

## CLAYTON LOCKETT

**“IN REALITY I AM PROBABLY THE MOST DANGEROUS TYPE OF CRIMINAL” . . . “CAUSE IM AN ASSASSIN - POINT BLANK!”<sup>1</sup>**

Letters written by Clayton Lockett, a self-acclaimed assassin (App. 9-10, 30).

### I. Procedural History

The evidence in this case shows that on June 3, 1999, Clayton Lockett kidnapped, beat and shot Stephanie Neiman. He then callously buried her in a shallow grave while she was still breathing and fighting for her life. The Oklahoma Court of Criminal Appeals (“OCCA”) summarized the evidence presented at the defendant’s jury trial as follows:

At around 10:30 p.m. on June 3, 1999, Bobby Bornt was asleep on the couch at his house in Perry, Oklahoma, when his front door was kicked in. Three men, Appellant [Lockett], Shawn Mathis and Alfonzo Lockett, entered his house and immediately started beating and kicking him. Bornt recognized Appellant because Appellant had recently covered a tattoo for him. Appellant was carrying a shotgun which he used to hit Bornt. After the beating, Bornt's attackers used duct tape to secure his hands behind his back and they gagged him and left him on the couch while they ransacked the house looking for drugs. As Bornt lay restrained on the couch his friend, Summer Hair, approached the open door. She was pulled inside, hit in the face and thrown against a wall. One of the men put a gun to her head and ordered her to call to her friend, Stephanie Neiman, who was outside sitting in her pickup. When Neiman came inside, they hit her several times to get the keys to her pickup and the code to disarm the alarm on her pickup.

The men put all three victims in the bedroom where Bornt's nine-month old son, Sam, had been sleeping. Alfonzo Lockett came into the bedroom and got Hair. He took her into

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<sup>1</sup>Quotes in this brief are printed as written by the authors. No grammatical or spelling corrections have been made.

the bathroom where he made her perform oral sodomy on him. He then took her into Bornt's bedroom where he told her to get undressed and he raped her. When he was finished, he left her there and Appellant came into the bedroom. He raped her vaginally and anally and he made her perform oral sodomy on him. When he was finished, he told her to get dressed and she went back into Sam's bedroom with the others. Alfonzo Lockett came into the bedroom and used duct tape to secure Hair's and Neiman's hands behind their backs. He also put tape across their mouths.

Appellant instructed Mathis to look in the garage for a shovel. When he returned with a shovel, the victims were loaded into Bornt's and Neiman's pickups. Bornt and his son were placed in his pickup with Appellant. Hair and Neiman were placed in Neiman's pickup with Mathis and Alfonzo Lockett. They took off driving with Appellant in the lead. They left Perry and drove to a rural area in Kay County. Appellant stopped on a country road where he got out of the pickup he was driving and went over to Neiman's pickup. He made Hair get out and go with him to a ditch where he raped her and forced her to perform oral sex on him. When he was finished, he took her back to Bornt's pickup. While Hair was sitting in the pickup, Mathis got her and took her back to Neiman's pickup where he made her perform oral sex on him. He grabbed her head and said, "In order for you to live, this is what you have got to do."

While stopped on the country road, Appellant told Mathis to get the shovel and start digging. When Mathis was digging in the ditch, Bornt heard Appellant say, "Someone has got to go." Neiman was taken to the hole dug by Mathis and Appellant shot her. The gun jammed and Appellant came back up to the pickup to fix it. While he was doing this, Bornt could hear Neiman's muffled screams. When the gun was fixed, Appellant went back down to the ditch and shot Neiman again. While Mathis buried Neiman's body, Appellant and Alfonzo Lockett warned Bornt and Hair that if they told anyone they would be killed too. They then drove both pickups to another location where they left Neiman's pickup. All of them rode back to Bornt's house in his pickup. Appellant, Mathis and Alfonzo Lockett dropped off

Bornt, his son and Hair at Bornt's house and they left in Bornt's pickup.

The following day, Bornt and Hair told the Perry police what had happened. Neiman's pickup and her body were recovered and Appellant, Mathis and Alfonzo Lockett were subsequently arrested. Appellant was interviewed by the police three times. The first time he terminated the interview and asked for an attorney. He later reinitiated the interview and although he denied shooting Neiman during the second interview, he confessed to having killed her in a third interview.

*Lockett*, 53 P.3d 418, 421-422 (Okla. Crim. App. 2002).

Based on this evidence, Lockett was tried and convicted of First Degree Murder in the District Court of Noble County, State of Oklahoma, Case No. CF-1999-53. At trial, the jury found the existence of five aggravating circumstances: 1) Lockett had previously been convicted of felonies involving the use or threat of violence; 2) Lockett knowingly created a great risk of death to more than one person; 3) the murder was especially heinous, atrocious or cruel; 4) the murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution; and 5) there exists a probability that Lockett would commit criminal acts of violence that would constitute a continuing threat to society (O.R. 932). *See* Okla. Stat. tit. 21, § 701.12 (1), (2), (3), (5) & (7). Lockett was sentenced to death (O.R. 933). Lockett was also found guilty of one count of Conspiracy, one count of First Degree Burglary; three counts of Assault With a Dangerous Weapon, three counts of Forcible Oral Sodomy; four counts of First Degree Rape, four counts of First Degree Kidnapping, two counts of Robbery by Force and Fear, all after former conviction of two or more felonies

(O.R. 817-818). The jury sentenced Lockett to 2,285 years and 90 days imprisonment for these non-capital crimes.

The OCCA denied appellate relief on direct appeal. *Lockett v. State*, 53 P.3d 418 (Okla. Crim. App. 2002). The United States Supreme Court thereafter denied certiorari review. *Lockett v. Oklahoma*, 538 U.S. 982 (2003). Lockett's state post-conviction appeal was denied on October 22, 2002. *Lockett v. State*, No. PCD-2002-0631, slip op. (Okla. Crim. App. Oct. 22, 2002) (unpublished). On December 9, 2003, Lockett filed in federal district court his § 2254 petition that is the subject of this appeal. On January 19, 2011, the district court denied federal habeas relief.

Lockett appealed the denial of federal habeas relief to the United States Court of Appeals for the Tenth Circuit. The Tenth Circuit affirmed the decision of the federal district court. *See Lockett v. Trammell*, 711 F.3d 1218 (10th Cir. 2013). Petitioner's request for rehearing and rehearing *en banc* was thereafter denied on May 28, 2013. *See Lockett v. Trammell*, No. 11-6040, *Order* (10<sup>th</sup> Cir. May 28, 2013). The United States Supreme Court denied certiorari review on January 13, 2014. *Lockett v. Trammell*, \_\_ S. Ct. \_\_, 2014 WL 102620 (2014).

Recognizing that Lockett had exhausted all state and federal appeals, the Oklahoma Court of Criminal Appeals set Lockett's execution date for March 20, 2014. Pursuant to Art. VI, § 10 of the Oklahoma Constitution, Lockett now seeks executive clemency from the Governor of the State of Oklahoma.

## II. Statement of the Facts

### A. The Murder.

Bobby Bornt met Lockett through a mutual friend, Ramon Gissandaner (Tr. 1510). Lockett charged Bobby twenty dollars to cover an old tattoo. Lockett also claimed he gave Bobby a twenty dollar bag of marijuana, but no evidence supported this claim. Bobby gave Gissandaner the twenty dollars to repay Lockett for his work (Tr. 1512-1513). About a week later, Lockett, together with his cousin Alfonzo Lockett<sup>2</sup> and friend Shawn Mathis, broke into Bobby's home.<sup>3</sup> Lockett held a shotgun and hit Bobby with it - he continued beating Bobby for approximately fifteen minutes (Tr. 1519; App. 5). Bobby was beaten and bound while his nine month son cried in an adjacent room. As Lockett described it, Bobby was bleeding profusely (App. 111)<sup>4</sup>. Lockett proceeded to bind Bobby with duct tape, taping his feet together, his hands behind his back and stuffed a rag in his mouth (Tr. 1522). Lockett moved Bobby off of the couch and told Bobby he was bleeding on Lockett's couch (Tr. 1533). Bobby described Lockett as "in charge" and that Lockett directed both Alfonzo and Mathis

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<sup>2</sup>Because Clayton Lockett and Alfonzo Lockett share the same surname, Alfonzo Lockett will be referred to as Alfonzo to avoid confusion.

<sup>3</sup>During Lockett's statement, he told police he intended on stealing Bobby's belongings and pawning them to account for the money Bobby owed him (App. 111). However, in a letter written after the murder, Lockett stated his intent was to kill Bobby (App. 29).

<sup>4</sup>Portions of Lockett's confession admitted at trial are attached to the appendix for this Board's review. Due to the length of the confession and the page limitations imposed by this Board, the State has selected portions of the statement where Lockett describes the events. As noted by the Tenth Circuit, testimony from Summer and Bobby do not support certain portions of Lockett's confession wherein he claims to have helped the victims - for example, he claims he held Sam to comfort him at times during the ordeal and that he massaged Bobby's legs. *Lockett*, 711 F.3d n.1.

in their actions (Tr. 1582). Summer Hair and Stephanie Neiman happened upon the crime scene in an effort to persuade Bobby to attend a party (Tr. 1664). As described above, Summer initially entered the house and was immediately attacked and beaten (Tr. 1672). She was forced to call Stephanie into the home and Stephanie was also beaten (Tr. 1682-1688). Summer was initially made to perform oral sex on Alfonzo and vaginally raped by Alfonzo (Tr. 1696-1701). After Summer was raped by Alfonzo, Lockett raped her vaginally, anally and ultimately forced Summer to perform oral sex on him (Tr. 1702 - 1705). After being raped by Lockett, Summer was taken into a room with Bobby, Stephanie and Sam (Bobby's son) (Tr. 1706). Summer and Stephanie were restrained with duct tape and eventually all four victims were taken from Bobby's house (Tr. 1712-1717). Bobby, Stephanie and Summer were told they were all three going to die, but that Sam would be dropped off at a shelter (Tr. 1734-1735, 1793). Before leaving Bobby's residence, Lockett forced Bobby to tell him where he kept a shovel, telling Bobby "fuck it Bobby - you gonna die anyway" (App. 111; App. 5).

Lockett freely admitted that his original plan was to take Bobby, Summer and Stephanie to the country and kill all three of them (App. 111). He claimed he did not plan on killing Sam. However, Lockett did not drop Sam anywhere and all four were taken to a remote location in the country (App. 2). When they arrived at the murder scene, Lockett took Summer from the truck and had her undress in a ditch (Tr. 1722). He vaginally raped

Summer and forced her to perform oral sex on him again (Tr. 1724-1725)<sup>5</sup>. Summer, Bobby and Sam were put in Bobby's truck and Stephanie was standing out in front of the truck (Tr. 1725-1726). According to Lockett, Bobby and Summer agreed not to report the crimes he had committed against them that evening (App. 111). Lockett stated that he decided to kill Stephanie because she would not agree to keep quiet (App. 111). Lockett kept Stephanie restrained and eventually made her walk down to a hole that Mathis was digging so they could bury her. Stephanie stood for approximately twenty minutes close to the area Mathis was digging (App. 111). Mathis asked Lockett if the hole was big enough and Lockett responded "what you gonna bury in there, a dog?" (App. 111). Lockett was holding a shotgun (Tr. 1731). This was being said and done in front of Stephanie (App. 111).

Summer saw Stephanie standing down in the ditch and heard a gunshot (Tr. 1728, 1732). After the first shot, Lockett returned to the truck claiming the gun had jammed and Summer eventually heard a second shot (Tr. 1733). Bobby testified that Lockett was excited (Tr. 1628). Lockett told police he could hear her pleading "oh God, please please" (App. 111). Bobby recalled Lockett, Alfonzo and Mathis laughing about how tough Stephanie was (Tr. 1629). He ordered Mathis to bury her, despite the fact that Mathis informed him Stephanie was still alive (Tr. 1572; App. 3-4)<sup>6</sup>. Lockett told police he could see her

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<sup>5</sup>Summer was also made to perform oral sex on Mathis at the murder scene and Mathis told her "in order for you to live, this is what you have got to do" (Tr. 1746).

<sup>6</sup>Based on the condition of Stephanie's body and the graphic nature of the photographs taken at the medical examiner's office, the State included in the appendix only the medical examiner's diagram of the gunshot wounds that caused Stephanie's death (App. 6-7).

breathing while she was being covered in dirt (App. 111). Both Bobby and Summer were threatened that if they told anybody about the events, they too would be murdered (App. 111).

## **B. The Trial**

At trial, Lockett's guilt was not disputed. He hardly could considering he confessed in a rather cold-blooded fashion and such confession was admitted in the State's case-in-chief during guilt stage proceedings. The Tenth Circuit referred to the confession as follows:

Throughout the videotaped confession, Mr. Lockett's demeanor was relaxed and conversational. He made no statements of remorse. The federal district court described the confession as "a step-by-step account of the evening," which Mr. Lockett delivered "[w]ith clarity, detail and the absence of emotion." *Lockett*, CIV-03-734-F at 14. Mr. Lockett explained that he initially planned to kill all of his adult victims so that the police would not find out that he had violated his probation by leaving his home county. He said that he ultimately decided to kill Ms. Neiman because she said that she would tell the police about his crimes. He calmly spoke of watching his accomplices bury Ms. Neiman while she was still alive, describing her coughing while the dirt hit her face.

*Lockett*, 711 F.3d at 1224; (App. 111; Tr. 1276-77).

Co-defendant Alfonzo, voluntarily spoke to police and led police to Stephanie's body (Tr. 1319, 1340, 1926). Evidence clearly established that Lockett was the ring leader of the crime. Lockett's trial attorneys' efforts were largely focused on sentencing stage proceedings to save him from the death penalty. However, based not only on the horrendous crime he committed, the overwhelming case in aggravation and his criminal behavior before and after



the crime establishing his disregard for authority, the jury determined the appropriate punishment was death. In fact, Lockett's utter disregard for authority is something still prevalent to the present day.

### **Aggravating Circumstances**

To support its request for the death penalty, the State presented evidence of five aggravating circumstance during Lockett's sentencing stage proceeding.

**1. Lockett had previously been convicted of felonies involving the use or threat of violence.**

The State presented uncontested evidence that Lockett was a four-time convicted felon, two of which involved intimidation of state witnesses. *Lockett*, 711 F.3d at 1225-1226. Donald Chambray and Raphael Truyen both cooperated as witnesses against Lockett regarding one of the felony convictions, namely burglary (Tr. 2197; App. 17-18). Evidence established that Lockett physically assaulted Chambray and threatened Truyen that he was next (Tr. 2195-2201; App. 17-18). Truyen was sitting on his porch when Chambray approached him (Tr. 2197). Chambray had a busted eye, busted mouth and a busted nose (Tr. 2197). Chambray was holding his ribs and told Truyen that Lockett said to let Truyen know he was next (Tr. 2198). Lockett proceeded to drive by Truyen's house and yelled to Truyen that he was lucky he was at the house and that Lockett was going to get him (Tr. 2198; App. 17-18). Lockett's attorney acknowledged the jury that Lockett threatened to kill Chambray and Truyen (Tr. 2176). The facts of that actual conviction established Lockett stole nine firearms and three hunting knives during a burglary (Tr. 2191). The evidence

overwhelming established Lockett was previously convicted of a felony that involved use and the threat of violence to a person.

**2. Lockett knowingly created a great risk of death to more than one person.**

The State also presented overwhelming evidence that Lockett knowingly created a great risk of death to more than one person. Both surviving witnesses testified Lockett threatened to kill them (Tr. 1539, 1734-1735). Lockett himself stated that was his initial plan - the fact that he changed his mind is of no moment (App. 111). The legal requirements had already been satisfied. *See Smith v. State*, 727 P.2d 1366, 1373 (Okla. Crim. App. 1986) (this aggravating circumstance can be proven “where a defendant during the continuing course of conduct in which a murder is committed, threatens the life of another and has the apparent ability and means of taking that person’s life”).

**3. Stephanie’s murder was especially heinous, atrocious or cruel.**

Undisputed evidence established that Stephanie’s murder was especially heinous, atrocious or cruel when she was beaten, bound and driven to a remote location to die (Tr. 1531-1532, 1559-1561, 1683, 1708-1712, 1721). She was forced to watch as a grave was dug and was shot twice (1566-1571, 1731-1733). Stephanie was frightened and suffered, as evidenced by her moans and muffled screams after she was shot and laid suffering while Petitioner unjammed the shotgun so he could shoot her again (Tr. 1566-1573, 1732-1733). By Lockett’s own account, Stephanie suffered because she was buried alive. There is no doubt Stephanie's murder was especially heinous, atrocious and cruel.

4. **Stephanie's murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution.**

Overwhelming undisputed evidence established that Stephanie was murdered so that Lockett could avoid arrest or prosecution for his crimes. Of course the strongest evidence was App. 111).

5. **Petitioner is a continuing threat to society.**

Finally, evidence established that Lockett was a continuing threat to society. This was established by his repeated criminal conduct since he was a juvenile, his actions of making weapons while incarcerated and by his own statements through letters wherein he threatened the death of the surviving witnesses as well as his the two co-defendants (Tr. 2202-2207, 2212-2219, 2226-2235, 2243-2250, 2256; App. 9-16, 23-33). The district court summarized the evidence regarding Lockett's behavior while awaiting trial as follows:

Five letters were introduced (State's Exhibits 62-66). Two of the letters concern his co-defendant, Alfonzo Lockett. In the first letter, State's Exhibit 62, Petitioner tells his aunt that Alfonzo's life is in danger. Petitioner tells her that he has written his "homeboys" in the penitentiary and "they [are] waiting on him." Petitioner also states that he has "a lot guns stashed in an old house with bullets. Enough guns to start a war...." The second letter, State's Exhibit 66, is a copy of Alfonzo's statement to police. On the statement, Petitioner has written comments like "This is when he start givin it up!" and "Bullshit! That nigga aint telling tha truth. That nigga dry ass snitchin and railroading a nigga." Two of the letters, State's Exhibits 63 and 65, are written to Undersheriff Raymond Henry. In both letters, Petitioner complains about the treatment he is receiving from Undersheriff Henry's officers. In State's Exhibit 63, Petitioner tells Undersheriff Henry that he is "**probably the most dangerous type of criminal....**" In State's Exhibit 65, Petitioner

details his prior violent acts while incarcerated and tells Undersheriff Henry that he needs to be taken more seriously “because [he] aint in here for missing [S]unday school....” In the final letter, State's Exhibit 64, Petitioner discusses his gang affiliations and threatens the lives of three people, including the two surviving victims in this case. Petitioner states, “Cuzz Im a California Hoover Crip! We don't get down at all like these Hooverz from Oklahoma! Why you think so many niggaz beat cases out that way? **Cause Im an assassin—point blank!**”

Petitioner's threats to others were clearly relevant to the jury's assessment of continuing threat. Regarding the letters to Undersheriff Henry, the very implication made by Petitioner is that if Undersheriff Henry's officers do not start treating him better, Petitioner is going to retaliate (State's Exhibit 65: “I got to beg you to kill this tension ... before it escalates....”). Therefore, whether or not Petitioner committed these prior violent acts while incarcerated is a collateral issue. Even if the statements are untrue, Petitioner made them for the purpose of threatening the officers guarding him and they were therefore probative as to Petitioner's future dangerousness.

*Lockett v. Workman*, CIV-03-734-F, 2011 WL 10843368 \*33-34, *slip op.* (W.D. Okla. Jan. 19, 2011)(emphasis added).

Some of the letters were written in a manner that are indecipherable to the average person. Sergeant Mike Sharp, with the Oklahoma City Police Department's Gang Enforcement Unit, reviewed the letters and has aided this board by translating same. As outlined in his letter, Sergeant Sharp has extensive experience in investigating and arresting individuals involved in the gang lifestyle (App. 19). Lockett's intentions were to hire hits on different people, including the two surviving victims, Bobby and Summer, and to seek revenge for the ones he feels “snitched” (App. 19-22). According to Sergeant Sharp, Lockett

appeared to be, or wanted the reader to believe, he was a high ranking gang member who had the power to allocate funds, order gang members to relocate and authorize certain people be killed (App. 19).

Both Bobby and Summer have expressed they feared then and fear now retaliation for Lockett's imprisonment and impending execution (App. 102-105). As the evidence so clearly demonstrated at trial, and as will be discussed below, Lockett's behavior since he has been incarcerated for this crime, clearly indicates that Lockett is a continuing threat to society. There can be no doubt that if given the opportunity to live within prison society, Lockett will continue to make weapons out of the materials available to him. He has proven this with his behavior since his arrest for this murder. Not only did Lockett destroy county property while awaiting trial, he made several weapons, i.e. saw blades, a tattoo gun, sharpened wires, shanks made from metal window frames he destroyed (Tr. 2205-2206, 2228-2231, 2233; App. 11). Lockett was angry that a jailer had discovered his escape plan, and he planned on using the sharpened wires to kill the jailer and take his keys (Tr. 2231). Lockett refused to return shower items after he showered, including razors (Tr. 2216-2219). Lockett was found in possession of a homemade shiv by Undersheriff Raymond Henry (Tr. 2290). Upon retrieving the shiv from Lockett, Lockett told Henry "you know that I could have stuck this in your fucking heart." (Tr. 2290; App. 11(referring to exhibit 68)). However, even in the securest facility, Lockett has been able to make homemade weapons and hide them in his cell (App. 52-56, 67-70, 93-94). There can be absolutely no question

the jury's determination that Lockett is a continuing threat society, most importantly prison society, is supported by his actions.

### **Mitigation evidence**

Lockett's attorneys presented mitigation evidence through the testimony of seven witnesses. A summary by the federal district court is listed here:

In the second stage, Petitioner presented seven witnesses, five of whom gave testimony relevant to Petitioner's upbringing and mental health. Petitioner's stepmother, aunt, and uncle testified extensively about their firsthand knowledge of Petitioner's upbringing, home life, and childhood experiences. Through these witnesses, the jury was advised that Petitioner was abandoned by his mother at the age of three (Tr. XIV, 2355-56); that Petitioner's father was abusive (Tr. XIV, 2372-76, 2382-83, 2430, 2438-39, 2443-45, 2465-70, 2475); that Petitioner wet the bed and sucked his thumb as late as age 12 and was punished for it (Tr. XIV, 2357, 2363-65, 2430-31, 2473-74); that Petitioner's father was a drug user who did drugs in front of Petitioner and routinely caused Petitioner to get high by blowing marijuana smoke up his nose as early as age three (Tr. XIV, 2383, 2445, 2471); that Petitioner's father was a criminal who taught him to steal and would punish him if he got caught (Tr. XIV, 2376-80, 2436-38, 2480-81); that Petitioner's father encouraged sexual activity, walked around nude, and watched pornographic movies in front of Petitioner (Tr. XIV, 2384-87, 2428-29, 2432-33, 2472-73); that Petitioner acted out sexually as a child and may have been sexually abused by his brother (Tr. XIV, 2387-89, 2427-28, 2433); and that Petitioner idolized his father despite his apparent failings (Tr. XIV, 2369, 2470-71).

In addition to family members, two experts testified on Petitioner's behalf. Joyce Turner is a clinical social worker whose experience and training is in human behavior, i.e., "how things that happen to people impact their behavior in the roles that they fulfill as adults" (Tr. XIV, 2542-43). Ms. Turner

testified that both sexual abuse and child abuse have negative effects on children (Tr. XIV, 2543–44). “If what we are taught to expect from that primary caregiver is inconsistent abuse, if it's failure to nurture, then that's how you're going to view the world and what you're going to expect from people.” According to Ms. Turner, the ability to trust is eroded, one becomes suspicious of the real intentions of others, and anger builds up. Because it is unsafe to express anger, an abused child will “divorce [himself] from feeling” and repress the anger (Tr. XIV, 2552–53). Ms. Turner testified that the danger of built-up anger is that it will eventually flood out. Something will trigger memories of the abuse and aggression results (Tr. XIV, 2553–54).

Ms. Turner also testified about abandonment, particularly in the first three years of a child's life. Abandonment causes attachment problems and regressive behaviors, such as bed-wetting and thumb-sucking (Tr. XIV, 2545, 2555–58). Ms. Turner concluded that “[i]f a lot of extremely bad things happen to you very, very early on, that's going to have a lifelong impact. That's going to erode, you know, a healthy foundation of establishing relationships and understanding what a healthy relationship even is” (Tr. XIV, 2558).

Petitioner's other expert was Dr. John R. Smith, a psychiatrist. From his examination and evaluation of Petitioner, which included information obtained by Ms. Turner, Dr. Smith concluded that Petitioner “had been severely damaged psychologically” (Tr. XV, 2629, 2631). Dr. Smith testified that “if you are traumatized during childhood by abandonment, by neglect, by physical or sexual abuse, that will affect the way your brain evolves and develops. If you are again traumatized in adolescence, that may add another piece to the puzzle of understanding adult brain function” (Tr. XV, 2634–35). Dr. Smith related to the jury once again the emotional and physical trauma Petitioner suffered growing up. He also discussed Petitioner's incarceration in an adult correctional facility at the age of 16 and that while in prison, Petitioner was raped by three men (Tr. XV, 2637–43).

Dr. Smith concluded that Petitioner is mentally ill and suffers with symptoms of posttraumatic stress disorder. Dr. Smith described Petitioner as disconnected from his feelings, insecure, anxious, depressed, and vulnerable. He found that Petitioner sometimes distorts reality (Tr. XV, 2648-49). In addition to a mental disorder, Dr. Smith diagnosed Petitioner with a personality disorder as well. Through his upbringing, Petitioner had learned antisocial attitudes and behaviors, i.e., "toughness," "gangness," and "meanness" (Tr. XV, 2665).

Regarding Petitioner's actions on the night of the crimes, Dr. Smith believed that Petitioner's past experiences influenced his behavior.

Based on what I have told you about my understanding of Clayton, he would have found it, number one, easier to get enraged with a woman than a man because his very earliest rage and hurt was from women. And he is kind of dissociated. He has lack of empathy at times. He would have found it immensely difficult to tolerate this kind of aggression and pushing from anyone and especially in front of people that he considered his brothers. You could not possibly—I don't think he could have allowed that degree of humiliation to go on without responding to it, even if he didn't want to. Partly because of other people watching him and seeing him. And then, the rage that came up.

There is some evidence that I have heard that he tried to find a way out of this. And, in fact, I guess, did allow two of the potential victims to go free. He was touched, in fact, in my opinion, primarily by their quickness and willingness to agree, we are not going to tell anybody, but he was also touched by them both having children. Clayton having been abandoned, knowing what it's like to go without mothering, knowing what it's like to go without any decent parenting, he is



still very empathic towards children; that's one of his strong points and one of the decent points in his life.

But I think that because of his background and history, the terror of going back to prison, his immediate inability to find a way out for himself, which would allow face, I think all of those things emotionally contributed to his going ahead and killing this young woman. (Tr. XV, 2663-64).

*Lockett*, 2011 WL 10843368, \* 16-18.

The jury was instructed on 43 mitigating factors that they should consider prior to assessing punishment (O.R. 906-908). The jury obviously found the overwhelming aggravating circumstances outweighed the mitigating evidence and sentenced Lockett to death. Since his death sentence, Lockett has continued to show absolutely no respect for authority, poses great security risks for correctional officers by failing to obey orders and destroying property, intimidates from behind the walls of death row and continues to disregard the rules and regulations mandated for the safety and welfare of not only correctional guards, but prisoners alike (App. 51-96).

### **III. The Appeals**

Lockett has made two primary claims throughout his appeals, i.e., that he was denied a fair sentencing proceeding because the trial court limited the testimony of mitigation witness Joyce Turner and that he was prejudiced by the admission of victim impact testimony. Both of these claims have consistently been rejected by the courts.

## 1. Limitation of Joyce Turner's testimony

Lockett's claim on appeal that the limitations placed on Turner's testimony denied him a fair sentencing proceeding has been denied by all the reviewing courts. The final court to review this issue held as follows:

Our careful review of the record leads us to conclude that the erroneous limitation on Ms. Turner's testimony did not have a "substantial and injurious effect" on the jury verdict.

We discern in Mr. Lockett's arguments three possible ways in which the excluded portions of Ms. Turner's testimony could have influenced the jury's decision. First, did missing factual details prevent the jury from genuinely understanding the context of Mr. Lockett's childhood experiences? Second, did the absence of Ms. Turner's explicit opinion testimony that Mr. Lockett's adult criminal behavior was connected to his childhood trauma prevent the jury from understanding that this connection may have existed? Third, could the jury have inferred from Ms. Turner's failure to draw this explicit connection that she did not believe such a connection existed?

### a. Missing Facts

We do not harbor significant doubt as to whether the handful of missing facts had a substantial and injurious effect on the jury's decision. Jurors heard substantial evidence that would have allowed them to understand the context of Mr. Lockett's childhood. The few missing details were not significantly different from the numerous details introduced through the testimony of Mr. Lockett's family members. For example, jurors did not hear that Mr. Lockett's father pointed guns at his family, but they did hear that his father routinely and severely beat his family members, that he was a criminal who taught young Mr. Lockett to commit crimes and punished him for getting caught, and that he showed Mr. Lockett pornography and forced him to do drugs when he was a young child.

Although the missing facts were relevant to mitigation, they were not significantly different in kind from the many facts the jury heard. They represent cumulative evidence of severe child abuse and poor parenting. We therefore harbor no significant doubt about the effect of these missing facts on the jury's sentencing decision.

b. Missing Opinion

We also do not harbor significant doubts as to whether the omission of Ms. Turner's expert opinion about Mr. Lockett had a substantial and injurious influence on the jury's decision. Taken together, the mitigating evidence, including Dr. Smith's testimony, was sufficient to allow the jury to understand how and why childhood trauma may influence adult behavior. Although she was not able to explicitly state her opinion that Mr. Lockett's adult crimes were tied to childhood trauma, her general testimony pointed to these conclusions.

For example, Ms. Turner testified that abuse and abandonment, especially in the first three years of life, erode children's sense of trust and safety and cause "a buildup of repressed rage" that may eventually release in the form of aggressive behavior. Aplt. Br. at 20. The jury likely understood that these points related to the testimony from Mr. Lockett's family members about the abuse and abandonment he experienced in childhood, including the first three years of life.

Dr. Smith reinforced this connection, testifying that Mr. Lockett was mentally ill as a result of his childhood trauma, which influenced his criminal acts. Dr. Smith testified at length to specific connections between Mr. Lockett's childhood and adolescent trauma, on the one hand, and his brain development and adult criminal behavior, on the other. He told the jury that as a 3-year-old child, Mr. Lockett was abandoned by his mother and "found on [his father's] doorstep, urine-soaked," and that Mr. Lockett's father frequently stripped him naked and beat him with belts or boards. Tr. Vol. XV at 2637. Dr. Smith told the jury that this type of early childhood trauma "may affect the neuron connections in the brain," which in turn control how he

“integrates, perceives, and expresses [himself] throughout life.”  
Tr. Vol. XV at 2633.

According to Dr. Smith, this trauma caused him to develop “an extremely deep mistrust of human relationships.” *Id.* at 2642. This led Mr. Lockett to join a gang, which gave him a sense of belonging but also taught him criminal behaviors and “deviant” values. *Id.* at 2643. Dr. Smith said that beneath his “cloak of gangland meanness,” Mr. Lockett was “very insecure, full of anxiety” and often felt “very vulnerable.” *Id.* at 2649.

Dr. Smith testified that Mr. Lockett had been raped in prison by a group of three men when he was 16 years old and that this experience, along with possible early childhood sexual assault, may have led him to “repress[ ] or dissociate[ ]” his sexual assault of Ms. Hair. *Id.* at 2647. Dr. Smith also offered an explanation for why Mr. Lockett allowed two of his victims to live while killing Ms. Neiman: Mr. Lockett may have become enraged at Ms. Neiman's defiance because “his very earliest rage and hurt was from women.” *Id.* at 2663. Dr. Smith suggested that Mr. Lockett did not kill Mr. Bornt and Ms. Hair because “he was touched ... by their quickness and willingness to agree” not to report him and because they had young children and Mr. Lockett knew “what it's like to go without mothering ... [or] decent parenting.” *Id.* at 2664.

In short, Dr. Smith offered a clear and emphatic opinion that Mr. Lockett's crimes were linked to his childhood and adolescent trauma. We therefore do not harbor significant doubt as to whether the absence of Ms. Turner's opinion on the issue affected the jury's sentencing decision.

### c. Potential Negative Inference

Mr. Lockett's strongest argument relates to the third question: whether the jury may have drawn a negative inference from Ms. Turner's missing analysis. Mr. Lockett argues that upon hearing Ms. Turner's extensive testimony about hypothetical effects of childhood trauma on individuals, the jury likely expected her to conclude that, in her expert opinion, Mr.