Murderer Characteristics: The murders were completely random
December 5, 1996
July 1974Victims profile: Grant Patrick Hendrickson, 22, and Michele Cartagena, 19
Shooting (

Cook v. State, 270 Ga. 820, 514 S.E.2d 657 (Ga. 1999). (Direct Appeal)
Schofield v. Cook, 284 Ga. 240, 663 S.E.2d 221 (Ga. 2008). (State Habeas)
Cook v. Upton, Not Reported in F.Supp.2d, 2010 WL 1050404 (M.D. Ga. 2010). (Federal Habeas)

Final/Special Meal:

Steak, baked potato, potato wedges, fried shrimp, lemon meringue pie and soda.

Final Words:

"I'm sorry," Cook said as he was strapped to a gurney. "I'm not going to ask you to forgive me. I can't even do it myself." He also thanked his family for "their support, for being with me and I'm sorry I took so much from you all."

ClarkProsecutor.org

Georgia Department of Corrections

GDC# Cook Andrew Allen W 07/74 03/98 Monroe Andrew Allen Cook
GDC ID: 963560
YOB: 07/74
RACE: WHITE
GENDER: MALE
EYE COLOR: BROWN
HAIR COLOR: BLACK
HT:
WT:
MAJOR OFFENSE: MURDER

CASE NO:
OFFENSE:
CONVICTION COUNTY: MONROE COUNTY
CRIME COMMIT DATE:
SENTENCE LENGTH:
INCARCERATION BEGIN:

News Release - February 14, 2013
Georgia Department of Corrections
Brian Owens, Commissioner
Director of Public Affairs Joan Heath
Contact: Office of Public Affairs (478) 992-5219

Cook Execution Media Advisory
Inmate's Last Meal

FORSYTH, Ga. - Condemned murderer Andrew Allen Cook is scheduled for execution by lethal injection at 7 p.m. on Thursday, Feb. 21, 2013, at Georgia Diagnostic and Classification Prison in Jackson. Cook was sentenced to death for the 1995 murders of Michelle Cartagena and Grant Hendrickson. Media witnesses for the execution are: Kate Brumback, The Associated Press; Anderw Reeser, WMGT; Will Davis, Monroe County Reporter; Shonti Tager, WGXA and Joe Kovac, The Macon Telegraph.

Cook requested a last meal consisting of steak, baked potato, potato wedges, fried shrimp, lemon meringue pie and soda.

There have been 53 men executed in Georgia since the U.S. Supreme Court reinstated the death penalty in 1973. If executed, Cook will be the 31st inmate put to death by lethal injection. There are presently 93 men and one woman under death sentence in Georgia. The Georgia Diagnostic and Classification Prison is located 45 minutes south of Atlanta off Interstate 75. From Atlanta, take exit 201 (Ga. Hwy. 36), turn left over the bridge and go approximately ¼ mile. The entrance to the prison is on the left. Media covering the execution will be allowed into the prison's media staging area beginning at 5 p.m. on Thursday.

Georgia Attorney General

PRESS ADVISORY
February 5, 2013

Execution Date Set for Andrew Allen Cook, Convicted of 1995 Murder of Two Mercer University Students

Georgia Attorney General Sam Olens offers the following information in the case against Andrew Allen Cook, who is currently scheduled to be executed on February 21, 2013, at 7:00 p.m. On February 5, 2013, the Superior Court of Monroe County filed an order, setting the seven-day window in which the execution of Andrew Allen Cook may occur to begin at noon, February 21, 2013, and ending seven days later at noon on February 28, 2013. Cook has concluded his direct appeal proceedings and his state and federal habeas corpus proceedings.

Cook's Crimes (1995)

The Georgia Supreme Court summarized the facts of the case as follows: The evidence adduced at trial shows the following: at approximately midnight on January 2, 1995, Mercer University students Hendrickson and Cartagena were parked on a small peninsula known as "the Point," which juts into Lake Juliette in Monroe County, north of Macon. Cook drove onto the Point, parked his Honda CRX near Hendrickson's and Cartagena's car, and shot them. Cook fired fourteen times with an AR-15 rifle from a distance of about forty feet and then moved closer and fired five times with a nine millimeter Ruger handgun. Hendrickson and Cartagena were each hit multiple times and killed. Cook then went to the passenger side of the victims' car, removed Cartagena, and dragged her about 40 feet. He partially undressed her, knelt between her legs, and spit on her. Cook then drove away. The murders

were completely random. Cook did not know the victims and there was no interaction between Cook and the victims before he killed them.

Several people parking or camping around Lake Juliette heard the shots, and the murders were reported to the police the next morning when some campers found the bodies. A couple parked near the Point when the shots were fired said they saw a 1980s-model Honda CRX parked near the entrance to Lake Juliette. Later, they saw headlights going onto the Point, heard shots, and observed the CRX speeding away from the Point. The police recovered .223 caliber and nine millimeter bullets and shell casings from the crime scene, and the State Crime Lab reported that the weapons used in the murders were probably an AR-15 rifle and a nine millimeter Ruger handgun. There was saliva mixed with tobacco dried on Cartagena's leg, and the Crime Lab extracted DNA from the saliva. The police began looking for suspects who chewed tobacco, matched the DNA taken from the saliva, and owned or had access to a Honda CRX, an AR-15 rifle, and a nine millimeter Ruger pistol.

The investigation lasted almost two years. Many people were interviewed and dozens of suspects were excluded after they submitted blood or saliva samples to the Crime Lab, or allowed their weapons to be examined by a state firearms expert. In the fall of 1996, GBI Agent Randy Upton began tracking the purchasers of AR-15 rifles in the Macon area. He obtained a list of 108 people who bought AR-15 rifles from 1985 to 1995 from one of Macon's most popular gun stores, and he started calling them and asking if they would give saliva samples and allow examinations of their rifles. On November 27, 1996, Agent Upton contacted Cook. Agent Upton told Cook he was conducting an investigation into the Lake Juliette murders and that Cook owned an AR-15 rifle in 1994 and 1995. Cook replied that he had "gotten rid of" his AR-15 in April 1994. Agent Upton stated that that was not possible because the records show that Cook did not buy his AR-15 until August 1994. Cook then became defensive and stated that his father was an FBI agent, and he did not have to cooperate. Agent Upton asked for a saliva sample, and Cook said he needed to talk with his father before giving a saliva sample. The conversation ended.

Agent Upton learned that Cook pawned his AR-15 rifle back to the gun store in May 1995, five months after the murders. The police also discovered that Cook had an acquaintance purchase a nine millimeter Ruger handgun for him in December 1993 at the same gun store, because Cook was too young to buy it himself. Cook sold the Ruger to a friend in July 1995. The police sought to obtain these weapons from their current owners. They also learned that Cook owned a 1987 Honda CRX at the time of the murders.

One of Cook's friends, who worked with Cook at a diaper factory, testified that in late November 1996 he and Cook had a conversation about "the worst thing you ever did." Cook said he had killed someone with an AR-15. The friend did not believe Cook, but asked why he did it. Cook replied that he did it "to see if I could do it and get away with it." Cook refused to provide any more details. The friend testified that the following day at work, Cook received a call on his pager, and left his work area to return the call. Cook returned 15 minutes later and was "as white as a ghost." Cook said "I got to go," and spit the tobacco he had been chewing into a trash can. Cook said it was the GBI who had called and they wanted to question him about what he and the friend had talked about the day before, and test his saliva. He said, regarding the saliva, "that's a DNA test right there, so they got my ass." Another friend testified that Cook told him in late November 1996 that he needed to leave town because it was "getting hot."

After going to Cook's home and not finding him, Agent Upton called Cook's father, John Cook, on December 4, 1996. John Cook was an FBI agent and had been an FBI agent for 29 years. Agent Upton said he needed to ask Cook a few questions regarding the Lake Juliette murders, and asked John Cook for assistance in locating him. John Cook said he could

probably contact his son. John Cook, who knew about the case from the media but had not worked on it, testified that he did not think his son was a suspect.

John Cook paged his son several times and at 11:00 p.m. Cook returned his calls. John Cook told his son the GBI was looking for him concerning the Lake Juliette murders and asked him if he knew anything about them. Cook replied, "Daddy, I can't tell you, you're one of them … you're a cop." John Cook said he was his father first and, believing his son may have been a witness, asked Cook if he was there during the shooting. Cook said yes. John Cook asked his son if he saw who shot them, and Cook replied yes. Although he still thought "maybe he was just there and saw who shot them," John Cook asked his son if he shot them. After a pause, Cook said yes. Cook told his father he was fishing at Lake Juliette and had an argument with the male victim. The male victim threatened him with a gun, and Cook shot the victims in self-defense. Cook realized that the male victim had only threatened him with a pellet gun, and he threw the pellet gun into the woods. John Cook urged his son to go to the authorities but Cook said he was going to run and "just disappear." John Cook was worried that his son was going to kill himself.

John Cook was stunned by what his son had told him. After speaking with his wife, he called his friend and FBI supervisor, Tom Benson, who was at a conference in New Orleans. He and Benson decided that Benson would fly back to Georgia the next day and the two men would go to Monroe County Sheriff John Bittick, and John Cook would tell the sheriff what his son had told him. They arrived at the Monroe County sheriff's office at about 4:00 p.m. on December 5, 1996.

At about 11:45 a.m. on December 5, 1996, Cook was arrested by a game warden for shooting deer and turkeys out of season and giving a false name. He was taken to the Jones County sheriff's office. Agent Upton, who did not know about Cook's admission to his father, learned that Cook was being held in Jones County for game violations. He drove to Jones County to question Cook about the Lake Juliette murders. When Agent Upton introduced himself and asked to speak with him about the murders, Cook blurted, "it's been two years since the murders and you guys don't have anything; I had a CRX; I had an AR-15; I had a Ruger P89; you guys are going to try to frame me." Cook added, "get my father and get me a lawyer and I'll tell you what you want to hear." The interview terminated. Agent Upton subsequently learned from Sheriff Bittick that John Cook was in Monroe County, and that Cook had made an admission to his father the night before. Agent Upton transported Cook to Monroe County.

After Cook arrived at the Monroe County sheriff's office, John Cook asked Sheriff Bittick if he could speak with his son, and the sheriff agreed. Cook and his father had a private meeting. Both men were crying and John Cook hugged his son. John Cook told his son he did not believe that he told the whole truth on the phone. Cook replied that there was no pellet gun, that "I pulled in, the car was already there, and I just stopped and shot them." Cook then dragged the female victim from the car to make it look like an assault or robbery. John Cook testified at trial about his son's admissions. The police recovered from the current owners the AR-15 rifle and nine millimeter Ruger handgun that Cook owned in January 1995. Ballistics testing revealed that they were the murder weapons. Cook's DNA matched the DNA extracted from the saliva on Cartagena's leg; the state DNA expert testified that only one in twenty thousand Caucasians would exhibit the same DNA profile.

The evidence was sufficient to enable a rational trier of fact to find Cook guilty of two counts of malice murder and two counts of felony murder beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (99 S. Ct. 2781, 61 L. Ed. 2d 560) (1979). The evidence was also sufficient to enable the jury to find the existence of the statutory aggravating circumstance

beyond a reasonable doubt. Id.; O.C.G.A. § 17-10-35 (c) (2). Cook v. State, 270 Ga. at 820-823 (1999).

The Trial (1997-1998)

Cook was indicted in the Superior Court of Monroe County, Georgia on February 17, 1997, for two counts of malice murder, two counts of felony murder, and one count of armed robbery. On March 19, 1998, following a jury trial, Cook was convicted of both counts of malice murder and both counts of felony murder. The jury's recommendation of a death sentence for the murder of Michele Lee Cartagena was returned on March 19, 1998. Cook received a consecutive life sentence for the murder of Grant Patrick Hendrickson. Cook filed a motion for new trial on March 23, 1998, and an amendment thereto on June 4, 1998. This motion, as amended, was denied by the trial court on July 10, 1998.

The Direct Appeal (1999)

The Georgia Supreme Court affirmed Cook's convictions and death sentence on March 19, 1999. Cook v. State, 270 Ga. 820, 514 S.E.2d 657 (1999). Cook filed a petition for writ of certiorari in the United States Supreme Court, which was denied on November 1, 1999. Cook v. Georgia, 528 U.S. 974 (1999).

State Habeas Corpus Proceedings (2000-2008)

Cook, represented by the Georgia Resource Center, filed a petition for a writ of habeas corpus in the Superior Court of Butts County, Georgia on May 9, 2000. Cook filed an amendment thereto on March 7, 2002. An evidentiary hearing was held on October 8-9, 2002. On October 2, 2007, the state habeas corpus court entered an order granting Cook state habeas corpus relief as to his death sentence finding that he received ineffective assistance of trial counsel. The state habeas corpus court denied Cook relief as to his convictions. The State appealed to the Georgia Supreme Court, which unanimously reversed the habeas corpus court's order and reinstated Cook's death sentence on June 30, 2008. Schofield v. Cook, 284 Ga. 240, 663 S.E.2d 221 (2008).

Federal Habeas Corpus Proceedings (2009-2010)

Cook, represented by the Georgia Resource Center, filed a petition for a writ of habeas corpus in the United States District Court for the Middle District of Georgia on January 16, 2009. On March 18, 2010, the district court denied Cook federal habeas corpus relief. The district court denied a motion to alter and amend judgment on June 14, 2010. The district court granted Cook a certificate of appealability on August 26, 2010.

11th Circuit Court of Appeals (2011-2012)

The case was orally argued before the Eleventh Circuit on November 21, 2011. On April 20, 2012, the Eleventh Circuit issued an opinion which denied relief. Cook v. Warden, 677 F.3d 1133 (11th Cir. 2012). Cook filed a petition for panel rehearing, which was denied on June 21, 2012.

United States Supreme Court (2012-2013)

Cook filed a petition for writ of certiorari in the United States Supreme Court, which was denied January 22, 2013. Cook v. Humphrey, 2013 U.S. LEXIS 1029 (2013).

Andrew Cook apologized before his execution

By Rhonda Cook - AJC.com

Friday, Feb. 22, 2013

Andrew Cook apologized to his family and the families of the two people he murdered 18 years ago, but he didn't ask for their forgiveness. "I'm not going to ask you to forgive me," Cook said a few moments before he was executed by lethal injection late Thursday for killing two Mercer University students on Jan. 2, 1995. "I can't even do it myself."

He said it was senseless to kill Grant Patrick Hendrickson and Michele Cartagena. Cook, then 20 years old, picked the couple at random when he came up on them parked at "the Point," a small peninsula that juts into Lake Juliette. He fired 14 shots from an AR-15 and another five from a 9 mm Ruger at them and then dragged Cartagena about 40 feet from the car, partially undressed her, knelt between her legs and spit tobacco juice on her in an attempt to make it look like a robbery and sex crime, prosecutors said. He thanked his family for "their support, for being with me, and I'm sorry I took so much from you all."

At 11:22 p.m. Thursday, the 38-year-old Cook became the first person to be executed in Georgia using only one drug, a massive dose of pentobarbital. The state abandoned the three-drug combination it had used on 29 other men because two of the drugs were becoming impossible to secure. His death came almost 5 1/2 hours after his final appeal was filed with the U.S. Supreme Court just before 6 p.m. He had been scheduled to die at 7 p.m. Thursday, but the state put his lethal injection on hold until the Supreme Court denied his appeal just before 11 p.m. His lawyers asked for mercy by claiming Cook had changed during his time in prison and was a good man, that he had become spiritual while on death row and he wanted to help the families of his victims.

Hendrickson's mother, Mary, told a Macon television station that the 18-year wait has been hard. "I think that's what it was: the devil's work," she told WMAZ-TV. "When all that is going on, I was just thinking to myself: 'Well, the devil is not going to win. He's not going to win over my heart. He is not going to win.'"

Two days earlier, Warren Hill won a stay of his execution set for Tuesday evening with a claim that he had new evidence proving beyond a reasonable doubt that he is mentally ill. Hill was serving a life sentence in 1990 for killing his 18-year-old girlfriend four years earlier when he beat to death his cellmate, Joseph Handspike, with a nail-studded board, saying "you ain't bad now." In Cook's case, it was harder to connect him to his victims than it was to connect Hill to Handspike because Cook had no connection to Hendrickson or Cartagena. Investigators had a report of a Honda CRX seen driving off. They knew the types of weapons used. And they had recovered DNA in the tobacco juice spit on Cartagena's leg.

Investigators contacted Cook two years after the crime as they were seeking DNA samples from area people who owned weapons like those used to kill Hendrickson and Cartagena. To get a reluctant Cook to cooperate, an investigator asked Cook's father, then an FBI agent, for help. Andrew Cook confessed to his father, and then John Cook relayed the details to investigators. The father also testified at his son's trial. According to pleadings filed in the final days before the execution, John Cook "did what he thought was right" and he never expected his son to get the death penalty. But instead of Cook "harboring bitterness toward

his father," his attorneys wrote, "Andy has embraced him … Andy has never wavered in his support for his father."

Ga. executes man who killed college students

By Kate Brumback - AJC.com

Friday, Feb. 22, 2013

JACKSON, Ga. — A 38-year-old inmate who was convicted of killing two college students after confessing to his FBI agent father was executed in Georgia on Thursday, apologizing to the families of both victims before being injected at a state prison. Andrew Allen Cook was pronounced dead at 11:22 p.m., about 14 minutes after he was injected with the sedative pentobarbital. He was the first inmate to be executed since the state changed its procedure in July from a three-drug combination to a single dose.

With his last words, he apologized to the families of Mercer University students Grant Patrick Hendrickson, 22, and Michele Lee Cartagena, 19, who were shot several times as they sat in a car at Lake Juliette, which is about 75 miles south of Atlanta. He said what he did was senseless. "I'm sorry," Cook said as he was strapped to a gurney. "I'm not going to ask you to forgive me. I can't even do it myself." He also thanked his family for "their support, for being with me and I'm sorry I took so much from you all."

The Georgia Appeals Court on Wednesday temporarily stayed Cook's execution to consider a challenge to the state's lethal injection procedure. But the Georgia Supreme Court lifted the stay Thursday and all other appeals were exhausted. Cook's lawyers have argued at various stages in their appeals of his death sentence that he suffered from mental illness and was being treated for depression up to the time of his death.

Mary Hendrickson, the mother of one of the victims, recently told television station WMAZ-TV in Macon she's been waiting 18 years for justice. "I think that's what it was: the devil's work," she said. "When all that is going on, I was just thinking to myself: 'Well, the devil is not going to win. He's not going to win over my heart. He is not going to win.'"

The single-drug injection began at about 11:08 p.m. Cook blinked his eyes a few times, and his eyes soon got heavy. His chest was heaving for about two or three minutes as his eyes closed. Not too long after, two doctors examined him and nodded and Carl Humphrey, warden of the state prison in Jackson, who announced the time of death. Corrections officials said Thursday evening that Cook had received visits from family earlier in the day and ate the last meal he had requested — steak, a baked potato, potato wedges, fried shrimp, lemon meringue pie and soda.

A jury sentenced Cook to death after he was convicted in the January 2, 1995 slayings at Lake Juliette. Cook wasn't charged until more than two years later. He confessed to his father, a Macon FBI agent who ended up testifying at his son's trial. The Georgia Bureau of Investigation reached out to John Cook in December 1995 because they were interested in speaking to his son. When he called his then-22-year-old son to tell him the GBI wanted to talk to him, he had no idea the younger man was considered a suspect. "I said, 'Andy, the GBI is looking for you concerning the Lake Juliette homicide. Do you know anything about

it?"' John Cook testified at his son's trial in March 1998. "He said, 'Daddy, I can't tell you. You're one of them. ... You're a cop.'"

Eventually, Andrew Cook told his father that he knew about the slayings, that he was there and that he knew who shot the couple, John Cook recalled. "I just felt like the world was crashing in on me. But I felt maybe he was there and just saw what happened," he said. "I then asked, 'Did you shoot them?' "After a pause on the phone, he said, 'Yes.'" As a law enforcement officer, John Cook said he was forced to call his supervisor and contacted the Monroe County sheriff. At the trial, as he walked away from the stand, the distraught father mouthed "I'm sorry" to the victims' families who were sitting on the front row of the courtroom. Several members of both families acknowledged his apology.

Ga. executes man who killed students

Augusta Chronicle

Friday, Feb. 22, 2013

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With his last words, he apologized to the families of Mercer University students Grant Patrick Hendrickson, 22, and Michele Lee Cartagena, 19, who were shot several times as they sat in a car at Lake Juliette, which is about 75 miles south of Atlanta. He said what he did was senseless. “I’m sorry,” Cook said as he was strapped to a gurney. “I’m not going to ask you to forgive me. I can’t even do it myself.” He also thanked his family for “their support, for being with me and I’m sorry I took so much from you all.”

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How FBI agent sent his son to Death Row

By David Usborne - Independent.co.uk

Friday 10 April 1998

THEY DO not come much more dedicated than John Cook. Dedicated as a lawman - in his home city of Macon, Georgia, he was an FBI agent for 29 years - as a Christian and as a father. Never could he have imagined how those three decent loyalties would one day rip him, his life and his family apart. For almost three decades, Mr Cook, 55, would have these words for his children as he left home each morning. "I'm going out to make the streets of America safe for little children, pretty women and old dogs". Glib words for sure, said with tongue half in cheek, but words he earnestly believed in.

One time, Mr Cook and his colleagues failed the city. That was the night of 2 January 1995, when two university students were shot dead as they sat in their car in a lovers' lane area at nearby Lake Juliette. It was only on 4 December 1996, that the Macon police, through gun-sale records, found a suspect. He lived in a trailer near the lake. Name: Andrew Cook.

Andrew was John Cook's son, now 23, and that was the beginning of the agent's nightmare. That day, he received a phone call from Andrew. This is how Mr Cook later recalled asking his son about the night of the murders. "He was hesitant, and finally said, `Daddy, I can't tell you. You're one of them, a cop'. I said, `Andy, I'm your father. Do you know anything?'" As the conversation proceeded, the boy said that yes, he did. Next, Andrew admitted he had been at the scene. Then, girding himself, John Cook asked the fateful question. "Did you shoot them?" Andrew said that he had. It was a moment, Mr Cook recalled, that "wrenched my heart out. I felt like the world crashed in on me". But what was to ensue would prove

more painful still. Unable to put aside his commitment to the law and to God, even for his own child, he accompanied the boy the next day to turn himself in.

Two weeks ago, Andrew Cook went on trial for two counts of first degree murder. Because of that one conversation - the telephone confession - John Cook found himself in court as the star witness for the prosecution. The trial, in Macon's courthouse, lasted barely a week. With the words of the father in its ears as well as DNA evidence produced by the prosecution, the jury took two hours to reach its verdict: guilty. Judge Johnnie Caldwell said that the killing of the two young people, Michelle Cartagena, 19, and Grant Hendrickson, 20, was the most senseless he had ever seen.

One more task remained for the distraught father: to plead with the jury in the sentencing hearing the next day not to spare his son from execution. Moving the court to tears and crying himself, he said: "I was busy looking out the front door for evil. But it came in the back door and consumed my son." He went on: "Yesterday, I sat here and talked to you as the cop, and now I want to talk to you as the father." Asking jurors to accept that there had to be a "kernel of value, of goodness" deep in his son, he concluded: "I knew it would probably be my words that would send him to the electric chair."

He had guessed right. Andrew Cook's confession, given in trust from a son to a father, was too much for the jury to ignore; it showed no hesitation in recommending the death sentence. Judge Caldwell duly obliged and Andrew Cook is now on Georgia's Death Row. Cook Sr, who resigned from the FBI in February and is now an investigator in the local district attorney's office, has since told the Atlanta Constitution that he survived the trial "not because I am any hero or have special courage. You do what you have to, and I have a strong belief in God. "God is not finished with the final chapter in any of our lives. I don't know what the final chapter will be for Andy's life, but somehow, somewhere, there will be a purpose." Does he regret reporting that December telephone call to the police? No. But, he adds, "I probably would not have gone into such detail that I would be the star witness against him."

Andrew Allen Cook

ProDeathPenalty.com

At approximately midnight on January 2, 1995, Mercer University students Grant Hendrickson and Michele Cartagena were parked on a small peninsula known as "the Point," which juts into Lake Juliette in Monroe County, north of Macon. Cook drove onto the Point, parked his Honda CRX near Hendrickson's and Cartagena's car, and shot them. Cook fired fourteen times with an AR-15 rifle from a distance of about forty feet and then moved closer and fired five times with a nine millimeter Ruger handgun. Grant and Michele were each hit multiple times and killed. Cook then went to the passenger side of the victims' car, removed Michele's body, and dragged her about 40 feet. He partially undressed her, knelt between her legs, and spit on her.

Cook then drove away. The murders were completely random: Cook did not know the victims and there was no interaction between Cook and the victims before he killed them. Several people parking or camping around Lake Juliette heard the shots, and the murders were reported to the police the next morning when some campers found the bodies. A couple parked near the Point when the shots were fired said they saw a 1980s-model Honda CRX

parked near the entrance to Lake Juliette. Later, they saw headlights going onto the Point, heard shots, and observed the CRX speeding away from the Point. The police recovered .223 caliber and nine millimeter bullets and shell casings from the crime scene, and the State Crime Lab reported that the weapons used in the murders were probably an AR-15 rifle and a nine millimeter Ruger handgun. There was saliva mixed with tobacco dried on Michelle Cartagena's leg, and the Crime Lab extracted DNA from the saliva.

The police began looking for suspects who chewed tobacco, matched the DNA taken from the saliva, and owned or had access to a Honda CRX, an AR-15 rifle, and a nine millimeter Ruger pistol. The investigation lasted almost two years. Many people were interviewed and dozens of suspects were excluded after they submitted blood or saliva samples to the Crime Lab, or allowed their weapons to be examined by a state firearms expert. In the fall of 1996, GBI Agent Randy Upton began tracking the purchasers of AR-15 rifles in the Macon area. He obtained a list of 108 people who bought AR-15 rifles from 1985 to 1995 from one of Macon's most popular gun stores, and he started calling them and asking if they would give saliva samples and allow examinations of their rifles. On November 27, 1996, Agent Upton contacted Cook. Agent Upton told Cook he was conducting an investigation into the Lake Juliette murders and that Cook owned an AR-15 rifle in 1994 and 1995. Cook replied that he had "gotten rid of" his AR-15 in April 1994. Agent Upton stated that that was not possible because the records show that Cook did not buy his AR-15 until August 1994. Cook then became defensive and stated that his father was an FBI agent, and he did not have to cooperate. Agent Upton asked for a saliva sample, and Cook said he needed to talk with his father before giving a saliva sample. The conversation ended.

Agent Upton learned that Cook pawned his AR-15 rifle back to the gun store in May 1995, five months after the murders. The police also discovered that Cook had an acquaintance purchase a nine millimeter Ruger handgun for him in December 1993 at the same gun store, because Cook was too young to buy it himself. Cook sold the Ruger to a friend in July 1995. The police sought to obtain these weapons from their current owners. They also learned that Cook owned a 1987 Honda CRX at the time of the murders. One of Cook's friends, who worked with Cook at a diaper factory, testified that in late November 1996 he and Cook had a conversation about "the worst thing you ever did." Cook said he had killed someone with an AR-15. The friend did not believe Cook, but asked why he did it. Cook replied that he did it "to see if I could do it and get away with it." Cook refused to provide any more details. The friend testified that the following day at work, Cook received a call on his pager, and left his work area to return the call. Cook returned 15 minutes later and was "as white as a ghost." Cook said "I got to go," and spit the tobacco he had been chewing into a trash can. Cook said it was the GBI who had called and they wanted to question him about what he and the friend had talked about the day before, and test his saliva. He said, regarding the saliva, "that's a DNA test right there, so they got my ass." Another friend testified that Cook told him in late November 1996 that he needed to leave town because it was "getting hot."

After going to Cook's home and not finding him, Agent Upton called Cook's father, John Cook, on December 4, 1996. John Cook was an FBI agent and had been an FBI agent for 29 years. Agent Upton said he needed to ask Cook a few questions regarding the Lake Juliette murders, and asked John Cook for assistance in locating him. John Cook said he could probably contact his son. John Cook, who knew about the case from the media but had not worked on it, testified that he did not think his son was a suspect. John Cook paged his son several times and at 11:00 p.m. Cook returned his calls. John Cook told his son the GBI was looking for him concerning the Lake Juliette murders and asked him if he knew anything about them. Cook replied, "Daddy, I can't tell you, you're one of them . . . you're a cop." John Cook said he was his father first and, believing his son may have been a witness, asked Cook if he was there during the shooting. Cook said yes. John Cook asked his son if he saw who shot them, and Cook replied yes. Although he still thought "maybe he was just there and saw who shot them," John Cook asked his son if he shot them. After a pause, Cook said yes.

Cook told his father he was fishing at Lake Juliette and had an argument with the male victim. The male victim threatened him with a gun, and Cook shot the victims in self-defense. Cook realized that the male victim had only threatened him with a pellet gun, and he threw the pellet gun into the woods. John Cook urged his son to go to the authorities but Cook said he was going to run and "just disappear." John Cook was worried that his son was going to kill himself. John Cook was stunned by what his son had told him.

After speaking with his wife, he called his friend and FBI supervisor, Tom Benson, who was at a conference in New Orleans. He and Benson decided that Benson would fly back to Georgia the next day and the two men would go to Monroe County Sheriff John Bittick, and John Cook would tell the sheriff what his son had told him. They arrived at the Monroe County sheriff's office at about 4:00 p.m. on December 5, 1996. At about 11:45 a.m. on December 5, 1996, Cook was arrested by a game warden for shooting deer and turkeys out of season and giving a false name. He was taken to the Jones County sheriff's office. Agent Upton, who did not know about Cook's admission to his father, learned that Cook was being held in Jones County for game violations. He drove to Jones County to question Cook about the Lake Juliette murders. When Agent Upton introduced himself and asked to speak with him about the murders, Cook blurted, "it's been two years since the murders and you guys don't have anything; I had a CRX; I had an AR-15; I had a Ruger P89; you guys are going to try to frame me." Cook added, "get my father and get me a lawyer and I'll tell you what you want to hear." The interview terminated.

Agent Upton subsequently learned from Sheriff Bittick that John Cook was in Monroe County, and that Cook had made an admission to his father the night before. Agent Upton transported Cook to Monroe County. After Cook arrived at the Monroe County sheriff's office, John Cook asked Sheriff Bittick if he could speak with his son, and the sheriff agreed. Cook and his father had a private meeting. Both men were crying and John Cook hugged his son. John Cook told his son he did not believe that he told the whole truth on the phone. Cook replied that there was no pellet gun, that "I pulled in, the car was already there, and I just stopped and shot them." Cook then dragged the female victim from the car to make it look like an assault or robbery. John Cook testified at trial about his son's admissions. The police recovered from the current owners the AR-15 rifle and nine millimeter Ruger handgun that Cook owned in January 1995. Ballistics testing revealed that they were the murder weapons. Cook's DNA matched the DNA extracted from the saliva on Michele Cartagena's leg; the state DNA expert testified that only one in twenty thousand Caucasians would exhibit the same DNA profile.

UPDATE:

Andrew Cook apologized to his family and the families of the two people he murdered 18 years ago, but he didn't ask for their forgiveness. "I'm not going to ask you to forgive me," Cook said a few moments before he was executed by lethal injection late Thursday for killing two Mercer University students on Jan. 2, 1995. "I can't even do it myself." He said it was senseless to kill Grant Patrick Hendrickson and Michele Cartagena. He thanked his family for "their support, for being with me, and I'm sorry I took so much from you all."

Cook v. State, 270 Ga. 820, 514 S.E.2d 657 (Ga. 1999). (Direct Appeal)

Defendant was convicted in the Superior Court, Monroe County, Johnnie Caldwell, Jr., J., of two counts of malice murder and two counts of felony murder, and was sentenced to death.

Defendant appealed. The Supreme Court, Hines, J., held that: (1) sufficient evidence supported convictions; (2) finding of statutory aggravating circumstance in sentencing phase was supported by evidence; (3) finding that defendant's statement to FBI agent father was not result of governmental coercion was supported by evidence; (4) statement of unavailable witness was not sufficiently reliable to be admissible; (5) testimony of witnesses regarding alleged coercive conduct by police was properly excluded as irrelevant; (6) report of state firearms expert constituted sufficient discovery; and (7) death sentence was not excessive or disproportionate to penalty imposed in similar cases. Affirmed. Fletcher, P.J., filed dissenting opinion.

HINES, Justice.

Andrew Allen Cook was found guilty of two counts of malice murder and two counts of felony murder in the shooting deaths of Grant Patrick Hendrickson and Michele Lee Cartagena, and was sentenced to death for one of the murders. The jury recommended a death sentence for Cook's murder of Ms. Cartagena after finding that the murder of Ms. Cartagena was committed while the defendant was engaged in the commission of the murder of Mr. Hendrickson. OCGA § 17–10–30(b)(2). Cook appeals and we affirm. FN1. The murders were committed on January 2 or 3, 1995. The grand jury indicted Cook for malice murder (2 counts), felony murder (2 counts), and armed robbery on February 17, 1997, and the state filed its notice of intent to seek the death penalty on February 27, 1997. The trial took place from March 9–19, 1998. During the trial, the state withdrew the armed robbery charge, and on March 19, 1998, the jury convicted Cook of the remaining counts and recommended a death sentence for the murder of Ms. Cartagena. In addition to the death sentence, the trial court sentenced Cook to a consecutive life sentence for the murder of Mr. Hendrickson. Cook filed a motion for new trial on March 23, 1998, which was supplemented on June 4, 1998, and denied on July 10, 1998. Cook filed a notice of appeal on July 31, 1998, and the case was docketed on August 19, 1998. The case was orally argued on November 10, 1998.

1. The evidence adduced at trial shows the following: at approximately midnight on January 2, 1995, Mercer University students Hendrickson and Cartagena were parked on a small peninsula known as “the Point,” which juts into Lake Juliette in Monroe County, north of Macon. Cook drove onto the Point, parked his Honda CRX near Hendrickson's and Cartagena's car, and shot them. Cook fired fourteen times with an AR–15 rifle from a distance of about forty feet and then moved closer and fired five times with a nine millimeter Ruger handgun. Hendrickson and Cartagena were each hit multiple times and killed. Cook then went to the passenger side of the victims' car, removed Cartagena, and dragged her about 40 feet. He partially undressed her, knelt between her legs, and spit on her. Cook then drove away. The murders were completely random: Cook did not know the victims and there was no interaction between Cook and the victims before he killed them.

Several people parking or camping around Lake Juliette heard the shots, and the murders were reported to the police the next morning when some campers found the bodies. A couple parked near the Point when the shots were fired said they saw a 1980s-model Honda CRX parked near the entrance to Lake Juliette. Later, they saw headlights going onto the Point, heard shots, and observed the CRX speeding away from the Point. The police recovered .223 caliber and nine millimeter bullets and shell casings from the crime scene, and the State Crime Lab reported that the weapons used in the murders were probably an AR–15 rifle and a nine millimeter Ruger handgun. There was saliva mixed with tobacco dried on Cartagena's leg, and the Crime Lab extracted DNA from the saliva. The police began looking for suspects who chewed tobacco, matched the DNA taken from the saliva, and owned or had access to a Honda CRX, an AR–15 rifle, and a nine millimeter Ruger pistol.

The investigation lasted almost two years. Many people were interviewed and dozens of suspects were excluded after they submitted blood or saliva samples to the Crime Lab, or allowed their weapons to be examined by a state firearms expert. In the fall of 1996, GBI Agent Randy Upton began tracking the purchasers of AR–15 rifles in the Macon area. He obtained a list of 108 people who bought AR–15 rifles from 1985 to 1995 from one of Macon's most popular gun stores, and he started calling them and asking if they would give saliva samples and allow examinations of their rifles. On November 27, 1996, Agent Upton contacted Cook. Agent Upton told Cook he was conducting an investigation into the Lake Juliette murders and that Cook owned an AR–15 rifle in 1994 and 1995. Cook replied that he had "gotten rid of" his AR–15 in April 1994. Agent Upton stated that that was not possible because the records show that Cook did not buy his AR–15 until August 1994. Cook then became defensive and stated that his father was an FBI agent, and he did not have to cooperate. Agent Upton asked for a saliva sample, and Cook said he needed to talk with his father before giving a saliva sample. The conversation ended.

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After going to Cook's home and not finding him, Agent Upton called Cook's father, John Cook, on December 4, 1996. John Cook was an FBI agent and had been an FBI agent for 29 years. Agent Upton said he needed to ask Cook a few questions regarding the Lake Juliette murders, and asked John Cook for assistance in locating him.FN2 John Cook said he could probably contact his son. John Cook, who knew about the case from the media but had not worked on it, testified that he did not think his son was a suspect. FN2. Cook did not live with his parents; he was 20 years old when he committed the murders.

John Cook paged his son several times and at 11:00 p.m. Cook returned his calls. John Cook told his son the GBI was looking for him concerning the Lake Juliette murders and asked him if he knew anything about them. Cook replied, "Daddy, I can't tell you, you're one of them ... you're a cop." John Cook said he was his father first and, believing his son may have been a witness, asked Cook if he was there during the shooting. Cook said yes. John Cook asked his son if he saw who shot them, and Cook replied yes. Although he still thought "maybe he was just there and saw who shot them," John Cook asked his son if he shot them. After a pause, Cook said yes. Cook told his father he was fishing at Lake Juliette and had an argument with the male victim. The male victim threatened him with a gun, and Cook shot the victims in self-defense. Cook realized that the male victim had only threatened him with a pellet gun, and he threw the pellet gun into the woods. John Cook urged his son to go to the authorities but Cook said he was going to run and "just disappear." John Cook was worried that his son was going to kill himself. John Cook was stunned by what his son had told him. After speaking with his wife, he called his friend and FBI supervisor, Tom Benson, who was

at a conference in New Orleans. He and Benson decided that Benson would fly back to Georgia the next day and the two men would go to Monroe County Sheriff John Bittick, and John Cook would tell the sheriff what his son had told him. They arrived at the Monroe County sheriff's office at about 4:00 p.m. on December 5, 1996.

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2. Cook claims that the trial court erred by ruling that his December 5, 1996 statement to his father was admissible. He asserts that the statement should have been suppressed because it was made to his FBI agent-father when he had not been read his Miranda (v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)) rights, and after he had requested a lawyer. The record is clear that no one read Cook his Miranda rights on December 5, and that Cook invoked his right to counsel when Agent Upton sought to question him in Jones County. However, the trial court found that "[a]ll the statements were freely and voluntarily given, and were more in the nature of a father-son exchange at a time when the defendant had expressed some desire to see his father about the events that had transpired." The trial court also found that Cook's father did not speak to his son at the behest of the GBI or the sheriff or any other law enforcement officer, and no trickery, deceit, or promises were involved. According to the trial court, "[t]he facts in this case differ from the usual custodial interrogations by police officers seeking confessions from a person charged in a crime." Factual and credibility determinations made by a trial court after a Jackson v. Denno (378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964)) hearing will not be disturbed on appeal unless clearly erroneous. Dixon v. State, 267 Ga. 136, 139(3), 475 S.E.2d 633 (1996).

The evidence regarding the circumstances of Cook's December 5 statement to his father shows the following: before Agent Upton read Cook his Miranda rights, Cook demanded his father and a lawyer; neither Agent Upton nor any other investigator in the case attempted to

interrogate Cook after this invocation of his right to counsel; Agent Upton learned that John Cook was in Monroe County and that Cook had made an admission regarding the murders the night before; and Agent Upton told Sheriff Bittick that Cook had invoked his right to counsel and asked to see his father. The record does not show that Sheriff Bittick told John Cook his son wanted to speak with him, but Sheriff Bittick did contact the district attorney on December 5 regarding the procurement of a lawyer for Cook. Agent Upton transported Cook to Monroe County.

After Cook arrived at the Monroe County sheriff's office, John Cook asked to speak with his son. John Cook testified that he "wanted to know what happened" and that, though it is difficult to separate out the law enforcement part of his personality, he wanted to speak to his son mostly as a father ("I was still not thinking in my mind directly and openly that I was an agent with the FBI"). John Cook testified he was not intent on gathering evidence for the state; instead, he wanted "to try to persuade Andy to cooperate in hopes of getting a reduced sentence." However, John Cook also testified that he was not going to keep any incriminating evidence to himself, and that he had no doubt he would pass on additional information to the investigators. Neither Sheriff Bittick nor any other law enforcement agent asked him to speak with his son. Sheriff Bittick testified that John Cook was a personal friend he had known professionally for a number of years. He also testified that he sometimes permits parents to speak with their children in custody when he feels it is the right thing to do, and not for the purpose of gathering evidence.

Sheriff Bittick entered the office where Cook was being held and told Cook that "his Daddy wanted to talk to him." Cook said, "okay." John Cook and his son were left alone in an office; Cook was not handcuffed. Both men were crying and shaking; John Cook hugged his son. John Cook testified that it was not a normal interview but he asked specific questions about the murders and elicited specific answers from Cook. John Cook said this is typical of a conversation with his son, that Cook "does not volunteer anything. If you have a conversation with him you will do 90 percent of the talking." Cook, however, was not reluctant to talk. John Cook also told his son that "the best thing for us to do was cooperate and see if we couldn't get some kind of a plea bargain to a reduced sentence." Sheriff Bittick testified that, after the father-son conversation, John Cook sat in his office for several minutes, upset and crying. John Cook then spontaneously told Sheriff Bittick what his son had just told him regarding the murders. Sheriff Bittick did not ask any questions about the conversation. FN3. John Cook attempted unsuccessfully to persuade the district attorney to accept a guilty plea for a sentence less than death. At trial, he testified for the state in the guilt-innocence phase and for his son in the sentencing phase.

The Fifth Amendment specifies that no person shall be compelled in a criminal case to be a witness against himself. In Miranda, the United States Supreme Court formulated procedural safeguards to ensure that the inherently compelling nature of an in-custody interrogation by the police will not undermine the suspect's will to resist and force him to speak "where he would not otherwise do so freely." Miranda, 384 U.S. at 467, 86 S.Ct. 1602. One of these safeguards is the rule that once an accused has "expressed his desire to deal with the police only through counsel, [he] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." Edwards v. Arizona, 451 U.S. 477, 484–485, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). The Supreme Court has defined interrogation or its functional equivalent as express questioning by law enforcement officers or " 'any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.' " Arizona v. Mauro, 481 U.S. 520, 526–527(II), 107 S.Ct. 1931, 95 L.Ed.2d 458 (1987), quoting Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980).FN4 The Supreme Court has expressed particular concern about deceit or trickery during a police interrogation, such as using psychological

ploys like a “reverse line-up,” to subjugate the individual to the will of the examiner. See Mauro, 481 U.S. at 526, 107 S.Ct. 1931; Innis, 446 U.S. at 299, 100 S.Ct. 1682. However, the Supreme Court has made clear that “[i]n deciding whether particular police conduct is interrogation, we must remember the purpose behind our decisions in Miranda and Edwards: preventing government officials from using the coercive nature of confinement to extract confessions that would not be given in an unrestrained environment.” Mauro, supra at 529–530, 107 S.Ct. 1931. “[F]ar from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently desirable.” United States v. Washington, 431 U.S. 181, 187, 97 S.Ct. 1814, 52 L.Ed.2d 238 (1977). FN4. We need not discuss the “custodial” aspect of “custodial interrogation” as the parties concede that Cook was in custody on December 5 when he spoke with his father.

The coercion proscribed by Miranda must be caused by the police. Colorado v. Connelly, 479 U.S. 157, 170, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) (“The sole concern of the Fifth Amendment, on which Miranda was based, is governmental coercion.”). “Indeed, the Fifth Amendment privilege is not concerned ‘with moral and psychological pressures to confess emanating from sources other than official coercion.’ ” Id., quoting Oregon v. Elstad, 470 U.S. 298, 305, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985). Numerous cases hold that Miranda is not implicated when a suspect in custody is questioned or encouraged to confess by a father, mother, wife, or girl friend. See, e.g., Arizona v. Mauro, 481 U.S. 520, 107 S.Ct. 1931, 95 L.Ed.2d 458 (no interrogation under Miranda when suspect's wife spoke with suspect about murder with a police officer present and recording the conversation, after the suspect had invoked his right to counsel); United States v. Gaddy, 894 F.2d 1307, 1309–1311 (11th Cir.1990) (no Miranda violation when suspect's aunt, who was a police officer, called suspect in jail after he invoked his right to counsel and persuaded him to confess); Snethen v. Nix, 885 F.2d 456, 457–460 (8th Cir.1989) (accused not interrogated under Miranda when his mother, who gained access to him in prison by telling officers “if [my son] did this, he will tell me,” exhorted accused to confess so her other son would not be unjustly punished); Lowe v. State, 650 So.2d 969, 972–974 (Fla.1994) (suspect not interrogated under Miranda when suspect's girlfriend sought and was granted access to suspect after he had invoked his right to counsel, and she persuaded him to confess); Buttersworth v. State, 260 Ga. 795, 797–799(2), 400 S.E.2d 908 (1991) (no Miranda violation when suspect's father elicited location of body from in-custody suspect and told sheriff); State v. Massey, 316 N.C. 558, 342 S.E.2d 811, 822 (1986) (suspect not subjected to custodial interrogation under Miranda when suspect's father asked him at jail in the presence of a police officer if he shot the victim and suspect admitted it).

The difficulty in this case arises from the fact that John Cook was both an FBI agent and the suspect's father. Adopting Cook's argument that, due to his father's career, the conversation he and his father had at the Monroe County sheriff's office is a per se custodial interrogation would not be reasonable; such a holding would require us to presume that law enforcement parents would place their parent-child relationship subordinate to their employer-employee relationship, that a law enforcement parent would automatically coerce a confession from his or her own child. It is perfectly natural and reasonable for a parent, law enforcement or civilian, to speak to his or her arrested child about an alleged crime and give advice that may include cooperating with the police and confessing. However, we can envision situations where a law enforcement parent might subject his or her arrested child to a custodial interrogation within the meaning of Miranda. Therefore, we conclude that this issue must be resolved on a case-by-case basis, by viewing the totality of the circumstances, in order to determine if the law enforcement parent was acting as a parent or as an agent of the state when speaking with his or her arrested child. United States v. Gaddy, 894 F.2d at 1309–1311, is analogous to Cook's case. In Gaddy, Gaddy's co-defendant, William Danner, was arrested by the Chatham County police for possession of a firearm by a convicted felon and theft by taking. Danner invoked his right to counsel. Gaddy was also arrested for a parole violation after the police began to suspect that Gaddy and Danner might have committed a

murder together. Danner's aunt, Janice Hernandez, was a police officer in the Chatham County police department, and she was apprised by a superior about the case involving her nephew. The detective working the case also told her it would be in Danner's best interest if he cooperated. However, no one requested that Officer Hernandez speak with Danner. Officer Hernandez, acting on her own, called Danner in jail and urged him to confess. Danner agreed, his aunt set up a meeting between Danner and the investigators, and Danner made a full confession. Danner's motion to suppress this statement was denied, and he appealed after he was convicted of kidnapping. The Eleventh Circuit Court of Appeals found no violation of Miranda or Edwards when Officer Hernandez contacted her nephew and persuaded him to confess because Officer Hernandez did not act as "an agent of the government but ... as a private citizen." Id. at 1311. In making this determination the Eleventh Circuit considered the following factors: 1) Officer Hernandez was not part of the investigative team on Gaddy's or Danner's case; 2) she was not directed by a superior to speak with Danner; 3) she acted solely out of concern for his welfare; and 4) she was not acting in the normal course of her duties when she contacted him. Id. She was a "worried aunt" who "communicated with Danner, not to assist the police department in solving a crime, but to protect her nephew." Id.

An analysis of Cook's case reveals the following: 1) John Cook was not part of the investigative team on the Lake Juliette murders (in fact, the FBI did not have jurisdiction to investigate the case); 2) Cook asked to see his father at the same time he requested an attorney; 3) John Cook was not directed by any law enforcement agent connected with Cook's case to speak to his son—he made the request on his own initiative; 4) John Cook's motive in speaking with his son was to urge him to cooperate in the hope of getting a plea bargain; and 5) the interview involved hugging and crying by father and son which is not typical of a police interrogation. Under these circumstances, we conclude that the trial court did not err by finding that John Cook acted as a father and not as an agent of the state when he met with his son on December 5. See Gaddy, supra. Further, the meeting between John Cook and his son was devoid of any trickery, deceit, or other psychological ploy. Viewed from the defendant's perspective, "[w]e doubt that [Cook], [after requesting to see his father and] told by officers his [father] will be allowed to speak to him, would feel that he was being coerced to incriminate himself in any way." Mauro, 481 U.S. at 528, 107 S.Ct. 1931. Since the evidence shows a lack of governmental coercion, Cook's December 5 statement to his father was admissible under Miranda and Edwards. See Mauro, supra at 529–530, 107 S.Ct. 1931; Gaddy, supra. The evidence also shows that Cook's December 5 statement to his father was voluntary under OCGA § 24–3–50. Griffin v. State, 230 Ga.App. 318, 320, 496 S.E.2d 480 (1998) (when confession is made to a witness who is not a state agent, it must still be voluntary under OCGA § 24–3–50).

3. On several occasions during trial, the trial court prevented Cook from cross-examining state witnesses about whether Cook was read his Miranda rights and other issues that may relate to the voluntariness of his statements under OCGA § 24–3–50. This was error as the defense retains the right, regardless of a pretrial determination by the trial court that a statement was voluntary, to present testimony and cross-examine witnesses regarding the circumstances surrounding the voluntariness of a confession. See Crane v. Kentucky, 476 U.S. 683, 688–690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); Griffin, 230 Ga.App. at 324, 496 S.E.2d 480. However, after a review of the evidence presented at the Jackson v. Denno hearing and at trial, we conclude that the error is harmless. The jury heard extensive evidence about the environment in which Cook made his admissions, and there is no evidence that Cook was induced to make his admissions by a hope of benefit or fear of injury. OCGA § 24–3–50.

4. There is no reversible error in the trial court's failure to give Cook's requests to charge in the guilt-innocence phase.

5. Cook claims that the trial court erred by refusing to permit hearsay testimony under the necessity exception to the hearsay rule. OCGA § 24–3–1(b). At trial, Cook wanted to question GBI Agent Mansfield about a statement made to him by Jason Hurt. According to Cook, Hurt was unavailable to testify because he was on the run from a probation violation. Cook claimed that Hurt told Agent Mansfield that John Weigand had admitted committing the murders to him, and that Hurt had seen Michele Cartagena's driver's license (which was missing from the crime scene) at Weigand's home.FN5 "To qualify as a necessity exception to the hearsay rule, there must be a necessity for the exception and a circumstantial guaranty of the testimony's trustworthiness." Perkins v. State, 269 Ga. 791, 795(4), 505 S.E.2d 16 (1998); see also McKissick v. State, 263 Ga. 188, 189(3), 429 S.E.2d 655 (1993). Pretermitting whether the evidence was sufficient to show that Hurt was unavailable to testify, we conclude that the trial court did not err by finding that there was an insufficient guaranty of trustworthiness. Hurt recanted his statement incriminating Weigand in a second statement to Agent Mansfield the very next day. See Perkins, supra at 796(4), 505 S.E.2d 16; McKissick, supra. Hurt also said in his second statement that he now believed that the driver's license he saw at Weigand's home belonged to Weigand's ex-girlfriend and not to Cartagena. Id. FN5. At trial, Cook attempted to portray Weigand, one of the early suspects in the case, as the possible killer due to comments he made to an ex-girlfriend after the murders and his father's ownership of a nine millimeter pistol. The evidence at trial showed that Weigand did not chew tobacco, he never owned or had access to an AR–15 rifle, Weigand's father's pistol was a Beretta and not a Ruger, and Weigand's DNA did not match the DNA from the crime scene. Weigand's parents also testified that he was home on the night of January 2, 1995.

6. Cook complains that the trial judge improperly bolstered the credibility of the state firearms expert in his ruling qualifying the witness as an expert, by stating that he had dealt with the witness and his boss for 25 years and had seen their work and heard their testimony many times. Cook, however, did not object to this statement by the trial court and therefore cannot raise this issue on appeal. Warbington v. State, 267 Ga. 462, 463(2), 479 S.E.2d 733 (1997) (a party cannot ignore an alleged injustice at trial, take his chances on a favorable verdict, and complain later); State v. Griffin, 240 Ga. 470, 241 S.E.2d 230 (1978) (a party who fails to object to a trial court's alleged improper comment at trial is estopped from raising an objection on appeal).

7. The trial court did not err by permitting the state DNA expert to testify that Cook's DNA matched the DNA taken from the crime scene, even though the test result sheets had not been admitted into evidence. The record shows that the state DNA expert performed the DNA tests himself and could therefore state his opinion regarding the test results. See Peters v. State, 268 Ga. 414, 415(1), 490 S.E.2d 94 (1997) (an expert may base his opinion on facts within his personal knowledge). Cook's objection to the admission of the testimony of the state firearms expert, based on the non-admission into evidence of the test bullets he used for comparison with the crime scene bullets, is without merit for the same reason. Id. The trial court later admitted the DNA test result sheets for the limited purpose of Cook's examination of his DNA expert, but refused to allow the highly technical test result sheets to go out with the jury. This ruling was not an abuse of discretion. Hicks v. State, 256 Ga. 715, 720(3), 352 S.E.2d 762 (1987) (trial court may exclude evidence if it could mislead or confuse jury).

8. A defense expert in the field of population statistics testified that the crime scene DNA sample was a "mixed sample," meaning that it included more than one person's DNA.FN6 The expert opined that this affected the probability determination (1:20,000) by the Crime Lab. Cook then asked the expert if he had an opinion about whether the Cellmark Laboratory (which the witness was not affiliated with) would issue a probability determination on a mixed sample. The state objected that it was irrelevant and speculative what another laboratory might do, and the trial court sustained the objection. We find no error. OCGA § 24–2–1; Alexander v. State, 239 Ga. 108, 110(1), 236 S.E.2d 83 (1977) (admission of

evidence is a matter which rests largely within the trial court's discretion). FN6. The state presented evidence that Cartagena was the source of the "uninterpretable allele" since the saliva was dabbed from her skin.

9. At trial, Cook sought to introduce the testimony of several witnesses who had been suspects in the case concerning the alleged coercive "course of conduct" by the police during the investigation, especially in the questioning of suspects. The trial court determined that none of these suspects had actually confessed to the crimes, and noted that Cook had not been interrogated by any of the law enforcement officers who had questioned these suspects. Therefore, the trial court did not err by excluding this evidence as irrelevant. OCGA § 24–2–1; Weems v. State, 269 Ga. 577, 578–579(2), 501 S.E.2d 806 (1998) (evidence of the conduct of police officers during an investigation not admissible when not relevant to the issues at trial); Morris v. State, 264 Ga. 823, 824–825(2), 452 S.E.2d 100 (1995)

10. The trial court did not err by ruling that Cook could not introduce, absent a stipulation by the state, testimony about the use of police lie detector tests to exclude certain suspects. Robertson v. State, 268 Ga. 772, 779(21), 493 S.E.2d 697 (1997); Ward v. State, 262 Ga. 293, 296(5), 417 S.E.2d 130 (1992).

11. The trial court did not err by admitting crime scene and pre-autopsy photographs of the victims. Bright v. State, 265 Ga. 265, 284(16), 455 S.E.2d 37 (1995); Osborne v. State, 263 Ga. 214, 215(2), 430 S.E.2d 576 (1993).

12. Cook filed a motion in limine to suppress as prejudicial a sketch drawn by a crime scene investigator which he alleged graphically portrayed the partially-undressed body of the female victim. However, the record reveals that it was Cook who tendered the sketch into evidence at trial. Therefore, Cook has waived his argument that the sketch would prejudice the jury. Barnes v. State, 269 Ga. 345, 356(19), 496 S.E.2d 674 (1998) (invited error is not grounds for reversal).

13. Cook's contention that the state violated OCGA § 17–16–4 by failing to provide sufficient discovery regarding the ballistics examination is without merit. The record shows that Cook was provided before trial with the report of the state firearms expert listing his conclusions, which were based on his microscopic examination of bullets and shell casings for each weapon tested in the case. Cook is not entitled to the internal documents and work product of the Crime Lab. Williams v. State, 251 Ga. 749, 753(3)(b), 312 S.E.2d 40 (1983); Self v. State, 232 Ga.App. 735, 737(3), 503 S.E.2d 625 (1998); Andrews v. State, 196 Ga.App. 790, 791, 397 S.E.2d 63 (1990).

14. Cook's argument that the state failed to prove the chain-of-custody for the admission into evidence of the crime scene bullets and shell casings is without merit. Stephens v. State, 259 Ga. 820, 821(3), 388 S.E.2d 519 (1990).

15. The trial court did not err by allowing a witness to testify for the state in the sentencing phase that Cook exposed himself to her and a friend at Lake Juliette in 1993. Evidence in aggravation may include reliable information tending to show a defendant's general bad character. Williams v. State, 258 Ga. 281, 287(7), 368 S.E.2d 742 (1988); Fair v. State, 245 Ga. 868, 873(4), 268 S.E.2d 316 (1980).

16. Cook's death sentence was not imposed as the result of passion, prejudice, or other arbitrary factor. OCGA § 17–10–35(c)(1). The death sentence is also not excessive or disproportionate to the penalty imposed in similar cases, considering both the crimes and the defendant. OCGA § 17–10–35(c)(3). The similar cases listed in the Appendix support the imposition of the death penalty in this case, in that all involve the deliberate, unprovoked

killing of two or more people, and thus show the willingness of juries to impose the death penalty under these circumstances.

Judgments affirmed. All the Justices concur, except FLETCHER, P.J., who dissents.

APPENDIX

Jenkins v. State, 269 Ga. 282, 498 S.E.2d 502 (1998); DeYoung v. State, 268 Ga. 780, 493 S.E.2d 157 (1997); Stripling v. State, 261 Ga. 1, 401 S.E.2d 500 (1991); Isaacs v. State, 259 Ga. 717, 386 S.E.2d 316 (1989); Moon v. State, 258 Ga. 748, 375 S.E.2d 442 (1988); Romine v. State, 256 Ga. 521, 350 S.E.2d 446 (1986); Cargill v. State, 255 Ga. 616, 340 S.E.2d 891 (1986); Blanks v. State, 254 Ga. 420, 330 S.E.2d 575 (1985); Putman v. State, 251 Ga. 605, 308 S.E.2d 145 (1983); Wilson v. State, 250 Ga. 630, 300 S.E.2d 640 (1983); Burden v. State, 250 Ga. 313, 297 S.E.2d 242 (1982); Rivers v. State, 250 Ga. 288, 298 S.E.2d 10 (1982); Waters v. State, 248 Ga. 355, 283 S.E.2d 238 (1981); Gilreath v. State, 247 Ga. 814, 279 S.E.2d 650 (1981).

FLETCHER, Presiding Justice, dissenting.

I disagree with the majority's conclusion that the defendant's confession to an FBI agent was voluntary because the agent was the defendant's father. None of the cases relied upon by the majority involves a law enforcement officer who is also a family member and who questions the defendant after the invocation of the right to counsel and before Miranda FN7 warnings. Therefore, I dissent. FN7. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). After the defendant was formally arrested and had asked for a lawyer, he was questioned by Agent Cook without being given Miranda warnings. Minnick v. Mississippi FN8 is clear in its requirement that once "counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present." FN8. 498 U.S. 146, 153, 111 S.Ct. 486, 112 L.Ed.2d 489 (1990). When Agent Cook first questioned the defendant about the crimes, the defendant said he could not speak with him because "you're a cop." Only after Agent Cook assured him that he (Agent Cook) was acting as a parent did the defendant answer questions. Agent Cook proceeded to "question[ ] [the defendant] like you would question a criminal suspect" and obtained incriminating admissions. Despite assuring the defendant that he was acting as a parent and not as a cop, Agent Cook immediately called his supervisor because "I needed to tell law enforcement that I thought my son was responsible" and told his supervisor that he planned to go to Sheriff Bittick the next day. In less than 24 hours, Agent Cook did inform the sheriff of the defendant's admissions.

After the defendant's arrest, the record shows that Agent Cook sought to question him in part because he was "law enforcement oriented" and that he had the intent of revealing any incriminating statements the defendant made to law enforcement officials. No one informed the defendant of this intent or of his Miranda rights. Instead, the sheriff told him that "his Daddy wanted to talk to him." The "talk" consisted of the defendant "not volunteering any of [the confession, but] responding to specific and direct questions." The record shows that Agent Cook conducted the type of thorough interrogation expected of an experienced FBI agent, even though he admitted at the Jackson–Denno FN9 hearing that he was "not conducting an interview as objectively as I would normally." After obtaining the defendant's confession, Agent Cook informed the sheriff of all that the defendant had said and later gave a written statement. FN9. Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

When the sheriff initiated the contact between the defendant and Agent Cook, the sheriff had a long-standing personal and professional relationship with Agent Cook and knew that he would disclose future admissions as he had revealed the defendant's prior admissions. GBI

Agent Upton, who arrested the defendant, testified that shortly after he brought the defendant to Monroe County and before Agent Cook began his questioning, he (Agent Upton) informed Sheriff Bittick and the district attorney that the defendant had requested a lawyer. The law enforcement officers all agree that no efforts had been made to contact a lawyer prior to Agent Cook interrogating the defendant. Under the totality of these circumstances, I conclude that the behavior of law enforcement officials coerced the defendant's confession. The cases relied upon by the majority are not on point and do not support the majority's conclusion. In United States v. Gaddy,FN10 the aunt who urged Gaddy to confess was an evidence technician employed by the county police. The aunt did not question Gaddy about the crime, but only urged him to speak with the investigating officers about any knowledge he might have. Gaddy spoke to officers and confessed only after being informed of and waiving his Miranda rights. The aunt did not make a statement to police or testify regarding admissions made by Gaddy. Buttersworth v. State FN11 is also distinguishable in that Buttersworth had not been arrested and had not invoked his right to counsel as the defendant did in this case. Additionally, in Buttersworth the father who received the incriminating admissions was not a law enforcement officer. FN10. 894 F.2d 1307 (11th Cir.1990). FN11. 260 Ga. 795, 400 S.E.2d 908 (1991).

Finally, none of the other cases relied upon by the majority involves family members who were also law enforcement officers. The cases are also distinguishable because the defendant was given Miranda warnings before making an inculpatory statement directly to or in the presence of the police. FN12. State v. Massey, 316 N.C. 558, 342 S.E.2d 811 (1986) (the defendant had already received Miranda warnings and made a confession to police when he made an incriminating statement to his father in the presence of an officer); Snethen v. Nix, 885 F.2d 456 (8th Cir.1989) and Arizona v. Mauro, 481 U.S. 520, 107 S.Ct. 1931, 95 L.Ed.2d 458 (1987) (the defendant made an inculpatory statement to a family member in the presence of police after receiving Miranda warnings); Lowe v. State, 650 So.2d 969 (Fla.1994) (the defendant had received Miranda warnings and volunteered his confession to police at the urging of his girlfriend). Even if the defendant's confession were admissible, I disagree with the majority's summary conclusion that the trial court's clear violation of Crane v. Kentucky FN13 and OCGA § 24–3–50 was harmless. In the sentencing phase of a death penalty case, the jury is instructed to remember the evidence introduced during the guilt-innocence phase.FN14 I am not persuaded that the jury would have necessarily returned a death sentence had it known all the circumstances surrounding the confession, including that no law enforcement officer told the defendant that any statement he made would be used against him. FN13. 476 U.S. 683, 688–690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986). FN14. Ga. Super. Ct. Pattern Jury Instructions (Criminal) (IV)(B)(13)(b).

Schofield v. Cook, 284 Ga. 240, 663 S.E.2d 221 (Ga. 2008). (State Habeas)

Background: Following affirmance of defendant's convictions for malice and felony murder and sentences of life imprisonment and death, 270 Ga. 820, 514 S.E.2d 657, defendant filed petition for writ of habeas corpus. The Superior Court, Butts County, David B. Irwin, J., vacated death sentence but left defendant's convictions in place. Warden appealed and defendant cross-appealed.

Holdings: The Supreme Court, Thompson, J., held that: (1) trial counsel's strategic choice to forgo the presentation of evidence of defendant's mental health did not constitute deficient performance; (2) even if trial counsel's failure to learn that defendant was sent to behavioral center for a psychiatric evaluation and failure to provide records from that evaluation to their psychologist constituted deficient performance, such deficiency did not prejudice defendant;

(3) trial counsel's preparation and presentation of evidence of defendant's background did not constitute deficient performance; (4) trial counsel's failure to differently prepare defendant's father for his testimony did not prejudice defendant; (5) trial counsel's failure to subpoena friend of witness who claimed, during sentencing phase, that defendant exposed himself to her and friend, did not constitute deficient performance; (6) even if trial counsel performed deficiently in conducting motion to suppress defendant's statements to his father, an FBI agent, such deficiency did not prejudice defendant; and (7) trial counsel did not render ineffective assistance during the cross-examination of the friend to whom defendant confessed. Judgment affirmed in part and reversed in part. THOMPSON, Justice.

A jury convicted Andrew Allen Cook of the murders of Grant Patrick Hendrickson and Michele Lee Cartagena; Cook received a death sentence for Cartagena's murder and a life sentence for Hendrickson's murder. This Court affirmed Cook's convictions and sentences in 1999. Cook v. State, 270 Ga. 820, 514 S.E.2d 657 (1999). Cook filed a petition for writ of habeas corpus on May 9, 2000, which he amended on March 7, 2002. An evidentiary hearing was held on October 8 and 9, 2002. In an order filed on October 2, 2007, the habeas court vacated Cook's death sentence on the basis that he received ineffective assistance of trial counsel but left his convictions in place. The warden has appealed in case number S08A0309, and Cook has cross-appealed in case number S08X0310. In the warden's appeal, we reverse and reinstate Cook's death sentence. In Cook's cross-appeal, we affirm.

I. Factual Background

Grant Patrick Hendrickson and Michele Lee Cartagena were students at Mercer University. At approximately midnight in the early morning hours of January 3, 1995, the couple was parked next to Lake Juliette. Cook had never met them. Cook, who had been seen earlier parked near the entrance to the lake area, drove up to their car and fired 14 times with an AR-15 assault rifle, drew closer, and fired five times with a 9-millimeter handgun. Cook then dragged Cartagena a short distance, partially removed her clothing, spread her legs and knelt between them, and spit on her. The crimes remained unsolved for nearly two years; however, an investigator eventually identified Cook as the killer by researching owners of AR-15 rifles. The evidence at trial included Cook's admissions of guilt to his father, a friend, and his ex-girlfriend; ballistics evidence linking the bullets used in the murder to weapons Cook had owned; and DNA evidence linking Cook to the sputum on Cartagena's thigh. In his admission to his friend, Cook reportedly smirked, stated that he committed the murders “to see if [he] could do it and get away with it,” and stated that he was confident his ex-girlfriend would never report him to investigators because she knew he would murder her if she did.

Case No. S08A0309

II. Alleged Ineffective Assistance of Counsel

In case number S08A0309, the warden appeals from the habeas court's determination that trial counsel were ineffective for failing to adequately investigate and present evidence of Cook's mental health status and for failing to present other mitigation evidence. To prevail on his ineffective assistance of counsel claim, Cook must show that trial counsel rendered constitutionally-deficient performance and that actual prejudice of constitutional proportions resulted. Strickland v. Washington, 466 U.S. 668, 687(III), 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Smith v. Francis, 253 Ga. 782, 783-784(1), 325 S.E.2d 362 (1985). To show actual prejudice, Cook must show that there is a reasonable probability (i.e., a probability sufficient to undermine confidence in the outcome) that, but for counsel's unprofessional errors, the result of the proceeding would have been different. [Cit.] Smith, 253 Ga. at 783(1), 325 S.E.2d 362. We accept the habeas court's findings of fact unless they are clearly erroneous, but we apply the facts to the law de novo. Strickland, 466 U.S. at 698, 104 S.Ct. 2052; Lajara v. State, 263 Ga. 438, 440(3), 435 S.E.2d 600 (1993). For the reasons discussed below, we

find that the absence of trial counsel's professional deficiencies would not in reasonable probability have resulted in a different outcome in either phase of Cook's trial, and, accordingly, we order his death sentence reinstated. See Schofield v. Holsey, 281 Ga. 809, 812, n. 1, 642 S.E.2d 56 (2007) (holding that the combined effect of trial counsel's various professional deficiencies should be considered).

<p><>**A. Mental Health Evidence**</p<>

The warden contends the habeas court erred by vacating Cook's death sentence based, in part, on trial counsel's failure to investigate and present evidence of Cook's mental health. We begin by noting that a large portion of the habeas court's order catalogues actions properly taken by trial counsel in pursuing the possibility of a mental health defense. The record supports the habeas court's finding that trial counsel realized early in their representation of Cook that a verdict of guilt was likely and therefore, they would have to focus much of their energy on the sentencing phase. Counsel learned directly about Cook's background by interviewing Cook, his friends, and his family members. During Cook's interview, counsel asked about any history of abuse. Counsel learned that Cook had been physically abused by his stepfather and that Cook claimed to have memory problems and to hear voices. At that time, Cook specifically denied a history of sexual abuse.

Counsel then sought and obtained a recommendation from expert death penalty litigators for a social worker who prepared a "psychosocial assessment" of Cook at counsel's request. In her detailed report, the social worker stated her findings and recommendations were based on an interview with Cook, a meeting with a nurse in Cook's jail, several meetings with trial counsel, case materials provided by trial counsel, psychological records from Cook's childhood, a summary provided by Cook's father, and interviews with Cook's father, mother, brother and one of his sisters. Although in Cook's habeas proceedings the social worker and habeas court described the report as preliminary, that characterization overlooks language used in the report indicating otherwise, as well as the detailed information about Cook and his family contained in the report. The social worker stated that Cook had been a shy and awkward child but that his family life was essentially positive until his mother divorced Cook's father in 1981, when Cook was seven years old. The social worker described difficulties encountered when Cook's father remarried in 1983 and the fact that his father thereafter chose to live with his sons apart from his new wife for some time in an attempt to mitigate those difficulties. She reported that Cook was evaluated in 1984 at the age of nine because he was "emotionally exhausted" from the disruption in his family life and because he was having difficulty in school.

She specifically described how Cook went to live with his mother, how his mother eventually remarried, how Cook's stepfather drank excessively and disliked Cook, and how Cook and his stepfather fought with one another. She reported that in 1989, which was around the time that his brother obtained a driver's license, Cook began demonstrating "antisocial behaviors," including burglarizing a neighbor's house and stealing and then fraudulently using a box of checks. These behaviors, she reported, led Cook's parents to hospitalize him at Coliseum Psychiatric Hospital for approximately five weeks, where the staff described him as "sad and angry" but not as having any delusions or thought disorders. She reported that as Cook grew older and after Cook's brother moved out, Cook's relationship with his stepfather worsened. His stepfather abused him emotionally and physically and even threatened to kill him. She reported that Cook committed another burglary after he was released from Coliseum Psychiatric Hospital and as a result, he was arrested and placed on probation for a year. She reported that Cook's mother divorced Cook's stepfather in 1994 and became "too lenient" with Cook in an attempt to compensate for Cook's previous living situation. She reported that in December 1994 Cook's mother had to sell her home, Cook took the loss of the home hard, and the murders occurred several days later. Finally, she reported that Cook claimed to have been hearing voices and he exhibited

some seemingly paranoid thinking, but he did not appear to be delusional and she speculated that the murders could possibly have been the result of a "psychotic break."

As noted in our summary of the social worker's report, trial counsel also obtained Cook's childhood psychological records. These records presented a mixed picture of Cook as a child. In 1984, at the age of nine, Cook was evaluated by a psychologist, who found that he "strongly dislike[d] school," "seem[ed] to live in a dream world," was withdrawn and unhappy, had wounded his own wrist, had threatened to hurt himself by choking himself with a string, and was having problems with family relationships. The psychologist recommended classes for learning disabled students, possible tutoring, additional attention from family members, "some therapeutic intervention" if school problems persisted, and another appointment if no improvement occurred. She reported that Cook was "emotionally exhausted" from the disruptions in his family life but she felt Cook's parents were "doing a very fine job."

Counsel also obtained and reviewed records from Cook's 1989 hospitalization at Coliseum Psychiatric Hospital, where he was admitted because of his "increasingly severe behavior problems and episodes of marked oppositional violations of major social rules." The psychologist who evaluated him at that time noted that he reported previously trying to commit suicide, but " 'not very hard.' " The psychologist also reported that Cook was isolated and lethargic, that the disruption in his family life did not alone seem to explain the "underlying rage he [was] containing," and that "his oppositional behavior [was] severe." A psychiatrist who evaluated Cook noted his increasingly serious acts of misbehavior, including his shooting of a dog, stealing guns and blank checks, and carving his name in his arm with a razor blade. The psychiatrist specifically noted that Cook denied any history of physical or sexual abuse and that his relationship with his stepfather was, at that point, "fair." Cook's diagnoses upon discharge were major depression and oppositional defiant disorder and it was recommended that he take an anti-depressant and continue his individual and family therapy sessions. Cook did not receive follow-up treatment, however.

While awaiting trial, Cook was also evaluated by a psychiatrist selected by the trial court. Although it appears counsel did not directly provide any records to the court's psychiatrist, the psychiatrist's report indicates that he had records from Cook's 1989 hospitalization. The psychiatrist noted Cook's reported memory problems and found they likely resulted from "painful events in childhood." He noted that Cook reported mistreatment from his stepfather, including an alleged attempt to kill him and a statement to Cook that he looked "like a 'psychopathological killer.' " He also noted that Cook reported previous suicidal thoughts but no actual suicide attempts. He performed personality testing on Cook, but he deemed the results invalid because it appeared that Cook was "consciously attempting to paint a somewhat overly virtuous picture of himself, while at the same time reporting a great deal of discomfort and distress." He concluded that Cook's "overall profile was highly suggestive of an attempt to appear much more disturbed than he actually [was]." He noted that Cook claimed to be hearing voices, but he concluded as follows: "Assuming he is telling the truth, these experiences do not closely resemble the hallucinations seen in acute mental illness." He also concluded that Cook's thought processes were not indicative of "acute mental illness." His overall conclusions were that Cook appeared not to be suffering from any "major psychiatric disorder," that he appeared to have "some emotional problems stemming from his childhood ... and his difficulties with his stepfather," and that he appeared to be "deliberately attempting to manipulate [the psychiatrist's] conclusions about him and to appear more psychologically disturbed than is actually the case."

Once the court-ordered evaluation was complete, counsel arranged for Cook to be examined by their own expert. A review of all of the testimony in Cook's habeas proceedings reveals that, at a minimum, counsel provided their psychologist with the report by the court's psychiatrist, a letter written by a jail doctor reporting that Cook claimed to be hearing voices,

reports from Cook's psychological treatment in 1984, the records from Cook's 1989 hospitalization, and the report by the social worker employed by the defense. Counsel informed their psychologist by letter that Cook claimed not to have a clear memory of the murders, that Cook claimed to remember only "flashbacks" in his dreams, and that there was some initial information suggesting Cook might not have been the killer. Accordingly, counsel informed their psychologist as follows:

The top concern I have is whether there is a psychological or physical neurological explanation of why Mr. Cook would have expressed an admission if he did not commit the crime. However, contrary to the habeas court's order, the record does not support a finding that counsel instructed their psychologist to limit his evaluation solely to this question. Instead, the psychologist's testimony shows that he conducted a thorough neuropsychological examination. He, in his own words, conducted a "thorough interview" of Cook in person, and he administered over a dozen separate psychological tests. Counsel testified that he consulted with the psychologist after the examination to discuss the results, but that the psychologist told him that his diagnosis was antisocial personality disorder and that Cook was "a very angry young man."

Although counsel communicated with the psychologist only orally prior to trial, counsel asked the psychologist to memorialize his findings in a written report which was submitted to counsel after the trial. The lengthy report confirms that, at a minimum, the psychologist was well aware of the following when he conversed with counsel: most aspects of Cook's family background; the details of his psychiatric treatment at age 15 and the fact that his follow-up care was discontinued; Cook's history of suicidal thoughts; Cook's educational and employment background; and the details of the findings by the court-ordered psychiatric evaluation several months earlier, including the findings regarding Cook's claims regarding memory loss and hallucinations. Although we do not consider this written report to establish the truth of the matters asserted in it, we do consider it as an indication of the facts known to the defense psychologist at the time of his evaluation and his conversation with defense counsel. Compare Waldrip v. Head, 279 Ga. 826, 828(II)(A), 620 S.E.2d 829 (2005) (refusing to consider inadmissible hearsay on appeal despite the absence of any objection). The essential details of what conclusions the psychologist reached are contained within his testimony in the habeas record. He testified that he administered a personality inventory, but that he had to disregard the results because he believed Cook had attempted to manipulate the outcome. He testified that he ruled out schizophrenia and mood disorders, despite Cook's prior reports of hallucinations and treatment for depression and despite his description of his history of receiving prescription medications. He also testified that Cook denied past sexual and physical abuse, despite the notations in the report by the court's psychiatrist about Cook's claim of physical abuse by his stepfather. He testified that Cook admitted to exaggerating his past illegal drug use in his evaluation by the court's psychiatrist. He also testified that he was aware of the opinion of Cook's jail doctor that Cook had been faking his alleged hallucinations.

In 1997, while Cook was incarcerated and awaiting trial, jail personnel sent Cook to River's Edge Behavioral Health Center for evaluation and treatment. The records show that during his two visits to River's Edge, Cook indicated that he was suffering from sleep problems, anxiety, depression, and audio and visual hallucinations. Although the initial diagnostic impression in the records indicates possible malingering and antisocial personality disorder, the discharge summary, written after Cook discontinued his own treatment, omits these items and lists solely the diagnostic code for major depression with psychotic features. The records also indicate that during this evaluation Cook claimed to have been physically abused by his stepfather and to have been sexually abused by a relative. Cook was given several prescriptions based on his claimed symptoms of sleep problems and hallucinations. As determined by the habeas court, counsel did not learn of their client's referral to River's Edge

until Cook's habeas proceedings and therefore, counsel did not provide records from this evaluation to their defense expert.

As trial approached, counsel consulted with their own psychologist to consider whether to present mental health evidence in the sentencing phase of trial. By this time, they had been presented reports, both oral or written, from various experts that showed Cook's history of serious misconduct, prior diagnoses of not only major depression but also of oppositional defiant disorder and antisocial personality disorder, and a history of Cook's likely malingering and attempts to mislead experts who examined him after his arrest. FN1 Counsel testified that, "in the end, it was decided not to put up these mental health experts because I thought that it would end up doing more damage than good." In light of the negative evidence contained within the mental health records concerning Cook's criminal history and the experts' conclusions regarding malingering and manipulation by Cook, we conclude, as a matter of law, that counsel's strategic choice to forgo the presentation of mental health evidence was not unreasonable based on the information they actually obtained.

FN1. Despite the habeas court's criticism of the timing of counsel's obtaining all of the above-described information, we find no reason to conclude that the timing actually affected counsel's ultimate strategic considerations.

We also must consider, however, whether that decision was corrupted by insufficient investigation and, if so, whether actual prejudice to the outcome of Cook's case resulted. As to this ground, we find that even assuming the habeas court correctly concluded that counsel's failure to learn their client was sent to River's Edge for a psychiatric evaluation and failure to provide records from that evaluation to their psychologist constituted deficient performance, we conclude as a matter of law that Cook has not shown sufficient prejudice to warrant success of his overall ineffective assistance of counsel claim. See Holsey, 281 Ga. at 812, n. 1, 642 S.E.2d 56 (holding that the combined effect of trial counsel's various professional deficiencies should be considered). With the exception of Cook's new claim of sexual abuse, everything contained in the River's Edge records was already known to counsel and the defense expert. Moreover, after reviewing the documents he allegedly should have been given by trial counsel, the defense psychologist stated that such records would not have caused him to change his conclusion regarding the lack of "organicity" associated with Cook's complaints and that he would merely change his other findings to state that antisocial personality disorder was not a proper "conclusive diagnosis." We have held that the critical issue in cases such as this is what the expert reasonably selected by trial counsel "would have been willing to testify to had he been provided the materials trial counsel allegedly failed to provide." Holsey, 281 Ga. at 813, 642 S.E.2d 56(II). Here, we conclude as a matter of law that, in view of what Cook's expert at trial would have testified to had counsel made him aware of Cook's 1997 River's Edge evaluation, there is no reasonable probability of a different outcome.

Furthermore, even assuming, arguendo, Cook's claim of sexual abuse would have prompted further evaluation by Cook's psychologist at the time of trial and that it would have led that psychologist to give testimony comparable to that of Cook's expert in the habeas proceedings, we find the evidence of prejudice insufficient to sustain his ineffective assistance of counsel claim. Given Cook's history of suspected malingering in mental health evaluations and his previous denials of sexual abuse, his claim of abuse made for the first time while in jail awaiting his death penalty trial likely would have appeared dubious to the jury. Although there is no direct testimony about what abuse actually occurred, we note that Cook's expert on habeas testified that the details of the alleged abuse came from Cook himself and that Cook reported one incident of abuse where a sister had him suck on her nipples when he was seven or eight years old and another incident in which he is not sure who the perpetrator was and about which no details were provided. Based on his analysis, this expert concluded that Cook suffered from recurrent major depression, dysthymic

disorder, and post-traumatic stress disorder as a result of his family background and his alleged sexual abuse by his sister and his possible additional sexual abuse by some unnamed relative. Cook's new expert stated his belief that Cook saw the victims in this case kissing, which "reactivate[d] for him the abuse situation with [his sister]," which "activate [d] the rage that he had" because of his stepfather, which led him to fall into a dissociative state in which he murdered the victims, and which caused an impaired memory of the murders. Such a theory, even assuming counsel could have presented it at trial through his own expert who refused to adopt it in his habeas testimony, would not have had a strong impact on the jury in light of the totality of the evidence. Cook's claim of sexual abuse would have been undermined by the habeas testimony of his sister in which she strongly denied Cook's claim of abuse. Thus, we find the jury likely would have found the expert's theory to be based on suspect facts and contrary to the substantial evidence showing that Cook deliberately planned the murders and that Cook remembered his crime and confessed to multiple persons, even explaining that he committed the murders simply to see if he could get away with it.

In light of the foregoing discussion, we conclude that Cook has not shown sufficient prejudice regarding this portion of his ineffective assistance claim to warrant success of his overall ineffective assistance claim. See Holsey, 281 Ga. at 812, n. 1, 642 S.E.2d 56 (holding that the combined effect of trial counsel's various professional deficiencies should be considered).

B. Evidence of Cook's Background

The warden also argues that the habeas court erred by finding counsel was deficient for failing to adequately investigate Cook's background. As outlined above, trial counsel took several important steps to investigate Cook's family background, and much of the habeas court's order catalogues the results of counsel's investigation. Counsel testified that he interviewed a number of Cook's family members and friends and traveled to Tennessee to conduct interviews. As discussed above, counsel also obtained funds to hire a social worker who provided them with detailed findings concerning Cook's background. The habeas court's order and Cook's argument in response to the warden's appeal focus primarily on the alleged impact further investigation into Cook's background would have had on the preparation of mental health evidence, an issue we have already addressed at length above. We further note that trial counsel actually did present testimony at trial concerning Cook's background in the form of lay testimony from his family. His mother described the fact that she and Cook's father divorced, that Cook first lived with his father, that his father remarried, and that Cook then came to live with her. She testified that Cook at first "got along very well" with his stepfather but that the two eventually fell into conflict. She explained that Cook was forced by his stepfather to do excessive chores, that his stepfather constantly found fault with him, and that there was physical violence between the pair "[s]everal times." She recounted how she divorced Cook's stepfather and then became unable to afford her house. Finally, she informed the jury of her feelings about Cook's background as follows: "I just feel that as a mother maybe I have-I have failed him." Cook's father, whose testimony is discussed further below, also informed the jury that he believed he had failed Cook as a father, although he admitted to the jury that he believed Cook "had a good upbringing." One of Cook's sisters testified that she visited Cook each week, and she asked the jury to spare his life because she loved him.

Counsel testified in Cook's habeas proceedings that they considered presenting the testimony of another of Cook's sisters, but they concluded that she would not make a good witness. Counsel could conceivably have introduced additional testimony of the sort highlighted in the habeas court's order showing how Cook's parents had not always provided him a stable and happy home life and how his mental health and behavioral problems could have been more aggressively addressed. However, we do not find that the lay testimony concerning Cook's background that counsel actually presented was unreasonable in light of the

circumstances, particularly because so much of the additional lay testimony Cook now proposes could have alienated the jury and led to unfavorable cross-examination and the presentation of unfavorable witnesses by the State. Accordingly, we hold both that trial counsel did not perform deficiently in preparing and presenting evidence of Cook's background and that counsel's failure to present additional evidence of the kind Cook now proposes did not create prejudice sufficient to warrant the success of his overall ineffective assistance of counsel claim. See id. (holding that the combined effect of trial counsel's various professional deficiencies should be considered).

C. Preparation of Testimony by Cook's Father

The warden next challenges the habeas court's conclusion that trial counsel failed to adequately prepare Cook's father for his testimony. Counsel testified in Cook's habeas proceedings that in preparing for trial he considered Cook's father to be the most important witness for the sentencing phase. Counsel and Cook's father both testified in Cook's habeas proceedings that they had frequent contact with each other and that Cook's father provided the defense assistance in preparing for trial, but they also testified that their relationship had to be somewhat circumscribed given the fact that Cook's father was going to be the State's most important witness in the guilt/innocence phase. Counsel testified that he expressed to Cook's father his belief that life without parole was not going to be a viable option in Cook's case but that he did not attempt to dictate testimony to him in advance.

In the sentencing phase, Cook's father gave moving testimony. He began as follows: "Yesterday, of course, I sat up here as a cop. And now I'd like to tell you a little bit about Andy as the father." He explained to the jury how his son was already dead in some ways and how Cook, along with his family, now must live in shame. He explained that he felt he had failed "to protect his own son from the evil." He urged the jury to consider that justice without "compassion or mercy" was mere vengeance, which he said should belong to God alone. He testified that he was uncertain whether death or life without parole was the more severe punishment, and he urged the jury to consider if Cook might now have or might ever have "something of value in him" that might warrant the possibility of parole.

Cook argues that the reference to life without parole possibly being worse than death prejudiced his defense. Many jurors, however, may have been moved by the forthrightness of Cook's father. Moreover, regardless of the opinion of Cook's father about life without parole, this testimony may have prompted many jurors to consider whether any residual value in Cook could justify his continued existence, even if he were incarcerated without the possibility of parole. Cook's father further recounted how his son called him after his guilt/innocence phase testimony to tell him that he was proud of him, that he had done the right thing, and that he loved him. Cook's father asked the jury to close their eyes, to remember the victims' families, to think of him and the rest of Cook's family, and to picture themselves on their knees before God. He concluded by telling the jury that Cook had tried to enter a guilty plea "to save everyone from having to open these sores and feel this pain." FN2 Testimony in the habeas court proceedings indicates that most persons in the courtroom, including counsel and jurors, were in tears during this testimony.

FN2. In noting this testimony that was favorable to the defense in this case, we make no comment on the admissibility of such testimony if objected to. See Mobley v. State, 265 Ga. 292, 299-300(18)(b), 455 S.E.2d 61 (1995) (disapproving Mobley v. State, 262 Ga. 808, 811(4), 426 S.E.2d 150 (1993), and holding that "offers by defendants to plead guilty and testimony of prosecutors regarding their reasons for rejecting such offers are no longer admissible").

In light of the testimony actually presented at trial, we hold both that trial counsel did not perform deficiently and that counsel's failure to prepare Cook's father in a different manner

did not create prejudice sufficient to warrant the success of his overall ineffective assistance of counsel claim. See id. (holding that the combined effect of trial counsel's various professional deficiencies should be considered).

D. Evidence that Cook Previously Exposed Himself

During the sentencing phase of Cook's trial, the State presented testimony from a woman who claimed Cook exposed himself to her and her friend at Lake Juliette in 1993. The habeas court concluded trial counsel's performance was deficient based on their failure to subpoena the friend as a witness because, the habeas court found, she would have testified that she was unable to identify Cook. Because the witness who did testify at trial stated during her testimony that the other witness could not reliably identify Cook and the potential second witness' subsequent affidavit offered no additional evidence which reasonably would have benefitted Cook's defense, we conclude Cook has not shown deficient performance. Although the habeas court made findings based on third-party reports as to what additional testimony the friend might have provided, such reports constitute inadmissible hearsay which will not be considered on appeal. See Waldrip, 279 Ga. at 828, 620 S.E.2d 829(II)(A) (refusing to consider inadmissible hearsay on appeal despite the absence of any objection); Dickens v. State, 280 Ga. 320, 322(2), 627 S.E.2d 587 (2006) (holding that inadmissible hearsay cannot be used to prove prejudice). Given the unremarkable nature of the new witness' testimony and the testimony actually presented at trial, we also conclude that Cook has not shown sufficient prejudice regarding this individual claim to warrant the success of his overall claim of ineffective assistance of counsel. See Holsey, 281 Ga. at 812, n. 1, 642 S.E.2d 56 (holding that the combined effect of trial counsel's various professional deficiencies should be considered).

Case No. S08X0310

E. Guilty But Mentally Ill Verdict

In his cross-appeal, case number S08X0310, Cook argues that the habeas court erred by failing to address in the ineffective assistance claim whether potential mental health evidence could have supported a verdict of guilty but mentally ill. See OCGA § 17-10-131. We have held that "the statute that provides for a verdict of guilty but mentally ill does not preclude a death sentence as the result of such a verdict." Lewis v. State, 279 Ga. 756, 764(12), 620 S.E.2d 778 (2005). Accordingly, the habeas court did not err in failing to address the merits of Cook's claim beyond addressing the role that potential mental health evidence might have played as mitigating evidence in the sentencing phase, which we addressed above.

F. Crime Scene Expert

Cook also argues that the habeas court erred by failing to address whether trial counsel were ineffective for failing to employ a crime scene expert. We find, however, that the testimony Cook presented in his habeas proceedings would have had no net positive effect on the jury's deliberations, as that testimony concerned matters of common sense and matters that could easily have proven to be more harmful than beneficial to his defense. Accordingly, we conclude that as to this claim, Cook has failed to show either deficient performance or prejudice to his defense.

G. Admissibility of Cook's Confession to His Father

Cook's father was an FBI agent at the time of Cook's arrest. After his arrest, Cook asked to see an attorney and his father, and Cook was given no Miranda warnings. See Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Cook's father also asked that

he and Cook be allowed to speak to each other, and they were allowed to do so. On direct appeal, this Court held that Cook's confession to his father without Miranda warnings was properly admitted into evidence. We held that such cases must be resolved on a case-by-case basis, by viewing the totality of the circumstances, in order to determine if the law enforcement parent was acting as a parent or as an agent of the state when speaking with his or her arrested child. Cook, 270 Ga. at 827(2), 514 S.E.2d 657. In applying that standard, we noted that Cook's father had not been part of the investigative team, that the FBI did not have jurisdiction over the case, that Cook had asked to speak to his father, that Cook's father had asked to speak to Cook after his arrest without the prompting of anyone involved in Cook's case, that the father's motive was to help Cook get a favorable plea bargain, and that the conversation was accompanied by crying and hugging. Id. at 827-828(2), 514 S.E.2d 657. Accordingly, we held that Cook's father was acting in the role of father rather than officer. Id. at 828(2), 514 S.E.2d 657. We further noted that the conversation "was devoid of any trickery, deceit, or other psychological ploy" and that Cook would not have felt coerced to incriminate himself, and we held, accordingly, that the conversation was not accompanied by "government coercion." Id.

Cook argued in the habeas court that his trial counsel was deficient in conducting the motion to suppress his statements to his father. In support of that argument, Cook introduced a letter from his father to counsel; however, the contents of the letter are inadmissible hearsay and cannot be considered for the truth of the matters asserted therein. See Waldrip, 279 Ga. at 828, 620 S.E.2d 829(II)(A) (refusing to consider inadmissible hearsay on appeal despite the absence of any objection). Cook also introduced testimony from his father indicating, like the letter, that a file on the Lake Juliette murders had been opened by the FBI, that the FBI had assisted local officials on the case, and that he had "actively participated in a supervisory capacity" on several occasions as the "relief supervisor." He added, however, that "as an investigative agent, [he] never actually physically worked on this case." Because his habeas testimony does not reveal that he had an actual investigative role, it is consistent with his testimony in the trial court that, although he knew his office had done some work to assist in the case, he had not personally worked on the case and knew details about the case only from what he had read in the paper. Although his habeas testimony, if presented at trial, would have led this Court to modify its statement that "the FBI did not have jurisdiction to investigate the case," it would not have changed the outcome of our analysis regarding whether Cook's father was acting as an FBI agent or as a father at the time of his conversation with Cook. Cook, 270 Ga. at 827(2), 514 S.E.2d 657. Accordingly, even assuming trial counsel performed deficiently regarding this issue, no prejudice to Cook's defense resulted. This individual claim in Cook's cross-appeal cannot help support Cook's overall ineffective assistance claim. See Holsey, 281 Ga. at 812, n. 1, 642 S.E.2d 56 (holding that the combined effect of trial counsel's various professional deficiencies should be considered).

H. Cross-Examination of Michael Hancock

Cook argues in his cross-appeal that the habeas court erred by not finding that trial counsel rendered ineffective assistance during the cross-examination of Michael Hancock, the friend to whom Cook confessed. On direct examination at trial, Hancock described Cook's confession to him in detail. However, on cross-examination, counsel questioned him about his having initially given a more limited version of Cook's confession to a ranger working for the Department of Natural Resources. Hancock explained in his trial testimony that the ranger had told him "to be quiet" for the moment and asked him if he instead would make a statement to the GBI. The cross-examination Cook now claims trial counsel should have conducted is equivalent to the cross-examination that counsel actually did conduct. Accordingly, we conclude that this claim shows neither deficient performance by counsel nor any prejudice to Cook's defense.

I. Combined Effect of Individual Ineffective Assistance Claims

We have set out above the instances in which we have found or assumed trial counsel's deficient performance. We conclude, considering the combined effect of those deficiencies, that they did not in reasonable probability affect the outcome of either phase of Cook's trial. Id. Accordingly, we order Cook's death sentence reinstated. Judgment affirmed in Case No. S08X0310. Judgment reversed in Case No. S08A0309. All the Justices concur.

Cook v. Upton, Not Reported in F.Supp.2d, 2010 WL 1050404 (M.D. Ga. 2010). (Federal Habeas)

C. ASHLEY ROYAL, District Judge.

Andrew Allen Cook (hereinafter "Petitioner" or "Cook"), an inmate on death row at the Georgia Diagnostic and Classification Prison in Jackson, Georgia, petitions the Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For reasons discussed below, this petition is denied.

I. BACKGROUND

A. Facts

The Georgia Supreme Court set forth the historical facts concerning this case: [A]t approximately midnight on January 2, 1995, Mercer University students Hendrickson and Cartagena were parked on a small peninsula known as "the Point," which juts into Lake Juliette in Monroe County, north of Macon. Cook drove onto the Point, parked his Honda CRX near Hendrickson's and Cartagena's car, and shot them. Cook fired fourteen times with an AR–15 rifle from a distance of about forty feet and then moved closer and fired five times with a nine millimeter Ruger handgun. Hendrickson and Cartagena were each hit multiple times and killed. Cook then went to the passenger side of the victims' car, removed Cartagena, and dragged her about 40 feet. He partially undressed her, knelt between her legs, and spit on her. Cook then drove away. The murders were completely random: Cook did not know the victims and there was no interaction between Cook and the victims before he killed them.

Several people parking or camping around Lake Juliette heard the shots, and the murders were reported to the police the next morning when some campers found the bodies. A couple parked near the Point when the shots were fired said they saw a 1980s-model Honda CRX parked near the entrance to Lake Juliette. Later, they saw headlights going onto the Point, heard shots, and observed the CRX speeding away from the Point. The police recovered .223 caliber and nine millimeter bullets and shell casings from the crime scene, and the State Crime Lab reported that the weapons used in the murders were probably an AR–15 rifle and a nine millimeter Ruger handgun. There was saliva mixed with tobacco dried on Cartagena's leg, and the Crime Lab extracted DNA from the saliva. The police began looking for suspects who chewed tobacco, matched the DNA taken from the saliva, and owned or had access to a Honda CRX, an AR–15 rifle, and a nine millimeter Ruger pistol.

The investigation lasted almost two years. Many people were interviewed and dozens of suspects were excluded after they submitted blood or saliva samples to the Crime Lab, or allowed their weapons to be examined by a state firearms expert. In the fall of 1996, GBI

Agent Randy Upton began tracking the purchasers of AR–15 rifles in the Macon area. He obtained a list of 108 people who bought AR–15 rifles from 1985 to 1995 from one of Macon's most popular gun stores, and he started calling them and asking if they would give saliva samples and allow examinations of their rifles. On November 27, 1996, Agent Upton contacted Cook. Agent Upton told Cook he was conducting an investigation into the Lake Juliette murders and that Cook owned an AR–15 rifle in 1994 and 1995. Cook replied that he had "gotten rid of" his AR–15 in April 1994. Agent Upton stated that that was not possible because the records show that Cook did not buy his AR–15 until August 1994. Cook then became defensive and stated that his father was an FBI agent, and he did not have to cooperate. Agent Upton asked for a saliva sample, and Cook said he needed to talk with his father before giving a saliva sample. The conversation ended.

Agent Upton learned that Cook pawned his AR–15 rifle back to the gun store in May 1995, five months after the murders. The police also discovered that Cook had an acquaintance purchase a nine millimeter Ruger handgun for him in December 1993 at the same gun store, because Cook was too young to buy it himself. Cook sold the Ruger to a friend in July 1995. The police sought to obtain these weapons from their current owners. They also learned that Cook owned a 1987 Honda CRX at the time of the murders. One of Cook's friends, who worked with Cook at a diaper factory, testified that in late November 1996 he and Cook had a conversation about "the worst thing you ever did." Cook said he had killed someone with an AR–15. The friend did not believe Cook, but asked why he did it. Cook replied that he did it "to see if I could do it and get away with it." Cook refused to provide any more details. The friend testified that the following day at work, Cook received a call on his pager, and left his work area to return the call. Cook returned 15 minutes later and was "as white as a ghost." Cook said "I got to go," and spit the tobacco he had been chewing into a trash can. Cook said it was the GBI who had called and they wanted to question him about what he and the friend had talked about the day before, and test his saliva. He said, regarding the saliva, "that's a DNA test right there, so they got my ass." Another friend testified that Cook told him in late November 1996 that he needed to leave town because it was "getting hot."

After going to Cook's home and not finding him, Agent Upton called Cook's father, John Cook, on December 4, 1996. John Cook was an FBI agent and had been an FBI agent for 29 years. Agent Upton said he needed to ask Cook a few questions regarding the Lake Juliette murders, and asked John Cook for assistance in locating him. John Cook said he could probably contact his son. John Cook, who knew about the case from the media but had not worked on it, testified that he did not think his son was a suspect.

John Cook paged his son several times and at 11:00 p.m. Cook returned his calls. John Cook told his son the GBI was looking for him concerning the Lake Juliette murders and asked him if he knew anything about them. Cook replied, "Daddy, I can't tell you, you're one of them ... you're a cop." John Cook said he was his father first and, believing his son may have been a witness, asked Cook if he was there during the shooting. Cook said yes. John Cook asked his son if he saw who shot them, and Cook replied yes. Although he still thought "maybe he was just there and saw who shot them," John Cook asked his son if he shot them. After a pause, Cook said yes. Cook told his father he was fishing at Lake Juliette and had an argument with the male victim. The male victim threatened him with a gun, and Cook shot the victims in self-defense. Cook realized that the male victim had only threatened him with a pellet gun, and he threw the pellet gun into the woods. John Cook urged his son to go to the authorities but Cook said he was going to run and "just disappear." John Cook was worried that his son was going to kill himself.

John Cook was stunned by what his son had told him. After speaking with his wife, he called his friend and FBI supervisor, Tom Benson, who was at a conference in New Orleans. He and Benson decided that Benson would fly back to Georgia the next day and the two men would go to Monroe County Sheriff John Bittick, and John Cook would tell the sheriff what

his son had told him. They arrived at the Monroe County sheriff's office at about 4:00 p.m. on December 5, 1996. At about 11:45 a.m. on December 5, 1996, Cook was arrested by a game warden for shooting deer and turkeys out of season and giving a false name. He was taken to the Jones County sheriff's office. Agent Upton, who did not know about Cook's admission to his father, learned that Cook was being held in Jones County for game violations. He drove to Jones County to question Cook about the Lake Juliette murders. When Agent Upton introduced himself and asked to speak with him about the murders, Cook blurted, "it's been two years since the murders and you guys don't have anything; I had a CRX; I had an AR–15; I had a Ruger P89; you guys are going to try to frame me." Cook added, "get my father and get me a lawyer and I'll tell you what you want to hear." The interview terminated. Agent Upton subsequently learned from Sheriff Bittick that John Cook was in Monroe County, and that Cook had made an admission to his father the night before. Agent Upton transported Cook to Monroe County. After Cook arrived at the Monroe County sheriff's office, John Cook asked Sheriff Bittick if he could speak with his son, and the sheriff agreed. Cook and his father had a private meeting. Both men were crying and John Cook hugged his son. John Cook told his son he did not believe that he told the whole truth on the phone. Cook replied that there was no pellet gun, that "I pulled in, the car was already there, and I just stopped and shot them." Cook then dragged the female victim from the car to make it look like an assault or robbery. John Cook testified at trial about his son's admissions.

The police recovered from the current owners the AR–15 rifle and nine millimeter Ruger handgun that Cook owned in January 1995. Ballistics testing revealed that they were the murder weapons. Cook's DNA matched the DNA extracted from the saliva on Cartagena's leg; the state DNA expert testified that only one in twenty thousand Caucasians would exhibit the same DNA profile. Cook v. State, 270 Ga. 820, 514 S.E.2d 657 (1999) (footnote omitted).

B. Procedural History

On March 19, 1998, Petitioner "was found guilty of two counts of malice murder and two counts of felony murder." Cook, 270 Ga. at 820, 514 S.E.2d 657. "The jury recommended a death sentence for [Petitioner's] murder of Ms. Cartagena after finding that the murder of Ms. Cartagena was committed while [Petitioner] was engaged in the commission of the murder of Mr. Hendrickson." Id. Petitioner filed a motion for new trial on March 23, 1998. (Resp't Ex. 2, p. 508–10, 515–77). The petition was denied on July 8, 1998. (Resp't Ex. 2, p. 578).

The Supreme Court of Georgia affirmed Petitioner's convictions and sentence of death on March 19, 1999. Cook, 270 Ga. at 831, 514 S.E.2d 657. Petitioner filed a motion for reconsideration that was denied on April 2, 1999. (Resp't Ex. 27, 28). Petitioner filed a Petition for Writ of Certiorari in the United States Supreme Court and the Court denied the Petition on November 1, 1999. Cook v. Georgia, 528 U.S. 974, 120 S.Ct. 419, 145 L.Ed.2d 327 (1999). The Court denied Petitioner's motion for rehearing on August 26, 2002. Cook v. Georgia, 528 U.S. 1108, 120 S.Ct. 855, 145 L.Ed.2d 720 (2000). On May 9, 2000, Petitioner filed a habeas corpus action in the Butts County Superior Court that challenged his conviction and sentence. (Resp't Ex. 34). Petitioner filed an amended petition on March 7, 2002. (Resp't Ex. 47). The court conducted an evidentiary hearing on October 8–9, 2002. (Resp't Ex. 53–60). The state habeas court denied the writ as to Petitioner's conviction but granted the writ as to the death sentence on October 2, 2007. (Resp't Ex. 82).

On appeal, the Georgia Supreme Court affirmed the lower court's denial of relief as to the murder conviction, reversed the grant of sentencing phase relief, and reinstated Petitioner's death sentence on June 30, 2008. Schofield v. Cook, 284 Ga. 240, 663 S.E.2d 221 (2008). Petitioner's motion for reconsideration was denied on July 25, 2008. (Resp't Ex. 104, 105). On January 16, 2009, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in

State Custody in this Court pursuant to 28 U.S.C. § 2254. Both Petitioner and Respondent have briefed the issues of procedural default, exhaustion of state remedies, miscarriage of justice,FN1 and the merits of the claims that Petitioner raised in his Petition for Writ of Habeas Corpus by a Person in State Custody.FN2

FN1. According to the procedural default rule, "a state prisoner seeking federal habeas corpus relief, who fails to raise his federal constitutional claim in state court, or who attempts to raise it in a manner not permitted by state procedural rules, is barred from pursuing the same claim in federal court." Alderman v. Zant, 22 F.3d 1541, 1549 (11th Cir.1994). There are two exceptions to the procedural default rule: (1) cause and prejudice and (2) fundamental miscarriage of justice. See Baldwin v. Reese, 541 U.S. 27, 124 S.Ct. 1347, 158 L.Ed.2d 64 (2004); Hill v. Jones, 81 F.3d 1015, 1022 (11th Cir.1996) (citing Harris v. Reed, 489 U.S. 255, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989)). In relation to claims not addressed in Petitioner's brief and found to be procedurally defaulted by the state courts, this Court defers to the state courts' determinations of procedural default and finds that Petitioner has not shown cause and prejudice or a fundamental miscarriage of justice to excuse any defaults. See Morris v. Kemp, 809 F.2d 1499, 1503 (11th Cir.1987).

FN2. Petitioner initially submitted a brief consisting of 115 pages, and later filed a reply brief consisting of 61 pages. Petitioner states that his briefs focus on Claims One, Two, Three, and Seven of his federal habeas corpus petition. However, a review of these voluminous briefs shows that Petitioner actually focuses on Claims One and Seven only. Petitioner states that he "does not abandon any of his other claims, set forth in his Petition, ... but relies instead on factual and legal arguments contained in the petition itself and in briefing before the state courts in support of his claim that the Georgia Supreme Court's rulings as to those claims were contrary to and/or an unreasonable application of clearly established U.S. Supreme Court precedent and/or were based on unreasonable determinations of fact." (Pet'r Sept. 30, 2009 Br., p. 6–7). This Court addresses in detail only those Claims (One and Seven) that Petitioner focuses on in his briefs. In relation to the various unaddressed Claims, the Court finds that Petitioner has not shown that the state courts' determinations regarding any of these Claims resulted in decisions that were "contrary to, or involved an unreasonable application of, clearly established Federal law," or "resulted in ... decision[s] that w[ere] based on an unreasonable determination[s] of the facts in light of the evidence presented." 28 U.S.C. § 2254(d).

II. DISCUSSION

A. Standard of review under 28 U.S.C. § 2254(d)

Petitioner's federal habeas petition is governed by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which " 'establishes a highly deferential standard for reviewing state court judgments'." McNair v. Campbell, 416 F.3d 1291, 1297 (11th Cir.2005) (quoting Parker v. Sec'y for the Dep't of Corr., 331 F.3d 764, 768 (11 th Cir.2003)); Fotopoulous v. Sec'y, Dep't of Corr., 516 F.3d 1229 (11th Cir.2008). Under AEDPA, Congress prohibited district courts from granting habeas relief unless a state court's adjudication of a claim: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings. 28 U.S.C. § 2254(d).

The "contrary to" clause of 28 U.S.C. § 2254(d)(1) has been explained as follows: Under § 2254(d)(1), "[a] state court's decision is 'contrary to' our clearly established FN3 law if it 'applies a rule that contradicts the governing law set forth in our cases' or if it 'confronts a set

of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent'."

FN3. " 'Clearly established Federal law' consists of the 'holdings, as opposed to dicta, of the [United States Supreme] Court's decisions as of the time of the relevant state-court decision'." Newland v. Hall, 527 F.3d 1162, 1183 (11th Cir.2008) (quoting Williams v. Taylor, 529 U.S. 362,412–13 (2000). Moreover, "[c]learly established federal law is not the case law of the lower federal courts." Grossman v. McDonough, 466 F.3d 1325, 1335–36 (11th Cir.2006). Michael v. Crosby, 430 F.3d 1310, 1319 (11th Cir.2005) (quoting Mitchell v. Esparza, 540 U.S. 12, 15–16, 124 S.Ct. 7, 157 L.Ed.2d 263 (2003) and Williams v. Taylor, 529 U.S. 362, 405–06, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000)). In contrast, "[a] state court's decision that applies the law as determined by the Supreme Court to the facts is not 'contrary to' whether or not the federal court would have reached a different result." Carr v. Schofield, 364 F.3d 1246, 1250 (11th Cir.2004) (quoting Fugate v. Head, 261 F.3d 1206, 1216 (11th Cir.2001). A federal district court cannot substitute its opinion for that of the state court and in situations in which there is no Supreme Court precedent on point, the federal court " 'cannot say that the state court's conclusion ... is contrary to clearly established federal law as determined by the United States'." Henderson v. Haley, 353 F.3d 880, 890 (11th Cir.2003) (quoting Isaacs v. Head, 300 F.3d 1232, 1252 (11th Cir.2002)). The "unreasonable application" clause of 28 U.S.C. § 2254(d)(1) has been explained as follows: [U]nder § 2254(d)(1), a state court unreasonably applies Supreme Court precedent if it "identifies the correct governing legal principle from [the Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case." ... An unreasonable application also may occur if a state court unreasonably extends, or unreasonably declines to extend, a logical principle from Supreme Court caselaw to a new context. Michael, 430 F.3d at 1319 (quoting Williams, 529 U .S. at 407, 413). The issue is not whether the state court applied federal law incorrectly; "relief is appropriate only if that application is objectively unreasonable." Id. When attempting to determine if the state court's decision involved an unreasonable application of federal law, the federal district court need not decide if it "would have reached the same result as the state court if [it] had been deciding the issue in the first instance." Wright v. Sec'y for the Dep't of Corr., 278 F.3d 1245, 1256 (11th Cir.2002). Instead, the court merely "should ask whether the state court's application of clearly established federal law was objectively unreasonable." Williams, 529 U.S. at 409.

In addition to the two narrow "contrary to" and "unreasonable application of" prongs of AEDPA, § 2254(d)(2) provides that a petitioner is also entitled to relief if the state court's conclusion is based on an "unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). " '[A] determination of a factual issue made by a State court shall be presumed to be correct', and that the habeas petitioner has 'the burden of rebutting the presumption of correctness by clear and convincing evidence'." Newland, 527 F.3d at 1184 (quoting 28 U.S.C. § 2254(e)). Finally, this Court must give deference to the state court's determinations regarding credibility. Baldwin v. Johnson, 152 F.3d 1304, 1317 (11th Cir.1998).

B. Claim One: Petitioner was deprived of his right to the effective assistance of counsel at trial, in violation of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and related precedent. In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the Supreme Court of the United States established the legal principles governing ineffective assistance of counsel claims. An ineffective assistance of counsel claim consists of two components: Performance and prejudice. "It is well established that a habeas petitioner must demonstrate both deficient performance and prejudice, and that a failure with respect to either prong constitutes a failure to demonstrate ineffective assistance of counsel." Bottoson v. Moore, 234 F.3d 526 (11th Cir.2000). Moreover, " 'there is no reason for a court deciding an ineffective assistance claim to

approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one'." Randolph v. McNeil, 590 F.3d 1273, 1276 (11th Cir.2009) (quoting Strickland, 466 U.S. at 697).

The Eleventh Circuit Court of Appeals explained the performance analysis as follows: The petitioner satisfies the test's performance prong by proving that counsel's performance failed to meet the standard of "reasonableness under prevailing professional norms." Our evaluation of counsel's performance is highly deferential; we must "indulge a strong presumption" that counsel's performance was reasonable and that counsel "made all significant decisions in the exercise of reasonable professional judgment." We review counsel's performance "from counsel's perspective at the time," to avoid "the distorting effects of hindsight." Our review is objective, in that we consider whether there was any reasonable justification for the attorney's conduct. Thus, the "petitioner must establish that no competent counsel would have taken the action that his counsel did take." Newland, 527 F.3d at 1184 (citations omitted). If a petitioner shows that his counsel's performance was deficient, he still must show prejudice. "The petitioner satisfies the Strickland test's prejudice prong by showing that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome'." Newland, 527 F.3d at 1184 (quoting Strickland, 466 U.S. at 694). "The prejudice prong does not focus only on the outcome; rather to establish prejudice, the petitioner must show that counsel's deficient performance rendered the results of the trial fundamentally unfair or unreliable." Rhode v. Hall, 582 F.3d 1273 (11th Cir.2009) (citing Lockhart v. Fretwell, 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993)). In this case, Petitioner contends that, but for his counsels' errors, he would not have received a sentence of death. In such a situation, the Court must "consider 'whether there is a reasonable probability that, absent the errors, the sentencer—including an appellate court, to the extent it indedendently reweighs the evidence—would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Newland, 527 F.3d at 1184 (quoting Strickland, 466 U.S. at 695). In a recent case, the United States Supreme Court explained that when determining if prejudice exists, "it is necessary to consider all the relevant evidence that the jury would have had before it if [Petitioner's counsel] had pursed a different path—not just the mitigation evidence [Petitioner's counsel] could have presented, but also the [aggravating evidence] that almost certainly would have come in with it." Wong v. Belmontes, —— U.S. ——, ——, 130 S.Ct. 383, 386, 175 L.Ed.2d 328, —— (2009).

Along with the deference mandated by Strickland, the Court must keep in mind the deference that AEDPA requires. Petitioner "must do more than satisfy the Strickland standard. He must show that in rejecting his ineffective assistance of counsel claim the state court 'applied Strickland to the facts of his case in an objectively unreasonable manner'." Rutherford v. Crosby, 385 F.3d 1300, 1309 (11th Cir.2004) (quoting Bell v. Stone, 535 U.S. 685, 699, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002)).

1. Petitioner's claim that trial counsel was ineffective in his investigation and failure to present mental health evidence at the penalty phase of his trial Petitioner raised this claim in the Butts County Superior Court during his state habeas proceedings. That court concluded that "[t]rial counsel unreasonably failed to conduct an adequate investigation of Petitioner's background and mental health history; to understand what that history showed; to understand how it related to his culpability for these crimes; and to present that evidence to the jury." (Resp't Ex. 82, p. 34). The habeas court also determined that Petitioner had established the second prong of Strickland and "had the available information and resources been effectively utilized, there is a reasonable probability that the result of the penalty phase would have been different." (Resp't Ex. 82, p. 49). The state habeas court, therefore, granted Petitioner's writ of habeas corpus "only with respect to the death sentence imposed." (Resp't Ex. 82, p. 58).

On appeal, the Supreme Court of Georgia, applying Strickland, reversed this aspect of the habeas court's decision and reinstated Petitioner's death sentence. That Court explained that it must "accept the habeas court's findings of fact unless they are clearly erroneous" and noted that "a large portion of the habeas court's order catalogues actions properly taken by trial counsel in pursuing the possibility of a mental health defense." Schofield v. Cook, 284 Ga. 240, 241, 663 S.E.2d 221 (2008). The Georgia Supreme Court went into great detail describing trial counsel's investigation into mental health evidence and explaining what this evidence revealed. The Georgia Supreme Court agreed with the habeas court that counsel FN4 realized early in their representation of Petitioner that a verdict of guilty was likely and therefore, they would have to focus much of their energy on the sentencing phase. Id. Almost immediately following his appointment, Mr. Wangerin met with Petitioner and Petitioner's father. (Resp't Ex. 53, p. 370). Counsel learned of Petitioner's background by interviewing him personally and speaking with family members. (Resp't Ex. 53, p. 370, 383, 410, 415). Petitioner told counsel of physical abuse by his step father, but denied any sexual abuse. (Resp't Ex. 53, p. 370, 388).

FN4. The record shows that lead counsel, Kevin Wangerin, was appointed the day after Petitioner's arrest. (Resp't Ex. 53, p. 364). Mr. Wangerin had no previous death penalty experience, but he had represented other defendants charged with capital crimes. (Resp't Ex. 55, p. 1293). He had been practicing law for approximately five and one-half years. He had attended criminal continuing legal education courses; including one death penalty conference. (Resp't Ex. 55, p. 1293). Co-counsel, Thomas Wilson, was appointed "a couple of months" after Petitioner's arrest. (Resp't Ex. 55, p. 1376). He had been practicing criminal law for approximately nine years and had handled one previous death penalty case. (Resp't Ex. 55, p. 1397)

Counsel "obtained a recommendation from expert death penalty litigators for a social worker." Cook, 284 Ga. at 242, 663 S.E.2d 221. Mr. Wangerin hired Ofelia Gordon to prepare a "psychosocial assessment ." Id.; (Resp't Ex. 53, p. 378). Ms. Gordon's assessment shows that she met with Petitioner, a nurse at the Monroe County Jail, as well as Petitioner's father, brother, mother, and sister. (Resp't Ex. 56, p. 1633–48). Moreover, she obtained psychological records dating back to Petitioner's childhood.

The Georgia Supreme Court found that Ms. Gordon's report, which she shared with counsel, showed as follows: Cook had been a shy and awkward child but that his family life was essentially positive until his mother divorced Cook's father in 1981, when Cook was seven years old. The social worker described difficulties encountered when Cook's father remarried in 1983 and the fact that his father thereafter chose to live with his sons apart from his new wife for some time in an attempt to mitigate those difficulties. She reported that Cook was evaluated in 1984 at the age of nine because he was "emotionally exhausted" from the disruption in his family life and because he was having difficulty in school. She specifically described how Cook went to live with his mother, how his mother eventually remarried, how Cook's stepfather drank excessively and disliked Cook, and how Cook and his stepfather fought with one another. She reported that in 1989, which was around the time that his brother obtained a driver's license, Cook began demonstrating "antisocial behaviors," including burglarizing a neighbor's house and stealing and then fraudulently using a box of checks. These behaviors, she reported, led Cook's parents to hospitalize him at Coliseum Psychiatric Hospital for approximately five weeks, where the staff described him as "sad and angry" but not as having any delusions or thought disorders. She reported that as Cook grew older and after Cook's brother moved out, Cook's relationship with his stepfather worsened. His stepfather abused him emotionally and physically and even threatened to kill him. She reported that Cook committed another burglary after he was released from Coliseum Psychiatric Hospital and as a result, he was arrested and placed on probation for a year. She reported that Cook's mother divorced Cook's stepfather in 1994 and became "too lenient" with Cook in an attempt to compensate for Cook's previous living situation. She reported that

in December 1994 Cook's mother had to sell her home, Cook took the loss of the home hard, and the murders occurred several days later. Finally, she reported that Cook claimed to have been hearing voices and he exhibited some seemingly paranoid thinking, but he did not appear to be delusional and she speculated that the murders could possibly have been the result of a "psychotic break." Cook, 284 Ga. at 242–43, 663 S.E.2d 221.

Petitioner's counsel also had Petitioner's childhood psychological records. A psychological evaluation from Clinical Psychologist, Polly Paul McMahon, Ph.D., showed that in 1984, at the age of nine, Petitioner was a "sad and troubled youngster," who "strongly dislike[d] school." (Resp't Ex. 56, p. 1605). According to evaluation, he had "tried to stick something in his wrists" and had been known to "threaten hurting himself by putting a string around his neck and choking himself until he turns red." (Resp't Ex. 56, p. 1606). Dr. McMahon noted that his mother and father divorced in 1981 and that his father had remarried in 1983. (Resp't Ex. 56, p. 1605). She added that the parents "maintained excellent communication about their children" and listed his "excellent family support system" as Petitioner's major asset. (Resp't Ex. 56, p. 1609). Dr. McMahon reported that "many of his problems are related to his difficulties in school" and she recommended that he not be held back, but be placed in classes for learning disabled students and receive additional tutoring if necessary. (Resp't.Ex.56, p. 1609). She noted that he was "emotionally exhausted with the stress of change in his life," but that his family was "doing a very fine job in working with [him]" and that the assistance in school (learning disabled classes and possible tutoring) would be beneficial. (Resp't Ex. 56, p. 1614).

Counsel also had records from Coliseum Psychiatric Hospital, where Petitioner, at age fifteen, was "admitted because of his 'increasingly severe behavior problems and episodes of marked oppositional violations of major social rules'." Cook, 284 Ga. at 243, 663 S.E.2d 221. Regarding these 1989 records from the Coliseum Psychiatric Hospital, the Georgia Supreme Court found the following facts, which are supported by a review of the evidentiary record: The psychologist who evaluated him at that time noted that he reported previously trying to commit suicide, but " 'not very hard.' " The psychologist also reported that Cook was isolated and lethargic, that the disruption in his family life did not alone seem to explain the "underlying rage he [was] containing," and that "his oppositional behavior [was] severe." A psychiatrist who evaluated Cook noted his increasingly serious acts of misbehavior, including his shooting of a dog, stealing guns and blank checks, and carving his name in his arm with a razor blade. The psychiatrist specifically noted that Cook denied any history of physical or sexual abuse and that his relationship with his stepfather was, at that point, "fair." Cook's diagnoses upon discharge were major depression and oppositional defiant disorder and it was recommended that he take an anti-depressant and continue his individual and family therapy sessions. Cook did not receive follow-up treatment, however. Cook, 284 Ga. at 243, 663 S.E.2d 221.

The psychological evaluation also described Petitioner as an "impulsive person," who "may react quickly with little hint that he has considered consequences;" that he "has difficulty accepting rules and laws; that he "must feel free that he can 'do his own thing and change rules as needed; that he "thrives on excitement," and that he "may eventually show an interest in weapons." (Resp't Ex. 56, p. 1619). The report showed that Petitioner had "a family who is quite concerned and expresses willingness to be involved in all aspects of his treatment." (Resp't Ex. 56, p. 1623). Following his arrest, the trial court had Petitioner evaluated by Forensic Psychologist Dr. Jerold S. Lower, Ph.D.. Dr. Lower reported "memory problems and found they likely resulted from 'painful events in childhood'." Cook, 284 Ga. at 244, 663 S.E.2d 221. Dr. Lower noted that Petitioner's stepfather "attempted to kill him at age 13 and has mistreated him since." (Resp't Ex. 56, p. 1650). Petitioner reported suicidal thoughts but "never followed through with these and has made no attempts." (Resp't Ex. 56, p. 1650).

Additionally, Dr. Lower reported as follows: Personality testing was invalid. The validity scale pattern suggested that he was consciously attempting to paint a somewhat overly virtuous picture of himself, while at the same time reporting a great deal of discomfort and distress. The overall profile was highly suggestive of an attempt to appear more disturbed than he actually is. (Resp't Ex. 56, 1650). Dr. Lower reported that Petitioner claimed to hear voices and "see[ ] things that are not present." (R. at 28, p. 1650). Dr. Lower stated that "[a]ssuming he is telling the truth, these experiences do not closely resemble the hallucinations seen in acute mental illness." (R. at 28, p. 1650A). He also explained that "it appears Mr. Cook is not suffering from any sort of major psychiatric disorder" and "[o]ur impression is that he is deliberately attempting to manipulate our conclusions about him and to appear more psychologically disturbed than is actually the case." (R. at 28, p 1650A).

Mr. Wangerin explained that he "reviewed Dr. Lower's report, and saw that it wasn't favorable and at that point determined that [they] needed an independent evaluation." (Resp't Ex. 53, p. 427). Mr. Wangerin, after consultation with death penalty experts at either the Multicounty Public Defenders Officer or the Southern Center for Human Rights, contacted Dr. Michael Shapiro, Ph.D.. The Georgia Supreme Court found as follows regarding Dr. Shapiro: Counsel informed their psychologist by letter that Cook claimed not to have a clear memory of the murders, that Cook claimed to remember only "flashbacks" in his dreams, and that there was some initial information suggesting Cook might not have been the killer. Accordingly, counsel informed their psychologist as follows: The top concern I have is whether there is a psychological or physical neurological explanation of why Mr. Cook would have expressed an admission if he did not commit the crime.

However, contrary to the habeas court's order, the record does not support a finding that counsel instructed their psychologist to limit his evaluation solely to this question. Instead, the psychologist's testimony shows that he conducted a thorough neuropsychological examination. He, in his own words, conducted a "thorough interview" of Cook in person, and he administered over a dozen separate psychological tests. Counsel testified that he consulted with the psychologist after the examination to discuss the results, but that the psychologist told him that his diagnosis was antisocial personality disorder and that Cook was "a very angry young man."

Although counsel communicated with the psychologist only orally prior to trial, counsel asked the psychologist to memorialize his findings in a written report which was submitted to counsel after the trial.... The essential details of what conclusions the psychologist reached are contained within his testimony in the habeas record. He testified that he administered a personality inventory, but that he had to disregard the results because he believed Cook had attempted to manipulate the outcome. He testified that he ruled out schizophrenia and mood disorders, despite Cook's prior reports of hallucinations and treatment for depression and despite his description of his history of receiving prescription medications. He also testified that Cook denied past sexual and physical abuse, despite the notations in the report by the court's psychiatrist about Cook's claim of physical abuse by his stepfather. He testified that Cook admitted to exaggerating his past illegal drug use in his evaluation by the court's psychiatrist. He also testified that he was aware of the opinion of Cook's jail doctor that Cook had been faking his alleged hallucinations.... Cook, 284 Ga. at 244–45, 663 S.E.2d 221. With all of this mental health evidence, counsel made the strategic decision not to present any mental health experts during the trial. The Georgia Supreme Court explained as follows:

As trial approached, counsel consulted with their own psychologist to consider whether to present mental health evidence in the sentencing phase of trial. By this time, they had been presented reports, both oral or written, from various experts that showed Cook's history of serious misconduct, prior diagnoses of not only major depression but also of oppositional defiant disorder and antisocial personality disorder, and a history of Cook's likely malingering and attempts to mislead experts who examined him after his arrest. Counsel

testified that, “in the end, it was decided not to put up these mental health experts because I thought that it would end up doing more damage than good.” Id. at 241–46, 663 S.E.2d 221.

These findings regarding counsel's investigation into the mental health evidence and resulting decision not to present mental health testimony are supported by the voluminous record and are certainly not “unreasonable.” 28 U.S.C. § 2254(d)(2). Although counsel obviously investigated mental health evidence, the Georgia Supreme Court agreed with the state habeas court that counsel failed to learn of one evaluation: Petitioner's 1997 evaluation and treatment at the River Edge Behavioral Health Center (hereinafter “River Edge”) while he was in the Monroe County Jail awaiting trial. As counsel did not have these records, he did not provide them to his mental health expert-Dr. Shapiro. Cook, 284 Ga. at 246, 663 S.E.2d 221. Given this failure, the Georgia Supreme Court decided to assume counsel's investigation into mental health evidence was insufficient. Id. Unlike the state habeas court, however, the Georgia Supreme Court concluded that Petitioner failed to show “sufficient prejudice to warrant success of his overall ineffective assistance claim.” Id. After a thorough review of the record and the arguments of the parties, this Court finds that this ruling is supported by the record and that the Georgia Supreme Court's decision to deny relief on this claim did not involve “an objectively unreasonable application of the Strickland standard.” Hammond v. Hall, 586 F.3d 1289, 1324 (11th Cir.2009).

Petitioner claims that the Georgia Supreme Court's “decision constitutes an unreasonable application of Strickland” because it “completely overlook[s] trial counsel's positive response to the River Edge material.” (Pet'r Sept. 30, 2009 Br., p. 67–68). According to Petitioner, the River Edge material “would have prompted trial counsel to reconsider his decision not to present mental health evidence.” (Pet'r Sept. 30, 2009 Br., p. 68). This is not how counsel testified at the state habeas evidentiary hearing. Mr. Wangerin explained that he did “not know that [the River Edge] report ... would change [his] determination [not to present mental health evidence] in and of itself.” (Resp't Ex. 53, p. 419). Counsel pointed out that while Dr. Figaro's report was beneficial, “it still ha[d] to be weighed against the other information out there.” (Resp't Ex. 53, p. 425). Petitioner also claims that the Georgia Supreme Court “unreasonably applied ... Strickland ... in concluding that Dr. Shapiro's potential testimony was the sole deciding factor in determining prejudice.” (Pet'r Sept. 30, 2009 Br ., p. 69). However, the state court did not consider only Dr. Shapiro's FN5 potential testimony when determining prejudice. Instead, it is obvious the Georgia Supreme Court reviewed the total record when making its determination. The court reviewed all of the psychological evaluations and reports described above and also reviewed and explained the River Edge Report as follows: FN5. Even if defense counsel decided not to use Dr. Shapiro and could have kept out any of his negative testimony, as Petitioner argues, there is plenty other aggravating mental health evidence that would have been introduced had counsel opted to introduce mental health evidence in mitigation. This evidence paints the picture of a person who is manipulative (R. at 28, p. 1650A); “attempt[s] to appear more disturbed than he actually is” (Resp't Ex. 56, p. 1650); has difficulty accepting rules (Resp't Ex. 56, p. 1619); lies, and acts on impulse. (Resp't Ex. 56, p. 1619).

In 1997, while Cook was incarcerated and awaiting trial, jail personnel sent Cook to River's (sic) Edge Behavioral Health Center for evaluation and treatment. The records show that during his two visits to River's (sic) Edge, Cook indicated that he was suffering from sleep problems, anxiety, depression, and audio and visual hallucinations. Although the initial diagnostic impression in the records indicates possible malingering and antisocial personality disorder, the discharge summary, written after Cook discontinued his own treatment, omits these items and lists solely the diagnostic code for major depression with psychotic features. The records also indicate that during this evaluation Cook claimed to have been physically abused by his stepfather and to have been sexually abused by a relative. Cook was given several prescriptions based on his claimed symptoms of sleep problems and hallucinations. Cook, 284 Ga. at 245–46, 663 S.E.2d 221. The Court pointed out that “[w]ith the exception

of Cook's new claim of sexual abuse, everything contained in the River Edge records was already known to counsel and the defense expert" and that Dr. Shapiro testified the River Edge evaluation would not substantially change his opinion. Cook, 284 Ga. at 247, 663 S.E.2d 221. The Georgia Supreme Court did not end its analysis here however. Instead, it explained as follows:

Furthermore, even assuming, arguendo, Cook's claim of sexual abuse would have prompted further evaluation by Cook's psychologist at the time of trial and that it would have led that psychologist to give testimony comparable to that of Cook's expert in the habeas proceedings, we find the evidence of prejudice insufficient to sustain his ineffective assistance of counsel claim. Given Cook's history of suspected malingering in mental health evaluations and his previous denials of sexual abuse, his claim of abuse made for the first time while in jail awaiting his death penalty trial likely would have appeared dubious to the jury. Although there is no direct testimony about what abuse actually occurred, we note that Cook's expert on habeas testified that the details of the alleged abuse came from Cook himself and that Cook reported one incident of abuse where a sister had him suck on her nipples when he was seven or eight years old and another incident in which he is not sure who the perpetrator was and about which no details were provided. Based on his analysis, this expert concluded that Cook suffered from recurrent major depression, dysthymic disorder, and post-traumatic stress disorder as a result of his family background and his alleged sexual abuse by his sister and his possible additional sexual abuse by some unnamed relative. Cook's new expert stated his belief that Cook saw the victims in this case kissing, which "reactivate[d] for him the abuse situation with [his sister]," which "activate [d] the rage that he had" because of his stepfather, which led him to fall into a dissociative state in which he murdered the victims, and which caused an impaired memory of the murders. Such a theory, even assuming counsel could have presented it at trial through his own expert who refused to adopt it in his habeas testimony, would not have had a strong impact on the jury in light of the totality of the evidence. Cook's claim of sexual abuse would have been undermined by the habeas testimony of his sister in which she strongly denied Cook's claim of abuse. Thus, we find the jury likely would have found the expert's theory to be based on suspect facts and contrary to the substantial evidence showing that Cook deliberately planned the murders and that Cook remembered his crime and confessed to multiple persons, even explaining that he committed the murders simply to see if he could get away with it. Cook, 284 Ga. at 247–48, 663 S.E.2d 221.

Petitioner also claims that the Georgia Supreme Court, when finding a lack of prejudice, ignored favorable mental health testimony from individuals such as Dr. Patrice Webster, the treating clinician at Colisuem Psychiatric Hospital, and Beverly Owenby, the nurse at the Monroe County Jail. (Pet'r Sept. 30, 2009 Br., p. 69). Petitioner claims that their testimony, along with the River Edge Report "would likely have altered the outcome of the sentencing phase." (Pet'r Sept. 30, 2009 Br., p. 69). However, the record shows the Georgia Supreme Court did not ignore such testimony. Instead, the court discussed the 1989 evaluation from the Coliseum Psychiatric Hospital and, as noted above, it contained many details that were potentially harmful to the defense. Cook, 284 Ga.243. Additionally, any helpful information that nurse Owenby may have been able to provide would have been minimized by the testimony of Dr. Patton Paul Smith, the doctor at the jail, who testified that Petitioner was "manipulative" while incarcerated at the Monroe County Jail and, specifically, that nurse Owenby "was manipulated by Mr. Cook." FN6 (Resp't Ex. 54, p. 515).

FN6. Petitioner admitted to Dr. Jay Jackman, the expert forensic psychiatrist who examined him and testified at his state habeas hearing, that he did manipulate and lie to jail personnel. Specifically, Petitioner stated that while in the Monroe County Jail, he "said he saw things when he didn't." (Resp't Ex. 54, p. 977). This is how he was able to see Dr. Figaro at River Edge. (Resp't Ex. 53, p. 296).

Petitioner relies on a recent Supreme Court case, Porter v. McCollum, ––U.S. ––––, 130 S.Ct. 447, –– L.Ed.2d –––– (2009), to support his theory that counsel's deficient performance prejudiced him. However, this case is easily distinguished from Porter. Specifically, the mitigation evidence presented during Porter's post-conviction proceedings was much stronger than that presented here. The United States Supreme Court explained that had Porter's counsel conducted any type of investigation FN7 and presentation of evidence, the judge and jury would have learned of "(1) Porter's heroic military service in two of the most critical—and horrific—battles in the Korean War, (2) his struggles to regain normality upon his return from war, (3) his childhood history of physical abuse, and (4) his brain abnormality, difficulty reading and writing, and limited schooling." Id. at 454. The Supreme Court explained that "evidence of Porter's abusive childhood ... may have particular salience for a jury evaluating Porter's behavior" in this crime of passion against his ex-girlfriend. Id. at 455. Additionally, the Court stressed the importance of Porter's military service because "[o]ur Nation has long tradition of according leniency to veterans in recognition of their service, especially those who fought on the front lines as Porter did." Id.

FN7. The Court points out also that the investigation conducted in Porter was far more limited than that undertaken in this case. Porter's trial "counsel did not even take the first step of interviewing witnesses or requesting records." Porter, 130 S.Ct. at 453. In fact, counsel had only one meeting with Porter prior to the trial. Conversely, in this case, Petitioner's counsel met with Petitioner and family members on numerous occasions, hired a social worker to prepare a psychosocial assessment, reviewed numerous mental health records, and had Petitioner examined by a mental health expert.

Here, however, the jury did hear testimony that Petitioner was emotionally and physically abused by his stepfather. Much of the mental health evidence presented at the state habeas hearing was, as noted above, contradictory and potentially harmful to Petitioner. Furthermore, it has not been suggested the Petitioner committed a crime of passion for which his alleged abuse by his stepfather would have been "paricular[ly] salien[t]." Id. at 455. Finally, Petitioner certainly would not have been due any leniency for military service; much less service on the front lines of "the most critical—and horrific—battles" of a war. Id. at 454. Petitioner also cites Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) to support his theory that he was prejudiced by his counsel's deficient investigation. However, just as with Porter, the mitigating evidence introduced at Wiggins post-conviction proceeding was far stronger than that found here. Specifically, Wiggins alcoholic mother "left Wiggins and his siblings home alone for days, forcing them to beg for food and to eat paint chips and garbage." Id. at 516–17. His mother regularly beat him; had sex with various men while he slept in the same bed; and once forced his hand against a hot stove burner, which burned him so badly he had to be hospitalized. Id. at 517. After he was taken from his mother and placed in foster care, he was physically abused and repeatedly raped and molested by the father in the second foster home in which he was placed. Id. In a later foster home setting he was "gang-raped ... on more than one occasion." Id. Finally, in a Job Corps program, he was sexually abused by his supervisor. Id.

The Supreme Court of the United States explained that "[i]n assessing prejudice we reweigh the evidence in aggravation against the totality of available mitigating evidence. In this case, our review is not circumscribed by a state court conclusion with respect to prejudice, as neither of the state courts below reached this prong of the Strickland analysis." Id. at 534. Conversely, in the current case, this Court is "circumscribed by [the] state court conclusion with respect to prejudice." Id. The Court can grant relief only if Petitioner shows that " 'in rejecting his ineffective assistance of counsel claim the state court applied Strickland to the facts of the case in an objectively unreasonable manner'." Blankenship v. Hall, 542 F.3d 1253, 1271 (11th Cir.2008) (quoting Rutherford v. Crosby, 385 F.3d 1300, 1309 (11th Cir.2004). Based on the "totality of the evidence—'both adduced at trial, and the evidence

adduced in the habeas proceeding','' this Court cannot make such a finding. Wiggins, 539 U.S. at 536.

2. Petitioner's claim that trial counsel was ineffective in his investigation and presentation of life history or background evidence at the penalty phase of his trial The record shows that trial counsel investigated Petitioner's life history and background. Mr. Wangerin spoke with Petitioner and his family members on numerous occasions, hired a social worker to prepare a detailed "psychosocial assessment," and hired an investigator (R. F.Warner) to track down witnesses. (Resp't Ex. 53, p. 370, 378, 383, 457). Petitioner's family, friends, and ex-girlfriends were all contacted and interviewed. (Resp't Ex. 53, p. 370, 378, 465). Moreover, the social worker obtained, and provided to trial counsel, information from Petitioner's family, jail personnel, school records, and childhood psychological records. (Resp't Ex. 56, p. 1633–48).

After the investigation, trial counsel explained that they considered "getting into the mental evaluation, and we determined that was not the proper way to go." (Resp't Ex. 53, p. 409). Moreover, they considered calling "not only other family members but people [Petitioner] went to school with." (Resp't Ex. 53, p. 409). Counsel determined not to call certain witnesses because their testimony was irrelevant or potentially harmful. (Resp't Ex. 53, p. 465). Mr. Wangerin explained that his sentencing strategy revolved around Petitioner's father, John Cook. He testified as follows: The other part of the evaluation was that it was clear to me in his sentencing phase, or what I believe clear in the sentencing phase was that Andrew Cook had been convicted largely on the testimony of his father. And it was going to be up to his father to plea for his life, and that was going to be the most effective testimony to save Andrew Cook from the death penalty. (Resp't Ex. 53, p. 406–07) Mr. Wangerin stated that "[i]t was [his] belief that John Cook was to the jury the most important witness, and it was [his] belief that if John Cook got up and made an unabashed plea to save his son from the death penalty, that ... would have the most powerful effect on the jury." (Resp't Ex. 53, p. 410).

In accordance with this strategy, counsel decided to call Petitioner's mother, sister, and father during sentencing. Petitioner's mother, Sandra Sewell, testified that she and Petitioner's father divorced when he was "around eight years old." (Resp't Ex. 17, p. 1797). She stated that when she remarried, her new husband and Petitioner initially had a good relationship. However, their relationship deteriorated and "[t]here became lots of arguments." (Resp't Ex. 17, p. 1799). She explained that Petitioner's step-father found fault with everything Petitioner did and the tension between the two of them resulted in physical violence or "violent confrontations" "[s]everal times." (Resp't Ex. 17, p. 1799–1800). She also explained that after she divorced Petitioner's step-father she could no longer afford their home and Petitioner took the loss of the house very hard. (Resp't Ex. 17, p. 1802). She asked the jury to spare Petitioner's life and stated that she had "failed him," "robbed him of a normal child life," and that "remarrying a man and staying in a situation where [Petitioner] was beaten, where he was verbally abused, ... was wrong on [her] part." (Resp't Ex. 17, p. 1802).

Petitioner's sister, Debbie Pope, explained that she loved Petitioner, visited him each week in jail and understood Petitioner might "be in jail for the rest of his life." She begged the jury to spare his life. (Resp't Ex. 17, p1804–06). Petitioner's father, John Cook, testified that Petitioner "had some tough times." He stated that Petitioner's heart was not "totally malignant," that there was "value somewhere in him" and that there was "goodness in him." (Resp't Ex. 17, p. 1802). He explained to the jury that he loved his son and deeply regretted that he had to testify against his him during the trial. (Resp't Ex. 17, p. 1814). However, he explained that Petitioner did not hold the testimony against him and that Petitioner expressed concern and love for him; even after the testimony. (Resp't Ex. 17, 1806–18).

The Georgia Supreme Court addressed this particular ineffective assistance of counsel claim and stated "we hold both that trial counsel did not perform deficiently in preparing and presenting evidence of Cook's background and that counsel's failure to present additional evidence of the kind Cook now proposes did not create prejudice sufficient to warrant the success of his overall ineffective assistance of counsel claim." Cook, 284 Ga. at 249, 663 S.E.2d 221. Petitioner claims that this aspect of the Georgia Supreme Court's decision was based on an unreasonable determination of the facts because "the evidence presented in the habeas proceedings introduced ample previously untold information about [Petitioner's] lifelong struggle with mental illness and his deprived upbringing." (Pet'r Sept. 30, 2009 Br., p. 75). Moreover, Petitioner states that the Georgia Supreme Court's prejudice analysis constituted an unreasonable application of Strickland because it "assume[d] that if some mitigating evidence was presented at sentencing, no matter how minimal or cursory, anything new presented in habeas proceedings along the same thematic lines [was] 'cumulative'." (Pet'r Sept. 30, 2009 Br., p. 75–75). However, the record supports the Georgia Supreme Court's findings. Moreover, the Georgia Supreme Court did not merely base its finding regarding a lack of prejudice on the fact that the evidence offered at the state habeas evidentiary hearing was cumulative. Instead, it "consider[ed] all of the relevant evidence the jury would have had before it ... the entire body of mitigating evidence ... against the entire body of aggravating evidence." Wong v. Belmontes, —— U.S. ——, ——, 130 S.Ct. 383, 386, 175 L.Ed.2d 328, —— (2009). It explained as follows:

Counsel could have conceivably introduced additional testimony of the sort highlighted in the habeas court's order showing how [Petitioner's] parents had not always provided him a stable and happy home life and how his mental health and behavioral problems could have been more aggressively addressed. However, we do not find that the lay testimony concerning Cook's background that counsel actually presented was unreasonable in light of the circumstances, particularly because so much of the additional lay testimony [Petitioner] now proposes could have alienated and jury and led to unfavorable cross-examination and the presentation of unfavorable witnesses by the State. Cook, 284 Ga. at 249, 663 S.E.2d 221.

Specifically, the record shows some of this potentially unfavorable evidence to include that Petitioner had a fascination with guns and pulled a gun an a group of people in a parking lot (Resp't Ex. 54, p. 517); that he broke his brother's jaw (Resp't Ex. 53, p. 474–75); that he had only a few friends and was quick to "blow up and snap" (Resp't Ex. 54, p. 532); that he was unpredictable (Resp't Ex. 54, p. 518–19); that people were scared of him and did not want him to know where they lived (Resp't Ex. 54, p. 518–19); and that he broke into a vehicle and into homes (Resp't Ex. 54, p. 519). Petitioner faults the Georgia Supreme Court for taking into consideration the negative testimony that might have been introduced. However, just such analysis of the totality of the evidence is proper under Strickland. The United States Court of Appeals for the Eleventh Circuit has recently reiterated that a prejudice argument must be "rejected ... where mitigation evidence was a "two-edged sword" or would have opened the door to damaging evidence'." Cumming v. Sec'y for the Dept. of Corr., 588 F.3d 1331, 1367 (11th Cir.2009(quoting Wood v. Allen, 542 F.3d 1281, 1313 (11th Cir.2008); See also Wong, 130 S.Ct. at 390 (explaining that "the reviewing court must consider all the evidence—the good and the bad—when evaluating prejudice").

Petitioner also cites Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) for support. However, the facts in this case are easily distinguished from those in Williams and trial counsels' conduct in this case is simply not analogous to the conduct held to be ineffective in Williams. Specifically, in Williams, trial counsel "failed to conduct an investigation that would have uncovered extensive records graphically describing Williams' nightmarish childhood, not because of any strategic calculation but because they incorrectly thought that state law barred access to such records." Id. at 419. Counsel failed to discover records showing Williams had been "severely and repeatedly beaten by his father." Id.

Moreover, records showed both of his parents were imprisoned for two years for criminal neglect of Williams and his siblings and that during their incarceration, Williams had to endure an abusive foster home. Id . Additionally, [c]ounsel failed to introduce available evidence that Williams was "borderline mentally retarded" and did not advance beyond sixth grade in school. They failed to seek prison records recording Williams' commendations for helping to crack a prison drug ring and for returning a guard's missing wallet, or the testimony of prison officials who described Williams as among the inmates "least likely to act in a violent, dangerous or provocative way." Counsel failed even to return the phone call of a certified public accountant who had offered to testify that he had visited Williams frequently when Williams was incarcerated as part of a prison ministry program, that Williams "seemed to thrive in a more regimented and structured environment," and that Williams was proud of the carpentry degree he earned while in prison. Id. at 419–20.

Instead, during the sentencing phase of William's trial, counsel chose to focus on the fact that Williams had confessed. Additionally, "[t]he weight of defense counsel's closing ... was devoted to explaining that it was difficult to find a reason why the jury should spare Williams' life." Id. at 403. Unlike Williams' attorneys, Petitioner's trial counsel conducted an extensive investigation into Petitioner's background. Furthermore, based on this investigation, counsel chose a specific strategy for mitigation. Nothing in Williams requires Petitioner's trial counsel to present any mental health evidence or any additional lay witnesses to discuss Petitioner's background. As the Eleventh Circuit Court of Appeals has explained, " Williams creates no mechanistic rule of law at all for investigation or for presentation of evidence in capital cases." Chandler v. United States, 218 F.3d 1305, 1317 n. 21 (11th Cir.2000). Put simply, " Williams cannot command the outcome for this case; the cases' facts are materially different, allowing different outcomes under Strickland." Chandler, 218 F.3d at 1317 n. 21.

3. Petitioner's claim that trial counsel was ineffective in his lack of work with the key witness for both the guilt/innocence phase and penalty phase of the trial-John Cook Petitioner maintains that trial counsel failed to prepare John Cook for the penalty phase of the trial and, "[i]f he had been better prepared, there is a reasonable probability that the jurors would not have sought death." (Pet'r Sept. 30, 2009 Br., p. 97).FN8 The Georgia Supreme Court addressed this issue and held that "trial counsel did not perform deficiently and that counsel's failure to prepare [Petitioner's] father in a different manner did not create prejudice sufficient to warrant the success of his overall ineffectiveness of counsel claim." Cook, 284 Ga. at 250, 663 S.E.2d 221.

FN8. To any extent that Petitioner makes a separate and district claim that trial counsel was ineffective because he "failed to thoroughly investigate[ ] John Cook's role in the investigation" of the murders, Petitioner has failed to assert how the state court's finding with regard to trial counsel's investigation into Mr. Cook's role was an unreasonable application of law or based on any unreasonable determinations of fact. (Pet'r Sept. 30, 2009 Br., p. 91). The Georgia Supreme Court found that Mr. Cook had never worked in an investigatory capacity on the case. Petitioner has not shown this to be an unreasonable factual finding.

The record shows that trial counsel considered John Cook to be the most important mitigation witness and Mr. Wangerin met with him on several occasions. (Resp't Ex. 53, p. 407). Mr. Wangerin explained that he thought John Cook's testimony "was going to be the most effective testimony to save [Petitioner] from the death penalty." (Resp't Ex. 53, p. 407). Mr. Wangerin stated that he "tried to stress to Mr. Cook ... that it was [his] belief that this was a choice between the death penalty and a life without parole case ... and that is where his testimony needed to focus." (Resp't Ex. 53, p. 410). Additionally, trial counsel stated that he did not "ask [John Cook] verbatim what he was going to say." (Resp't Ex. 53, p. 410). He explained as follows: You say that I did not know what he was going to say which is true, I mean, I didn't have a transcript of what he was going to say. Okay? We had discussed that he

was going to be put on the stand and it was basically going to be up to him to plea for [Petitioner's] life, and in my mind, this was a case that plea should be for a life without parole sentence, not the death penalty, that I didn't think it was a life situation, where he could get a life sentence.

But yes, I left it up to John Cook as to the exact words he was going to say, and answers to my questions, that was up to John Cook. I did not try and put any testimony in his mouth. (Resp't Ex. 53, p. 442). The Georgia Supreme Court found as follows: In the sentencing phase, Cook's father gave moving testimony. He began as follows: "Yesterday, of course, I sat up here as a cop. And now I'd like to tell you a little bit about Andy as the father ." He explained to the jury how his son was already dead in some ways and how Cook, along with his family, now must live in shame. He explained that he felt he had failed "to protect his own son from the evil." He urged the jury to consider that justice without "compassion or mercy" was mere vengeance, which he said should belong to God alone. He testified that he was uncertain whether death or life without parole was the more severe punishment, and he urged the jury to consider if Cook might now have or might ever have "something of value in him" that might warrant the possibility of parole. <p<>Cook argues that the reference to life without parole possibly being worse than death prejudiced his defense. Many jurors, however, may have been moved by the forthrightness of Cook's father. Moreover, regardless of the opinion of Cook's father about life without parole, this testimony may have prompted many jurors to consider whether any residual value in Cook could justify his continued existence, even if he were incarcerated without the possibility of parole. Cook's father further recounted how his son called him after his guilt/innocence phase testimony to tell him that he was proud of him, that he had done the right thing, and that he loved him. Cook's father asked the jury to close their eyes, to remember the victims' families, to think of him and the rest of Cook's family, and to picture themselves on their knees before God. He concluded by telling the jury that Cook had tried to enter a guilty plea "to save everyone from having to open these sores and feel this pain." Testimony in the habeas court proceedings indicates that most persons in the courtroom, including counsel and jurors, were in tears during this testimony. Cook, 284 Ga. at 249–50, 663 S.E.2d 221 (footnotes omitted).</p<>

These findings are supported by the record and Petitioner has not shown that the Georgia Supreme Court's decision contains any unreasonable determinations of fact based on the evidence presented. Moreover, Petitioner has not shown that in rejecting this particular ineffective assistance of counsel claim the state court " 'applied Strickland to the facts of his case in an objectively unreasonable manner'." Rutherford v. Crosby, 385 F.3d 1300, 1309 (11th Cir.2004) (quoting Bell v. Stone, 535 U.S. 685, 699, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002)).

4. Petitioner's claim that trial counsel's lack of investigation for the guilt/ innocence phase of his trial was unreasonably deficient and prejudiced Petitioner

In this claim, Petitioner first maintains that counsel "did not investigate any defenses involving Mr. Cook's psychological state before, leading up to, nor during the murders for which he was charged." (Pet'r Sept. 30, 2009 Br., p. 107). Petitioner alleges that had certain mental health defenses been raised during the guilt/innocence phase of his trial, he "would have been found not guilty by reason of insanity,FN9 guilty but mentally ill or guilty of lesser crimes." (Pet'r Sept. 30, 2009 Br., p. 107–108). FN9. Petitioner has presented no evidence that he meets the standard of not guilty by reason of insanity.

The Georgia Supreme Court held as follows regarding this argument: Cook argues that the habeas court erred by failing to address in the ineffective assistance claim whether potential mental health evidence could have supported a verdict of guilty but mentally ill. We have held that "the statute that provides for a verdict of guilty but mentally ill does not preclude a death sentence as the result of such a verdict." Accordingly, the habeas court did not err in

failing to address the merits of Cook's claim beyond addressing the role that potential mental health evidence might have played as mitigating evidence in the sentencing phase, which we addressed above. Cook, 284 Ga. at 251, 663 S.E.2d 221 (quoting Lewis v. State, 279 Ga. 756, 764, 620 S.E.2d 778 (2005) (in which the Georgia Supreme Court explained that while a finding of mental retardation does preclude the death penalty, a verdict of guilty but mentally ill does not preclude the imposition of the death penalty)).

As this Court explained above, trial counsel did investigate Petitioner's mental health. They obtained psychological records from his childhood, the trial court had him examined by a mental health expert, and after trial counsel reviewed this report, they had Petitioner examined by a separate mental health expert. Furthermore, even had counsel decided to present evidence of mental illness and had Petitioner found "guilty but mentally ill," this would not have precluded the death sentence. Therefore, as the state court found, the relevant issue is the role that mental health evidence would have played during the mitigation phase of the trial and the Court has already discussed this issue at length above. Petitioner also states that trial counsel was ineffective because he failed to pursue appointment of a crime scene expert to testify at the guilt/innocence phase of the trial. According to Petitioner, such an expert could have explained "how the State's evidence, including the nature of the gun shots, the duration of the crime, and the confessions [ ] Mr. Cook made to his father, fit an unplanned crime, lacking any forethought, and motivated not by sexual intent but by rage." (Pet'r Sept. 30, 2009 Br., p. 114).

To show prejudice from counsel's failure to hire a crime scene expert, Petitioner points to an affidavit from forensic investigator R. Robert Tressel that he submitted during the state habeas proceedings. Mr. Tressel opined as follows: (1) the Lake Juliette murders were "a chaotic and unorganized crime, which occurred very quickly" (Resp't Ex. 55, p. 1245); (2) there was no motive for the crime (Resp't Ex. 55, p. 1249); (3) "[i]n [his] professional opinion this [was] not a sex crime" and was instead a "crime fueled by rage"; (Resp't Ex. 55, p. 1251); and (4) Petitioner's statements to his father were consistent with the crime scene. (Resp't Ex. 55, p. 1252). According to Petitioner, this testimony "would have assisted a jury in understanding the connection between [Petitioner's] mental illness and the nature of the crime." (Pet'r Sept. 30, 2009 Br., p. 114).

The Georgia Supreme Court considered this claim and found as follows: Cook also argues that the habeas court erred by failing to address whether trial counsel were ineffective for failing to employ a crime scene expert. We find, however, that the testimony Cook presented in his habeas proceedings would have had no net positive effect on the jury's deliberations, as that testimony concerned matters of common sense and matters that could easily have proven to be more harmful than beneficial to his defense. Accordingly, we conclude that as to this claim, Cook has failed to show either deficient performance or prejudice to his defense. Cook, 284 Ga. at 251, 663 S.E.2d 221.

The Court, like the Georgia Supreme Court, fails to see how, given the evidence that was actually presented at the trial, Petitioner was prejudiced by his attorneys' failure to hire an expert to testify that these crimes were unplanned, disorganized, and without any motive other than Petitioner's rage. Given the testimony that was presented, the jury certainly could have reached conclusions of this nature without the help of a crime scene expert. Moreover, the Court agrees that this evidence "could easily have proven to be more harmful than beneficial." Id. In short, this Court finds that the Georgia Supreme Court's decision regarding this issue is based on reasonable factual determinations and the state court conducted a reasonable application of Strickland.

C. Claim Seven: The trial court improperly admitted coerced and involuntary statements made by Petitioner to his father, a federal law enforcement agent, in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Petitioner maintains

that, without being advised of his right to remain silent or right to request an attorney, he was twice (on December 4, 1996 and again on December 5, 1996) interrogated by his father, Federal Bureau of Investigations (hereinafter "FBI") Special Agent John Cook, who was a supervisory agent for the FBI at the time. According to Petitioner, these interrogations violated the Fifth Amendment and should have been excluded from the trial. FN10. Petitioner also states that "[m]ore shocking and prejudicial was the debilitating prohibition of trial counsel to cross examine witnesses about the lack of Miranda warnings, which left counsel with a non-existent defense against at least two confessions ." (Pet'r Sept. 30, 2009 Br., p. 100). Petitioner claims that "if jurors had heard the circumstances in which [Petitioner's] confessions were obtained, they would have likely reached a different conclusion regarding the balance between aggravating and mitigating factors." (Pet'r Sept. 30, 2009 Br., p. 107). Petitioner presents no further argument or support for this statement. The Georgia Supreme Court found that the trial court erred when it failed to allow the defense to cross examine the witnesses about the confessions. Cook, 270 Ga. at 828, 514 S.E.2d 657. However, the Court found "that the error [was] harmless." Id . Petitioner has not shown that this decision was based on any unreasonable finding of the facts; or that it was "contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U.S.C. § 2254(d).

1. The December 4, 1996 phone call

The record shows that on December 4, 1996, Georgia Bureau of Investigations (hereinafter "GBI") Agent Randy Upton contacted John Cook and requested that he assist him in locating Petitioner. (Resp't Ex. 16, p. 1349). Randy Upton informed Mr. Cook that he wanted to ask Petitioner some "questions concerning the Lake Juliette homicides." (Resp't Ex. 16, p. 1350). Prior to that, Mr. Cook had no idea that Petitioner was being considered a suspect in these murders. (Resp't Ex. 16, p. 1350). Mr. Cook explained that he only knew about the murders "by what [he had] read in the paper." (Resp't Ex. 16, p. 1350). Mr. Cook said that the FBI "had done a little bit of work to assist the Monroe County Sheriff's Office in covering some leads out of the general area [,] ... [b]ut [he] had not personally worked on the case at all." (Resp't Ex. 16, p. 1350).

John Cook paged his son several times and finally spoke with him that night around 11:00 p.m.. Mr. Cook asked Petitioner if he knew anything about the Lake Juliette murders. (Resp't Ex. 16, p. 1351). Petitioner responded that he could not tell John Cook, because John Cook was "one of them"; he was "a cop." (Resp't Ex. 16, p. 1351). John Cook explained that he was a "father first" and asked if Petitioner was at Lake Juliette that night. Petitioner responded that he was. (Resp't Ex. 16, p. 1351). Mr. Cook then asked Petitioner if knew who shot the victims and Petitioner said that he did know. (Resp't Ex. 16, p. 1351). Mr. Cook thought that perhaps Petitioner "was just there and saw what happened." (Resp't Ex. 16, p. 1351). Mr. Cook then asked if he shot the victims and Petitioner responded that he did. (Resp't Ex.16, p. 1351). Petitioner explained to his father that he shot the victims in self-defense and later realized that the victims had just a pellet gun. (Resp't Ex. 16, p. 1352). John Cook tried to persuade Petitioner to "come in and tell authorities this." (Resp't Ex. 16, p. 1353). Petitioner replied that he was going to run and "just disappear." (Resp't Ex. 16, p. 1353). Mr. Cook told him that he could not disappear because "eventually, we'll find you." (Resp't Ex. 16, p. 1353). Mr. Cook did not know from where Petitioner was calling him and urged him not to run or commit suicide. (Resp't Ex. 16, p. 1354). Mr. Cook told Petitioner that he would "work with authorities and see what we can do." (Resp't Ex. 16, p. 1354).

Petitioner maintains "because Special Agent Cook did not inform [Petitioner] of his rights under Miranda, the interrogation via telephone is questionable and is subject to the same scrutiny applied to the second interrogation" that occurred one day later at the Monroe County Sheriff's Office. (Pet'r Sept.30, 2009 Br., p. 102). Respondent maintains that "this claim is unexhausted as Petitioner did not raise this claim on direct appeal to the Georgia

Supreme Court." (Resp't Oct. 28, 2009 Br., p. 65). In reply, Petitioner claims that he raised the issue in "Claim Seven in his First Amended Petition for Habeas Corpus at the state level." (Pet'r Jan. 19, 2010 Br., p. 46). Petitioner does not maintain he raised the issue on direct appeal to the Georgia Supreme Court; FN11 nor does he maintain that he discussed (or even mentioned) the issue in any of his briefs presented to the state habeas court. He simply claims that he listed the issue in his first amended habeas petition while his action was pending in the Butts County Superior Court.

FN11. It appears that Petitioner did raise this issue pretrial and the court found the "statements were freely and voluntarily given." (Resp't Ex. 2, p. 245). To properly exhaust this claim, Petitioner would have had to raise it on direct appeal to the Georgia Supreme Court. Georgia law clearly requires that errors or deficiencies of the trial be objected to at trial and pursued on appeal. See Black v. Hardin, 255 Ga. 239, 336 S.E.2d 754 (1985).

Whether this listing, without more, actually exhausted the claim is certainly questionable, but neither party addresses this issue in their briefs. "Exhaustion means more than notice. In requiring exhaustion of a federal claim in state court, Congress surely meant that exhaustion be serious and meaningful." Keene v. Tamayo–Reyes, 504 U.S. 1, 10, 112 S.Ct. 1715, 118 L.Ed.2d 318 (1992). If unexhausted, the claim would be procedurally defaulted because Petitioner would be barred for raising it in the state courts at this time and he has not shown any exceptions to overcome the default. O.C.G.A. § 9–14–51; Snowden v. Singletary, 135 F.3d 732, 736 (11th Cir.1998); Putman v. Turpin, 53 F.Supp.2d 1285, 1292 (M.D.Ga.1999), aff'd, 268 F.3d 223 (11th Cir.2001) (explaining that "when it is clear that the unexhausted claims would be barred in state court due to a state law procedural default, federal courts 'can ... treat those claims now barred by state law as no basis for federal habeas relief' ") (quoting Snowden, 135 F.2d at 735).

Even if Petitioner did adequately present this claim regarding the December 4, 2000 confession, and this court must, therefore, consider the merits of the claim, the claim still fails. Pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the prosecution may not use statements made during a "custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Id. at 444. "[C]ustodial interrogation means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Id. The December 4 conversation took place over the telephone-Petitioner placed the call to his father and his father did not even know from where Petitioner was calling. (Resp't Ex. 16, p. 1351–54). Petitioner has not cited, and the Court has not found, a case in which a telephone call, made by an individual who has not "been taken into custody or otherwise deprived of his freedom of action," was considered a "custodial interrogation." Miranda, 384 U.S. at 444. Therefore, to the extent that Petitioner makes a separate and distinct Fifth Amendment claim regarding his December 4, 1996 statement, this claim fails.

2. The December 5, 1996 meeting at the Monroe County Sheriff's Department

Petitioner claims that the December 5, 1996 "interview between John Cook and [Petitioner] was the 'functional equivalent' of a custodial interrogation" and that his statements should not have been admitted at trial. (Pet'r Jan. 19, 2010 Br., p. 60). Petitioner first raised this issue at trial. Following a hearing, the trial court found that "the statements were freely and voluntarily given, and were more in the nature of a father-son exchange at a time when the defendant had expressed some desire to see his father about the events that had transpired." (Resp't Ex. 2, p. 246). Moreover, the trial court also found that "[t]here was no trickery, deceit, promises, threats or extensive interrogation" and that John Cook did not interrogate

his son at the request of the GBI, “the Sheriff's Department, or any law enforcement agency involved in the investigation.” (Resp't Ex. 2, p. 245).

Petitioner raised this Fifth Amendment claim on direct appeal to the Supreme Court of Georgia. That court found the following facts regarding the December 5, 1996 statement: [B]efore Agent Upton read Cook his Miranda rights, Cook demanded his father and a lawyer; neither Agent Upton nor any other investigator in the case attempted to interrogate Cook after this invocation of his right to counsel; Agent Upton learned that John Cook was in Monroe County and that Cook had made an admission regarding the murders the night before; and Agent Upton told Sheriff Bittick that Cook had invoked his right to counsel and asked to see his father. The record does not show that Sheriff Bittick told John Cook his son wanted to speak with him, but Sheriff Bittick did contact the district attorney on December 5 regarding the procurement of a lawyer for Cook. Agent Upton transported Cook to Monroe County.

After Cook arrived at the Monroe County sheriff's office, John Cook asked to speak with his son. John Cook testified that he “wanted to know what happened” and that, though it is difficult to separate out the law enforcement part of his personality, he wanted to speak to his son mostly as a father (“I was still not thinking in my mind directly and openly that I was an agent with the FBI”). John Cook testified he was not intent on gathering evidence for the state; instead, he wanted “to try to persuade Andy to cooperate in hopes of getting a reduced sentence.” However, John Cook also testified that he was not going to keep any incriminating evidence to himself, and that he had no doubt he would pass on additional information to the investigators. Neither Sheriff Bittick nor any other law enforcement agent asked him to speak with his son. Sheriff Bittick testified that John Cook was a personal friend he had known professionally for a number of years. He also testified that he sometimes permits parents to speak with their children in custody when he feels it is the right thing to do, and not for the purpose of gathering evidence.

Sheriff Bittick entered the office where Cook was being held and told Cook that “his Daddy wanted to talk to him.” Cook said, “okay.” John Cook and his son were left alone in an office; Cook was not handcuffed. Both men were crying and shaking; John Cook hugged his son. John Cook testified that it was not a normal interview but he asked specific questions about the murders and elicited specific answers from Cook. John Cook said this is typical of a conversation with his son, that Cook “does not volunteer anything. If you have a conversation with him you will do 90 percent of the talking.” Cook, however, was not reluctant to talk. John Cook also told his son that “the best thing for us to do was cooperate and see if we couldn't get some kind of a plea bargain to a reduced sentence.” Sheriff Bittick testified that, after the father-son conversation, John Cook sat in his office for several minutes, upset and crying. John Cook then spontaneously told Sheriff Bittick what his son had just told him regarding the murders. Sheriff Bittick did not ask any questions about the conversation. Cook v. State, 270 Ga. 820, 824–25, 514 S.E.2d 657 (1999).

Contrary to Petitioner's assertions, these factual findings are not unreasonable and are supported by the record. Petitioner asserts the factual findings are incorrect and that his statements were coerced and involuntary because he “did not want to talk to his father.” (Pet'r Sept. 30, 2009 Br., p. 104). The record, however, shows that Petitioner twice told Agent Upton that he wanted to speak with his father. Agent Upton testified that when he entered the Jones County Sheriff's Office to interview Petitioner, “the first words out of [Petitioner's] mouth [were], ‘I want my father and a lawyer here’.” (Resp't Ex. 8, p. 137). When Agent Upton later told Petitioner that he was unsuccessful in his attempts to contact John Cook, Petitioner again said that he wanted to speak with his father. (Resp't Ex. 8, p. 137). Additionally, after arrival at the Monroe County Sheriff's Office, Sheriff Bittick told

Petitioner that John Cook wanted to speak with him and Petitioner said, ‘okay’.” (Resp't Ex. 8, p. 130).

Petitioner also maintains that the court's finding that no law enforcement officer requested John Cook speak with his son was unreasonable. However, the record is clear that Petitioner twice requested to see his father on December 5, 1996 and that John Cook requested to see his son. It is undisputed that after Petitioner was located, arrested on unrelated charges, and taken into custody, no law enforcement officer asked John Cook to speak with his son. Petitioner points to the December 4, 1996 call that Agent Upton made to John Cook in which he requested Mr. Cook's help in locating Petitioner. (Resp't Ex. 16, p. 1349). However, there is no indication that Agent Upton ever requested John Cook question petitioner regarding the murders, he merely asked John Cook if he could help him locate Petitioner. Once Petitioner was actually located, no law enforcement official directed or requested Mr. Cook to speak to Petitioner. Also, contrary to Petitioner's assertions, the record supports the finding that John Cook was not personally involved in the investigation of the Lake Juliette murders.FN12 In fact, he testified that he was familiar with the murders “[j]ust by what [he] read in the paper” and that he had “not personally worked on the case at all.” (Resp't Ex. 16, p. 1350). FN12. On appeal from the state habeas proceedings, the Georgia Supreme Court, when considering a related issue, determined that the FBI may have had jurisdiction to investigate the Lake Juliette murders, but again found that Mr. Cook had no actual investigative role in the case. Cook, 280 Ga. at 252, 626 S.E.2d 96.

After finding these facts, the Georgia Supreme Court then cited and applied Miranda, and its progeny. The court explained as follows: The Fifth Amendment specifies that no person shall be compelled in a criminal case to be a witness against himself. In Miranda, the United States Supreme Court formulated procedural safeguards to ensure that the inherently compelling nature of an in-custody interrogation by the police will not undermine the suspect's will to resist and force him to speak “where he would not otherwise do so freely.” One of these safeguards is the rule that once an accused has “expressed his desire to deal with the police only through counsel, [he] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police. The Supreme Court has defined interrogation or its functional equivalent as express questioning by law enforcement officers or “ ‘any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.’ ” The Supreme Court has expressed particular concern about deceit or trickery during a police interrogation, such as using psychological ploys like a “reverse line-up,” to subjugate the individual to the will of the examiner. However, the Supreme Court has made clear that “in deciding whether particular police conduct is interrogation, we must remember the purpose behind our decisions in Miranda and Edwards: preventing government officials from using the coercive nature of confinement to extract confessions that would not be given in an unrestrained environment.” “Far from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently desirable.” Cook, 270 Ga. at 825–26, 514 S.E.2d 657 (citations omitted).

As the Georgia Supreme Court undoubtedly applied the law as determined by the United States Supreme Court (Miranda and Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981)) to the facts of this case, the opinion is not “contrary to ... clearly established Federal law.” 28 U.S.C. § 2254(d)(1); see also Carr v. Schofield, 364 F.3d 1246, 1250 (11th Cir.2004) (explaining that “[a] state court's decision that applies the law as determined by the Supreme Court to the facts is not ‘contrary to’ whether or not the federal courts would have reached a different result.”). The only other issue is whether the Georgia Supreme Court's decision “involved an unreasonable application of ... clearly established Federal law.” U.S.C. § 2254(d)(1). We find that it did not. The Georgia Supreme Court explained that the “coercion proscribed by Miranda must be caused by the police.” Cook,

270 Ga. at 826, 514 S.E.2d 657. Thereafter, the Court cited numerous cases in which various courts, including the United States Supreme Court in Arizona v. Mauro, 481 U.S. 520, 107 S.Ct. 1931, 95 L.Ed.2d 458 (1980), have explained that " Miranda is not implicated when a suspect in custody is questioned or encouraged to confess by a father, mother, wife or girlfriend." Cook, 270 Ga. at 826, 514 S.E.2d 657. The Court acknowledged, however, that "[t]he difficulty in this case arises from the fact that John Cook was both an FBI agent and the suspect's father" and that such cases must be "resolved in a case-by-case basis, by viewing the totality of the circumstances, in order to determine if the law enforcement parent was acting as a parent or as an agent of the state when speaking with his or her arrested child." Cook, 270 Ga. at 826–27, 514 S.E.2d 657.

The Georgia Supreme Court analogized this case to that of United States v. Gaddy, 894 F.2d 1307 (11th Cir.1990), in which the Eleventh Circuit found no Miranda violation when the suspect's aunt, who was a police officer, called the suspect in jail after he invoked his right to counsel and persuaded him to confess. Cook, 270 Ga. at 827, 514 S.E.2d 657. The Georgia Supreme Court cited the following factors considered by the Eleventh Circuit in making its decision:

1) [the suspect's aunt] was not part of the investigative team ...; 2) she was not directed by a superior to speak with [her nephew]; 3) she acted solely out of concern for his welfare; and 4) she was not acting in the normal course of her duties when she contacted him. She was a "worried aunt" who "communicated with [her nephew], not to assist the police department in solving a crime, but to protect her nephew." Cook, 270 Ga. at 827, 514 S.E.2d 657 (citations omitted).

Correspondingly, the Georgia Supreme Court then found the following similar factors with regard to Petitioner's case: An analysis of Cook's case reveals the following: 1) John Cook was not part of the investigative team on the Lake Juliette murders ... 2) Cook asked to see his father at the same time he requested an attorney; 3) John Cook was not directed by any law enforcement agent connected with Cook's case to speak to his son—he made the request on his own initiative; 4) John Cook's motive in speaking with his son was to urge him to cooperate in the hope of getting a plea bargain; and 5) the interview involved hugging and crying by father and son which is not typical of a police interrogation. Under these circumstances, we conclude that the trial court did not err by finding that John Cook acted as a father and not as an agent of the state when he met with his son on December 5. Further, the meeting between John Cook and his son was devoid of any trickery, deceit, or other psychological ploy. Viewed from the defendant's perspective, "we doubt that [Cook], [after requesting to see his father and] told by officers his [father] will be allowed to speak to him, would feel that he was being coerced to incriminate himself in any way." Cook, 270 Ga. at 827–28, 514 S.E.2d 657 (citations omitted).

The state court concluded that based on these facts, including the "lack of governmental coercion, [Petitioner's] December 5 statement to his father was voluntary under Miranda and Edwards. Cook, 270 Ga. at 828, 514 S.E.2d 657. This Court is reminded that when attempting to determine if the state court's decision involved an unreasonable application of federal law, it need not decide if it "would have reached the same result as the state court if [it] had been deciding the issue in the fist instance." Wright v. Sec'y for the Dep't of Corr., 278 F.3d 1245, 1256 (11th Cir.2002). Given the deference that this Court must give the state court decision, the Court cannot find that the Georgia Supreme Court's application of Miranda and its progeny was "objectively unreasonable." Williams, 529 U.S. at 409. Therefore, the Court must deny relief on this claim.

III. CONCLUSION

Based on the above, the Court DENIES Petitioner's Petition for Writ of Habeas Corpus By a Person in State Custody.

Source: http://murderpedia.org/male.C/c1/cook-andrew-allen.htm