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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-749

SONNY BOY OATS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIFTH JUDICIAL CIRCUIT,
IN AND FOR MARION COUNTY, FLORIDA

SUPPLEMENTAL REPLY BRIEF OF APPELLANT

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On July 2, 2014, this Court *sua sponte* ordered supplemental briefing "to address the impact, if any, of the U.S. Supreme Court's decision in *Hall v. Florida*, 134 S. Ct. 1986 (2014), on the issues in this case." Mr. Oats submitted a Supplemental Initial Brief, as directed,[1] discussing the way in which *Hall* applies to and changes the analysis in this case.[2]

The State's Supplemental Answer Brief disputes the holding of the U.S.

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[1] In its Supplemental Answer Brief, the State protests that "Oats uses *Hall* as a sounding board to perpetuate further argument on the merits of his intellectual disability claim" (Sup. A.B. at 11). Mr. Oats understood that this Court, in asking for the supplemental briefing, wanted him to address *Hall* and argue the merits of his appeal in light of that decision, which is what he did.

[2] In its Supplemental Answer Brief, the State misrepresents Mr. Oats's position on these essential questions by stating that Mr. Oats "admits that *Hall* is inapplicable" because he argues that "'. . . he should win without any reference to *Hall* . . .'" (Sup. A.B. at 6). Mr. Oats does not "admit[]" that *Hall* is inapplicable by noting that he should have won before *Hall* and should still win after *Hall*. Whether or not Hall changes the outcome of this case is a separate issue from whether it applies to this case and whether it is precedent which provides additional support to previously made arguments that the death sentence stands in violation of the Eighth Amendment. Mr. Oats argues simply that *Hall* provides new life and energy to arguments that previously were viewed as more peripheral to this case but nevertheless were argued in circuit court and in prior briefing in this Court. For example, Mr. Oats argued in circuit court that the clear and convincing burden of proof violated the Eighth Amendment, particularly as to the third prong of the intellectual disability definition. The argument was set forth in the Initial Brief filed on March 19, 2013, as Argument V (I.B. at 98). If Mr. Oats were to re-write his Initial Brief now, after the decision in *Hall*, the argument would occupy a much more prominent position in the brief and would rely heavily on *Hall*, along with the logic of *Hill v. State*, 473 So. 2d 1253, 1258-59 (Fla. 1985), and *Mason v. State*, 489 So. 2d 734, 737 (Fla. 1986).

Supreme Court in *Hall*. According to the State, "*Hall* did not invalidate the Florida statute or court rules regarding intellectual disability, it held only that Florida's standard had been unconstitutionally applied *on the facts of that particular case*." (Sup. A.B. at 5-6) (emphasis in original). However, the scope of the majority opinion was much broader than the State acknowledges:

> No legitimate penological purpose is served by executing a person with intellectual disability. **To do so contravenes the Eighth Amendment, for to impose the harshest of punishments on an intellectually disabled person violates his or her inherent dignity as a human being.** "[P]unishment is justified under one or more of three principal rationales: rehabilitation, deterrence, and retribution." . . . As for deterrence, those with intellectual disability are, by reason of their condition, likely unable to make the calculated judgments that are the premise for the deterrence rationale. They have a "diminished ability" to "process information, to learn from experience, to engage in logical reasoning, or to control impulses . . . [which] make[s] it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information." Retributive values are also ill-served by executing those with intellectual disability. The diminished capacity of the intellectually disabled lessens moral culpability and hence the retributive value of the punishment. *See id.*, at 319, 122 S. Ct. 2242 ("If the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution").
>
> A further reason for not imposing the death penalty on a person who is intellectually disabled is to protect the integrity of the trial process. **These persons face "a special risk of wrongful execution" because they are**

> **more likely to give false confessions, are often poor witnesses, and are less able to give meaningful assistance to their counsel.**

Hall, 134 S. Ct. at 1992-93 (parenthetical material in original) (citations omitted) (emphasis added).[3] If that passage in *Hall* is not enough to establish that the State has misread the decision too narrowly, *Hall* goes further:

> **The question this case presents is how intellectual disability must be defined in order to implement these principles and the holding of *Atkins*.** To determine if Florida's cutoff rule is valid, it is proper to consider the psychiatric and professional studies that elaborate on the purpose and meaning of IQ scores to determine how the scores relate to the holding of *Atkins*. This in turn leads to a better understanding of how legislative policies of

[3] In explaining the scope of the Eighth Amendment prohibition against the execution of intellectually disabled and its rationale, it is clear that the majority in *Hall* holds that execution of one who is intellectually disabled violates the Eighth Amendment, in part due to "a special risk of wrongful execution." Of course, requiring the intellectually disabled to present clear and convincing evidence of onset before the age of 18 means that those who are intellectually disabled, and due to their disability already exposed to "a special risk of wrongful execution," must bear an additional risk of being wrongfully executed, particularly where the passage of time has resulted in the loss of the necessary evidence of the onset before the age of 18. *See Hill v. State*, 473 So.2d at 1258-59 ("The question remains whether petitioner's due process rights would be adequately protected by remanding the case now for a psychiatric examination aimed at establishing whether petitioner was in fact competent to stand trial in 1969. Given the inherent difficulties of such a *nunc pro tunc* determination under the most favorable circumstances, *see Pate v. Robinson*, 383 U.S., at 386-87; *Dusky v. United States*, 362 U.S., at 403, we cannot conclude that such a procedure would be adequate here."); *Mason v. State*, 498 So.2d at 737 ("Should the trial court find, for whatever reason, that an evaluation of Mason's competency at the time of the original trial cannot be conducted in such a manner as to assure Mason due process of law, the court must so rule and grant a new trial.").

> various States, and the holdings of state courts, implement the *Atkins* rule. That understanding informs our determination whether there is a consensus that instructs how to decide the specific issue presented here.

Id. at 1993 (emphasis added). Clearly, much more was at issue in *Hall* than whether "Florida's standard had been unconstitutionally applied *on the facts of that particular case*," (Sup. A.B. at 6) (emphasis in original). Indeed, the majority in *Hall* found that this Court's statutory construction of § 921.137(1) adopted in *Cherry v. State*, 959 So. 2d 702 (Fla. 2007), and applicable to all Florida cases, was unconstitutional, recognizing a "consensus that our society does not regard this strict cutoff as proper or humane." *Hall*, 134 S. Ct. at 1998. The majority in *Hall* was explicit as to the nature and scope of its ruling: "**In this Court's independent judgment, the Florida statute, as interpreted by its courts, is unconstitutional**." *Id*. at 2000. In its penultimate paragraph, the majority wrote:

> The death penalty is the gravest sentence our society may impose. **Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution. Florida's law contravenes our Nation's commitment to dignity and its duty to teach human decency as the mark of a civilized world.** The States are laboratories for experimentation, but **those experiments may not deny the basic dignity the Constitution protects**.

Id. at 2001 (emphasis added). In light of these statements, the State's position that *Hall* is somehow limited to its facts and inapplicable beyond that case is an

astounding misrepresentation of the majority opinion in *Hall v. Florida*.[4]

The State mistakes the clear language of the majority opinion in *Hall* when it disputes whether Mr. Oats can even cite *Hall* as providing further support for why his execution would violate the Eighth Amendment. The State asserts:

> First, *Hall* does not apply to Oats's case. *Hall* did not create a new constitutional right. *Atkins* created the constitutional right. *Hall* is an application of *Atkins* to the particular facts of Hall's case. 134 S. Ct. at 1990. *Hall* does not provide Oats with a new substantive claim. *Hall* did not invalidate the Florida statute or court rules regarding intellectual disability, it held only that Florida's standard had been unconstitutionally applied *on the facts of that particular case*.

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[4] The State also argues in its Summary of the Argument that "*Hall* did not change the burden of proof required for Oats to establish his claim; in fact, *Hall* does not discuss the burden of proof at all (Sup. A.B. at 2). This argument ignores the entire reasoning of the decision in *Hall*, and in particular, the following statements of Eighth Amendment law: "*Atkins* did not give the States unfettered discretion to define the full scope of the constitutional protection," *id*. at 1998, "[p]ersons facing that most severe sanction **must have a fair opportunity to show that the Constitution prohibits their execution**," *id*. at 2001 (emphasis added).

Imposing a clear and convincing burden of proof on a capital defendant from an impoverished background, requiring him to produce documents and records at an evidentiary hearing in 2010-11 from before the defendant turned eighteen in 1975 does not accord "a fair opportunity" within the meaning of *Hall*. Impoverished children generally, and certainly in the 1960s and 1970s, did not and do not receive much, if any, mental health evaluation beyond a Slosson IQ test or some equivalent exam given by a public school for course placement purposes. *Hall v. Florida* absolutely calls the burden of proof under Florida law (certainly as to the third prong) into question because it does not accord those with "a special risk of wrongful execution" with "a fair opportunity to show that the Constitution prohibits their execution. *See Hill v. State*, 473 So. 2d at 1258-59; *Mason v. State*, 489 So. 2d at 737.

(Sup. A.B. at 5-6) (emphasis in original). Implicit in this misreading of *Hall* seems to be an argument that *Hall* cannot be given retroactive effect and considered in postconviction proceedings under the standard articulated in *Witt v. State*, 387 So. 2d 922 (Fla. 1980). That the State makes an implicit argument that *Hall* is not retroactive rather than to explicitly argue within the construct of *Witt* is telling.[5] It seems to be an effort to keep the ruling of *Hall* under the radar in the hopes of not drawing fire. However, *Hall* clearly meets the *Witt* standard.[6]

First, under *Witt v. State*, "changes of law which place beyond the authority

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[5] For instance, the State contends that "*Hall* does not provide Oats with a new substantive claim" (Sup. AB. at 5). That may sound damning, but it is not the right legal inquiry. It is simply a meaningless and conclusory assertion. *Witt* does not require the creation of a new claim. *See Downs v. Dugger*, 514 So. 2d 1069 (Fla. 1987), applying *Hitchcock v. Dugger*, 481 U.S. 393 (1987), retroactively. An individual like Oats with a constitutional claim pending before this Court, based on a previously created right that is fundamentally altered by a new precedent can and must receive the benefit of that precedent under *Witt*.

[6] Again, as stated in his Supplemental Initial Brief, Mr. Oats's believes and has argued that he should prevail on the basis of his arguments in his Initial and Reply Briefs which were filed before the U.S. Supreme Court even granted certiorari review in *Hall*. It is still Mr. Oats's position that he should prevail in this appeal even without consideration of the decision in *Hall*. But, Mr. Oats also believes and argues that *Hall* provides additional support for the arguments he previously advanced, particularly that the clear and convincing burden of proof as to the third prong violates the Eighth Amendment. It is for that reason that he feels compelled to address the State's argument that *Hall*, a decision arising from collateral proceedings in a case in which the conviction became final in 1981, is not retroactive, even though Mr. Hall gets the benefit of the decision as to whether he can receive a death sentence for a 1978 crime.

of the state the power to regulate certain conduct or impose certain penalties" are retroactive *Id*. at 929. And presumably, the State does not contest that rule when asserting: "*Atkins* created the constitutional right." (Sup. A.B. at 5). Clearly, the State seeks to draw a line between the retroactivity of *Atkins v. Virginia*, 536 U.S. 304 (2002), and *Hall*—a line that the majority in *Hall* did not draw when it wrote: "**But *Atkins* did not give the States unfettered discretion to define the full scope of the constitutional protection**." *Hall*, 134 S. Ct. at 1998 (emphasis added). Accordingly, *Hall* more fully "define[d] the [] scope of the constitutional protection," *id.*, generally and rudimentarily defined first in *Atkins*. Under *Witt v. State*, both *Atkins* and *Hall* must apply retroactively.

Alternatively, under *Witt v. State*, it can be argued that *Hall* is to *Atkins* what *Hitchcock v. Dugger*, 481 U.S. 393 (1987), was to *Lockett v. Ohio*, 438 U.S. 586 (1978).[7] In both *Hall* and *Hitchcock*, the U.S. Supreme Court granted certiorari review in collateral proceedings and found that Florida capital law did not comport with the Eighth Amendment jurisprudence established over a decade earlier in *Atkins* and *Lockett*, respectively. This Court in *Downs v. Dugger*, 514 So. 2d 1069 (Fla. 1987), recognized that *Hitchcock* applied retroactively, as it corrected Florida's misapplication of *Lockett*, and was thus cognizable in collateral

[7] While *Hall* is retroactively applicable as placing beyond the authority of the State the power to execute certain individuals, Mr. Oats includes this alternative retroactivity argument for completeness.

proceedings.

Moreover, to not apply *Hall* retroactively and deny Mr. Oats the ability to rely upon that decision, as an expansion of the right recognized in *Atkins* and curtailment of the State's discretion to statutorily define the right, would violate Mr. Oats's right to equal protection and due process under the Fourteenth Amendment. Mr. Hall was convicted for a crime occurring in 1978. His conviction was affirmed on appeal and became final in 1981. *See Hall v. State*, 403 So. 2d 1319 (Fla. 1981). While his death sentence was subsequently vacated in collateral proceedings, a new penalty phase ordered and another death sentence imposed, his conviction for a 1978 crime has been final and intact since 1981. It is the sentence for that 1978 crime that was at issue in *Hall*. Mr. Oats was convicted for a crime occurring on December 20, 1979. The trial occurred in 1981. His conviction was affirmed in 1984, although his sentence was vacated at that time. *Oats v. State*, 446 So. 2d 90 (Fla. 1984). A death sentence was re-imposed on remand and subsequently affirmed. *Oats v. State*, 472 So. 2d 1143 (Fla. 1985). However, Mr. Oats's conviction has remained final and intact since 1984. There can be no valid basis for giving Mr. Hall the benefit of the ruling in *Hall* as to his death eligibility for the 1978 crime for which he was convicted in 1981, while denying Mr. Oats the ruling in *Hall*, as additional authority in support of his arguments that the Eighth Amendment precludes his execution for his 1979 crime for which he was

convicted in 1984. Indeed, allowing Mr. Hall the benefit of *Hall*, while precluding Mr. Oats from even citing it in his arguments would be arbitrary and constitute a violation of *Furman v. Georgia*, 408 U.S. 238 (1972).

The State argues that "*Hall* did not require state legislatures and judiciaries to surrender statutory enactment and interpretation to the medical community" (Sup. A.B. at 7). While the State is correct that *Hall* did not require surrender to the medical community, *Hall* did require surrender to the Eighth Amendment, explaining that "*Atkins* did not give the States unfettered discretion to define the full scope of the constitutional protection." *Hall*, 134 S. Ct. at 1998. In fact, the majority in *Hall* wrote: "The clinical definitions of intellectual disability, which take into account that IQ scores represent a range, not a fixed number, were a fundamental premise of *Atkins*." *Id*. at 1999. Simply put, the states are not free to ignore the medical community's clinical definition of intellectual disability, which was the underlying fundamental premise of *Atkins*. While "the legal determination of intellectual disability is distinct from a medical diagnosis," *Hall* requires that the legal determination is to be "informed by the medical community's diagnostic framework." *Id*. at 2000. "By failing to take into account the standard error of measurement, Florida's law not only contradicts the test's own design but also bars an essential part of a sentencing court's inquiry into adaptive functioning." *Id*. at 2001.

The State is correct that "*Hall* did not strip this Court of its judicial function" and "[s]tatutory construction remains central to this Court's role in applying the facts of a case to the law" (Sup. A.B. at 8).[8] But in *Hall*, the U.S. Supreme Court did strike down this Court's statutory construction adopted in *Cherry v. State* as violative of the Eighth Amendment. The U.S. Supreme Court found that this Court's construction of the statute did not comport with the Eighth Amendment by depriving a "[p]erson facing that most severe sanction [of] a fair opportunity show that the Constitution prohibits their execution." *Hall*, 134 S. Ct. at 2001.

While *Hall* acknowledged that science does not "dictate," this Court's decision in *Cherry* was wrong for departing too far from the science upon which *Atkins* was premised. Clearly as to ID, the Eighth Amendment under *Hall* requires the law to be tethered to a degree to the clinical definition fundamentally underlying *Atkins*. Science does not "dictate," but has to inform the legal standards. Mr. Oats submits that the problem in *Hall* was that *Cherry* ignored the science upon which IQ testing was and is premised. The SEM used by the medical

[8] The State seems to want to overlook the fact that the judiciary's function is not statutory construction alone. It falls to the judiciary to ensure that statutes are constitutional. Thus, while "[s]tatutory construction remains central to this Court's role," this Court must also review statutes for compliance with the Eighth Amendment as it has been construed by the U.S. Supreme Court in *Hall*.

community was and is a scientifically recognized fact.[9] Excluding it from consideration as to whether a capital defendant's intellectual disability precludes a death sentence without some logical basis premised upon reason was unconstitutional. Mr. Oats submits that it was the departure from science with no basis in reason that conflicted with the fundamental premise underlying *Atkins* that was found unconstitutional in *Hall.*[10] Here, requiring a greater quantum of evidence for the early-onset prong than the medical community uses is not founded on reason and ignores the difficulties faced by capital defendants from impoverished backgrounds in producing the requisite quantum of evidence from, in this case, forty years in the past. Such a requirement cannot be used, under *Hall v.*

[9] A legal test for intellectual disability which ignores the scientific fact recognized in the SEM is like a building code that ignores the existence of gravity.

[10] Perhaps there are situations where *Atkins* tests breaking from medical diagnosis of ID would be reasonable. For instance, early onset is required to diagnose ID medically, but since it has no bearing on the *Atkins* purposes of ensuring a degree of understanding by an individual at the time of their crime, in aiding their attorney in their representation, and at the time their sentence is carried out, it may be seen as a place where the *Atkins* test could omit the third prong from medical diagnosis without committing *Hall* error. Perhaps the concurrent requirement between IQ and maladaptive functioning could be altered in the *Atkins* environment to account for the fact that death row is a difficult place to measure adaptive functioning. But requiring a higher degree of evidence of early onset in the *Atkins* context than the medical community requires when such evidence has nothing to do with a defendant's moral culpability and more to do with the happenstance of someone else's recordkeeping or ability to recall the defendant's mental impairments before the age of eighteen amounts to the same constitutional error that the majority in *Hall* found infected *Cherry v. State*.

Florida, to deny Mr. Oats or any other capital defendant "a fair opportunity to show that the Constitution prohibits their execution." *Id.* at 2001.[11]

The State characterizes as "grandiose" the language used by Mr. Oats to highlight the State's admission in a closing memorandum filed June 15, 1990 (Sup. A.B. at 4), that "[u]nder the DSM-III criteria, the defendant falls in the mildly mentally retarded area. No doubt about that." (PCR1. 3248). The State asserts that fact to be unimportant, because of post-*Atkins* law stating that pre-*Atkins*

[11] Certainly, the third prong of the intellectual disability definition is qualitatively different from the other two prongs in that it requires consideration of historical information that may or may not be available. As Mr. Oats explained in his Initial Brief in early 2013, the third prong was used not to measure the mental impairment in any way, but only to distinguish what historically was known as mental retardation and viewed as impaired development into adulthood from brain dysfunction which had an onset after the age of eighteen and was thus not developmental in nature. For the medical community, the third prong merely requires some indication that the impairment began before the age of eighteen. This was because it was clearly a backward looking question that concerned a time in the patient's life when no one either cared about a child's intellectual functioning or anyone who did may have wanted to avoid stigmatizing a child with a lifetime label. Because of its limited purpose and the difficulty of definitively being established years later, imposing a clear and convincing burden on the third prong impinges upon a capital defendant's "fair opportunity to show that the Constitution prohibits [his or her] execution" to a greater degree than imposing the burden as to the other two prongs. To some extent, the third prong is the canary in the coal mine: its only purpose is to allow intellectually disabled individuals to be executed in violation of the Eighth Amendment because of inadequate documentation by those who made the defendant endure an impoverished, abusive or neglectful childhood. Indeed, the third prong reflects more on the culpability of the capital defendant's caregivers during his or her childhood than it does on the capital defendant's own moral culpability. The creation and preservation of clear and convincing evidence of onset before the age of eighteen was never in the capital defendant's control while he or she was a juvenile.

adjudications of ID are not binding law-of-the-case after *Atkins*, and because Justice Pariente, in her concurrence in *Hall*, did not hold it against the State that it had not *contested* ID in *Hall* before *Atkins* (Sup. A.B. at 4-5). But whether adjudications are binding is a separate question from whether admissions should be considered. And, the State overlooks the context here. The 1990 evidentiary hearing[12] was twenty years before the evidentiary hearing conducted in 2010-11 and twenty years closer in time to Mr. Oats's eighteenth birthday. After the 1990 evidentiary hearing had concluded, the State acknowledged in its "Closing Memorandum" that the DSM-III criteria for mental retardation were met, including the third prong—onset before the age of eighteen.[13] And, it is the third prong that is at issue in this appeal and was the basis of the circuit court's denial of Rule 3.851

[12] In 1990, an evidentiary hearing was conducted, including a competency-to-stand-trial issue and a penalty-phase-ineffectiveness issue that included the failure to obtain the assistance of a mental health professional. Mr. Oats presented three mental health experts who evaluated him before the evidentiary hearing and three mental health experts who saw Mr. Oats at the time of trial. The State presented testimony from two mental health experts.

[13] After acknowledging that the DSM-III criteria were met, the State did argue that the "DSM-III is not infallible" (PCR1. 3248). The State argued that Mr. Oats met the criteria because of a "[l]ack of formal education, depressed economic status and a poor fund of general knowledge also lower I.Q. scores" (PCR1. 3247). The State took issue with whether the DSM-III criteria truly reflected street smarts. The State's focus was quite clearly on the adaptive functioning prong as adequately measuring Mr. Oats's culpability. In fact, the cross examination of Mr. Oats's experts reflected the State's argument in this regard. But the State did not challenge and did not question any of the experts about the third prong, the very prong that is at issue in this appeal.

relief. The fact that in 1990, the State did not challenge the presence of the third prong, did not pursue such a challenge in the questioning of Mr. Oats's witnesses, or cross Mr. Oats's family members who described mental dysfunction well before the age of eighteen in their testimony, is important evidence to be considered now. While *Atkins* had yet to be decided, evidence of the third prong was presented and went unchallenged. The State even conceded it was established as part of the DSM-III criteria. The State's conduct in this regard must constitute relevant evidence since, with the passage of twenty years, evidence of the third prong has been made harder to find. Indeed, it almost looks like sandbagging. A failure to put Mr. Hall's ID to strong adversarial testing prior to *Atkins* is one thing, but here, the salient fact is that in 1990 the State presented no evidence and raised no argument challenging the third prong particularly. This Court should consider that in determining whether the third prong is met.

In his Supplemental Initial Brief, Mr. Oats argued that Dr. McClaren improperly ignored the standards of the medical community in not using the DSM-IV criteria, which *Hall* makes clearly erroneous. Instead, without legal expertise, he gave opinion testimony premised upon his reading the statute and applying its burden of proof that there was not compelling evidence of the third prong (Sup. I.B. at 22). The State contends that "Dr. McClaren did not depart from the standard of the profession in rendering his opinion. He rendered his opinion based on the

DSM and then bridged his findings into the statutory standard" (Sup. A.B. at 10). However, the State provides no citation to the record as supporting this assertion. This is because Dr. McClaren acknowledged during his discussion of the adaptive functioning prong that he did not use the DSM-IV criteria, which this Court cited in *Jones v. State*, 966 So. 2d 319, 326-27 (Fla. 2007), when evaluating Mr. Oats's adaptive functioning. Instead, he used his reading of the copy of the statutory language the State provided him to conclude that though the case was a close one, he could not conclude that the third prong had been sufficiently demonstrated.[12]

CONCLUSION

For reasons described above and in prior briefing, Mr. Oats respectfully requests that this Court apply *Hall v. Florida* to his *Atkins* claim and grant relief.

Respectfully submitted:

[12] The State cites *Stewart v. State*, 37 So. 3d 243 (Fla. 2010), and *Lynch v. State*, 841 So. 2d 362 (Fla. 2003), as somehow validating Dr. McClaren's failure to employ the DSM-IV criteria in his evaluation, and his use instead of his interpretation of the statutory language and its burden of proof. However, these cases both involve experts who evaluated capital defendants in anticipation of penalty phase proceedings. The experts in both cases used the applicable DSM to diagnose their respective defendants. In *Stewart*, PTSD, trauma from an abusive childhood and a history of substance abuse were identified. The experts in *Stewart* testified that the substance abuse and childhood trauma impaired the defendant's capacity at the time of the crime. In *Lynch*, the expert diagnosed a "schizoaffective disorder, a condition which is a combination of schizophrenia and a mood disorder." *Lynch*, 841 So. 2d at 367. The expert then opined that the defendant's psychotic process substantially impaired his capacity to conform his conduct to the requirements of the law. In neither case did the experts choose not to employ the standards of their profession.

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CERTIFICATE OF FONT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that counsel has furnished true and correct copies of the foregoing has been served by email to CapApp@MyFloridaLegal.com which is the primary email address given for opposing counsel this 7th day of August, 2014.

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