SUPPORTING AFFIDAVIT OF JOHN F. EDENS, PH.D.

I, John F. Edens, state and declare as follows:

I. Background and Qualifications

1. I am a Full Professor in the Department of Psychological and Brain Sciences at Texas A&M University (TAMU). I am also formerly the Director of Clinical Training (2012-2016) of the doctoral training program in Clinical Psychology at TAMU. Over the years, I have been actively involved in education and training in the areas of psychological assessment, violence risk assessment, forensic psychology, abnormal psychology, research methodology, and professional ethics. I have taught scores of courses within these areas to hundreds of graduate and undergraduate students. I also have been invited to conduct numerous advanced training workshops in these and related areas for mental health, legal and criminal justice professionals throughout North America, Europe, Asia, and Australia.

2. I have conducted research on psychological assessment and diagnosis and the prediction of human behavior since the 1990s and have published approximately 200 peer-reviewed journal articles, book chapters, and professional manuals related to these topics. Most of my research has focused on forensic and correctional mental health assessment issues, such as the potential for engaging in future violence and other forms of socially deviant behavior. For example, I was a co-investigator on a $1.3 million multi-site federal research grant from the National Institute of Mental Health that examined the role of psychopathic personality disorder (psychopathy) and antisocial personality disorder in the adjustment and future conduct of criminal offenders.

3. I believe it is fair to say that my research in the area of forensic and clinical psychology has been influential in the scientific and professional community, as reflected by the fact that I am in the top 1% of cited researchers in the fields of Psychology and Psychiatry (as documented by Essential
Science Indicators) and that I have received various national awards and honors from several professional and scientific organizations over the course of my career (e.g., the Saleem Shah Award for Early Career Contributions to Law and Psychology, jointly awarded by the American Psychology-Law Society and the American Academy of Forensic Psychology [2001], the Theodore Millon Award in Personality Psychology, jointly awarded by the American Psychological Foundation and the Society of Clinical Psychology [2015]). I have also been awarded Fellow status by the two largest professional organizations in psychology in the United States, the American Psychological Association and the Association for Psychological Science.

4. I am the lead author of the Personality Assessment Inventory Interpretive Report for Correctional Settings (PAI-CS). The PAI-CS is an empirically derived, actuarial interpretative system designed to aid in the identification of inmates who have mental health problems and/or are likely to have difficulties adjusting to prison.

5. I have published extensively on controversies concerning various psychiatric diagnoses, psychological tests, and assessment instruments and procedures used in forensic and correctional settings, particularly those intended to assess psychopathic personality disorder (psychopathy), such as the Hare Psychopathy Checklist-Revised (PCL-R), as well as antisocial personality disorder (ASPD). I also have consulted with numerous prosecution offices, defense teams, and state agencies (e.g., probation departments) on issues related to forensic mental health assessment, particularly in terms of the scientific reliability and validity of various tests, psychiatric diagnoses, and assessment methodologies.

6. Because of my background and expertise in forensic and correctional psychology, I am frequently called on to evaluate the work of other social scientists and mental health professionals. For example, I am formerly an Associate Editor of the peer-reviewed scientific journals...
Psychological Assessment, the Journal of Personality Assessment, and Assessment. In these editorial roles, I have been responsible for judging the scientific merit of research manuscripts submitted for publication and making editorial decisions, with input from peer reviewers, regarding whether these research reports are scientifically rigorous and warrant publication. At these journals, I have been primarily responsible for evaluating submissions that focus on forensic mental health topics (e.g., psychopathic personality disorder, violence risk assessment, adjudicative competence). I also serve on the editorial boards of multiple peer-reviewed psychology-law journals (e.g., Law and Human Behavior, Behavioral Science and the Law, International Journal of Forensic Mental Health), where I provide peer reviews for research manuscripts submitted for publication. In this capacity, I provide the Editor or Associate Editor with a review of the methodological rigor of the research and a recommendation concerning its overall contribution to the scientific literature. Over the course of my career I have been asked to serve as an editor or reviewer for hundreds of scientific research reports from a multitude of social science and medical journals.

7. Noted above, I have contributed extensively to, and am very familiar with, the research literature on the Hare PCL-R, psychopathy and ASPD, as well as other personality disorders. Because of my expertise in this area, since the early 2000s I have been asked to submit affidavits and declarations (similar in content to this document) that have expressed my grave reservations about the use of the PCL-R, labels such as "psychopath," and diagnoses of ASPD in numerous state and federal cases.

II. Referral Questions

8. I was asked by defense counsel to review and comment on the potential introduction of evidence concerning the PCL-R, psychopathy, and related mental health concepts such as ASPD in the case
of John Nicholas Jonchuck. I should clarify that I have not conducted a forensic mental health evaluation of Mr. Jonchuck at this time, although that has no bearing on the points of concern that I raise about the Hare PCL-R, psychopathy, and ASPD evidence in this affidavit.

III. Relevant Scientific Literature

9. The PCL-R is a 20-item checklist of prototypically psychopathic traits (e.g., remorselessness, grandiosity, superficial charm) and antisocial/criminal history variables (e.g., juvenile delinquency, revocation of conditional release) that typically is scored based on a semi-structured interview and review of available collateral information. Examinees can receive a score ranging from 0 (zero) to 40, with higher scores indicating that they are being rated as more psychopathic.

10. One of my foremost concerns about the use of the PCL-R in an insanity case such as this is its relevance to the legal issue at hand: Does the presence of psychopathy rule out the possibility that a defendant is suffering from serious mental disorders that might have some bearing on whether he or she meets the legal standard for insanity in any given jurisdiction? The short answer to this question appears to be a clear “no.” Persons high in psychopathic traits have been found to suffer from serious mental illness, and persons with serious mental disorders also may be quite psychopathic. As such, introducing the PCL-R into this process adds little or nothing to an examiner’s ability to substantiate the presence or absence of serious mental illness. Even more troubling, there is at least some evidence to suggest that an early precursor to the PCL-R misidentified an appreciable percentage of individuals with schizophrenia as being psychopaths.

11. Dr. Lazarou accurately notes in her report that the current version of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), identifies four criteria that are ostensibly suggestive of malingering. Her overview of the DSM’s general guidelines concerning factors that might suggest possible malingering does not mention, however, that these guidelines
have little support in extant scientific research. That is, data do not indicate that ASPD or the PCL–R are strongly associated with either an increased likelihood or an increased ability to mangle serious mental disorder. Even if there were a meaningful relationship between psychopathy and malingering, however, it is unclear why one would rely on an at best indirect indicator such as the PCL–R, rather than conduct a direct assessment of malingering. For example, when malingering is suspected in a forensic evaluation, it is common to administer an instrument such as the Structured Interview of Reported Symptoms, which is widely considered the gold standard for assessing the credibility of symptoms of severe mental illness.

12. No widely regarded authoritative sources in this area suggest that one should assess for psychopathy in insanity cases and no professional surveys indicate that examiners consider the PCL–R to be a relevant component of insanity evaluations. Case law surveys of the use of the PCL–R indicate that examiners very rarely use it as part of an evaluation to assess a defendant’s mental state at the time of the offense. Rather, it is almost always used as part of violence risk assessments in which claims are made about the degree to which a defendant is likely to be dangerous in the future.

13. An additional concern about the use of the PCL–R in a case such as this is that terms such as “psychopath” and “sociopath” and the personality traits typically associated with them (e.g., remorselessness, callousness) have the strong likelihood to unduly prejudice jurors against a defendant. These labels are highly stigmatizing, having been shown among venirepersons to evoke images of real-world serial killers such as Ted Bundy and Jeffrey Dahmer, as well as fictional villains such as Hannibal Lecter. In fact, when asked to spontaneously identify the person they first thought of when hearing the term “psychopath,” a sample of over 400 venirepersons in a survey in Dallas County, Texas, most frequently listed Charles Manson. Other research findings
from this same survey indicate that venirepersons strongly associate the mental health label "psychopath" with the moral judgment that a criminal defendant is an "evil" person, indicating that they conflate this diagnostic label with highly stigmatizing characteristics that go well beyond the bounds of a mental illness.

14. Other research findings confirm the stigmatizing effects of perceiving criminal defendants to be "psychopaths" as well. In a series of research studies, my colleagues and I have experimentally manipulated the presence of psychopathy evidence in capital case vignettes presented to mock jurors. The results of these studies indicate that defendants who were described as psychopaths were viewed as considerably more dangerous than defendants who were not described as psychopaths, even though all other facts of the cases other than diagnoses were described identically. In these studies, support for executing a psychopathic defendant was considerably higher than support for executing him when not described as psychopathic. For example, in one of these studies, 60% of the participants learning that the defendant was described as psychopathic indicated they would support a death sentence for the defendant, whereas only 38% did so when he was described as non-mentally disordered, and only 30% did so when he was described as psychotic (e.g., experiencing delusions and hallucinations). (In the lone study we have published in which psychopathy evidence did not predict greater support for death verdicts, post-testing of the research participants indicated that many did not understand the relatively complicated sentencing instructions we provided them, such as the definition of mitigating evidence.)

15. I should note that there has been one published mock jury study (Saks et al., 2014) that claimed to demonstrate that testimony that a capital defendant was highly psychopathic had relatively little effect on capital decision-making. We have recently attempted to replicate this
finding in my research lab and determined that the case materials and diagnostic evidence used in the Saks et al. (2014) research was fundamentally flawed. In short, the defendant in each of the experimental conditions was rated by participants in our replication study as highly psychopathic. That is, the background and case materials reviewed by the mock jurors led them to believe the defendant was highly psychopathic even in the condition in which an expert provided no testimony that the defendant actually was highly psychopathic. The results of their study suggest that, once a juror believes that a defendant is a psychopath, having an expert witness then assert that a defendant is in fact a psychopath does not make that juror believe the defendant is any more a psychopath than he or she already thought the defendant was. This result is quite different than making a claim that testimony about psychopathy has little or no impact on jurors who believe (initially) that a defendant is not a psychopath.

16. Importantly, the Saks et al. (2014) study did not actually examine whether perceiving a defendant as being more psychopathic results in greater support for death verdicts because all the groups (on average) already perceived him to be highly psychopathic prior to any testimony being presented about his diagnosis. Notably, in our replication we have found that the more psychopathic that mock jurors perceived the defendant to be, the stronger their support for a death sentence regardless of whatever expert testimony they reviewed. This result is very similar to numerous other studies that have directly asked mock jurors to rate how psychopathic they perceive a criminal defendant to be and then examined how these ratings related to other attitudes about the defendant. My colleagues and I have recently summarized the findings from this body of research in a meta-analysis that has recently been accepted for publication in a peer-reviewed scientific journal. The findings from this meta-analysis indicate that study participants who believe a defendant to be highly psychopathic are much more likely to support death verdicts (in
capital murder trial simulations), much more likely to recommend longer criminal sentences (in non-capital trial simulations) and to rate the defendant as much more dangerous and evil than are participants who believe the defendant to be less psychopathic.

17. Although mock jury studies in isolation are not dispositive in terms of establishing the stigmatizing effects of a psychopathy diagnosis, field research also has demonstrated that perceived psychopathic traits have a strong relationship with juror attitudes about criminal defendants. For example, Sundby (1998) published research from the Capital Jury Project indicating that actual jurors in capital murder trials described defendants whom they had sentenced to death with phrases such as “blasé,” “cocky,” “very unremorseful,” “cocksure,” “nonchalant,” “no remorse—almost a cocky attitude,” and “clever, smart, [and] calculating.”

18. Another significant reservation concerning introduction of evidence regarding psychopathy is that, noted above, it has been shown to increase perceptions that a defendant will be dangerous in the future. Although this sounds like common sense, at present there is little evidence to support the assertion that psychopathy diagnoses have any bearing on a convicted capital defendant’s potential for future violent acts. That is, the available scientific studies suggest that psychopathy diagnoses are at best very weakly related to violent behavior in U.S. prisons. This assertion is based on the results of a published meta-analysis in which my colleagues and I statistically aggregated the results of all available individual research studies examining the relationship between the most widely used assessment of psychopathy in forensic settings, the Hare Psychopathy Checklist-Revised (PCL-R), and violence in U.S. prisons, which consisted of an aggregated sample size of over 800 inmates across five individual research studies.

19. Although well-controlled research studies suggest that psychopathy and ASPD may be modestly to moderately related to future criminal behavior among individuals if they are released
back into the community,xx the available scientific findings do not support the argument that these diagnoses can identify prisoners who are likely to engage in serious violence while spending the rest of their lives incarcerated. Therefore, claims that an inmate is more likely to be violent in the future if serving out a life sentence because that inmate has been judged by a mental health professional to be “psychopathic” or “antisocial” are based on almost no scientific support and actually ignore what are known to be legitimate correlates of violence in prison settings (e.g., male, young age, limited education, prison gang membership).

20. To the extent that psychopathy does have a modest to moderate predictive relationship with violence if offenders are released back into the community, it should be noted that extant research findings indicate that it is not the personality traits (e.g., remorselessness, conning/manipulative) related to this diagnosis that are relevant to identifying those most at risk for future violent crime. Rather, it is the more criminalistic characteristics measured by the PCL-R (e.g., impulsivity, poor behavioral controls) that are most important to predicting criminal recidivism. Knowing whether a soon-to-be released inmate appears to lack remorse and is grandiose and unempathic is much less informative about his or her potential for future community violence than knowing whether he or she has an extensive history of irresponsible, impulsive, and criminal behavior. As such, the PCL-R items that are likely to be the most influential on jurors (e.g., perceived remorselessness) are the ones that are the least relevant to predicting future crime in the community.xxxi

21. Aside from having a prejudicial impact and having little or no demonstrated probative value concerning insanity, it should be stressed that a growing body of scientific research indicates that PCL-R scores are highly unreliable in “real world” legal cases (as opposed to controlled scientific research studies). Initially this concern was based primarily on several anecdotal case examples of large disparities across expert witnesses testifying about the same defendant.xxxii More recently,
however, several “field studies” of the PCL-R have reported that in adversarial settings mental health experts disagree considerably on the scoring of this rating scale and, not surprisingly, results also suggest that prosecution-retained experts tend to give higher scores than do defense-retained experts. It is unclear whether prosecution witnesses overestimate psychopathy, defense witnesses underestimate psychopathy, or both, but the key point is that how psychopathic a defendant is described to be at trial is to some extent contingent on which side is retaining the expert witness.

22. That being said, even examiners who are employed or retained by the same “side” of a case (and examiners who are independently appointed) may give markedly different scores on the PCL-R, indicating that the scores themselves are to some extent a function of the expert conducting the assessment rather than simply being an objective assessment of the “true” level of psychopathy exhibited by the defendant. In fact, it has been estimated that over 30% of the variability in PCL-R scoring across contested legal cases is explained by the examiners who are conducting the evaluation rather than a reflection of genuine differences in the defendants who are being assessed. Put somewhat more simply, approximately a third of any given defendant’s PCL-R score in these cases does not represent his or her actual level of psychopathic traits but instead reflects the idiosyncratic scoring approach of the person performing the evaluation—regardless of whether the expert examiner was retained by the prosecution or the defense.

23. Also of particular concern, since the publication of the first PCL-R professional manual in 1991 it has been widely known that the “personality” characteristics that are associated with psychopathy (e.g., lack of remorse, inflated self-worth, conning/manipulative) have worse inter-rater reliability than do the more criminogenic characteristics (e.g., juvenile delinquency, revocation of conditional release). The more recent field studies cited above also demonstrate that
personality characteristics appear to be the most difficult to assess reliably in applied settings—which is particularly troubling given that they seem to have the most pronounced prejudicial effect on jurors. Levels of inter-rater agreement in the published field studies have been well below accepted standards of what would constitute minimal reliability for forensic mental health practice.

24. The reasons for the unreliability of psychopathy evaluations across examiners have not been fully articulated in the literature, but there is recent evidence that even those trained by the instrument developer, Robert Hare (through Darkstone Research Group workshops) struggle to assess reliably the personality traits included in the PCL-R. In a special issue of the peer reviewed scientific journal, Psychological Assessment, which I guest-edited with a colleague, Blais et al. summarized reliability statistics for 280 participants in this training program who went on to score a series of practice cases that were then evaluated for accuracy. The interpretation of what constitutes minimally acceptable reliability is open to some degree of interpretation, but the effects of this formalized training program on inter-rater reliability were disappointing regardless of the standard. The overall level of reliability was close to what might be considered minimally acceptable for applied settings, but the reliability of the ‘personality’ components of the PCL-R was quite poor, indicating a large degree of unreliability in regards to rating traits such as remorselessness, superficial charm, and lack of empathy. Again, it should be stressed that this unacceptable level of reliability in assessing these personality traits was produced by professionals who had just completed a formalized training program on psychopathy assessment by the developer of the instrument.
IV. Opinion

25. To summarize my general concerns, PCL-R psychopathy evidence and ASPD diagnoses have the strong potential to stigmatize criminal defendants with an irrelevant and pejorative label and associated set of personality traits (e.g., remorselessness, conning/manipulative). Additionally, diagnoses of this disorder provided by examiners in adversarial settings seem highly unreliable. As such, it is very difficult if not impossible to argue that labeling a defendant as psychopathic has any demonstrated probative value in insanity cases.

26. Obviously, it is the role of the legal system rather than social scientists to determine the legal admissibility of evidence in terms of its relevance and probative and prejudicial value. However, to the extent that admissibility is to be informed by scientific data, the above-noted findings raise serious concerns about the introduction of psychopathy evidence in a case such as this, given the poor level of inter-rater reliability across examiners, the prejudicial effects such evidence seems to have among jurors, and its general irrelevance to determining whether a defendant is in fact insane by Florida’s legal standard.

27. It should be noted that critiques of the use of evidence concerning psychopathic and antisocial personality diagnoses (and related labels such as “sociopath”) are not new to the field. Extensive criticisms of experts who have provided this type of testimony have been published in scholarly journals for decades, dating back at least as far as the *Barefoot v. Estelle* capital murder decision in 1983.\textsuperscript{xviii}

Further, affiant says naught.

\[Signature\]

John F. Edens, Ph.D.
Professor
Department of Psychological and Brain Sciences
Texas A&M University
Subscribed and sworn before me, a Notary Public in and for the State of Texas, this ___ day of July, 2018.

My Commission expires:

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End Notes


More recently, see:
