

2004 09:00 FROM: STEJSKAL MAND

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INSTITUTE OF Law, Psychiatry  
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### Capital Sentencing Evaluation

|              |                     |                  |                            |
|--------------|---------------------|------------------|----------------------------|
| Name:        | Joseph L. Armstrong | Source:          | Circuit Court, Wise County |
| Age:         | 27 years            | Defense Counsel: | C. Bledsoe, L. Kern        |
| DOB:         | July 10, 1977       | Commonwealth:    | C.S. Dotson                |
| Report Date: | September 3, 2004   | Court Order:     | §19.2-264.3:1              |

#### Reason for the Evaluation

This report is submitted in partial fulfillment of this evaluator's appointment under §19.2-264.3:1 of the Code of Virginia. This Code section requires the evaluator to prepare a report regarding the history and character of the defendant and the defendant's mental condition at the time of the offense. The report is also to include opinions as to 1) whether the defendant acted under extreme mental or emotional disturbance at the time of the offense, 2) whether the defendant was significantly impaired with respect to his appreciation of the criminality of his conduct or his capacity to conform his conduct to the requirements of the law, and 3) whether there are other factors in mitigation relating to the history or character of the defendant or the defendant's mental condition at the time of the offense.

#### Qualifications of the Forensic Expert

The author is licensed as a clinical psychologist in the Commonwealth of Virginia. Doctor Stejskal is employed as the Director of Psychology at the Institute of Law, Psychiatry and Public Policy at the University of Virginia, where he directs the operations of the Forensic Psychiatry Clinic, and serves on the Medical School faculty. He also serves as a member of a judicial commission in the Family Division of the Superior Court of the District of Columbia. Doctor Stejskal has presented continuing education programs and lectures to other mental health professionals, as well as attorneys, law enforcement personnel, and probation officers. He has been appointed to serve as an expert evaluator in several jurisdictions, including Circuit and Juvenile Courts in Virginia and Maryland, the Superior Court of the District of Columbia, the U.S. District Court for the District of Maryland, the U.S. District Court for the Eastern District

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of Virginia, the U.S. District Court for the Western District of Virginia, the U.S. District Court for the District of Columbia, and the Virginia Board of Psychology. These appointments have involved serving at various times as an expert evaluator on behalf of the defense, the prosecution, or the Court. His credentials have been accepted in every court or proceeding in which he has been offered as an expert.

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### Sources of Information

This report is based on a broad range of information and evaluation procedures. This is a standard practice in capital sentencing evaluations, since the Code of Virginia requires the evaluator to develop a comprehensive understanding of the individual's character and mental condition. This evaluation is based on the following sources:

1. Three forensic interviews with the defendant, totalling approximately 1.5 hours
2. Interview with defendant's mother, Ms. Smith
3. Court order
4. Case materials from defendant's prior adjudications:
5. Report of Investigation by Medical Examiner, dated May 19, 2003
6. Report of Autopsy, dated May 20, 2002
7. Certificate of Analysis, dated June 13, 2002
8. Audiotape and transcription of a conversation between defendant and his mother, Ms. Smith, recorded on May 15, 2002, and videotape of the victim
9. Virginia Department of Corrections (VADOC) Presentence Investigation Report, dated March 28, 1997
10. VADOC Sentence Investigation Report, dated October 30, 1996
11. Character reference letter written by Margo Roberts, dated July 8, 1996
12. Administrative, medical, and disciplinary records from the U.S. Navy, dated April 1995 to February 1996
13. Portions of the victim's VADOC records, including medical, mental health, and disciplinary records
14. Academic records from Colorado Springs Public Schools, including Widefield High School, Sproul Junior High School, and Pinello Elementary School

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### Circumstances Surrounding the Offense

*Commonwealth's version:* A synopsis of the allegations against the defendant was not made available to me in the course of the present evaluation. In the report of investigation by the

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medical examiner, Dr. Gregory P. Wagner indicates that Cause of Death was Strangulation and Manner of Death was Homicide. In his narrative description of circumstances surrounding death, he stated, "29-year-old male found dead in cell in Red Onion prison. Question possible Seizure Disorder. No recent trauma. Lot of blood from mouth of left nose (sic). Investigator Yates investigating." The autopsy report prepared by Dr. Wagner includes the following: "The decedent was found dead in his cell. Autopsy examination showed petechial hemorrhages in the left orbit and conjunctiva, a faint red abrasion in the upper right neck, a fracture of the right side of the hyoid bone with acute contusion. There was acute contusion surrounding the right thyroid cartilage horn too. These findings are consistent with strangulation."

*Defendant's version:* A defendant's statements about an alleged offense are protected against disclosure until such disclosure is compelled, or until the defendant waives his privilege.

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## Opinions

i) *Whether the defendant acted under extreme mental or emotional disturbance at the time of the offense.*

Based on information available at this time, it is my opinion that, although the defendant was not experiencing symptoms suggestive of a major mental illness, his psychological state around the time of the alleged offense was influenced by his having become acculturated to prison life while still an impressionable and immature teenager. Many aspects of prison life, as he experienced it, foster the development of expectations, behavior and coping mechanisms that would be highly maladaptive outside of prison. Within the prison environment, however, these same expectations, behaviors, and coping mechanisms are adaptive and promote a sense of safety within what can be a highly threatening and malignant environment. Men living in prison realistically live in fear and must cope on a daily basis with the possibility of being sexually victimized. Recent data on prison life indicates that it would have been reasonable for Mr. Armstrong to fear such an assault. These fears would have been further exacerbated in the defendant after a mentally ill homosexual predator was assigned as his cellmate.<sup>1</sup>

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<sup>1</sup> Although VADOC does not make statistics available regarding physical and sexual victimization in prison, studies estimate that rates range from 4.7% to 60% among male inmates. This is compared to victimization rates for males in the general population where, according to the Bureau of Justice Statistics, rates of sexual assault per 1,000 persons are estimated at 0.7%.

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*ii) Whether the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law were significantly impaired.*

At the time of this writing, it is uncertain whether any evidence will be presented at trial regarding the nature of the interactions that occurred between Mr. Armstrong and the decedent on the night of Mr. Booth's death. However, it is reasonable to infer, without implying any waiver of defendant's privilege under the Fifth Amendment of the US Constitution, that the fears and apprehensions described above would have been operative in the mind of the defendant around the time of the alleged offense. Realistic concerns about safety and personal protection would have been a significant determining factor of the defendant's thoughts and conduct around the time of the alleged offense.

*iii) Whether there are other factors in mitigation relating to the history and character of the defendant or the defendant's mental condition at the time of the offense.*

There are three primary factors related to this domain of mitigation:

1) The defendant's early childhood development was influenced by a number of factors that were beyond his control, including witnessing his father's abuse of his mother, the turmoil caused by his father's heavy drinking, conflict between his parents over the father's abusiveness that eventually resulted in dissolution of the marriage, and witnessing the tragic death of his mother's subsequent boyfriend, a man with whom Mr. Armstrong had developed an extremely close relationship during his formative years.

According to the defendant and his family members, his biological father was a violent criminally-oriented man who was an inconsistent provider for the family and chronically abused his mother, at times hitting her with his fists and choking her with the phone cord in front of their children. Reports from Mr. Armstrong and his mother, Ms. Smith, indicate that they lived as an anxious and fearful household until Ms. Smith took the children and left the abusive marriage. According to Mr. Armstrong and Ms. Smith, the defendant's biological father is currently serving a lengthy prison sentence in California in connection with a homicide. Ms. Smith subsequently became involved with Mr. Crees, a man with whom Mr. Armstrong developed a strong attachment. Over the four years that Mr. Crees lived with the family, he raised the defendant as his own child. Tragically, as the defendant and his family waited in the car while Mr. Crees went inside to check on a neighbor's house, the house was engulfed in a natural gas explosion and he later died. According to Ms. Smith, Mr. Armstrong was traumatized after this incident, and had to sleep with her because he "saw ghosts."

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Following this, the defendant entered into a period of relative stability that lasted throughout adolescence. Mr. Armstrong's mother eventually remarried, with a man who had been living with the family for a few years and got along well with the defendant. To this day, Mr. Armstrong considers Mr. Smith his father. Throughout childhood and adolescence, according to the defendant and other family members, Mr. Armstrong did not experiment heavily with drugs or alcohol and was not involved in any criminal activity. He was able to recognize appropriate avenues of achievement, and experienced success in a number of different activities, including cub scouts, boy scouts, athletics, and music<sup>2</sup>. According to school records, he did not exhibit any behavior or disciplinary problems. According to the defendant and Ms. Smith, he was a motivated and responsible young man during his adolescent years, consumed by his ambitions to join the U.S. Navy and to pursue his avocation as a musician.

2) After successfully completing boot camp and basic training, Mr. Armstrong was sent to Newport News, Virginia to work on the U.S.S. Enterprise. The defendant enjoyed his first few months in the U.S. Navy and had no disciplinary problems. According to U.S. Navy records, he was selected for a leadership position by his petty officer. However, a few months after beginning his career with the U.S. Navy, the defendant severely injured his hand. He had surgery to repair the damage, but it never healed correctly. He was informed that he would be medically discharged from the U.S. Navy because he would no longer be able to perform his duties (he was also informed that he would never be able to play guitar again.)

Therefore, before the defendant was 18 years old, he was faced with the sudden and final disruption of his long-term goals and ambitions. He was forced to deal with the unexpected derailment of his Navy career, and his dreams of pursuing a musical career were curtailed. As might be expected from a 17-year-old boy who had not yet fully matured, he coped poorly with the disappointment, confusion and frustration that he faced. According to the defendant and his mother, he became very temperamental and cut off contact with his friends and family members during the months that followed. Mr. Armstrong turned to drugs and began associating with people who were involved in criminal activity. Within a relatively short time, he was arrested in connection with the violent acts of some of his recent associates, and entered Virginia's prison system.

3) Mr. Armstrong entered the prison system as an immature, impressionable, and ill-prepared teenager who had previously never experienced lengthy incarceration. His confinement in prison required that he learn how to adapt to an environment and to a prison culture that was far different from and considerably more dangerous than anything he had previously experienced. Whatever degree of successful socialization had been accomplished while being raised in his mother's home, survival in prison required that he "relearn" or "unlearn" many of the social conventions and interpersonal rules that govern social interactions in the community; prison

<sup>2</sup> According to the defendant and his mother, he was an accomplished guitarist

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taught him new rules about how to behave, how to protect his interests, and how to avoid exploitation and victimization by other prisoners. By the time of the alleged offense, Mr. Armstrong's behavior, thinking, and personality had adapted to the harsh demands of prison life.

The opinions represented in this report are based upon information available at the time this report was written. These opinions are subject to reconsideration and possible modification in the event new information is forthcoming from any source.



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September 6, 2004

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Bledsoe Law Office, P.C.  
408 Wood Avenue  
P.O. Box 657  
Big Stone Gap, Virginia 24219

Re: *Commonwealth of Virginia v. Joseph Armstrong*

Dear Mr. Bledsoe:

At your request, and pursuant to Judge Stump's order of August 20, 2004, I have undertaken an indirect retrospective evaluation of Kenneth Boothe, the alleged victim in the above captioned criminal case, to estimate his suicide risk on or about May 19, 2002, the date of the alleged offense. This brief letter summarizes my procedures and opinions in this matter.

In reaching the opinions contained herein, I have relied upon information from the following sources:

1. Pretrial Forensic evaluation of Kenneth Boothe, Jeff Farrow, Psy.D., May 26, 1995
2. Pretrial Forensic evaluation of Kenneth Boothe, Dennis Cropper, Ph.D., January 15, 1996
3. Smyth County Circuit Court Documents in
  - a. CR91121256-00
  - b. CR95061851-02
  - c. CR95031961-03
  - d. CR96031961-04
  - e. CR96031961-02
  - f. CR96031961-05
  - g. CR96031961-01
  - h. CR0012185102
  - i. CR01033088-01-04
4. Kenneth Boothe's Medical, mental health, classification, and disciplinary records from Virginia Department of Corrections (DOC), 1991 - 2002
5. Telephone interview with Sarah Chaffin, MSW, Marion Correctional Center

At this time, additional telephone interviews are or will be scheduled with additional DOC treatment providers.

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### Opinions

1) *Since at least the early 1990's, Kenneth Boothe had presented a chronic, fluctuating risk (Low to Moderate) to experience, verbalize, and enact suicidal feelings and impulses.*

This vulnerability derived from the operation of multiple static and dynamic risk factors, including behavioral impulsivity, labile and reactive mood/affect, poor anger control, history of alcohol abuse, history of previous suicide attempts, multiple psychiatric diagnoses (co-morbidity) including mood and psychotic disorders, history of self-injury, social isolation, estrangement/isolation from family, history of interpersonal violence, history of personality disorder diagnosis, history of psychiatric treatment, onset of mental illness before age 18, low intelligence.

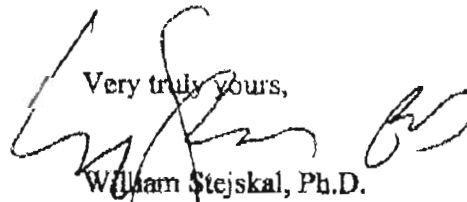
2) *During the days and weeks prior to his death, specific dynamic factors or conditions were present that would have acutely exacerbated Kenneth Boothe's risk (Moderate to High) to experience, verbalize, or enact suicidal feelings and impulses.*

This heightened risk for a suicidal crisis derived from a number of incidents and conditions, including conflicts with cellmate (MCC, WRCC), conflict with correctional officer that culminated in discharge of a firearm (WRCC), new legal problem related to his sexual assault on cellmate (WRCC), humiliation and possible revocation of suspended remainder of two life sentences due to his sexual assault on cellmate, three relocations within DOC in five months, concerns/fears about his medical condition, determined to be suitable for a double cell at ROSP based on erroneous classification of his mental health and behavioral risk, and the disruption and abrupt cessation of necessary psychiatric treatment (antipsychotic and antidepressant medication) despite 1) being placed on suicide precautions twice within six weeks of his death and 2) his exhibiting depression, disorganized thoughts, auditory hallucinations within eight weeks before his death.

The opinions represented in this report are based upon information available at the time this report was written. These opinions are subject to reconsideration and possible modification in the event new information is forthcoming from any source.

I hope that this information is clear. I will be available to provide additional information about this matter, should that become necessary.

Very truly yours,



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