The times at church are probably some of the best memories that Woodel has. He mentioned it in the letter because he was encouraging Bobbi to get more involved with the church and to get her children involved as well (RS15/2191).

After Woodel was incarcerated, Bobbi had another daughter, Breanna (RS15/2192). She developed leukemia, and Woodel agreed to be tested to see if he could be a bone marrow donor for her, but he was not a match (RS15/2192-93). Breanna subsequently passed away, as did Jackie; Woodel told Bobbi that he felt guilty for these deaths, too, as he felt God only took them because of what Woodel had done to the Moodys (RS15/2193). Bobbi couldn't explain the crime and had a hard time accepting that Woodel did it (RS15/2193). She noted Woodel is a good-hearted person that will do anything for anybody, and would go without food to give it to someone that was hungry. If he saw someone hurting or in pain, he would try to make them laugh or forget their troubles. He put everybody ahead of himself and never felt like he deserved to put himself before anyone else (RS15/2194).

Woodel's testimony spans nearly 175 pages (RS15/2216-16/2388). His earliest memory is living with his Great Grandmother Ella (RS15/2216-17/ 2242); then going with Bobbi, his father, his Aunt Becky, and his great-grandma on a trip,

which ended up being to the children's home, where he and Bobbi were left (RS15/2217). That first night he cried all night, waiting for them to come back (RS15/2217-18). He spent about two years at there, getting spanked frequently with a wooden paddle for wetting the bed and not following rules (RS15/2218-19).

The children's home had cottages, a church, and a swimming pool (RS15/2220). Kids were divided by age, and after he and Bobbi had been there awhile, they saw Scott, learning that he was also there. Through the years, his mother told him that she had no idea where he was during that time, but Aunt Becky told Woodel that Jackie had put Scott into the home because Jackie liked the place so much (RS15/2221). There was structure, they went to church every Sunday, and Woodel recalled seeing Santa Claus for the first time (RS15/2221). Woodel believed his sister's testimony about using a lookout to see each other, but he doesn't remember that happening (RS15/2222). When Woodel was about seven, he was talking to the lady in charge of the cottage and he looked up and saw a woman in the doorway; the woman looked at him then got on her knees, crying (RS15/2222-23). The woman turned out to be his mother. Woodel didn't know if that was the day he left the home, which he doesn't remember, or some other time. He was not certain this memory was from the children's home, because there are also spotty snapshot memories of being with his mom, dad, or aunt and getting a visit from another caretaker (RS15/2223).

Woodel eventually adjusted and came to like some things about the home and to dislike others. It was not a big deal when he left there, it was just like the rest of his life, moving from one shift to another. Woodel recalls at one point going to five different schools in the same year. He would start school, get to know the kids, and then move on in a couple of months and start again (RS15/2224). Woodel, Bobbi and Scott all left the children's home the same day and went to live with Jackie in her trailer in Charlotte. Albert was living with another woman and the children were shuffled back and forth between Jackie and Albert. Woodel saw a lot of fights between Jackie and Albert (RS15/2225). Either Jackie or Albert always had a lot of people around the house for a short time; they would stay a few days or weeks and then move on and other people would take their place, but there was always somebody sleeping on the floor or the couch (RS15/2225-26). According to Jackie, Albert was going to Texas and Mexico and bringing back illegal immigrants that stayed at the home; according to his father, they were Jackie's boyfriends (RS15/2226).

Due to sign language, the arguments between Jackie and Albert were not calm but included a lot of hand gestures, fast and animated; several times the police came and took his father away (RS15/2226-27). Woodel saw his father "smack" his mother, items being lifted in a threatening manner, and objects being tossed around when Jackie and Albert fought. He discussed a picture of Jackie with

a frying pan, and what could be construed as black eyes; his impression was that Jackie was in her nightgown, with her hair still in curlers, and didn't want her picture taken so when her boyfriend came up with a camera, she picked up the pan, "like that," and said "don't" but the boyfriend snapped the shot anyway (RS15/2228). Woodel couldn't say if her eyes looked bad due to lack of sleep or something alcohol related or from being punched (RS15/2229).

Woodel was helping Albert help someone else move when he dropped a floor-length mirror and it shattered; Albert was angry and tossed him around, as Bobbi described (RS15/2229-30). Around the same time Woodel and the son of Albert's girlfriend were going to ride their bikes to church, but instead of going to church they just played outside (RS15/2229). Woodel assumed that Judy blamed Woodel for leading her son astray and took it out on Albert, because Albert took it out on Woodel; he smashed Woodel's bike with a sledgehammer and "tossed me around a little bit." While he lived at the trailer park in Charlotte, Woodel would go to the church parking lot outside of the park and, without his mom knowing, meet up with Albert and Albert's girlfriend for about half an hour, then everyone would go home (RS15/2230). Woodel could remember the kids running out the back of their trailer and going to a neighbor's trailer to stay when his father would come over to fight (RS15/2230-31). He saw Jackie's car destroyed and saw Albert struggling in handcuffs more than once (RS15/2231).

Woodel didn't know if his father had been drinking during those times; he didn't remember seeing his father drink until Woodel was about 15 and his father might have a beer; he never recalled seeing his father drunk (RS15/2231). He did see his mother drink frequently (RS15/2231-32). Jackie would always carry whiskey in her purse, and Woodel and Scott would always find it and pour it out, then Jackie would take it out on them and go buy more whiskey. Woodel was about nine or ten and couldn't say what Jackie did when she drank, but he and Scott did not like her drinking (RS15/2232).

Woodel did not feel like Jackie favored Scott over him at that point, but he felt that way years later and at the time of his testimony (RS15/2232). When Jackie put him down it just went in one ear and out the other, it was so common. She asked pretty frequently why he couldn't be like Scott or like Bobbi, and probably said similar things to them. He didn't like being compared (RS15/2233). Jackie's father died in June, 1981, and the kids were left alone for several days while Jackie went to Michigan and then came back (RS15/2234). He's not sure if he knew at the time where she was, but she was frequently gone and typically they drew the conclusion that she was leaving so that she could go out drinking. Usually she did not drink around the kids but waited until their heads were turned, then she would make up an excuse to be away from them. She would take them to the library, the park, or the mall, and just drop them off and come back later. She would tell them

to have fun and then use the separation to get her little drinks in (RS15/2235). When she returned, sometimes she would be on time, and sometimes not; sometimes she would be sober, and sometimes not. Woodel could remember having to sit next to Jackie in the front seat and holding the steering wheel to keep the car in the lane, from the time he was about ten years old for many years. This was how he learned to drive. Woodel tried to take care of his mother, as she was family (RS15/2236). He could remember her hugging and kissing him and telling him that she loved him, but only when she was drunk (RS15/2237).

When they were in North Carolina, it was too chaotic to sit down at a table at dinner and discuss school or grades or anything (RS15/2237). Once they moved to Michigan there was more structure, because Woodel's maternal grandmother, Edna, either created the structure or influenced Jackie to embrace it (RS15/2234, 2237, 2242). Jackie would copy other people in terms of parenting so there would be conflicting rules and methods and no consistency, because her different friends would give her different advice on parenting (RS15/2237-38). Woodel always felt unwanted when growing up, and still did now. The common theme was you're not wanted here, go to your aunt's; you're not wanted here, go to your dad's; you're not wanted here, go to your mom's (RS15/2234). He did not have any toys, and could only recall playing with his neighbors' or his cousins' toys or his dad's tools. He would get toys from Aunt Becky at Christmas in Pennsylvania and take them

home, but they disappeared just like clothes and shoes disappeared (RS15/2238).

Woodel related several incidents where Jackie did unusual things, and noted that although the separate incidents seemed bizarre, through the years they became normal to him, because it was all he knew (RS15/2239-41). He cannot list off the places he lived chronologically, there were too many places in too short a period of time, and they are all jumbled in his head (RS15/2241). He was about 11 when he lived with Grandmother Edna in Michigan; from then until he moved to Florida in 1996, he lived there off and on (RS15/2243). Woodel and Bobbi were living at the trailer in Charlotte when Bobbi was sexually abused by one of Jackie's boyfriends (RS15/2242). It was shortly after they left the children's home, and Woodel did not know it was happening at the time. He testified that he was not sexually abused, but admitted that he didn't know that for a fact, he just didn't have any memory about it happening (RS15/2242).

When Woodel was 15 and living in Michigan, his brother Scott had stolen a car and Scott, Woodel, and a friend went for a joyride (RS15/2243). They got pulled over for running a red light, pulled into a gas station, and Scott jumped a fence and ran away; the police ran the license tag and the friend was put in handcuffs and Woodel was put in the back of a police car (RS15/2243-44). On the way to the police station, Woodel could hear the radio talk about searching for Scott, but Scott got away and ended up hitchhiking back to Michigan (RS15/2244-

45). The police called his father to come and get him, and that was how Woodel ended up going to live with his father (RS15/2245).

Albert was living with his second wife, Linda, at the time and eventually they started having marital problems. Albert decided to go live with Becky in Pennsylvania so Woodel went too. Woodel was in the 11th grade and started skipping classes and just driving around; he got caught, was suspended, and his first day back he skipped school again. He ended up suspended for 12 school days in one month (RS15/2245). Then one day he decided to borrow his cousin's car to go see his girlfriend, and ended up taking her for a ride, showing off, and getting into an accident. The girl broke her jaw and the car was totaled. That incident got him kicked out and sent back to Michigan, but Jackie didn't have time for him so she sent him back to Becky's. His uncle did not want him in the house so he spent a few nights out on the street, and then they felt sorry for him (RS15/2246). Becky took him to a military recruiting office and Woodel signed up for the Navy (RS15/2247).

The Navy tested him and told him that he had a high IQ, as his score was the equivalent of a third-year college student although he was only 17. They put him in the drill division for smarter people and shipped him off to San Diego (RS15/2247). Basic training lasted eight weeks, and he completed seven weeks and six days of basic training; the day before graduation he bought some cigarettes and

cards because they were to head out to Tennessee (RS15/2247-48). He got back to his barracks but before he could take the stuff out of his pockets they formed a line to go to the chow hall, where one of the door sentries saw the angle in his pocket and called a superior. The MPs put him in handcuffs and paraded him around the cafeteria, then they discharged him (RS15/2248). He received a general discharge although he tried to convince them to let him start over without pay, just to not be kicked out again (RS15/2249). He'd been kicked out of the house and sent off somewhere else, and then screwed up in the Navy so they didn't want him either; they kicked him back to Michigan (RS15/2247-48). Even though he had not wanted to be there in the first place, he didn't want to get kicked out. He wanted to just stay in California instead of returning to Michigan, but he had a lot of cash as he had saved all of his pay, and he heard people discuss jumping him to get his money, so he got on a bus for Michigan (RS15/2250).

Woodel got back to Michigan shortly after Thanksgiving in 1987. He looked into returning to public school, but his prior credits wouldn't transfer and he would have to repeat a lot of work, so he registered for adult education classes and then, in April 1988, he met Gayle. Around July or August they learned Gayle was pregnant; Woodel took responsibility and they got married (RS15/2251). He did not love Gayle and did not really want to get married, but his mother pressured him to, which Woodel saw as another way to get him out of the house (RS15/2251-

522). His mother wanted to know all the plans and told everyone about the marriage, and Woodel did not think he could back out after everyone already had heard about it (RS15/2252).

Woodel's son Christopher was born on 3/4/89. Woodel turned 19 in April and Gayle turned 18 in September; they married a week after she turned 18. Gayle was in foster care her whole life and used the marriage as a way to get away from foster care (RS15/2252). Woodel, Gayle and Christopher lived in Michigan and did everything together. Woodel worked at Little Caesar's and helped take care of his son when he was not working (RS15/2266). While married to Gayle, Woodel worked a number of different jobs, but was usually employed full time and sometimes worked extra hours or held two jobs at once (RS15/2267-68). Around mid-1992, Woodel and Gayle both started seeing other people; Woodel started seeing Christina (RS15/2267). He continued to hold different jobs for short periods of time, up until 1996 (RS15/2268).

During the seven years between marrying Gayle and moving to Florida, Woodel saw his family (RS15/2268). His mother lived in the same town so he saw her frequently. He saw his father and Bobbi at his wedding in 1989 and then at a family reunion in 1990; there was also a day in 1992 when he saw his father in Ohio and maybe again in 1994 (RS15/2269). He was working two jobs and had a conversation with Bobbi where one of them suggested his moving to Florida, so he

packed up and brought Christina and moved down (RS15/2269-70).

At that point, he and his mother had the same relationship they always had, which Woodel had difficulty describing. Woodel heard his sister and father testify about what kind of mother Jackie was, but Woodel thought she “mellowed out” when the kids became teenagers. Everyone else had gone their separate ways and he and his mom became closer; he got to understand her more and she got to understand him (RS15/2270). He’s aware that Bobbi resents their mother for the way Jackie treated them both (RS15/2271). He was not having any problems with Jackie when he came to Florida, and was not aware of any problems with Christina; if there had been a problem with Christina, Woodel did not think she would have come to Florida with him (RS15/2271-72).

The first day in Florida he and Christina put in job applications and he got hired at a Pizza Hut and started that night. Bobbi lived with a roommate in Lake Buena Vista (RS15/2271). Bobbi’s roommate wanted them all out of the apartment because their names weren’t on the lease, and changed the locks so Woodel couldn’t even get in to get his work uniforms (RS15/2272). They stayed with some friends in Kissimmee for a couple of weeks and when they had the money they moved in to an apartment (RS15/2272-73). They had to apply for new jobs because no one had a car so they needed something within walking distance (RS15/2273). Woodel and Bobbi got hired at the Pizza Hut and Christina got a job at a country

club (RS15/2273-74). Woodel worked extra hours when he could to make extra money, just to survive and pay the rent (RS5/2274).

Woodel started drinking when he was eleven. In Michigan, the pattern varied; some days he would get up and drink a beer instead of having breakfast, some days it was mostly beer. At night, after getting off work, he would drink with his friends. Moving to Florida and working at Pizza Hut, some of the employees would hang out after closing and wind down, go to Denny's or an all-night restaurant, or maybe hang in the parking lot and "drink a beer or two or six;" it was his normal routine (RS15/2275). Woodel "frequently drank to get drunk," drinking just because it was there (RS15/2275-76). He was typically a quiet, reserved person, but when he drank, he liked to talk; the topics ranged from the economy to religion to child rearing. They talked about anything but those were the topics that were important to him. He has different moods when drinking and based on Jessica's testimony of his singing, Woodel felt he must have been in a "happy show-offy" mood the night before the murders (RS15/2276).

Woodel was not consciously aware of any problems he may have been having before the murders (RS15/2276). He did not sense any problems with Christina, although after the murders he received a letter from her indicating one of the reasons she wanted to go to Michigan was she thought they needed a little time apart, as they were always together (RS15/2276-77). Woodel was supporting

Christina too, as she wasn't working at the time. He bought her a bus ticket to Michigan but stayed behind because he couldn't afford to take off work, as he was hoping to take time off in April to take them up to his father's wedding (RS15/2277). He was not sad or disappointed when Christina left, he was happy to be in Florida (RS15/2277-78). It was true that he was shocked and disappointed when he found out Christina was pregnant, because he was not where he wanted to be financially. That was one of the reasons he and Gayle split up; two years after he and Gayle got married, she was telling people that her baby was not Woodel's, and she trapped him into getting married so she could get out of foster care (RS15/2278). Yet in December 1996, Gayle was bringing Christopher down because Woodel always considered himself to be Christopher's father, even if not biologically; it didn't change anything (RS15/2278-79). And now, Gayle has another child and Christina has another child, so everyone has moved on. He was looking forward to Christopher coming down in 1996, and had even discussed getting custody, because Woodel still considered Christopher to be his son; Woodel was excited about the idea (RS15/2279).

Woodel wasn't upset when Bobbi left a few days after Christina (RS15/2279-80). He thought he was free from "the nagging mothers," which he attributed to them being typical females. He never openly resented them or the way they treated him, but he kept a lot of emotions in (RS15/2280). At any rate, he was

happy to have the place by himself for a few days (RS15/2281).

Woodel did not think that he had gone to work when he got up on the morning of 12/30/96 (RS15/2281-82). Before that, he had been working as a stock boy at Publix, from 5:00 a.m. to 3:00 p.m. From there he would go to Pizza Hut and work 4:00 p.m. to 11:00 p.m. or closing. But his hands had an allergic reaction to the cardboard at Publix, so he had to take a few days off work there to let the swelling go down (RS15/2282). He had only worked at Publix for two weeks and did not go back after the problem with his hands, but had gone by there to pick up his check. Nothing happened that morning; he had been talking to Gayle on the phone about her coming down (RS15/2283). He probably had a beer or two that day, but that wasn't anything remarkable (RS15/2283-84). He recalls being at work at Pizza Hut on the 30th but can't remember how he got to work that day (RS15/2284). Nothing in particular happened at work (RS15/2285-86). The only thing that stood out was that one of his co-workers who regularly gave him a ride home got off early and left instead of hanging out and giving him a ride home later, but he doesn't think this upset him (RS15/2286).

Woodel described, in detail, all that he could remember after getting off work on the night of the murders (RS15/2286-2316). He finished around 11:00 or midnight, and was reluctant to go home since no one was there. There was a restaurant next door where the Pizza Hut employees sometimes hung out after

work, and he tried to talk Jessica into going over and shooting pool with him (RS15/2286). Jessica was talking about how much she liked Old English 800, which Woodel used to drink in Michigan but had not had since coming down to Florida (RS15/2287). He had been drinking Icehouse in Florida but decided to go see if they had Old English 800 at the 7-11 across the street (RS15/2287-88). Jessica thought he bought a quart but Woodel thought it was a 40-ounce drink. They went back to some tables by Pizza Hut and started talking to three people that had been hanging around the area (RS15/2288). Woodel bonded with one of the three guys who was from Canada and also had beer, and pretty much ignored Jessica and the other two guys (RS15/2289).

He and Jessica shared the Old English and it was gone in a couple of minutes, and the guy from Canada offered him another beer. Woodel took one and didn't keep count but he drank them like he usually did, which was fast (RS15/2289). At one point Jessica got up and ran to Pizza Hut, and Woodel figured she was going to use the bathroom because he didn't think they had been out there long enough for Jessica's mom to finish the paperwork and be ready to leave (RS15/2289-90). Woodel wasn't really waiting for a ride at that point, he was used to walking so even though it was about two miles it didn't bother him. In Michigan he used to walk 15 miles sometimes to visit Gayle, as his mother was always worried about the time or the cost of gas so he just walked everywhere. At any

rate, he stayed there and continued to drink with the three guys (RS15/2290).

Woodel and “Canada” made a deal to split the next case. They went to 7-11, got a case, and sat at the tables, drinking and talking. Time was not important as Woodel did not have to be anywhere. Around 1:00 or 2:00 they had beer left but wanted to buy more before they quit selling alcohol, so they bought another case to be safe. They kept drinking, time went by, and people got tired (RS15/2291). Woodel was not aware when Jessica and her mother went home, but it was just the four of them when they started in on the second purchased case (RS15/2292). Woodel was drinking the most, and the guy from Canada was drinking the second most. Woodel thought subconsciously they were competing to impress each other (RS15/2293).

At some point the party started losing energy; there was still beer left and Woodel had no idea what time it was (RS15/2293-94). There were no fights or disputes and Woodel was still feeling in the “Green Acres” mood, he did not recall any negative feelings or effects. He walked home, stopping outside of Outdoor Resorts to throw up from the drinking (RS15/2294). He thought the guard at the front was upset about having stragglers coming in that late (RS15/2295). Woodel told him that Woodel had been to a pre-New Year’s Eve party (RS15/2296).

Woodel described his route through the park, noting the first trailer he and Bobbi had lived in and the victims’ trailer nearby. They had only lived in the

second trailer for a few weeks, and Woodel thought he might have been walking back toward their first trailer when he saw Mrs. Moody. He saw her back as she washed a sliding glass door, with a light coming from inside the trailer because the front door was open. He went around to the screened porch door and waited for her to finish the door and turn around and notice him, so he could ask her what time it was (RS15/2297).

Woodel explained that his memory was like pictures that he has pieced together. He was not sure when Mrs. Moody noticed him, but the next thing he remembers, he was standing outside the porch door (RS15/2298). Mrs. Moody went inside the trailer, and it did not occur to him that he could see her due to the light coming from the trailer, but since it was still dark outside, she might not be able to see him; he assumed she could see him and was just ignoring him (RS15/2298-99). Mrs. Moody returned and began cleaning the inside of the sliding glass door. He stood there and waited, feeling like he had to talk to her and find out the time. He speculated that he just wanted to talk and knew there was no one at home to talk to, but he still can't really explain it. He entered the porch area, but he didn't see her anymore; he heard a noise in the back and saw an open door and went down the porch to the back door and waited (RS15/2299). When she came to the back of the trailer she had a knife. She was asking him what he wanted or telling him to leave or something; he can only remember bits and pieces. He was

surprised that he was facing a knife when he was only there innocently to ask a simple question. At the time, he couldn't understand why she came to the door with a knife, but now he realizes that he may have been asking about the time loudly enough for her to hear him (RS15/2300).

The moment Woodel saw the knife, he got scared and lost control of his senses. All noise and background stopped and he had tunnel vision; it was either stand there and get cut or act, so he reacted and struck out. He pushed her back and she stumbled. The door opened into the back bedroom and she stumbled to the foot of the bed and Woodel still doesn't know why but at that point he went up the steps into the trailer (RS15/2301).

Then it was like a whole other side of him took over. He was feeling angry, upset, ignored, and wanting attention, and lashed out. He went in and tried to get the knife away; he thinks he wanted to put it up, but words were said back and forth (RS15/2301). He did not take the knife out of her hand but picked it up from the floor (RS16/2361). He took the knife, went to the bathroom and got the toilet tank lid, because he wanted to subdue her and prevent her from attacking him. He doesn't remember but he's tried to rationalize to understand why he took the steps he did. He remembers a lot of it, but it's like being in a traffic accident, where one minute you're sitting there and the next you're on the ground under the vehicle and you don't know how you got there. When he came back into the room with the

toilet tank lid Mrs. Moody was still at the foot of the bed but in the process of getting up, and that's when he hit her over the head (RS15/2302).

The lid felt like plastic and it cracked in half and Woodel still had a chunk of it in his hands (RS15/2302-03). She was sitting on the foot of the bed so he hit her over the head again, thinking if he could knock her out it would take the fear away, and one thing led to another. Woodel thinks at that point he was mad about being alone (RS15/2303). He thinks a lot of feelings came out that he had been suppressing, and he was angry at symbolized family members and took it out on Mrs. Moody (RS15/2303-04). He doesn't recall his motives and for years he has agonized over it, trying to figure out why he did what he did (RS15/2304). He had always had people around but he had been the quiet one, and he had never been in a fight or been violent at all, and could not understand his actions (RS15/2303-04). There is nothing he wouldn't give to take them all back (RS15/2304).

Woodel was asked about the rest of the blows, including the stabs that Woodel wanted to refer to as "pokes" in his statement to the police (RS15/2304-05). He thinks "poke" is better because he thinks of a stab as a forward, thrusting motion, not just reaching out to touch someone. Woodel recalled that after Mrs. Moody fell back, the toilet lid crumbled and fell all over the place, and he walked from the foot of the bed around to the side. He still had the knife in his hand but he's not sure about the lid pieces (RS15/2305). He stood there watching her and

couldn't move; he just stood held the knife in front of him while Mrs. Moody was rolling back and forth to get off the lid chunks (RS15/2305-06). Woodel explained this is where a lot of the defensive wounds came from, as he held the knife steady and she's rolling back and forth, hitting the knife. Woodel couldn't say which cut came first, he was just frozen and couldn't move (RS15/2306). On cross, he admitted that he was wobbling and losing his balance; the cut of her jugular vein and the stab that penetrated three inches into her lung were caused by his wobbling around, and most, if not all, of the 56 total cuts and stab wounds were from his wobbling (RS16/2365-67).

Woodel was going through the hallway to leave when a man unexpectedly came through the door. He and the man each took a full stride toward each other and then Woodel grabbed his wrist with his left hand and "thrust with the knife two quick times," spun around, and thrust again three times; he still does not know why. He has tried to figure it out over the years but he wasn't thinking at the time, just acting on instinct and reflex in the "flee or fight" stage (RS15/2307). Mr. Moody did not fight or attempt to prevent Woodel from leaving, and Woodel thinks if he had not had the knife, Mr. Moody would not have been hurt (RS15/2307-08). He did not think he stuck Mr. Moody, as he recalled thrusting but not feeling any resistance at all. Woodel assumed that when he spun Mr. Moody around and saw Mr. Moody fall that Mr. Moody had hit his head on the television,

but he didn't think he had stuck Mr. Moody (RS15/2308).

Woodel exited the trailer but then turned and went back inside to Mr. Moody. Woodel still had the knife, and he "prodded" Mr. Moody with it in case Mr. Moody jumped up on Woodel. The three wounds in Mr. Moody's rear were caused by this prodding (RS15/2308). Woodel then tried to take Mr. Moody's wallet out of his back pocket, but he couldn't get his hand and the wallet out of the pocket together, so he turned Mr. Moody over, unbuckled his belt, pulled his pants down, and took the wallet. Woodel took the wallet just because he noticed it was there; he wasn't thinking about money (RS15/2309). Woodel already had money for rent and money he was going to send Christina for Christmas, and this crime was not at all about the money (RS15/2310; RS16/2378-79). Woodel couldn't say what was going through his mind (RS15/2310).

Then Woodel saw a pail in the kitchen sink that still had liquid, either water or cleaner, from washing the glass door (RS15/2311). He took the pail back to the bedroom and doused Mrs. Moody with the liquid, thinking she was passed out and he might revive her (RS15/2311-12). Then he pulled the corner of the mattress protector back over her, covering her indecency (RS15/2312). She was indecent because he had taken off her nightgown and robe, and cut off her underwear; he remembered doing that after he'd hit her with the tank lid, and she was still conscious and struggling (RS15/2312; RS16/2361-63). He doesn't know why he

did these things and he does not remember tying her panties in a knot, but knew he had done that because they were in evidence (RS15/2312). He also doesn't know why he took the things he did, putting the glasses and knives and toilet tank lid pieces into the pail, other than he happened to see them so he took them (RS15/2312-13). When he washed the knife he had used in the sink, he saw the butcher block and grabbed two more knives and put them in the pail as well; that was irrational and he can't explain it (RS15/2313).

Woodel remembers coming out, walking along the boulevard, crossing the bridge and coming around the corner to his trailer, then going inside and putting the pail on the kitchen counter. Again, he doesn't know what he was thinking, he doesn't think he was thinking at the time. He can't recall any feelings other than coming home from work with a lunch pail (RS15/2314). He took some of the big pieces of the lid and the eyeglasses and went over to the bridge and dropped them in the canal (RS15/2314-15). He was back in his bedroom in the trailer when he opened the wallet. He took out the money and threw the wallet into the trash can. He put the money with his own money; he didn't even think he counted it (RS15/2315). Later he stuck all the knives in the silverware drawer in the kitchen, but the knife he used as a weapon was too long to fit so he took that out and just left it on the counter (RS15/2315-16). He took a shower, sat on the couch watching TV, and dozed off a bit (RS15/2316). He thinks he woke up when Gayle called to

say she was leaving to come down (RS15/2316-17). He went to the Kilbourn's trailer to get a stamp to send money to Christina, and the knife was still on the counter (RS15/2316).

Later he moved the knife, since his son was coming down he did not want the knife just sitting out. His son used to get into his things, so Woodel put the knife under his mattress (RS15/2317). Woodel thought as long as he was home to keep an eye on his son, he could keep him away from the knife (RS15/2317-18). Then when the detective came and Woodel knew he was going to be out of the home, he took the knife from under the mattress and put it behind a desk. He told Gayle about the knife and asked her to get rid of it, because he was afraid Christopher would find it and hurt himself. He wasn't trying to keep it from the police; this was two or three days later and if he'd thought about keeping it from the police, he would have gotten rid of it sooner (RS15/2318).

Woodel did not remember what had happened until later (RS15/2318). He went to work on the 31st and either didn't realize he had done it or blocked it out of his mind. He told another employee that something bad had happened at the park, but he couldn't face what he had done. His wife and son were coming down and he had other things on his mind. Then on the 2nd, his sister called to say she was coming back home to see Gayle and Christopher. The place was a mess and he had a lot of cleaning and laundry to do. That's when he took the trash out, still not

thinking about the police or hiding anything, just cleaning and being distracted (RS15/2319). He doesn't think he was trying to pretend it never happened, he thinks it was such a shock to his system that he just blocked it out. But as time went on that day, more attention was given to it, and he realized he had done it. He knew he had screwed up again and senselessly thrown everything down the drain (RS15/2320).

To this day, he can come up with endless possibilities or theories, but he still doesn't know why this happened (RS15/2320). When his daughter got leukemia, Christina told him that she was being punished for what he did, and Woodel feels that way at times. He has, on occasion, blamed God and blamed his parents, but he accepts the responsibility for what he did, and he's not sure there's enough punishment for him. When he wrote the letters to his sister, he was trying to help himself understand what had happened by seeing things through her eyes, thinking she might see something he was missing (RS15/2321). He longs to understand, but he can't explain it (RS15/2322). He wrote two letters to Dr. Dee which were admitted into evidence (RS15/2322-23). In the letters, he tries to express survivor's guilt. Woodel thought since Dee was the professional that he would have some insight and could help Woodel understand what happened and why. Woodel thinks Dee did that on a logical level but not on a moral spiritual level (RS15/2323).

Woodel told the jurors that he has trouble expressing his feelings and finding

the right words for what he wants to say. He saw some information listing all the different emotions and was surprised to see so many (RS15/2323). About this incident he feels guilt, remorse, shame, pity, hatred and loathing. He knows we're supposed to love others as we love ourselves, but he doesn't have any love for himself and he doesn't see how his family could love him (RS15/2324). He has tried to put himself in the shoes of the victims' family and thought about how he would feel on the other end, and even though his parents were the way they were, he can only imagine what the family went through. He agreed to meet with the victims' family before the guilt phase of the trial, and try to explain that they weren't targeted and it wasn't about revenge or any special reason, it was just Woodel's selfishness and inconsideration (RS15/2325). He knew such a meeting wasn't an ordinary thing but was thinking morally rather than about any court process (RS15/2326).

Woodel believes in God and has always believed in God; he's gotten closer to Him since being locked up. He got a cross and has asked God for forgiveness. It's bad to let your father down, but even worse to let your Holy Father down. When Woodel sees the cross, he is reminded that God loves him and forgives him, even if Woodel doesn't feel it (RS15/2326).

He has been locked up for seven and a half years (RS15/2326). He has not been in trouble during that time and has only one Disciplinary Report (RS15/2326-

27). The one DR was for contraband, as Woodel did not know there was a limit on how many stamps you could keep, and his sister and his aunt both sent him a book of stamps and he went over the limit. During a normal search, all the stamps were found and confiscated, and Woodel was given the DR and placed in confinement for 15 days (RS15/2327). He also got in trouble for having a popsicle stick away from the canteen that he forgot to throw away or was using for something else (RS15/2328).

Woodel was asked why he told the detectives that he only had seven or eight beers, and Woodel responded that he could remember having seven or eight, not counting the Old English, and he thinks he quit counting after seven or eight, so that was the number that stuck in his head (RS15/2310). He remembered as he was writing his statement that it was more than seven, but he has always had a problem admitting his alcohol consumption and he didn't want the police to think he was a drunk (RS15/2346-47). He actually lost track but thinks he probably drank about a case by himself (RS15/2311, 2346). That wouldn't be unusual, he's done it before. He used to go to "trash can parties" where everyone that came brought a bottle of alcohol and poured it into a 33-gallon trash can then you mixed in a few packs of Kool-Aid and added a couple bags of ice and had punch. The party would last for days and you would drink, pass out, wake up, get drunk again, pass out again, and so on (RS15/2311).

Dr. Henry Dee, clinical psychologist and neuropsychologist, opened his private practice in Lakeland in 1972 and was doing forensic cases before that time. He was appointed to supervise psychiatrists for the Child Protection Team for many years (RS16/2390). He had testified as an expert in the areas of child abuse and forensic neuropsychology many times (RS16/2391). When Dr. Dee initially met with Woodel, he did not have any background information (RS16/2392). Later Dee received the discovery, including investigative notes, a transcript of Woodel's confession, and a copy of the tape of the confession (RS16/2392-93). Dee interviewed Woodel's sister, Aunt Becky Russell, father Albert, and two or three people that worked with Woodel at Pizza Hut. Dee met with Woodel at least seven times, and thought there were other visits that had not been documented (RS16/2393).

Dr. Dee's initial report noted that the results of Woodel's MMPI, a commonly used personality test, did not render a valid profile. Dee was confused because the test suggested that Woodel was psychotic, but Dee knew from having spent hours interviewing Woodel that Woodel was not psychotic (RS16/2394). Dee asked to meet with Woodel again, and during the course of that interview, Dee noticed that Woodel's use of language was very peculiar, and his interpretation of items on the test was "so idiosyncratic that it just lost all meaning," and Woodel's hands were moving all the time that Woodel was talking (RS16/2394-95). Dee

asked what Woodel was doing, and Woodel indicated he was signing, and mentioned for the first time that his parents were deaf. Dee was amazed that Woodel had not mentioned this earlier, over their hours of interviewing, but Woodel indicated that he didn't think it was important (RS16/2395).

Dr. Dee's research confirmed that would be typical of the way many children of deaf parents behave (RS16/2395-96). Dee undertook a lot of research in the area, and discovered that children of deaf parents are not part of deaf culture but have their own subculture. There is a specific term for hearing children of deaf parents, mother-father deaf; it is a very unusual group, and Dee did not recall having ever seen anyone from that category before. Dee learned this was a very important condition and it was necessary to understand people in that situation (RS16/2396).

Dr. Dee found that deaf people socialize almost exclusively with other deaf individuals, because it is so hard for them to socialize with hearing people (RS16/2396-97). About 85 to 95 percent of marriages of deaf people are to individuals with a similar impairment; yet, because deafness is not usually hereditary, deaf people often have hearing children. Deaf people socialize at deaf clubs, which are social clubs, sporting clubs, and so forth, and they bring their children with them into this small society. It would be clear to the other deaf people that the children could hear, speak and sign, and apparently they would be

asked why they were part of the community; ultimately the symbol and phrase “mother-father deaf” was developed by the deaf culture to refer to hearing children within the deaf community (RS16/2397).

Dr. Dee testified that “mother-father deaf” individuals don’t fully belong to either the deaf culture or the hearing culture (RS16/2397). They identify with the deaf in many ways that truly deaf children would, because socialization is mostly with the deaf; they tend to associate almost exclusively with deaf people through adolescence and then they start being progressively excluded from that culture because they begin to enter the hearing world, which comes as quite a shock to them (RS16/2397-98). Dee referred to a book called Mother-Father Deaf by Dr. Paul Preston which reported that nearly all mother-father deaf children report the same thing upon entering adulthood, that they’re told they have to enter the world of the hearing, and they are astonished and hurt by this. They still identify with being deaf and often report they still feel somehow that they are deaf. Dee pointed out that Bobbie talked about signing and kept referring to “we,” as deaf people but she isn’t deaf, that is just a general characteristic of people that grow up in the culture (RS16/2398).

When Dr. Dee asked Woodel about the signing, Dee discovered that Woodel was saying all kinds of things with his signing that he wasn’t speaking (RS16/2398). Dee described his communications with Woodel as being extremely

frustrating, lengthy, confusing, and nonregulatory, but when Dee asked Woodel to interpret Woodel's signing for him, Woodel displayed a richness of communication and depth of feeling that he wasn't able to express verbally. Woodel's verbalizations are often incomplete and bare. Dee testified that in reviewing Woodel's confession, it was obvious that Woodel had the same difficulty when talking to the police. There is a poverty of communication and expression about relatively simple things, and when things get complex, Woodel is almost at a loss for words (RS16/2399).

Dee noted that speaking and signing were both primary modes of communication for hearing children of deaf parents, as if they were speaking two different languages at once. Woodel did this with Dee, and it was significant in a lot of ways; it explains the poverty of emotional expression when you hear Woodel speak, because the first emotions are expressed in an infant's crying. Dee pondered what might happen if your cries as a child were never heard, which happened in a deaf household at that time before there was equipment to detect that the children were crying (RS16/2400). He noted that hearing parents, over time, learn to differentiate cries they hear from their children, as emotions are differentiated into angry cries, painful cries, or a cry for help. But if there's no response to crying at all, there wouldn't be any detailed expression of feeling ever developed (RS16/2401). Aunt Becky confirmed to Dee that the Woodel children often cried

without getting any response from their parents (RS16/2440).

Woodel told Dee in a later interview that he couldn't express his feelings very well, and that he learned long ago that it wasn't important to do so, which Dee thought was a very odd thing to say. Woodel added that he couldn't explain it, he didn't have the words for it, and Dee thought that was an illustration of the kind of poverty of expression you see when you hear Woodel speak. As a result, getting information from Woodel is a long, strenuous process (RS16/2401). Having identified that Woodel belonged to this group, Dee spent a lot of time with Woodel, trying to understand the impact (RS16/2401-02). Dee concluded there were multiple impacts from the condition that affected Woodel's personality development. In addition, there were other, more pernicious influences at work (RS16/2402).

Dr. Dee explained that deaf parents of hearing children typically grew up without parents, as most are raised in schools for the deaf. They are just told not to do things, without having parents to explain why (RS16/2402). At the time Woodel's parents would have been growing up, most administrators at deaf schools did not sign. Yet, they were the ones to administer punishment, so the deaf children were never given any adequate explanation for why they were being punished. When those children grow up and become parents, they have no experience with parenting themselves to communicate with their children; the

transmission of culture is almost impossible, and they don't have the words to explain why. A common complaint of people Woodel's age would be that they were told to be nice and be polite but were never told why it was important, and it was that way with all discipline (RS16/2403).

At the same time, the experience of not having had parents themselves leads deaf parents treat their children like peers (RS16/2403). Dee saw examples of this with Woodel's parents; they tend to be very permissive, with very few rules and regulations, or they are arbitrarily harsh and can't explain anything to the children. The rules can change capriciously without explanation. The children grow up in a peer culture, using siblings rather than parents to solve their problems. They may decide, for example, to solve a hunger problem by stealing food from a neighbor, because it seems effective and there is no one to tell them we shouldn't steal and why. They don't have that kind of contact with their parents (RS16/2404).

Deaf parents can't appreciate their children's situation because they have never heard themselves; they can't appreciate that ability to communicate. Dee was struck by the story of one young woman trying to tell her deaf mother that she wanted to join a group for mother-father deaf, and her mother responded that they were deaf, too; when the woman explained that no, they could hear, the mother asked why the woman would want to join them, having no appreciation for what her daughter had gone through (RS16/2405).

Woodel and his sister Bobbi both had to develop pseudoresponsibility and pseudomaturity in early childhood that most children never experience, because they also had to communicate on their parents' behalf. For example, if a deaf parent is ill, the hearing child will have to explain the complaints to the doctor and communicate with other people because the parent can't. And the hearing children of deaf parents are stigmatized like deaf children; some people react with derision to signing, because it is so animated with a lot of facial expressions, and someone that is not used to it may think it looks "crazy" (RS16/2406). Woodel related to Dee how other kids would make fun of his mother if she came to his school, calling her names, playing jokes on her, running up behind her and calling her dummy; he felt forced to laugh and go along as if he felt it was funny too (RS16/2406-07). This is a common report of children growing up in this situation, a decidedly abnormal circumstance for the child that just wants to fit in (RS16/2407).

Dee testified that Woodel's case presented additional destructive factors, beyond the terrible struggles created by his parents' deafness; Woodel and his sister were frequently abandoned by their parents in very concrete ways. Dee tried to chronicle how often the children were moved and stopped at 23 times before Woodel was 15, noting that Woodel couldn't remember all the moves (RS16/2407). The parents disputed custody for years, and one parent would take

the children and hide them at a new school, and the other parent would find them and do it again; the children were also sent to live with aunts, or if staying with their mother, the mother would leave them with anyone that would take them or just by themselves (RS16/2408).

Dee testified that that kind of abandonment leads a child to feel terrifying loneliness, with the conviction that you're not loved. The more it's repeated, the more important that experience becomes. This became a permanent part of how Woodel would view himself in the world, and he would develop the insight that nobody really wanted him; it was an inescapable, and correct, conclusion. Dee testified that although Aunt Becky believed the mother wanted to care for the children but didn't know how, Dee didn't believe she really wanted to care for them because she abandoned them so frequently (RS16/2408).

Dee testified that voluminous literature addressed how such abandonment affects children, leading to chronic depression and low self-esteem. You accept the feeling that you are not important, no one loves you, and you are expendable (RS16/2409). This went on until Woodel was 15 or 16, and there was the incident where he got in trouble with his cousin's car, Aunt Becky put him on a bus back to his mother, and his mother sent him right back to Pennsylvania, where he wasn't allowed to sleep in the house (RS16/2409-10). Dee thought this was very poignant to show that Woodel did not just have a perception of rejection, he was truly

rejected (RS16/2411).

So Woodel was sent to the Navy and loved the Navy, feeling for the first time in his life that he had found a home, which is not the reaction most people have to boot camp. But he ended up going off base without leave and got kicked out, which was devastating for him (RS16/2410). Ultimately he is back in Michigan and meets a young woman, she gets pregnant, and they have to wait a year until she is 18 to marry. Then Woodel gets in trouble for something like stealing car hood ornaments and gets sent to jail for two years, and his wife leaves him (RS16/2411). He served his time and completed probation and then moved to Florida in 1996 (RS16/2411-12).

Dee testified that he performed a complete battery of neuropsychological tests, but did not discover anything particularly relevant. There was no compelling evidence of brain damage, Woodel was not psychotic, and he had no diagnosable mental illness (RS16/2412-13). Woodel demonstrated “guilt proneness,” which was not surprising in light of the rejection he’d experienced in childhood. There was some emotional instability, but nothing strikingly abnormal (RS16/2413).

Nothing that Dee found in working with Woodel suggested that his character or personality would have a violent nature. Asked to describe Woodel’s childhood in a nutshell, Dee responded that it was “[f]illed with some of the most spectacular neglect and abuse that I think I experienced ever,” despite Dee’s having testified in

abuse and neglect cases at the Department of Children and Families hearings many times (RS16/2414). This case ranked very high in terms of the amount of abuse and neglect Woodel experienced. Yet Woodel still consistently defends his mother, which is hard to explain but has been seen often in abusive situations (RS16/2415).

Dee identified Woodel's two half-brothers, Scott and Charles, from Jackie's prior marriage (RS16/2416). Charles was raised by his paternal grandmother and died in a car accident when he was 16 years old (RS16/2435). Scott was older than Woodel by two or three years, and he was the child that Jackie favored; she would send the other children away, but Scott remained with her when he wasn't in a juvenile home (RS16/2416-17). Dee described Scott as incorrigible, noting he taught Woodel the fine skills of theft and shoplifting. Their mother would go to the mall to sell cards with the signing alphabet to make money, and would leave Scott, Woodel and Bobbie in the car for hours on end. Soon they would be running through the mall, and Scott would direct Woodel to get the things Scott wanted. There were interesting confrontations with the police, because the young children would be picked up - as the mother would leave them if they weren't in the car when she was ready to go (RS16/2417). The police would take the children home but there was never any follow-up, because the police could not communicate with the parents (RS16/2417-18). Jackie's favoring Scott over Woodel would accentuate Woodel's feelings of not being loved or wanted. Yet Woodel loved his

mother, because even though she wasn't a good mother, she was his mother and the only one he had (RS16/2418).

Dee asked Woodel to write letters expressing how he felt about his parents, and Dee found that Woodel's writing was much like his oral expression, confusing and inarticulate (RS16/2419). Woodel attended two years of school while at the Children's Home in North Carolina, and was given an IQ test which reflected a 20-point difference between his verbal and nonverbal IQs. This is not surprising given his growing up in a home with no language. Dee felt that Woodel had overcome some deficits from his limited linguistic environment, noting that his current IQ scores do not reflect the same discrepancy. However Woodel still shows very clear aftereffects of his childhood in his verbal expression and inarticulateness (RS16/2420). His difficulty with abstract concept formation and understanding feelings is clear in the letters that he wrote to Dee (RS16/2421).

Dee was not able to come up with any rational explanation for the murders. Woodel told Dee essentially the same thing he had told the police, and Dee felt that a lot of times Woodel didn't know and couldn't remember what had happened (RS16/2421). Dee felt that Woodel had provided information that explained what happened rather than his clear recollection of what he did, and Dee did not think Woodel remembered it very clearly; what he doesn't remember, he rationalizes, which everyone does (RS16/2421-22).

Dee testified that what happened with the murders was completely out of character for Woodel; Dee was bewildered, like everyone else. Woodel didn't have any history of violence and not a long history of criminal versatility. Typically someone who kills one or two people has shown a lot of violence in the past toward loved ones or inanimate objects, but there was nothing like that here (RS16/2422). Woodel answered Dee's questions candidly, without glibness and self-serving stories, even though he might not know the answers; he did not try to justify the murders, or blame them on alcohol or some kind of insanity. Dee believes Woodel feels guilty but has grave difficulties in expressing his feelings (RS16/2423). It was clear to Dee that Woodel had remorse and was ashamed and bewildered by what happened, but Woodel was not articulate about it (RS16/2424-25).

On cross-examination, Dee related that Woodel had lived with Christina after getting out of prison, and then Woodel and Christina moved to Florida together as a couple in 1996 (RS16/2430). There is no question in Dee's mind that Woodel is not psychotic or schizophrenic (RS16/2431-32). Dee had a copy of Dr. Boardman's one-page report from the Children's Home, showing the results Boardman obtained in Woodel's IQ testing (RS16/2433). Dee's testing revealed Woodel had an average IQ of 103, but Dee thought he was actually brighter than that score reflected (RS16/2434-35).

Dee acknowledged that Albert Woodel indicated that Jackie had some level of hearing, but noted there seemed to be differences of opinion as to how much she could hear; although Albert suggested that they had been responsive to the children, Dee noted that Albert could not speak for the times when he wasn't around (RS16/2441-42). Once Woodel was about five years old, he did not see his father for a long time (RS16/2444).

Dee did not ask Woodel directly about any prior sexual abuse, because you have to be careful with such subjects to avoid false positives; but he broached the issue with Woodel and gave Woodel the opportunity to report any prior sexual abuse, and Woodel did not report any (RS16/2443). Dee was also aware of physical abuse by Albert, in that one time Albert came home, Woodel had done something which made Albert angry, and Albert followed Woodel into his bedroom and threw him across the room and into a wall. Dee's comment about the extent of the abuse and neglect referred to neglect that was so extreme it amounted to abuse, along with the abandonment (RS16/2444). There was also psychological abuse, based on the lack of toys, the absence of privacy, and the extreme deprivation in which the family lived. From Bobbie's report, there was also abuse at the Children's Home, since she would hear Woodel screaming at night (RS16/2446).

Dee discussed Woodel's statement to the police with regard to the amount of

alcohol he had consumed; Woodel indicated that although he had told the police he only had seven or eight beers, he actually had a lot more than that. Woodel did not want to tell the police how much he drank because he didn't want the police to think he was drunk or using alcohol as an excuse (RS16/2450).

In closing argument, Colon emphasized how the murders were an isolated incident, completely out of character for Woodel (RS17/2602-31). Colon noted Woodel had accepted responsibility for his actions early, and outlined how Woodel's childhood and drinking provided some insight into why this had happened, even though Woodel had not tried to use his background or the alcohol as an excuse (RS17/2603, 2605, 2614-15). Colon explained why these were not the most aggravated of crimes, deserving of the death penalty, and how Woodel's life had value (RS17/2611-14, 2617-25). He speculated that something from Woodel's past triggered his actions that night, and perhaps repressed feelings against his mother had surfaced (RS17/2617-19). He discussed why the aggravating factors should be discounted and addressed five statutory mitigating factors, suggesting that the jury should find both statutory mental mitigators based on Woodel's background and the alcohol involved (RS17/2616, 2625-30).

The jury recommended a life sentence for the murder of Mr. Moody, and recommended a death sentence by a vote of seven to five for the murder of Mrs. Moody (RS3/363-64; RS17/2648-49). Judge Roberts followed the jury

recommendations (RS3/393-403). As to Mrs. Moody's murder, the court found the same four aggravating circumstances previously found, giving great weight to the prior violent felony conviction, committed during commission of a burglary, and heinous, atrocious or cruel, and moderate weight to Mrs. Moody's vulnerability due to age or disability (RS3/394-96). In mitigation, the court found: no significant criminal history; defendant's age; substantial impairment of capacity to appreciate actions or conform conduct; extreme disturbance; physically abused as a child; neglected and rejected by mother and others; instability of homes as child; parents are deaf and mute; abuse of alcohol and drugs; willingness to meet with victims' daughter; willingness to be tested for bone marrow donation for his daughter; belief in God and belief he has been forgiven; voluntary confession; and compassion for others (RS3/397-402). The court concluded that the aggravating factors "far outweigh" the mitigation and imposed a sentence of death (RS3/402).

This Court affirmed the sentence, rejecting a claim of fundamental error based on testimony from State witness Arthur White; White testified that Woodel had admitted fondling the female victim and Woodel argued that this testimony was irrelevant and highly inflammatory. This Court held that this evidence was relevant and properly admitted. Woodel, 985 So. 2d at 530. Woodel filed a timely motion for postconviction relief which was later amended (2/124-194; 8/1253-1325). An evidentiary hearing was granted and 27 witnesses testified at the

hearing, conducted on March 21-25, May 11-13, and June 3, 2011.

Trial attorney Al Smith was admitted to practice in Florida in 1974; he spent almost three years with the state attorney's office and has done exclusively criminal work in private practice since 1977 (11/1743-45). He was experienced in capital cases and attended meetings on capital litigation since before formal Life Over Death seminars were offered (11/1712, 1745). Smith and co-counsel Gil Colon worked together, as a team, on both guilt and penalty (11/1732; 13/2187-88). Smith was not involved in the 2004 resentencing (11/1729-30; 14/2195).

The defense penalty phase theory was to emphasize that this crime was completely out of character for Woodel; he had no history of violence, had experienced rejection his whole life, was intoxicated, and when Mrs. Moody pulled a knife on him, it was the ultimate rejection which escalated into these crimes (11/1713, 1727-28). Smith had no memory of retaining Dr. McClane, although he had previously used McClane as a witness in capital cases; if McClane was not used as a defense witness here, it was because he did not have anything helpful for mitigation (11/1726, 1791).

Smith recalled that Dr. Dee was appointed in September, 1998, to conduct an overall evaluation and assist with mitigation issues; Dee testified at the penalty phase on Dec. 7, 1998 (11/1726; DA19/2958-3006). Dee's role was to explain the history of Woodel's background and what role that played in the crimes (11/1727).

Dee had an extensive background in capital cases, and was one of the primary psychologists used to get mitigation before a jury (11/1792). Dee testified for penalty mitigation not just all over the state, but all over the country; he was very competent, had a very good understanding of what they were dealing with, and had a very good rapport with the jury. Smith did not know of any psychologist or psychiatrist that had testified as often, or could relate to the jury as well; Dee had a very understanding presentation and communicated concepts to lay people in an intelligent and meaningful way (11/1792-94).

Dee was aware that Woodel was a “CODA,” a Child-Of-Deaf-Adults; Dee read literature, educated himself on the subject, and described to the jury what he had learned about people growing up in a deaf family (11/1795-96). Smith felt comfortable with Dee’s presentation of the issue and noted Woodel’s having deaf parents was a strong part of the mitigation case (11/1796-98). Smith did not know if there were any psychologists that specialized in CODA issues, but even if there were, Smith would not necessarily present that expert but would have to sit down and consider what kind of presentation the expert would make to the jury (11/1797). The defense did not consider getting an expert in deaf culture or a toxicologist; Smith testified he had never done that before and it never crossed his mind (11/1730-31, 1735-36). Toni Maloney was also appointed to assist the defense, but it was very late, not until the start of trial (11/1728). Smith thought

maybe it was Maloney who discovered Woodel's parents were deaf; Smith did not learn this from Woodel and did not know about it until jury selection (11/1730).

Smith discussed mitigation ideas with Colon and participated in interviews with Woodel, asking about family, friends, and anyone who could say good things about Woodel or talk about the abuse in his background (11/1799-1800). They contacted Woodel's father and sister, and made efforts to locate Woodel's mother through other family members (11/1800, 1809). They did not really want the mother as a witness, as Woodel did not have a relationship with her at all, and the defense was able to paint a realistic but horrible picture of the mother's parenting skills (11/1800). Smith thought not finding the mother was a good thing, because it showed her total lack of interest in Woodel and his life (11/1801).

Although Woodel was a cooperative client, it was difficult to get information from him or his family; they didn't volunteer or explain much, so you had to ask very specific questions to get information (11/1733, 1803). What the defense pieced together about Woodel's drinking was that he had consumed much more than eight beers, and suspected it was closer to 18 to 24 beers (11/1803).

Toni Maloney worked as a mitigation specialist for the Polk County public defender's office for 14 years, specializing in capital cases and mental health issues, then went into private practice in 1998 (11/1834-35). She often gets records for family members, not just the defendant, because it is important to have a

multigenerational history (11/1839). A mitigation investigation typically requires at least 100, and up to 300, hours of work, and includes travelling to anywhere the defendant lived for many years (11/1841, 1843-44).

Maloney was appointed to assist the defense, but came on so late her role was limited; she acted as a witness coordinator and assisted Dr. Dee in compiling a social history (11/1845-46). Maloney obtained some records, sharing what she had with Dee (12/1851-54). She testified that she was the one to discover that both Woodel's parents were deaf, and she found this significant and told Dee about it (11/1848-49). Everyone had known that the father was deaf, since they were in contact with him, but she was the first to discover that the mother was also deaf (12/1860-62). She assisted Dee in researching the dynamics of that, and found a book she shared with Dee (11/1849-50).

Maloney would have like to travel to North Carolina and Michigan and speak to neighbors, school people, and Woodel's half-brother Scott Sisk, but there was no time (12/1855-56). She felt they also needed an expert on the deaf community; there was not enough time to bring someone in because they were already in trial, but she tried to find someone that could connect with Dr. Dee and help to educate him on the subject, and she couldn't find anyone (11/1850; 12/1856-57). She called local community mental health centers, and the guy that wrote the book, and maybe researched other journal articles; she was sure that she

could have found someone to help if she'd had more time (12/1883-84).

Maloney recalled seeing the father's trial testimony, and thought that it was contrary to information Dee had from the father and other sources (12/1857-58). Maloney read in the paper that the case was returned for a new sentencing in 2004, but had no contact with Colon at that time; if contacted, she would have recommended that additional mitigation investigation be done (12/1858-59).

Danielle Waller is a mitigation specialist in Illinois (12/1893). She has been in private practice since 2000 and worked for the public defender's office for five years prior to that (12/1894). Her work includes consulting with lawyers, interviewing witnesses, obtaining records, and conducting a multigenerational history of the client and his family (12/1896). Generally, an adequate investigation takes at least a year, as it is not unusual for an investigation to require 600 to 1000 hours of work (12/1898-99, 2018-19). She made \$100 an hour in this case, but she had only put in 100-150 hours of work, since she took over from another mitigation specialist and much of the work had already been done by the time she started (12/1905, 2020; 13/2089). Waller explained that in Illinois, there is a trust fund available, with millions of dollars set aside specifically for mitigation specialists and investigators, so she usually has the luxury of spending as much time as she needs on any case (12/2018).

In this case, Waller reviewed records that had been obtained previously and

interviewed witnesses; she prepared a genogram, a family tree, which she presented, describing Woodel's dysfunctional family history (12/1904, 1967-2003). She observed that the 2003 ABA guidelines required counsel in this case to seek out a CODA expert, and that counsel could not rely on a general expert for this purpose (12/1964). She thought it would be important for a jury and sentencing judge to know that Woodel had been raised in a family with extreme and chronic abandonment and alcoholism, that his parents were neglectful and violent, using the children as a way to extract revenge on each other, and that Woodel grew up with very little stability and lived a transient lifestyle (12/1964-65). She had read a transcript of the 2004 resentencing and did not believe the jury in this case heard enough about the generational family dysfunction and alcoholism, or the extent of violence by Woodel's father Albert and Albert's dysfunctional relationships (13/2036-38). She did not discover any information about Albert abusing Woodel beyond what the jury had heard (13/2111).

Gene Bowen resided at the Children's Home with Woodel for about three years (13/2118). Woodel did not adjust well to the home, which was very structured (13/2122). Woodel struggled the whole time he was there, because he just didn't "get it;" he wasn't defiant, it was more of a communications gap (13/2122-23). The Home gave demerits for misbehavior and Woodel was in a constant state of demerit, because he didn't understand what was expected of him

(13/2124-25). Woodel was intelligent and wanted to please; he was not lazy or dumb, but was at the bottom of the social pecking order in his cottage, and the older boys took advantage of him (13/2125-27). Children at the home got paddled for discipline, but there was no physical abuse (13/2129, 2147). Bowen saw Woodel and his sister signing at the home, and you could tell from listening to Woodel that he learned to talk by someone that didn't hear; Bowen thought Woodel needed speech therapy but never got it (13/2131-32). Woodel was still at the home when Bowen left, and they never had any further contact (13/2139). Bowen had moved to North Carolina when he retired from the military in 2007 and was never contacted by anyone from Woodel's defense team in 1998 or 2004, but he would have offered the same testimony if he had been asked (13/2134).

Dawn Purdue was a house parent for Woodel's cottage at the Children's Home (13/2153-54). Woodel's parents had no sense of urgency about resuming their parental duties (13/2157). The parents did not visit on weekends as only the grandmother came; the parents visited less than once a month (13/2157, 2162). The Woodel children went somewhere for holidays, as they did not stay at the home (13/2162). Children from the Home rode a bus to public school (13/2165). Woodel was smart, and understood the rules as well as any six-year-old (13/2165-66). Woodel was the youngest child in the cottage when he got there, and he was behind in his language skills, but he seemed to come up to speed with his

vocabulary once he'd been going to school and spending time with other kids; she didn't have trouble with his language for long (13/2157-58, 2169). Woodel was like the little brother that got taken advantage of and teased (13/2170). The Home did not use a demerit system but there was corporal punishment; she did not specifically recall paddling Woodel, but it probably happened, although he was only rarely in trouble (13/2166-68). She was not contacted previously but could have offered this same testimony in 1998 or 2004 (13/2158).

Gil Colon had tried at least two or three other capital cases through verdict before being appointed to represent Woodel in March, 1997 (13/2178-79). Colon was first licensed to practice law in April, 1989, and worked for the state attorney's office for a year, then at the public defender's office for about two and a half years, and has been in private practice, doing exclusively criminal work, for the last 22 years (16/2574-76). His first murder case was in 1989 or the early 1990s and he has been consistently on murder cases since; his first capital case was in the mid-1990s, serving as second chair for Jack Edmund (16/2576-78). He started attending death penalty seminars when that became a requirement for qualifying for appointments, and was familiar with the ABA guidelines (13/2180; 16/2579).

Colon is a poor note-taker and often under-billed, so although his billing records were admitted into evidence as accurate copies of his bills, they do not accurately represent the work he completed in this case (13/2181-85). His records

reflect that the court permitted him to exceed the standard limitation on expert fees for Dr. Dee's expenses (13/2183). The defense theory for guilt phase was that the killings were not intentional, based on Woodel's alcohol consumption, inability to remember details, and lack of violent history (13/2185-87). There was no logical explanation for the murders, and no one could understand why they happened (13/2185, 2187). The attorneys knew it was a difficult case, and talked about developing mitigation all along (13/2190; 16/2640-41). The penalty phase theory also focused on the role of alcohol, the lack of any violent history, and that Woodel grew up in a family with deaf parents, where the mother was abusive, neglectful, and provided a poor environment; Woodel was also evaluated for mental health mitigation (13/2190-14/2191). Colon never had any problems communicating with Woodel, they had a pleasant relationship and got along well (16/2651).

Colon had no recall of the investigation he conducted for the 1998 penalty phase beyond what was reflected in his file (14/2199). He did not remember documents obtained, although he knew there had been a background check about Woodel and his sister being in the Children's Home; he had tried this case twice and had thousands of cases and hundreds of trials since then, and simply did not remember much about the investigation (14/2199-2206). His memory is that they were "scrambling" and requested a continuance for further penalty phase

investigation (14/2206-07).² There was a fax from Dr. Dee on Nov. 6, the Friday before the trial was to start on Monday, where Dee notes that there is excellent mitigation from Woodel's extremely chaotic childhood, and suggesting that Colon needed to have Maloney check it out thoroughly; Maloney was then appointed on November 12 (14/2207-09). Colon could not recall if the term "CODA" was found by Dee or by Maloney or by Woodel, but it was one of them, and it was at the last minute, either before trial or during the month-long guilt phase (14/2210-11).

Colon did not consider finding a CODA expert but educated himself on the issue through Dr. Dee (14/2213). He had used Dee frequently in the past; the court interrupted the questioning about Dee's reputation and indicated it would take judicial notice that until Dee died, he "testified in almost every death penalty case around here" (14/2213; 16/2666-67). Colon affirmed that Dee was an excellent defense witness, very knowledgeable, well qualified and experienced (16/2267-68). Colon's strategy with mental health experts is to use two or three if they are helpful, but in this case he went with Dee and did not use McClane as a witness, and Colon was satisfied with that (16/2669).

Dr. Dee read up on the CODA issue and the attorneys relied on Dee for direction in that area; Colon recalled a meeting at Dee's office where Dee discussed with Smith and Colon all the research he had done and what he had

² No written or oral motion to continue appears in the record.

learned (14/2213; 16/2683-84). Dee had read at least a couple of books on the subject and Colon felt that Dee had adequately explored the issue and how it related to Woodel (16/2684). Colon knew Dee well enough to know he could impress the jury with his background, his knowledge, and the fact he would take these extra steps to get educated in this area (16/2684-85). It was also the presentation, and the nature of his testimony as Dee was well prepared and very credible (16/2685). Colon had never had a CODA client or heard of a similar case in over twenty years practicing criminal law, and perhaps he should have looked for another expert but he felt comfortable with the package he had to present to the jury; it came across human, straightforward and honest (16/2685-86). Colon is wary of running the risk of looking like he is trying to pump up credibility with too many witnesses, and sometimes experts come across as a “bought” witness. Colon’s style is not to present a lot of expert testimony but he recognized that some attorneys believe you should present every possible expert in every area (16/2686). He did not feel, in 2004, that a CODA expert was necessary in this case (16/2687). He thought the ABA guidelines on this recommended, but did not require, using an expert for any particular area (16/2687-88). Colon noted some attorneys will put on an expert in every area just to avoid being criticized in the future, regardless of how it mixes with your case, but Colon prefers to evaluate the effects the expert might have on the jury, and he does that in every case (16/2688).

Colon did not consider using an expert to calculate Woodel's blood alcohol level at the time of the crimes or to explain the effects of alcohol to the jury; he did not consider an expert to be necessary as the trial was in Polk County, and a good portion of the jurors would know what it was like to be drunk and the type of things a person does when drinking, such as using poor judgment and experiencing memory loss (14/2214). The danger of presenting a toxicologist or bringing in an expert for every little piece by the defense is that the jury may start questioning the validity of the defense; Colon did not want the jury to question the expert on something basic like the effects of alcohol (14/2215-16). His theory was that Woodel was drunk, and the case he presented was consistent with that theory (14/2216). Even today, he would not use a toxicologist, because Polk County jurors have a common understanding of the affects of alcohol (16/2607).

Colon had no memory of Dr. McClane being involved in this case at all, but at some point Colon made a decision not to use McClane as a witness; Colon did not recall having a phone conference with McClane, but it is reflected in his billing records (14/2216-2222). While McClane's notes indicate that Woodel's parents are deaf, Colon did not recall if he knew this or if anyone understood the significance at that time (14/2222-23). Colon did not recall what he knew about the multigenerational pattern of alcoholism, and did not think it needed to be addressed by an expert, but felt that it should have been developed for the jury, either through

Maloney or testimony from Albert or Bobbi (14/2223-25). The family witnesses that testified were the ones Colon spoke to; Colon did not recall if he had spoken to the half-brother, Scott, but he never talked to the mother (14/2225-26). Colon did not travel to Michigan, North Carolina, or Pennsylvania to research family history or deaf culture, or send investigator to do so (14/2227).

When the case was returned for resentencing, it was assigned to Judge Roberts, and she did not rush the defense (14/2228-29). The theory of defense was the same, and Colon could not recall conducting any additional investigation, although he was “sure” he would have tried to make efforts to find additional mitigation (14/2229, 2232; 16/2636). He reviewed the file, read the transcripts, had Dr. Dee reappointed, and decided to go with the same defense; he believed in it, thought the arguments were solid, and liked the total package (14/2232, 2236-37; 16/2645-46). He did not think it was necessary to retain Maloney or another mitigation specialist (17/2739).

The focus was to be the use of alcohol, the lack of intent to kill, the past family background; the only explanation the defense team could come up with suggested some repressed aggression toward Woodel’s own mother that came out in the attack on Mrs. Moody (14/2229). Colon wanted to bring in anything positive that he could, from co-workers, friends, anything that showed a good side of Woodel, his lack of violence and happy nature (14/2230). He would not want to

put on any testimony that suggested Woodel had been manipulative, defiant, or a bad kid, or anything that would put Woodel in a negative light; you only take that tactic if your position is that the defendant couldn't help who he was, he was just born that way and the crimes were inevitable (17/2707). Colon had done that with a prior capital case, and would put on negative evidence if that was the theory, but in this case the theory was Woodel was kind, caring, and compassionate, and had been that way even as a young child; he only wanted positive character traits and would not use any evidence that might contradict that theory (17/2707-09). Colon wanted to use the same witnesses he had presented at the initial penalty phase, as they were the foundation of the mitigation case (16/2650).

Colon made an effort to use Woodel's mother, Jackie, as a focus in order to develop a possibility that what had happened was reaction to Mrs. Moody being a reminder of Jackie. Jackie had a negative influence on Woodel; she was an alcoholic who mistreated Woodel and Bobbi, was hardly ever home, and offered a strange environment with no privacy, so she was presented as the major problem (17/2709). He used Woodel, Bobbi, Aunt Becky, and Albert to put this before the jury. He was not sure of anyone else that he could have used, but he would not automatically put anyone on that had negative information about Jackie, he would have to consider what they added, and whether they would HAVE magnified the case or would detract the testimony of other witnesses (17/2710). Part of Colon's

style is that numbers don't win the case, and he would rather use one good witness than eight bad witnesses (17/2710-11). Even if they had located Woodel's mother, Colon probably would not have used her as a witness unless she admitted it was all true and it was her fault Woodel was there (17/2711).

Colon did not consider putting on the multigenerational pattern of alcoholism, abuse and neglect (17/2712). He couldn't recall ever going back to grandparents and great-grandparents at a penalty phase, unless they had a direct impact on the defendant (17/2712-16). Again, Colon felt the package he had was sufficient, focusing on the environment where Woodel grew up rather than his family tree history (17/2712-13). He did not feel that multifamily history was important unless it was directly related to the defendant (17/2742).

In addition, they decided to have Woodel testify. Colon did not recall the details of that decision, but one factor may have been that they did not do too well in 1998 without Woodel's testimony and didn't think they had anything to lose; another issue was that Colon thought Woodel was very credible in explaining and mitigating his own situation (16/2651). As Colon recalled, Woodel did not want to talk much about his past, but Colon had developed a relationship with Woodel and Woodel was more willing to do it, and in fact did talk about his past at the resentencing (16/2651-52). Colon thought Woodel's testimony went a long way to humanizing Woodel for the jury, which is what the defense wanted (16/2651-53).

Woodel was also able to talk about having been in prison since 1999, and only getting one minor disciplinary report, showing he was not a problem prisoner (16/2676-77). In hindsight, Colon agreed he could have gotten someone from the prison or a corrections consultant to corroborate Woodel's testimony, but he would not have wanted the jury to learn that Woodel had a previous death sentence (16/2677-2682).

Nancy McKenzie works as a sign language interpreter at a center for deaf services in Michigan (14/2239, 2241). She is also a CODA, and has deaf siblings (14/2242). She met Woodel and his mother about 20 years ago, when they came to the center for assistance (14/2241, 2246). Jackie was very immature, naïve, and childlike; McKenzie felt for her kids as CODAs, because their mom was not acting like the parent (14/2246-47). Jackie was loud and laughed inappropriately (14/2248). McKenzie knew the deaf community in Flint and Jackie did not fit in there; most people rejected her due to her immaturity (14/2248-49). Jackie smelled of alcohol and sometimes talked about drinking; McKenzie was worried that Jackie drank around the children, but she did not feel the kids were in danger (14/2252, 2272). McKenzie didn't see the kids around after Jackie married Don Bigelow, and Jackie was very quiet and reserved then; McKenzie had the impression that Bigelow was very controlling (14/2251).

Thomas Kerwin is a retired counselor from a community mental health

clinic in Flint, Michigan (14/2276). He counseled Woodel when Woodel was 12 and Jackie was getting adult services at the center (14/2277-79). Woodel was not much different than the other boys Kerwin saw, and Kerwin thought Woodel contended with the odds reasonably well (14/2279). Kerwin's notes, which had been obtained by the defense team, were admitted at the evidentiary hearing (7/1070-80; 14/2277).

Kerwin's impression was that Jackie was roping Woodel into going to counseling; from the first visit, Kerwin thought Jackie wanted Woodel out of her home (14/2280-81). Kerwin worked to establish a rapport with her and to build her confidence as a parent (14/2281). After four or five visits, Kerwin felt Woodel knew what his mother was up to, and the visits were odious (14/2283). He was puzzled about why the mother would want Woodel out of the house, so he contacted Woodel's school, but they advised that they did not have any problems with Woodel; Woodel spoke a lot in class, but other than excessive talking, they had no concerns (14/2283, 2310-11).

Although Kerwin's notes reflect that Woodel was controlling, passive/aggressive, and manipulative, this was written after 12 (of 14 total) visits and Kerwin no longer thinks that's accurate; he now believes that he was led astray by Jackie's talk about life at the grandmother's house, where the rules and limits were more liberal (14/2285-87, 2297-98, 2317-18). The grandmother was very

active in Woodel's life at the time, he had been or was living with her (14/2310). Kerwin thinks the comments were more a reflection of the dynamics between Jackie and Jackie's mother, and Kerwin eventually came to the conclusion that the problem was with Jackie rather than with Woodel (14/2286-87). He had the impression that the mother was railroading Woodel and not providing basic support (14/2289). Kerwin felt the mother was unfit, but was not as concerned, because the grandmother was there as a moderating influence (14/2314).

Kerwin diagnosed Woodel with adjustment reaction with mixed emotional features because he was required to give a diagnosis; this basically meant that Woodel was reacting to his environment (14/2287, 2312-13). He felt generally that Woodel dealt pretty well with his mother's deafness, and that Woodel did a good job of controlling his thoughts and dealing with his problems (14/2292-93, 2297). Kerwin never saw any hint of mental illness in Woodel or his history, although Woodel's mother might have had some form of mental illness (14/2313, 2324).

Kerwin never met Woodel's father but his notes indicate Woodel had semi-ongoing contact with his father; Kerwin noted there had been an issue because the father had promised bicycles to Woodel and to Bobbi, but he required the children to write out the reasons they wanted a bike (14/2287-88). Bobbi wrote the letter but Woodel did not, and Kerwin thought it was wrong to have required a letter because, in his opinion, a bike is something parents should provide for their

children as part of growing up, to give them independence and balance, and a child should not have to provide a reason to get a bike (14/2288-90).

Woodel did not wear shoes for his first two visits, and had a lot of mosquito bites on the third visit (14/2284-85). At one visit, Woodel was hobbling, and the mother explained he had stepped on a nail and refused to go to the hospital (14/2291-92). Another time, Woodel had a black eye which was not explained (14/2295). Woodel was active in Boy Scouts; Woodel enjoyed the Scouts, attended the meetings, and was proud to wear the uniform shirt (14/2296, 2306). Woodel also had two Big Brothers from the Big Brothers/Big Sisters program; the Brothers would have been screened, and upstanding people, but Kerwin found it frustrating because Kerwin was trying to build a rapport and a relationship, and social service sending a good person would, in a way, compete for that relationship (14/2295-96, 2307-08). Kerwin felt he was making slow but steady progress with Woodel, but after fourteen sessions, the mother told Kerwin it would be the last session, as she was not happy in general with the way things were going (14/2297-98).

Robert Alward is Woodel's uncle and Jackie's brother; he testified through a sign language interpreter (14/2330). His mother was Edna Hudson and his father was Robert C. Alward; his father worked for Buick, got drunk two or three times a month, and had a temper (14/2331-32). Alward saw his father get violent with his mother 7 or 8 times over 10 or 12 years, but Alward was mostly just home on

weekends (14/2344). His father might have spanked Jackie and one time the father hit Jackie in the ear, where her hearing aid was, and she cried like it hurt a lot (14/2332). His parents did not sign (14/2334). Jackie initially attended an oral school for the hearing impaired, and then at 14 she went to a deaf school; she was teased by the kids there (14/2335-36). When Jackie was a teenager, she would skip school and go into downtown Flint, Michigan, to an area known for drinking and sex, where hearing people hung out (14/2336).

Jackie was married three times; her second husband, Albert, was a peddler. Jackie and Albert lived in North Carolina and Alward lived in Michigan, so Alward only met Albert a few times (14/2337). His impression was that Albert was a nice guy, deaf, a signer; they chatted about fixing cars and Alward didn't know anything negative about him (14/2354-55). After Jackie's father died, Jackie and her three children came to live with Edna; Jackie lived with her mom for about ten years, then when Edna died, Jackie moved back to North Carolina (14/2337-38). Alward saw the family every few weeks when they lived in Michigan. Jackie embarrassed Alward; she acted awful, she didn't put in her teeth when they went downtown, and she would keep a flask of alcohol in her purse at all times (14/2339). Friends would tell Alward that they'd seen her drinking in church (14/2339-40).

Alward did things with Woodel including boating and skiing; Woodel

seemed to be an okay kid when Alward was around, obedient to and respectful of his mother and grandmother (14/2340, 2352). He did not have much contact with Woodel when Woodel was growing up in North Carolina, and only saw him in Michigan from time to time until Woodel went into the Navy; he saw Woodel again before he moved to Florida, and Woodel seemed normal, married with a child (14/2351-53). Alward didn't have much to do with Jackie, wasn't interested in being around her and didn't have much opinion about her kids (14/2358).

Woodel's grandmother, Edna, was born in Montana and had beautiful blond hair; when Edna was about 14 or 15 she shot and killed an Indian that tried to hurt her and steal her hair (14/2341, 2356-57). Edna did not have a problem with alcohol, although she might get drunk once or twice a year, and she was more of a parent than grandparent to Jackie's kids when they lived with her; she was a good influence, provided a stable home, and made sure the kids had what they needed (14/2344, 2346). Alward did not really know his grandfathers, but his mother's mother, Maude, and his father's mother, Esther, were both very nice, loved their families, and were not alcoholics or abusive (14/2347-49).

Jesse Church testified via interpreter that he has known Albert in North Carolina since 1974, and he knows Albert's second wife, Linda (15/2366-70). Church and Albert were in a deaf fishing club together and Albert liked to get drunk (15/2367-69). In the deaf community, Albert is known as a liar and a thief

(15/2370). Albert served as treasurer of the club and stole money from the club, then blamed it on Linda (15/2373). Albert has stolen things from Church, but Church didn't want to talk about it, because he had heard other people say Albert had done mean things in the past and Church was afraid Albert would kill him (15/2371). Albert borrowed a TV worth about \$50 and also a movie Church had made about deaf people, then refused to give them back, saying he had lost them, but Church and others thought Albert was lying; Church also paid a bill for food for the fishing club, and Albert refused to reimburse him (15/2377-79). However, Church is still friends with Albert, they chatted the other day about Church coming to court (15/2375-76).

Albert has gotten better than he was in the past, but he is still mean (15/2371-72). Church had seen Albert around Albert's children until the children moved away, and Albert just ignored them; they would run around the club or at home while Albert just drank (15/2372). Church recalled when Woodel was about 12 he was a good boy with his father; he only saw Albert and Woodel together once or twice (15/2383-84). According to Church, Albert stole Jackie from her husband, Paul Sisk; then Albert married his second wife, Linda; and now Albert has been married to his third wife, Bev, for about twenty years (15/2376). Bev is a good wife, she can control Albert and they are very happy (15/2376-77). Albert has quit drinking and is very good with his last child (15/2382-83).

Bonnie Holland is Christina Stogner's aunt, from Bryson City, North Carolina (15/2386). She knew Woodel as Christina's boyfriend when they lived in Michigan (15/2386-87). Christina and Woodel lived with Holland some and with Jackie some. Woodel interacted with Holland's boys, ages 7 and 9, and treated Christina very well (15/2387). Woodel and Christina seemed to have a loving relationship and stayed with her, on and off, about two years (15/2388, 2395). Woodel worked at a restaurant but Holland and Christina did not work; Woodel supported Christina and helped with the household expenses (15/2394, 2396). Woodel also supported a child he had with his ex-wife, Gayle, and was a responsible father (15/2397-98). One morning after Holland had been drinking and woke up hung over, Woodel told her she should think about quitting drinking; he was worried about her kids. She considered it and stopped drinking (15/2388). She did not recall Woodel drinking, or having any drug or alcohol problem at the time (15/2396).

Holland had met Jackie a few times; once Holland went to Jackie's house, after Jackie and Don Bigelow separated, and did not understand why there were pictures on the wall with people cut out and faces scribbled out (15/2389). Christina told her that was just how Jackie was. Holland also knew Woodel's brother, Scott; Scott is the father of Christina's child, Brandon, born in 2003, but does not support Brandon (15/2390). Holland thought Christina and Woodel

moved to Florida because Woodel wanted to get away from his mother and Christina was tired of having Woodel's ex-wife Gayle around (15/2396).

Holland was not aware of any difficulties Woodel may have had with his parents earlier in life, but he had adjusted well and was doing very well (15/2398). Holland talked to Christina after they had moved to Florida, and Woodel was working and Christina was pregnant with his child; they were very excited, and there were no problems between them, all was good (15/2398-99). Christina had a girl, but the girl later died from leukemia (15/2400).

Annie Swan testified via interpreter; she knew the Woodels and lived in the same apartment complex in North Carolina (15/2406-08). She did not think Jackie or Albert were fit to be parents (15/2408). There was no discipline; Albert was mean, violent, and had a bad temper; and he and Jackie would leave the children alone to get into trouble (15/2408, 2414). Albert punctured people's tires, stole things, and sold marijuana (15/2408-10). She heard Albert and Jackie argue a lot, and saw bruises on Jackie (15/2410-11). They took all the doors off inside the apartment, and only Jackie, Albert, and a guy named Robert from Mexico had a door to the bedroom; there was not even a door for the bathroom. Jackie, Albert and Robert drank every day and peddled things for a living (15/2411-12). Once, Swan told Jackie that Woodel needed medical attention because of a problem going to the bathroom, but Jackie didn't do anything about it (15/2412-13).

Although Swan knew Woodel for two or three years and saw him every day, he did not talk to her but played with her kids, so Swan could not say if Woodel ever went to school, was defiant, or a good kid or bad kid (15/2418-20). When Jackie would ask Swan for advice on discipline, Swan would tell Jackie it was her job, and Swan couldn't tell her how to do it (15/2420). Swan never called protective services to report the family, but once Jackie called the police on Albert, and the children were taken away for about six weeks. When Jackie wanted them to come home, the children didn't want to come, because they liked being with the kids at the foster home (15/2421).

Linda Mattson also testified via interpreter; she married Albert Woodel in 1983 and divorced him in 1986 (15/2427-29). Albert was a heavy drinker, and liked to get drunk and steal things (15/2430). He stole money when he was treasurer of the deaf fishing club, but he did not blame her (15/2430-31). He also slapped her one time when they had a big argument; he was not drunk when he slapped her. She never saw him violent with Woodel, and they seemed to have a good relationship, although they were not close and there was no affection (15/2445).

When Woodel was about 14 or 15 he came to live with Albert and Mattson for a few months (15/2433, 2438). Woodel skipped school, was lazy, disrespectful, disobedient, and defiant, but as far as she knew he did not drink or use illegal drugs

(15/2436, 2440). He took her car without permission and put his cigarettes out in her carpet. Mattson did not think Albert was a good father, because he couldn't control Woodel (15/2433-35). Woodel left because he gave her a lot of trouble, and she and Albert argued about him a lot; she wanted him to leave (15/2441).

After Woodel left, she and Albert lived together for about three years; they did not have any contact with Woodel over that time (15/2441-42). Albert worked as a mechanic and supported the family the whole time she knew him (15/2444-45). She sought a divorce when she learned that Albert was having an affair with Bev, who was only 17 or 18 while Albert was maybe 50 (15/2431-32, 2434-35). Albert and Bev are still married and living in North Carolina, and they have children, but Mattson has not kept in contact with them (15/2436, 2443-44).

Lt. Randolph Salle is a corrections officer at Union Correctional Institution [UCI], and supervised Woodel from April 2000 to January 2003 (15/2453-54). Woodel kept to himself, and was compliant and respectful; he had only one disciplinary report, for contraband, which was at Florida State Prison before his transfer to UCI (15/2457-58). Woodel was located on death row, where there were generally fewer disciplinary reports (15/2464-65).

Lisa Wiley was a mental health specialist at UCI from 1989-2005 (15/2466-67). When Woodel arrived, he was classified as S grade 1, which meant there were no identified mental health concerns (15/2468, 2472). He moved up a grade, to

being supervised or receiving services for depression, after September 2002, because he had learned that his mother was critically ill with cancer and his brother was now associating with his former girlfriend (15/2472-73). She met with him every two weeks from September 2002 until he left for court in January 2003; when he came back, he was reduced back to grade 1 (15/2474-75). Woodel was respectful and compliant during their sessions (15/2475). Wiley did not have any problems communicating with Woodel and did not know if his mother ever visited him on death row (15/2483, 2491).

James Aiken is a corrections consultant and an expert in inmate classification and institutional management (15/2494, 2503). Based on his review of the records and interview with Woodel, Aiken opined that Woodel's adjustment to prison would be favorable, from a security standpoint (15/2509). Woodel only had one disciplinary report, and did not present a danger; Aiken concluded Woodel could be safely confined for life without presenting undue risk of harm to staff (15/2510, 2514). He acknowledged that Woodel had been located in maximum security on death row (16/2532).

Scott Sisk is Woodel's half-brother, sharing Jackie as the common parent (16/2540-41). Sisk had a full brother, Charles, who died in a car accident involving alcohol on his 16th birthday (16/2541-42). Sisk was two years old when his mother and father divorced, and he stayed with Jackie while Charles lived with their father

(16/2542). Sisk was young when his mother married Albert and he does not have much memory of Albert, but he thinks Albert was somewhat mean, which may have been due to the discipline, because sometimes he was rough in spanking Sisk and Woodel (16/2542-43). After Albert, Jackie had a boyfriend, Robert, who was really mean and some might say violent (16/2543). Robert was deaf and he raped Sisk a few times when Sisk was 10-11 years old (16/2559). Although Jackie heard Sisk talk about the rapes in counseling, she did not do anything to stop them or protect Sisk (16/2560-61). Sisk was relieved when Robert died (16/2561-62).

Sisk went to live with his maternal grandparents in Michigan for about a year when he was in third grade, but did not remember much from that time (16/2543-45). He recalled that Grandma Edna Alward was easygoing and nice, but his grandfather, Robert Alward, had a temper and was verbally abusive to most people around him (16/2544). When he went back to his mother, she went to court and had him put in the Children's Home with Woodel and Bobbi, because she couldn't control him (16/2545-46). He was there about a year and got paddled two or three times (16/2546).

After the Children's Home, Sisk lived with Jackie, Bobbi, and Woodel; they got public assistance and also got food from churches and peddled (16/2547). When Robert died, the family moved to Flint and stayed at Grandma Edna's house; life was better, more structured, and they got regular meals. The kids were not as

able to get away with things, because Edna could hear them (16/2548). After a couple of years, Edna got Alzheimer's and went into a nursing home (16/2549).

Sisk outlined his criminal history, which included arson, burglary, larceny, probation violations, and prison time (16/2549-53). He first tried alcohol at age 13 and marijuana at 12 - 14; he got really drunk for the first time at 16, slowed down his alcohol consumption at about 21, then started drinking more later (16/2553). He has also used acid, cocaine, and crack (16/2554). He has four children, all with different mothers, including his youngest child with Christina Stogner (16/2555-57). He did not know that Christina had been Woodel's girlfriend or pregnant with Woodel's child at the time of the murders (16/2557).

Dr. Alan Marcus was Woodel's CODA expert for postconviction, although there was no testimony that he would have been available to testify in 2004 (17/2753-57). Woodel's attorneys found Marcus through the Florida chapter of CODA, an international organization that has been in Florida since 2004 or 2005 (17/2758-59, 2819). Marcus is a psychologist in private practice, and previously worked at Gallaudet University and for the Maryland School of the Deaf (17/2754-55). Marcus is a CODA, since both his parents are deaf, and he is a certified sign language interpreter, working with deaf individuals and people with deaf issues (17/2753-55). He has published several articles on deaf issues, offered presentations, and testified one time previously, although not from the stand

(17/2754-59). He never worked on a death penalty case before this one (17/2824).

Marcus discussed the importance of signing when communicating with Woodel and the difficulties that CODA individuals have learning English as a second language (17/2763-67). According to Marcus, Woodel, Bobbi, and Scott learned to manipulate and manage the world, which is common for CODAs with uneducated parents (17/2793-94). Marcus provided an overview of deaf culture and noted that Dr. Dee should not have attempted to administer the MMPI to Woodel (17/2767-76). Marcus disagreed with much of what Dr. Dee had offered about CODA parents as being too general and somewhat dated, as attitude and technology have made it easier to be deaf today; other than these comments and the administration of the MMPI, Marcus did not have any problems with the testing or other work Dee had completed (17/2869-18/2873). Marcus did not conduct any neuropsychological testing or offer any opinion as to whether Woodel suffered from any mental illness or whether any of the statutory mental mitigators applied (18/2873-75). He could have been available as a resource for Dr. Dee to consult in 2004, and believed he could have provided a good starting foundation for Dee's work; he hoped that Dee could have benefited from talking to him (18/2882-86). Marcus charged \$200 per hour and had fees of around \$8000 by the time of his testimony (18/2881).

Margaret Russell, Woodel's Aunt Becky, testified that she recalled meeting

with Dr. Dee shortly before her testimony in 1998 and with Gil Colon before the 2004 resentencing; Colon had not spoken to her about any substantive matters until just before her testimony (18/2903-07). Neither Dee nor Colon asked her about her parents, other than the fact that they had been divorced (18/2908). When her brother Albert was about 6 or 9 months old, their mother left and they were raised by her grandmother, Ella, a very loving, very strict Baptist (18/2909-11). Albert was primarily raised at a deaf school (18/2915). Russell discussed her father's other marriages and noted that although he was hard working and owned his own television repair shop, her father and his second wife both had drinking problems (18/2916). Russell testified that Albert was not selfish, he just didn't know how to be a good father; when Russell initially met with Al Smith, her impression was that Albert was a good father, but in recent years Russell has learned things and she no longer thinks Albert was a good father, although he worked hard and tried hard (18/2919-20, 2955-56). Neither Russell nor her husband had any problem with alcohol (18/2949). Russell did not have any contact or communication with Woodel once Woodel got out of the Navy (18/2951).

Dr. Daniel Buffington is a clinical pharmacologist; he met with Woodel in May, 2010 (29/4836, 4841). Woodel self-reported a history of alcoholic blackouts, and had other risk factors for having another alcohol-induced blackout (29/4845-46, 4850-56, 4904, 4911). Woodel used alcohol to self-medicate for anxiety, stress,

and depression, and was subject to a number of emotional stressors at the time of the murders, including sleep deprivation from working two jobs and difficulties in his relationship with his girlfriend Christina (29/4852-54, 4896-97, 4902-04). Buffington concluded that Woodel drank between 12 and 24 beers over a 5-hour time frame the night before the murders and had a blood alcohol level between .10 and .5, and probably just under .4 (29/4863-65, 4874). Buffington did not think Woodel could form intent due to his alcohol consumption and believed that both statutory mental mitigating factors applied due to Woodel's drinking (29/4866-67, 4869-71). According to Buffington, prior testimony established that Woodel experienced memory and personality changes, becoming loud, aggressive, and violent when drinking (29/4884).

Robert Norgard testified as an expert capital defense attorney and offered his opinion as to the prevailing norms in capital litigation around the time of Woodel's trial and resentencing (29/4919-26).

Leola Kilbourn had testified at the trial and resentencing; she had expected to be asked about Woodel's character, but the defense attorneys did not prepare her to testify (30/5088, 5090). Woodel was home alone at the time of his arrest, as his girlfriend Christina had left a few days earlier and Bobbi and Leola's daughter had gone to North Carolina (30/5092). When Bobbi returned after Woodel's arrest, Bobbi was very upset (30/5093-94).

Woodel's sister Bobbi had testified at the trial and resentencing, and discussed her part in the penalty phase investigation (30/5105, 5109-16). She encouraged the defense attorneys to secure an interpreter for her father, but she was told that the court would not pay for one, so she had to do the interpreting (30/5115-16). She recalled that Albert was in the room when Colon interviewed her, and that she did not feel comfortable saying some things, but she couldn't remember what they might have been (30/5116-17). The attorneys did not ask her about her uncle or grandparents (30/5117). When she spoke with Dr. Dee, her father was not present (31/5173). Bobbi's maternal grandmother, Edna, was a passive, giving, loving, person, but Bobbi's grandfather, Robert, was a drunk, strict and controlling (30/5117-18). Albert had helped get deaf Mexicans across the border for money, including one man, Roberto, who was romantically involved with her mother and sexually abused Bobbi when she was 8 or 9 years old (31/5133, 5157-59).

Dr. Mark Cunningham, a clinical and forensic psychologist with a private practice in Texas, addressed the "complex interaction of biopsychosocial forces" which produced Woodel's conduct (31/5277, 5303, 5353, [Ex. 65]). He produced a powerpoint presentation, outlining his work on the case and the adverse developmental factors which may have influenced Woodel's life (29/4786-4827; 33/5512-13). According to Cunningham, a person's moral culpability is reduced by

the number of damaging or impairing factors in the person's background; more factors means the person's choices are more predisposed, so culpability is reduced (32/5305). He identified 30 such factors that impacted Woodel and determined that Woodel had a genetic predisposition to alcohol abuse and negative personality features (32/5312-17). He did not find the murders to be surprising in light of Woodel's background, and was only surprised that there wasn't more violence, and more criminal activity, earlier in Woodel's life (32/5389, 5397). Woodel was raised in an environment that leads to delinquency, criminal violence, and antisocial behavior (32/5450-51, 33/5478-80). He acknowledged that the jury had heard about Woodel's bad childhood but was concerned that the jury did not appreciate the affect it would have on Woodel's conduct (32/5352-54). He also assessed Woodel's risk of future violence in prison and determined Woodel would be very unlikely to commit serious violence if given a life sentence (33/5488-5500). He opined that both statutory mental health mitigators applied based on Woodel's stress and the cumulative effects of his dysfunctional background (32/5484-86). His fee in this case was approximately \$51,000 (33/5518). He did not perform any psychological testing on Woodel (33/5530).

The court granted relief, finding that Colon provided ineffective assistance of counsel in failing to conduct a new investigation for mitigation when the case was remanded and a new penalty phase was ordered; in failing to ensure a

competent mental health examination; and in failing to file a motion in limine to exclude the testimony of Arthur White as to Woodel's admission of fondling (36/6061-67). The State appealed (36/6076).

SUMMARY OF THE ARGUMENT

The trial court erred in finding Colon rendered ineffective assistance at the 2004 resentencing. Colon conducted a constitutionally adequate investigation and any possible deficiency could not have prejudiced Woodel, since it would have no substantial impact on the weighing of the aggravating and mitigating factors. The court's finding that Colon unreasonably failed to ensure a reasonably competent mental health evaluation was similarly erroneous. The court did not identify any indications of brain damage or mental retardation that were overlooked or ignored by Dr. Dee, or find any constitutional deficiency with Dee's work. The court offers no analysis or explanation to support any finding of prejudice.

The trial court also erred in finding Colon performed unreasonably and prejudicially by failing to exclude the testimony of State witness Arthur White as to Woodel's admission of fondling Mrs. Moody. This Court's prior ruling that the admission of this evidence did not constitute fundamental error demonstrates, as a matter of law, that counsel was not constitutionally ineffective.

ARGUMENT

ISSUE I - IAC AS TO MITIGATION

The court below granted relief on Claim II(A) in Woodel's amended motion for postconviction relief, asserting that his resentencing attorney, Gil Colon, was constitutionally ineffective for failing to properly investigate, prepare, and present a mitigation case. This ruling was erroneous because Woodel did not meet his burden of establishing that counsel performed deficiently or that he was prejudiced by any deficient performance rendered by counsel. As this claim was granted following an evidentiary hearing, this Court must defer to any factual findings that are supported by competent, substantial evidence; legal ruling or mixed questions of fact and law are reviewed *de novo*. Stephens v. State, 748 So. 2d 1028, 1033 (Fla. 1999). The court below found that Colon was deficient for failing to conduct a thorough mitigation investigation after Woodel's case was remanded for resentencing:

In preparation for the Second penalty phase, Mr. Colon talked to three family members. Bobbie Hermes, Albert Woodel, and Margaret Russell. The same three people that testified at the 1998 trial. He did not go to North Carolina or Michigan and he did not hire an investigator to do so. All he did was review records and proceed with the same type of defense. He did not hire Toni Maloney, or for that matter, any mitigation specialist to talk to family members and other potential witnesses. He acknowledged on redirect that it may have been a bad decision. He did no additional investigation or try to find a CODA expert. Mr. Colon said that "looking back, I wish I had hired somebody that would have come in and provided further testimony." Mr. Colon was on notice that he had unique issues

regarding his client.

The first jury made a 9-3 recommendation of death for the murder of Mr. Moody and a 12-0 death recommendation for the murder of Bernice Moody. Despite these recommendations at the 1998 penalty phase, Mr. Colon failed to hire Ms. Maloney or any mitigation specialist to prepare for the 2004 penalty phase. Mrs. Maloney testified that she would have been available for the second penalty phase, and if she had been contacted, she believed additional investigation was needed. Mr. Colon's testimony at the evidentiary hearing was that he liked the package he had. He did no new investigation. Other than calling Mr. Woodel as a witness in the 2004 trial, he called the same witnesses that were called in the first trial. Mr. Colon did not consult with a toxicologist or similar professional to help the jury understand the role alcohol abuse played in Mr. Woodel's actions. A mitigation specialist could have developed a multigenerational history, which showed a pattern of alcoholism, a pattern of abuse and abandonment. The Court finds that counsel's performance fell below an objective standard of reasonableness with respect to Claim IIA of the Defendant's Motion. The Court finds that but for this deficient performance there is a reasonable probability that the result of the proceedings would have been different, and Mr. Woodel may have received a life recommendation.

(36/6063-64).

In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court established a two-part test for reviewing claims of ineffective assistance of counsel, requiring a defendant to show both deficient performance and prejudice. The first prong requires a showing that counsel's acts or omissions fell outside the wide range of professionally competent assistance, in that counsel's errors were "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Strickland, 466 U.S. at 687,

690. Only a clear, substantial deficiency will meet this test. See Johnson v. State, 921 So. 2d 490, 499 (Fla. 2005). The second prong requires proof the “errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable,” and thus there is a reasonable probability that, but for counsel’s errors, the result of the proceedings would have been different. Strickland, 466 U.S. at 687, 695. The deficiency must have affected the proceedings to such an extent that confidence in the outcome is undermined. Johnson, 921 So. 2d at 500.

The court below found Colon’s performance was constitutionally deficient because Colon did not hire a mitigation specialist, travel to places where Woodel had lived, or seek out appropriate experts before the 2004 resentencing; consequently there was no adequate exploration of Woodel’s multigenerational family history and no expert testimony on Woodel’s status as a CODA and the psychological effects of his alcohol consumption. The finding of deficiency is flawed, using hindsight to identify additional witnesses that could have been presented at the resentencing. This analysis is not helpful or relevant. “The one approach we are not supposed to take is the approach exemplified by the dissenting opinion, which relies upon all of the evidence which hindsight arguably shows could have been accumulated if counsel had conducted a perfect investigation.” Williams v. Head, 185 F.3d 1223, 1237-39 (11th Cir. 1999). See Waters v. Thomas, 46 F.3d 1506, 1514 (11th Cir. 1995) (en banc) (“That other witnesses

could have been called or other testimony elicited usually proves at most the wholly unremarkable fact that with the luxury of time and the opportunity to focus resources on specific parts of a made record, post-conviction counsel will inevitably identify shortcomings in the performance of prior counsel”); White v. Singletary, 972 F.2d 1218, 1220-21 (11th Cir. 1992) (“The test has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done. We ask only whether some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial”). The proper approach requires this Court to place itself in the shoes of the defense attorneys in 1998 and 2004. See Strickland, 104 S. Ct. at 2065 (“In reviewing counsel’s performance, a court must avoid using ‘the distorting effects of hindsight’ and must evaluate the reasonableness of counsel’s performance ‘from counsel’s perspective at the time.’”).

In this case, Colon had prepared a prior mitigation case for the 1998 trial. The defense had explored potential mental mitigation through two experts, Dr. McClane and Dr. Dee; had discovered the dysfunction in Woodel’s family background; had emphasized the role alcohol had played in the commission of the murders; and had developed Woodel’s positive character traits through friends and co-workers. Colon was comfortable with the mitigation package that had been initially presented, and considered it to be honest and straightforward.

In preparation for resentencing, Colon did more than simply re-present the same mitigation case. The court below noted that Colon talked to the same three family witnesses that testified in 1998, and did no new or additional investigation. Colon testified, however, that in addition to familiarizing himself with the entire record, he was “sure” he made efforts to get additional mitigation, but could not remember exactly what he tried (16/2636). Additional mitigation was explored, as Dee was re-appointed; additional mitigation was presented, as Woodel himself testified, demonstrating counsel did not simply repeat the same mitigation previously offered. Unfortunately, Colon did not keep good records and did not have good recall of his thoughts or actions at the time of the resentencing (13/2182-84; 16/2645). However, an attorney cannot be deemed unreasonable just because he can’t recall the particulars of an investigation conducted years earlier. Colon did describe the strategy at resentencing as a continuation of the theme in 1998, that Woodel had been drinking excessively, had no history of violence, and grew up in an abusive environment with deaf parents and an extremely neglectful mother (13/2190; 14/2229). Counsel wanted to offer only positive evidence that would humanize Woodel in the eyes of the jury; he was not interested in offering any evidence that put Woodel in a negative light (16/2651-53; 17/2748-49). At the end of the day, Colon believed in the mitigation case as initially presented, and thought his arguments were solid (14/2232).

The background investigation in this case was comparable to the mitigation preparation found constitutionally adequate in Bobby v. Van Hook, 130 S. Ct. 13 (2009), where the United States Supreme Court observed:

Despite all the mitigating evidence the defense did present, Van Hook and the Court of Appeals fault his counsel for failing to find more. What his counsel did discover, the argument goes, gave them “reason to suspect that much worse details existed,” and that suspicion should have prompted them to interview other family members—his stepsister, two uncles, and two aunts—as well as a psychiatrist who once treated his mother, all of whom “could have helped his counsel narrate the true story of Van Hook’s childhood experiences.” 560 F.3d, at 528. **But there comes a point at which evidence from more distant relatives can reasonably be expected to be only cumulative, and the search for it distractive from more important duties.** The ABA Standards prevailing at the time called for Van Hook’s counsel to cover several broad categories of mitigating evidence, see 1 ABA Standards 4-4.1, comment., at 4-55, which they did. **And given all the evidence they unearthed from those closest to Van Hook’s upbringing and the experts who reviewed his history, it was not unreasonable for his counsel not to identify and interview every other living family member or every therapist who once treated his parents.** This is not a case in which the defendant’s attorneys failed to act while potentially powerful mitigating evidence stared them in the face, cf. Wiggins, 539 U.S., at 525, 123 S.Ct. 2527, or would have been apparent from documents any reasonable attorney would have obtained, cf. Rompilla v. Beard, 545 U.S. 374, 389-393, 125 S.Ct. 2456, 162 L.Ed.2d 360 (2005). It is instead a case, like Strickland itself, in which defense counsel’s “decision not to seek more” mitigating evidence from the defendant’s background “than was already in hand” fell “well within the range of professionally reasonable judgments.” 466 U.S., at 699, 104 S.Ct. 2052.

Van Hook, 130 S.Ct. at 18-19 (emphasis added; footnote omitted).

As in Van Hook, the investigation into mitigation in Woodel’s case was

constitutionally sound. As a result, the jury was well aware that Woodel was raised in a dysfunctional family environment, which was detailed by family members, Dr. Dee, and Woodel himself (RS14/2101-RS16/2446). Dee also testified extensively about the lasting effects of growing up as a hearing child with two deaf parents (RS16/2395-2407). While necessarily hampered by the fact that Woodel's family lived out of state, counsel was able to secure the testimony of the three family members closest to Woodel and offered the jury a wealth of descriptive and anecdotal evidence about Woodel's childhood and background. In addition, Woodel testified extensively about his background and the circumstances of the Moodys' murders (RS15/2216-RS16/2389).

In Van Hook, the United States Supreme Court contrasted the 1989 and 2003 ABA guidelines, noting that private organizations, like individual states, are free to adopt any standards for practice, but that such standards do not offer "inexorable commands" or define Strickland's standards of reasonableness. While it may be preferable for counsel investigating mitigation to, for example, "cover every period of the defendant's life from 'the moment of conception,'" and to "contact 'virtually everyone ... who knew [the defendant] and his family' and obtain records 'concerning not only the client, but also his parents, grandparents, siblings, and children,'" there has been no showing that such an exhaustive investigation was constitutionally compelled in 2004. To the contrary, it remains

true today that “counsel does not enjoy the benefit of unlimited time and resources. See Rogers v. Zant, 13 F.3d 384, 387 (11th Cir. 1994). Every counsel is faced with a zero-sum calculation on time, resources, and defenses to pursue at trial.” Chandler v. U.S., 218 F.3d 1305, 1314, n.14 (11th Cir. 2000).

Woodel was not constitutionally entitled to perfect counsel or a perfect trial. Chandler, 218 F.3d at 1313, n.12; Waters, 46 F.3d at 1518. The evidentiary hearing below reflected the best penalty phase investigation that could have been conducted, and not simply what was constitutionally compelled. Such a showing ignores the practical reality that trial attorneys are necessarily limited by time and resources, which does not render their performance unreasonable.

The only case cited by the court below is Wiggins v. Smith, 539 U.S. 510 (2003), but Wiggins does not support any finding of deficiency or prejudice in this case. The Wiggins Court observed that the standard practice in Maryland in capital cases at the time of Wiggins' trial included the preparation of a social history report. Although Wiggins' attorney had Wiggins evaluated by a psychologist, the psychologist's report did not include any information about Wiggins' life history. Wiggins, 539 U.S. at 523. In this case, Dr. Dee explored Woodel's life history through Woodel as well as other sources, including direct interviews with family and friends (RS16/2393). In addition, Wiggins' counsel reviewed a PSI and social service records indicating that Wiggins had described his own background as

“disgusting” and spent most of his life bouncing around foster home placements, yet the attorneys made a decision not to investigate Wiggins’ life history any further. Rather, they decided “well in advance of trial” against presenting a case in mitigation in order to focus on a strategy of convincing the jury that Wiggins was not directly responsible for the murders. As a result, the attorneys did not conduct any investigation into Wiggins’ childhood or family history.

In this case, Woodel’s attorneys well exceeded the scope of the investigation conducted in Wiggins. Dr. Dee functioned essentially as a mitigation specialist, not only evaluating Woodel for any current or past mental health issues but also interviewing his family members and researching the dynamics of having been raised as a hearing child of deaf parents. It was Dee that identified the substantial mitigation available in Woodel’s horrendous childhood, and urged counsel to fully explore Woodel’s life circumstances.

Woodel’s postconviction legal expert, Robert Norgard, suggested deficiency by the fact that the defense team did not know that Woodel’s parents were both deaf at an earlier time. Norgard felt that this fact should have been obvious because a basic penalty phase investigation would start with the parents (30/5020-21). Norgard was apparently not aware that the defense team had tried to locate Woodel’s mother but could not, as she was not even readily available to family members (11/1800; 12/1855, 1876; 17/2711; 18/2958; 31/5201). The defense

attorneys did try to locate both Jackie and a CODA expert; their performance should not be considered unreasonable simply because they were unable to do so.

While Colon indicated, with the benefit of hindsight, that it may have been better to have had a CODA specialist, there was no showing as to how he could have found one. Resources to locate Woodel's postconviction expert, Dr. Marcus, were not shown to be available in 1998 or 2004 (17/2819). Testimony at the hearing revealed that the defense had searched for a CODA expert in 1998, but had not been able to locate one (11/1849-50; 12/1883-84); Woodel has not identified any CODA specialist that was available and could have testified instead of Dee. Colon was able to provide the jury with significant information about the issue through Dr. Dee and was comfortable with using Dee for this purpose; he felt Dee was well prepared and very credible (14/2213; 16/2683-89; RS16/2395-2407).

Colon's reluctance to embrace the other postconviction mitigation does not support a finding of deficiency. Colon's style places quality over quantity. He would rather use one good witness than eight bad ones, and he would not automatically present someone just because, for example, they had negative information about Jackie; he would have to consider what they added to the case and whether they might detract from other testimony (17/2710-11). He does not feel multigenerational family history is important unless it was directly related to the defendant (17/2742). He wanted the jury to hear only positive things about

Woodel and would not put on any testimony suggesting Woodel was manipulative or defiant (17/2707). He is wary of presenting a lot of expert testimony as it may look like the defense is trying to buy credibility, and he explained his reasons against presenting an expert to discuss the effects of alcohol or Woodel's positive prison behavior (which would reveal to the jury that Woodel had previously been sentenced to death) (14/2214-16; 16/2681-89). As these strategic decisions are objectively reasonable, they do not support a claim of deficient performance.

Although Judge Hunter faults Colon for failing to present a toxicologist to help the jury understand the effects of Woodel's alcohol consumption, Colon believed that typical Polk County jurors are familiar with the effects of alcohol from first hand experience and the use of an expert for this purpose was unnecessary and presented a risk that the jurors would question the validity of the defense or the expert, particularly if their own experience was different; even today, he would not use a toxicologist in this situation (14/2214-16; 16/2607; 17/2728-30). Although Norgard disagreed with Colon's assessment on this point, it is objectively reasonable. See Grayson v. Thompson, 257 F.3d 1194, 1221-22 (11th Cir. 2001) (denying IAC for failing to present an expert regarding intoxication and alcoholism, noting that expert testimony regarding the effects of alcohol may have been helpful to the jury, but that the effects of excess alcohol consumption are not outside the ken of the average juror; and even though counsel

in that case did not testify to a strategic decision against using an expert, “reasonably competent counsel could have made such a strategic decision”). The finding of two statutory mitigating factors due primarily to Woodel’s drinking confirms that Colon’s assessment was correct, and the sentence in this case was imposed with full appreciation of the role that alcohol played in the crimes.

The lower court’s finding of prejudice is also erroneous. The court did not offer any findings, reasoning, or analysis to support its conclusion that prejudice had been established. While the court criticized counsel for inadequate investigation, it never identified what mitigation could have been discovered, had a more thorough investigation been conducted.

A proper prejudice analysis requires a court to “consider ‘the totality of the available mitigation evidence - both that adduced at trial, and the evidence adduced in the habeas proceeding’ - and ‘reweig[h] it against the evidence in aggravation.’” Porter v. McCollum, 130 S. Ct. 447, 453-54 (2009) (quoting Williams v. Taylor, 529 U.S. 362, 397-98 (2000); see also Tompkins v. Moore, 193 F.3d 1327, 1336 (11th Cir. 1999) (prejudice requires court “look at the mitigating circumstance evidence that was not presented, along with that which was, and consider the totality of it against the aggravating circumstances that were found”). This necessarily requires a determination as to how the relevant aggravating and mitigating factors were weighed at trial, along with determining how the

evidentiary support for those factors would change with the new information developed in postconviction.

In this case, much of the postconviction mitigation was heard by the jury. Woodel's dysfunctional family life, his long history of drinking, and the implications of being raised a CODA were well substantiated to the jury. The fact that much of the evidence offered in postconviction was cumulative to that presented at the penalty phase weighs heavily against any finding of prejudice. See Rutherford v. Crosby, 385 F.3d 1300, 1315-1316 (11th Cir. 2004) ("this is not a situation like the one in Williams v. Taylor or Wiggins v. Smith, 539 U.S. 510, 123 S. Ct. 2527, 156 L.Ed.2d 471 (2003), where the jury heard very little mitigating circumstance evidence and heard none at all about the type of mitigation presented during the post-conviction proceedings"). In Wong v. Belmontes, 130 S. Ct. 383, 386-91 (2009), the Court reversed the Ninth Circuit for finding prejudice by ignoring the mitigation evidence already presented, the cumulative nature of the new evidence, the negative information that would have been presented had the new evidence been presented and the aggravated nature of the crime. A proper prejudice analysis takes into account the totality of the circumstances, but there is no indication that the court below considered the extent to which the postconviction evidence simply repeated much of what the jury had already heard.

The new mitigation that has been offered in this case is simply "more"

anecdotes and sources for the same general mitigating factors considered by the jury. This is a critical distinction from cases which have granted relief on a claim of ineffective assistance of counsel. Compare Rompilla v. Beard, 545 U.S. 374, 392 (2005) (significant mitigation available but not presented “bears no relation to the few naked pleas for mercy actually put before the jury”); Williams v. Taylor, 529 U.S. 362, 372 (2000) (five categories of mitigation, including nightmarish childhood and borderline mental retardation, never suggested by penalty phase testimony that defendant was a nice boy and confessed to the crime); Armstrong v. Dugger, 833 F.2d 1430 (11th Cir. 1987) (only penalty phase witness, defendant’s parole officer, did not discuss childhood poverty, or that defendant was hardworking, mentally retarded, and had organic brain damage).

In Robinson v. Moore, 300 F.2d 1320, 1345-48 (11th Cir. 2002), the rejection of prejudice was affirmed where (1) the new mitigation did not reveal any statutory factors; (2) the new mitigation did not reduce the weight of the aggravating factors; and (3) the jury had heard some of the same mitigation. See also Rutherford, 385 F.3d at 1315-16 (rejection of prejudice reasonable where (1) jury had heard some evidence of defendant’s mental and emotional state from penalty phase witnesses and other possible nonstatutory mitigation; (2) evidence would have come at a cost, with some damaging testimony; and (3) it was a brutal case with strong aggravating factors).

The aggravating facts in Woodel's case were egregious beyond absolution by the fact that he was a CODA raised by neglectful parents. His death sentence is supported by four aggravating factors: prior violent felony conviction (for the contemporaneous murder); committed during commission of a burglary; heinous, atrocious and cruel; and victim vulnerability due to age or disability. Woodel committed a senseless, brutal double murder, stabbing an elderly woman dozens of times without cause or justification. Against this scenario, the new mitigation presented in postconviction revealed that alcohol was not simply a problem for Woodel and his immediate family but went back another generation or two; that Woodel's father had a reputation for stealing in the deaf community; and that grandma Edna had killed an Indian when she was a teenager. Such evidence does not reasonably reduce Woodel's moral culpability for Mrs. Moody's brutal murder. The additional evidence offered in postconviction does not undermine confidence in the outcome of Woodel's 2004 resentencing.

Even if Maloney or a similar specialist had been hired earlier in 1998 or rehired in 2004, Woodel has not established that there would have been any appreciable difference in the mitigation case presented. While both Maloney and Norgard expressed certainty that Maloney would have been able to find a CODA expert if given more time and Marcus thought there were lots of CODA psychologists out there that could have provided relevant testimony, CCRC has not

identified one, let alone present his testimony. This defeats his claim. Nelson v. State, 875 So. 2d 579, 583 (Fla. 2004) (noting defendant cannot show deficient performance or prejudice without showing witness's availability and testimony). Dr. Marcus did not testify that he would have been available as a witness in 2004, but indicated he could refer Dr. Dee to other sources and offer advice on improving communication with Woodel (18/2882-86). Colon did not indicate that he would automatically choose to present a CODA expert in lieu of Dr. Dee, but indicated he would have to consider how the witness would come across to the jury (16/2686-89). Even if another CODA expert could have been found, and counsel determined the expert's presentation was more favorable than Dee's, there has been no showing that any new expert would offer any additional information to the jury. Norgard's criticism of Dr. Dee, that he was no "expert" because all he did was research the CODA issue by reading a few books, does not demonstrate that Colon was unreasonable in submitting Dee's testimony to the jury or suggest any possible prejudice.

Dr. Dee, in fact, made a point of becoming an expert by the time he was called to testify in 1998. He repeated this testimony in 2004, noting CODAs grow up in a unique situation as "they don't fully belong to either the hearing culture or the deaf culture" (RS16/2395-99); are generally around deaf people because those are the people their parents know, but leaving the home and venturing to the

hearing world causes a culture shock (RS16/2395-99); and that deaf people tend to marry and socialize with other deaf people, and spoke of deaf clubs, where hearing children often come with their parents, but feel alienated (RS16/2396-97). Dee discussed the difficulty Woodel had in expressing himself verbally, and the richness and depth of feeling when Woodel signed (RS16/2399); Woodel's poverty of emotional expression was explained as developmental psychology teaches that first emotions are expressed in crying, but when an infant in a deaf home cries, there is no one to hear and respond (RS16/2400). As a result, communication of feelings is never developed and it is difficult to elicit emotional information from CODAs (RS16/2401). Thus, being a CODA had a major impact on Woodel's personality development and condition (RS16/2402). Dee pointed out that deaf parents have typically been raised in deaf schools and therefore lack the experience of knowing a normal child-parent relationship (RS16/2402). In the deaf schools, the administrators that typically administer punishments often did not learn to sign, so the students would not learn the importance of explaining to someone what they have done wrong as part of the punishment, another inadequacy that is passed on to their children (RS16/2403). Another consequence is that deaf parents treat their children like peers rather than children, being either overly permissive or arbitrarily harsh, again without explanation (RS16/2403-04). Dee gave examples of problems created by the lack of communication skills and the deficit in

understanding what behavior may be appropriate; CODAs are frequently stigmatized and have to develop “pseudoresponsibility” and “pseudomaturity” (RS16/2405-06). Importantly, however, Dee felt that the neglect and abandonment Woodel experienced as a child had “even more pernicious influences” on Woodel’s development than simply being a CODA (RS16/2402, 2407).

This Court has repeatedly recognized that presenting a more favorable expert in postconviction does not establish that counsel performed deficiently or prejudicially. Anderson v. State, 18 So. 3d 501, 512 (Fla. 2009) (noting counsel was reasonable in relying on the expertise of his forensic psychologist, particularly one with a great deal of experience in capital cases); Peede v. State, 955 So. 2d 480, 494 (Fla. 2007); Stephens v. State, 975 So. 2d 405, 415 (Fla. 2007).

Moreover, the record in this case demonstrates no reasonable probability of a different result had the postconviction experts testified. Defense counsel presented mitigation through Dee, and Woodel’s postconviction experts offer no persuasive mitigation above and beyond that presented by Dee. The basic difference between Dee’s testimony and that offered by Dr. Cunningham comes down to the fact that Dee believed these murders were completely out of character for Woodel, and Dee was at a loss to explain why they happened. Cunningham, on the other hand, suggested that Woodel’s background and life trajectory compelled the murders. Under Cunningham’s theory, Woodel’s history, particularly his

failure to bond adequately with his mother at a young age, provided a rational explanation for the uncharacteristic violence. Still, Cunningham was unable to explain why some individuals simply had “more concrete in their rebar” to resist the life of violence one would expect from Woodel’s background, or why Woodel did not give in to the violence much earlier in life. Even if Cunningham’s perspective is taken as more favorable by some, that is still no basis for finding ineffective assistance of counsel. Anderson, 18 So. 3d at 512; Peede, 955 So. 2d at 494; Stephens, 975 So. 2d at 415.

Comparing the evidence from resentencing with the testimony from the postconviction evidentiary hearing, there is no significant difference in terms of the aggravating and mitigating circumstances offered to the jury. Much of the postconviction presentation actually dilutes the defense case, as it shifts the focus away from Woodel and onto remote family history. While Colon embraced some of the new mitigation *in hindsight*, he would not have put on much of the new mitigation offered collaterally. He would not likely use the multigenerational information, or cumulative witnesses, or negative testimony about Woodel, or anyone that came across as a “bought” expert (16/2686-87; 17/2710-16, 2741-42). Importantly, he did not identify any of the collateral mitigation as something he felt should have been presented; to the contrary, he felt that Dee was very well prepared to discuss the CODA issue and Colon was very comfortable, overall, with

the mitigation package he presented; it came across human, straightforward, honest, and credible (16/2684-88).

Although Judge Hunter noted the lack of a multigenerational family history, he did not identify any additional mitigating factors that would have been weighed against the heavy aggravation based on the multigenerational pattern of alcohol abuse. To the extent Woodel's family history suggests that his alcohol use was something beyond his control, the jury was already aware that Woodel's mother both drank excessively and encouraged her children to do so from a young age. The jury heard about Woodel living with Aunt Becky as a child and with his great-grandmother Ella before being left at the Children's Home, as well as the stabilizing influence of his grandmother Edna in Michigan. Testimony about more remote family members, which Colon indicated he has never presented in a penalty phase (17/2715-16), does not offer any meaningful mitigation in itself. Woodel's background was given moderate weight in sentencing, and any additional evidence in this area would not significantly impact the sentencing calculus in this case.

Woodel failed to establish either deficient performance or prejudice with regard to the investigation and presentation of mitigation at his 2004 resentencing. This Court must reverse the lower court's finding of ineffective assistance of counsel on this basis.

ISSUE II - IAC AS TO MENTAL HEALTH ASSISTANCE

The court below also granted relief on Claim II(B) in Woodel's amended motion for postconviction relief, asserting that counsel rendered ineffective assistance of counsel by failing to ensure that Woodel received a reasonably competent mental health evaluation. This ruling was erroneous because the testimony from the evidentiary hearing did not identify any shortcomings in the psychological evaluation conducted by Dr. Dee in 1998 for trial and again in 2004 for the resentencing. This claim was also subjected to an evidentiary hearing; factual findings are reviewed for deference and legal conclusions are considered *de novo*. Stephens, 748 So. 2d at 1033.

In granting relief on this claim, the court below ruled:

The issues raised by the Defendant in Claim IIB. have been discussed by the Court to a large extent with regard to Claim IIA. At the evidentiary hearing, Dr. Cunningham, a clinical and forensic psychologist, testified extensively about the factors that put someone at risk for alcohol and drug abuse, and how those factors could be applied to Mr. Woodel. Dr. Daniel Buffington, a clinical pharmacologist testified at the evidentiary hearing regarding alcoholic blackouts and cognitive and physical effects of alcohol consumption. Dr. Buffington calculated Mr. Woodel's alcohol consumption at the time of the incident to have been between 12 and 24 beers. Dr. Alan G. Marcus, a Clinical Psychiatrist who works with deaf and hard of hearing adults and their families, including CODA's, discussed the deficiencies in Dr. Dee's presentation with respect to the special problems faced by Mr. Woodel as a CODA. The testimony presented at the evidentiary hearing regarding the capabilities of Dr. Dee seemed to agree that he was often used and respected as a death penalty mental health expert in Polk County. The Court is of the

opinion after reading the trial transcript of Dr. Henry Dee from the 2004 penalty phase, that Dr. Dee made a determined effort to present as complete a mental health picture of the Defendant as possible. Considering his limited knowledge of CODA and the deaf culture, he did his best to try to convey to the jury how that factor impacted on Mr. Woodel.

However, after considering the testimony of Dr. Marcus regarding CODAs, the testimony of Dr. Buffington and Dr. Cunningham regarding the effects of alcohol on the Defendant, and other testimony the Court received involving multigenerational patterns of alcohol abuse, the Court is of the opinion that the defense did not present a reasonably competent mental health picture of the Defendant and was deficient regarding Claim IIB of the Defendant's Amended Motion. The Court finds that counsel's performance fell below an objective standard of reasonableness with respect to Claim IIB of the Defendant's Motion. The Court finds that but for this deficient performance there is a reasonable probability that the result of the proceedings would have been different, and Mr. Woodel may have received a life recommendation.

(36/6065-66). The court does not identify any specific deficiency on the part of counsel or Dr. Dee, but simply concludes that the testimony from the postconviction experts suggests that the jury did not have "a reasonably competent mental health picture." No factual or legal analysis is offered in support of the court's conclusory ruling on this issue.

Due process may be implicated by inadequate mental health assistance at trial when it is shown in postconviction that "a prior mental health expert's examination was so 'grossly insufficient' that the expert 'ignore[d] clear indications of either mental retardation or organic brain damage.'" Stewart v. State, 37 So. 3d 243, 255 (Fla. 2010); Raleigh v. State, 932 So. 2d 1054, 1060 (Fla.

2006); State v. Sireci, 502 So. 2d 1221, 1224 (Fla. 1987). In this case, there was no showing that Dr. Dee ignored clear indications of mental retardation or organic brain damage.

At the evidentiary hearing, there was nothing to establish what a reasonably competent mental health examination for penalty phase purposes consisted of in 1998 or 2004. In addition, this case did not implicate any mental health issues; Woodel has never been diagnosed with any mental illness or personality disorder and at trial, at resentencing, and at the evidentiary hearing, all of the “expert” mental health assistance addressed socioeconomic factors, family dysfunction, and alcohol abuse. In fact, Woodel’s postconviction experts did not even conduct psychological testing. Although Judge Hunter apparently considered the postconviction testimony relating to Woodel as a CODA, the effects of alcohol consumption, and multigenerational alcohol abuse to be more persuasive than Dr. Dee’s testimony before the jury, this is not the relevant analysis. See Stewart, 37 So. 3d at 257 (“Stewart has not identified clear signs of brain damage that his penalty-phase mental health experts overlooked. ... An expert’s evaluation ‘is not rendered less than competent ... simply because [the] appellant has been able to provide testimony to conflict with that presented’ by the expert,” citing Jones v. State, 732 So. 2d 313, 320 (Fla. 1999)).

Trial counsel have great discretion in determining whether and how to

present mental health evidence. Jones v. State, 928 So. 2d 1178 (Fla. 2006). Many cases recognize that the presentation of more favorable mental health testimony in postconviction does not render counsel's investigation into mitigation ineffective. Pace v. State, 854 So. 2d 167, 175 (Fla. 2003); Davis v. State, 875 So. 2d 359, 372 (Fla. 2003); Rivera v. State, 859 So. 2d 495, 504 (Fla. 2003); Asay v. State, 769 So. 2d 974, 985-86 (Fla. 2000); Pietri v. State, 885 So. 2d 245, 261 (Fla. 2004); Jones v. State, 732 So. 2d 313, 320 (Fla. 1999); Davis v. Singletary, 119 F.3d 1471, 1475 (11th Cir. 1997).

In this case, the postconviction experts were not even "more favorable," as they did not offer anything with regard to Woodel's mental functioning which conflicted with or expanded upon Dr. Dee's testimony. There was no evidence suggesting that the evaluation conducted by Dr. Dee was inadequate, let alone constitutionally deficient. The only criticism offered of Dr. Dee related to administering an MMPI to Woodel, and Dee himself recognized that the test did not provide any valid measure of Woodel's mental functioning. Al Smith, Gil Colon, and Bob Norgard all recognized Dee as the preeminent death penalty mental health expert in Polk County, and acknowledged that his reputation and experience extended far beyond the county (11/1792-95; 16/2666-67; 30/5027).

The court below granted relief on this issue, noting the postconviction testimony by Dr. Marcus (as to Woodel being a CODA), Dr. Buffington and Dr.

Cunningham (as to the effects of alcohol on Woodel), and other evidence of multigenerational alcohol abuse (36/6065-66). However, Dr. Marcus was not available as a witness in 2004, and although he, Toni Maloney, and Bob Norgard all assured the court that there must have been other psychologists that could have offered testimony as a CODA expert, no one has been identified. Neither deficient performance nor prejudice has been shown with regard to Colon's failure to find and present a CODA expert in 2004.

As to Drs. Buffington and Cunningham, Colon testified that he would not have used such experts in arguing the effects of alcohol to the jury (14/2214-16; 16/2607; 17/2728-30). Counsel chose to elicit limited testimony about Woodel's drinking from Dr. Dee after a number of lay witnesses had discussed Woodel's history of alcohol use and his drinking on the night before the murders, and effectively argued to the jury that the alcohol played a pivotal role in the murders. In sentencing Woodel to death, Judge Roberts found and weighed both statutory mental mitigating factors due primarily to Woodel's drinking and the effects of alcohol at the time of the crimes. Colon made a reasonable strategic decision to present the alcohol factor as mitigation, secured consideration of the relevant facts, and obtained weight for the statutory mitigators. Using Drs. Buffington and Cunningham would not result in the finding of any additional mitigating factors or any additional weight to the mitigation previously found. As there would be no

impact on the sentencing calculus, no prejudice has been demonstrated.

As to the testimony of multigenerational patterns of alcohol abuse in Woodel's family, the jury heard about Woodel's mother having substantial problems with alcohol, and how Woodel and his siblings drank alcohol from an early age (RS14/2105-06, 2110, 2152-53, 2164; RS15/2167-68, 2231-32, 2235, 2275-76). The additional information that there were earlier generations with alcohol issues is not surprising or persuasive as mitigation, since both grandmother Edna and great-grandmother Ella, the only ones with a direct role in Woodel's upbringing, did not have any problems with alcohol. In light of the heavily aggravated nature of Mrs. Moody's murder and the wealth of mitigation which the jury heard, there can be no possible prejudice. Accordingly, this Court must reverse the lower court's finding of ineffective assistance of counsel due to the failure to secure adequate mental health assistance for Woodel.

ISSUE III - IAC AS TO TESTIMONY BY ARTHUR WHITE

The court below also held that counsel performed deficiently and prejudicially with regard to State witness Arthur White, by failing to move to exclude White's testimony that Woodel had admitted to fondling Mrs. Moody (36/6067). As this ruling followed an evidentiary hearing, this Court must grant deference to factual findings, but review of legal conclusions is *de novo*. Stephens, 748 So. 2d at 1033.

In his resentencing appeal, Woodel alleged that White's testimony was fundamental error, because it was irrelevant, inflammatory, and constituted a nonstatutory aggravating circumstance. This Court rejected the claim, finding the testimony to be relevant and admissible. Woodel, 985 So. 2d at 530. In Chandler v. State, 848 So. 2d 1031, 1045-46 (Fla. 2003), this Court noted that, where a claim of fundamental error has been rejected, the trial attorney cannot be found to have been ineffective for the failure to object as prejudice has been refuted as a matter of law. The lower court's finding of ineffectiveness in this issue cannot be reconciled with this Court's finding in the resentencing appeal that Arthur White's testimony about Woodel's admission of fondling Mrs. Moody was not fundamental error, and it must be reversed.

At the evidentiary hearing, Bob Norgard testified that Woodel's attorneys performed deficiently by failing to try to exclude White's testimony about Woodel's fondling (29/4934-36). Norgard recognized that a motion in limine might be denied but opined there was a strong argument for exclusion under Section 90.403, Florida Statutes (30/5007). Despite this Court's prior ruling upholding the admission of White's testimony, Judge Hunter commented that filing a motion to exclude the testimony was a "no brainer" and that he would have granted it "in a heartbeat" (30/5008).

Notwithstanding the fact that some judges may have granted a motion in

limine to exclude White's testimony, the fact remains that Colon's failure to preclude or object to the evidence of Woodel's fondling did not result in the admission of any improper testimony which resulted in prejudice sufficient to undermine the outcome of the case under the prejudice prong of Strickland. If it had, this Court would have found fundamental error on appeal. See Chandler, 848 So. 2d at 1045-46. Even if a judge may have granted a motion in limine in an abundance of caution, such a ruling was not legally compelled, and the constitutional adequacy of counsel's performance cannot be dependent upon a trial court's discretionary ruling. While certainly it may have been beneficial to the defense case to obtain a favorable ruling, had it been sought, Strickland requires more than a speculative benefit in order to show a constitutional violation of the right to counsel. In Lockhart v. Fretwell, 506 U.S. 364, 372 (1993), the United States Supreme Court confirmed that the focus of Strickland's prejudice must be on the reliability and fairness of the proceeding. As Strickland itself counsels, the prejudice assessment, "should not depend on the idiosyncracies of the particular decisionmaker, such as unusual propensities toward harshness or leniency." Strickland, 466 U.S. at 695. Judge Hunter's expressed willingness to exclude White's testimony does not compel a finding of ineffective assistance of counsel.

This Court's prior holding that White's testimony was relevant and admissible and did not constitute fundamental error defeats Woodel's claim of

ineffective assistance of counsel. This Court must reverse the finding of ineffective assistance of counsel on this issue.

CONCLUSION

WHEREFORE, this Honorable Court must REVERSE the Order entered below granting a new penalty phase proceeding.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to Marie-Louise Samuels Parmer and Maria D. Chamberlin, Assistant CCRC, Office of the Capital Collateral Regional Counsel - Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619-1136, this 17th day of August, 2012.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

CAROL M. DITTMAR
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0503843
Concourse Center 4
507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
COUNSEL FOR APPELLANT