

No. _____

IN THE
Supreme Court of the United States

DARRYL BRYAN BARWICK,

Petitioner,

v.

RON DESANTIS, ET AL.,

Respondents.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

***THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
WEDNESDAY, MAY 3, 2023, AT 6:00 P.M.***

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ATTACHMENT A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-11277-P

DARRYL BRYAN BARWICK,

Plaintiff - Appellant,

versus

GOVERNOR OF FLORIDA,
ATTORNEY GENERAL OFFICE,
JIMMY PATRONIS, CHIEF FINANCIAL OFFICER
WILTON SIMPSON, COMMISSIONER OF AGRICULTURE
MELINDA COONROD, CHAIRWOMAN, FLORIDA COMMISSION ON OFFENDER
REVIEW
SUSAN MICHELLE WHITWORTH, COORDINATOR, OFFICE OF EXECUTIVE
CLEMENCY
STEPHEN HEBERT, DIRECTOR, OFFICE OF CLEMENCY INVESTIGATIONS

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Florida

Before: WILSON, ROSENBAUM, and JILL PRYOR, Circuit Judges

PER CURIAM:

Darryl Bryan Barwick is a Florida death-row prisoner who is scheduled to be executed on May 3, 2023, at 6:00 p.m.

Barwick brought an action under 42 U.S.C. § 1983, arguing that the Governor of Florida and several other state officials violated his constitutional right to due process because they did

not adequately consider his candidacy for executive clemency. He also moved for an emergency stay of execution. The district court denied Barwick's motion for a stay.

Barwick then moved in this Court for a stay of execution pending appeal. After reviewing the record and governing legal standards, we too must deny Barwick's motion for a stay.

I. BACKGROUND

Barwick is a Florida death-row prisoner who was sentenced to death in 1992 following his conviction for the murder of Rebecca Wendt. His execution is scheduled for May 3, 2023. We previously discussed the facts of Barwick's crimes in *Barwick v. Secretary, Florida Department of Corrections*, 794 F.3d 1239, 1241–42 (11th Cir. 2015) (per curiam). *See also Barwick v. State*, 660 So. 2d 685, 688–89 (Fla. 1995) (per curiam). We do not repeat that discussion here. Rather, because the challenge before us centers on Florida's clemency proceedings, we focus there.

A. Florida's Clemency Regime

Florida law provides the executive branch with the authority to commute punishments, and state law does not impose any legal limitations on officials' exercise of their discretion. Fla. Const. art. IV, § 8(a); Fla. Stat. § 940.01(1); *see also Bowles v. DeSantis*, 934 F.3d 1230, 1235–36 (11th Cir. 2019).

The Governor and the Cabinet, which collectively sit as the Clemency Board, have adopted the Florida Rules of Executive Clemency. *See Parole Comm'n v. Lockett*, 620 So. 2d 153, 155 (Fla. 1993). Rule 15 governs the "Commutation of Death Sentences." Fla. R. Exec. Clemency 15. It provides that the Florida Commission on Offender Review ("Commission")—which is distinct from the Clemency Board—"may conduct a thorough and detailed investigation into all factors relevant to the issue of clemency and provide a final report to the Clemency Board." *Id.* And Florida law requires that the Commission report to the Board "the circumstances, the criminal records, and the social, physical, mental, and psychiatric conditions and histories of persons under

consideration by the board for pardon, commutation of sentence, or remission of fine, penalty, or forfeiture.” Fla. Stat. § 947.13(1)(e).

But Rule 15 does not delineate the “factors relevant to the issue of clemency,” nor does Florida law otherwise include specific enumerated factors that should be considered during the clemency process. Instead, the Rules dictate that “[t]he Governor has the unfettered discretion to deny clemency at any time, for any reason.” Fla. R. Exec. Clemency 4.¹

The Rules’ specific requirements for the Commission investigation are largely procedural. For example, Rule 15 directs that the investigation “shall include, but not be limited to: (1) an interview with the inmate, who may have clemency counsel present, by [the Commission]; (2) an interview, if possible, with the trial attorneys who prosecuted the case and defended the inmate; (3) an interview, if possible, with the presiding judge; and (4) an interview, if possible, with the defendant’s family.” Fla. R. Exec. Clemency 15(B). And once the investigation is complete, the Commission is directed to issue a final report, which “shall include: (1) any statements made by the defendant, and defendant’s counsel, during the course of the investigation; (2) a detailed summary from each Commissioner who interviewed the inmate; and (3) information gathered during the course of the investigation.” Fla. R. Exec. Clemency 15(D).²

¹ The inverse is also true. “The Governor, with the approval of at least two members of the Clemency Board, has the unfettered discretion to grant, at any time, for any reason” the enumerated forms of clemency. Fla. R. Exec. Clemency 4.

² Rule 15 also provides that “[f]ailure to conduct or complete the investigation pursuant to these rules shall not be a ground for relief for the death penalty defendant.” Fla. R. Exec. Clemency 15(C).

B. Barwick's Clemency Process

According to Barwick's complaint, in 2020, Barwick began receiving legal services to support him in the clemency proceeding. Barwick's clemency interview took place on April 29, 2021, with Barwick, his counsel, and two Commissioners, Richard Davison and David Wyant.³

At the clemency interview, Davison initially stated that the interview would be reviewed by the Governor and the other members of the Clemency Board to determine whether Barwick's case should be heard before the full Board. Davison explained that the Commission "is not here to review what happened during [Barwick's] court proceedings or to determine [his] innocence or guilt." "The purpose of this interview," Davison continued, is to give Barwick "an opportunity to make any statements or comments concerning commutation to life of the death sentence imposed."

Barwick told the Commission about his childhood, and specifically about the abuse he received from his father. For example, Barwick said his father would beat him with "[w]hatever he could get his hands on," such as a two-by-four or baseball bat. After those beatings, Barwick would sustain injuries and would not go to school until they healed. Barwick also expressed remorse for his crimes and explained that he would hope to continue contributing in prison if his sentence was commuted to life imprisonment.

The Commissioners asked Barwick about his childhood, including about the beatings he received from his father and about his relationships with his siblings. They also asked Barwick questions about his crimes. For example, when asked why he killed Ms. Wendt or why he decided to commit crimes that he knew to be wrong, Barwick said he did not know. And Barwick said, in response to one of the Commissioners' questions, he would consider himself to be a sexual deviant.

³ Also present at the interview were the Commission's Investigator Supervisor, John Steve Dawson, and the Capital Punishment Research Specialist, Brandy Fortune.

Following the hearing, Barwick's counsel provided the Commission with a few reports and letters to bolster Barwick's application for commutation of his death sentence. These materials included a letter from Dr. Hyman H. Eisenstein, which explained that Barwick "has a history of multiple brain injuries," which have impaired his planning and decisionmaking and his ability to remember the facts of his crimes.

On April 3, 2023, Governor DeSantis determined that "executive clemency is not appropriate" for Barwick and issued a death warrant setting Barwick's execution for May 3, 2023.

C. Procedural History

On April 13, 2013, Barwick initiated this action in federal district court, alleging that the Governor and the other members of the Clemency Board violated his federal constitutional right to due process through an inadequate consideration process of his candidacy for clemency. He also moved for an emergency stay of execution. Barwick's central argument supporting his complaint and his request for a stay is that his clemency proceeding was decided on an arbitrary basis because the Florida clemency scheme sets forth no standards upon which his candidacy should have been decided, and because the Commission provided false guidance when it suggested it was not concerned with his underlying guilt but then focused its interview on the facts of his crimes.

The state officials ("State") opposed Barwick's motion for a stay of execution, arguing that Barwick's due-process claim is unlikely to succeed on the merits and that, under controlling precedent, last-minute stays of execution are disfavored. The State's merits argument posits that clemency is strictly an executive function and that Florida's clemency process satisfies the minimal procedural safeguards that the Due Process Clause requires. Relying on similar arguments, the State also moved to dismiss Barwick's complaint.

The district court denied Barwick’s motion for a stay of execution. The court held that Barwick received process as good as or better than other prisoners who brought similar challenges, which were ultimately rejected. The district court also noted that the Commission interviewers asked Barwick questions about the mitigating circumstances he had mentioned, that the record shows that the Clemency Board decided his candidacy on the merits, and that more detailed standards governing clemency claims are unlikely to have made a difference.

Barwick moved in this Court for an emergency stay of execution pending appeal.

II. STANDARD OF REVIEW

We may grant a stay of execution only if the prisoner “establishes that (1) he has a substantial likelihood of success on the merits, (2) he will suffer irreparable injury unless the injunction issues, (3) the injunction would not substantially harm the other litigant, and (4) if issued, the injunction would not be adverse to the public interest.” *Bowles*, 934 F.3d at 1238 (citation omitted). To obtain a stay, the prisoner “must satisfy all of the requirements for a stay, including a showing of a significant possibility of success on the merits.” *Hill v. McDonough*, 547 U.S. 573, 584 (2006).

III. DISCUSSION

Our discussion of Barwick’s motion for stay of execution proceeds in two parts. We first ensure that federal jurisdiction to consider Barwick’s claim exists. After assuring ourselves of jurisdiction, we consider the merits of Barwick’s motion.

A. *Federal jurisdiction is proper.*

We must first ensure that federal jurisdiction exists over Barwick’s claim because “we are obligated to address jurisdictional questions *sua sponte* whenever jurisdiction may be lacking.” *Reaves v. Sec’y, Fla. Dep’t of Corr.*, 717 F.3d 886, 905 (11th Cir. 2013) (quotation marks and citation omitted). Here, the parties and the district court have suggested that there may be a

question about whether an action under 42 U.S.C. § 1983 is the correct procedural vehicle for Barwick's claim about the alleged deficiencies in his clemency process.

In *Spivey v. State Board of Pardons & Paroles*, we held that a prisoner's action alleging that he was improperly denied clemency was incorrectly brought under § 1983 when it should have been treated as a second or successive petition for habeas relief. 279 F.3d 1301, 1303 (11th Cir. 2002) (per curiam). We therefore concluded in that case that the district court did not have jurisdiction and that we could not consider the prisoner's appeal of an order denying his motion for stay of execution. *Id.* at 1303–04.

But since *Spivey*, the Supreme Court has clarified that “§ 1983 remains available for procedural challenges where success in the action *would not necessarily* spell immediate or speedier release for the prisoner.” *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005) (emphasis in original). And following the Supreme Court's clarification in *Wilkinson*, we have explained that a prisoner's “complaint about Florida's clemency procedures may only be brought under 42 U.S.C. § 1983.” *Valle v. Sec'y, Fla. Dep't of Corr.*, 654 F.3d 1266, 1268 (11th Cir. 2011) (per curiam). We have thus considered the merits of several prisoners' challenges brought under § 1983 that concern state clemency proceedings and that resemble the claim brought in *Spivey* and the claim Barwick brings here. *See, e.g., Mann v. Palmer*, 713 F.3d 1306, 1316–17 (11th Cir. 2013); *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 794 F.3d 1327, 1332–33 (11th Cir. 2015); *Bowles*, 934 F.3d at 1239.

And since our post-*Wilkinson* decisions, the Supreme Court has expanded on the distinction between § 1983 claims and habeas claims. In *Nance v. Ward*, the Court explained that the text of § 1983 “broadly authorizes suit against state officials for the ‘deprivation of any rights’ secured by the Constitution.” 142 S. Ct. 2214, 2221 (2022) (quoting 42 U.S.C. § 1983). But the Court has

not “read § 1983 literally in the prisoner context” because doing so would “swamp[] the habeas statute’s coverage of claims that the prisoner is ‘in custody in violation of the Constitution.’” *Id.* (quoting 28 U.S.C. § 2254(a)). So the Court has “insisted that § 1983 contains an ‘implicit exception’ for actions that lie ‘within the core of habeas corpus.’” *Id.* (quoting *Wilkinson*, 544 U.S. at 79). And defining that core focuses on “whether a claim challenges the validity of a conviction or sentence,” such as “when an inmate seeks to overturn his death sentence, thus preventing the State from executing him.” *Id.* at 2221–22. In other words, “[a] claim should go to habeas . . . only if granting the prisoner relief ‘would *necessarily* prevent the State from carrying out its execution.’” *Id.* at 2222 (quoting *Nelson v. Campbell*, 541 U.S. 637, 647 (2005)) (emphasis in *Nelson*) (alteration adopted).

Applying those principles and controlling precedent, Barwick’s action is properly brought under § 1983, and we explicitly recognize the Supreme Court’s abrogation of *Spivey* under *Wilkinson* and *Nance*. Barwick’s complaint expressly does not challenge the ultimate validity of his death sentence, nor would a successful claim necessarily mean that the State could not carry out its execution. Instead, Barwick seeks an injunction “barring Defendants from executing him until Defendants provide him with an executive clemency process comporting with the United States Constitution.” Compl. ¶ 53. In other words, if Florida’s clemency process here violated the Due Process Clause, Florida could cure any violation by providing constitutionally adequate process. It could then proceed with its proposed execution if the Clemency Board determined that clemency was not warranted. *See Valle*, 654 F.3d at 1268 (“Even if successful, [the prisoner’s] claim would not necessarily lead to his speedier release, a commutation of his sentence, or even the implication that his sentence is invalid. The most [the prisoner] can hope for is an opportunity to plead for mercy.”).

We therefore have jurisdiction to consider the merits of Barwick’s claim.

B. The State did not violate the Due Process Clause.

The State first contends that we should not consider the substance of Barwick’s claim and that his motion “should be denied based on delay alone.” We disagree. The record shows that the Board did not make a decision on Barwick’s clemency candidacy until April 3, 2023, when the Governor issued the death warrant, noting that “it has been determined that executive clemency is not appropriate.” Until that point, Barwick had no reason to challenge the State’s executive clemency process. So we cannot see how, contrary to the State’s contention, Barwick “deliberately waited” to file this challenge until a decision would also require a stay of execution. The only reason for the timing of Barwick’s lawsuit in relation to the scheduled execution is the Governor’s decision to simultaneously deny clemency and issue the death warrant.

Turning to the merits, because Barwick appeals the district court’s order denying his motion for a stay of execution, we review to determine whether the district court abused its discretion. *Bowles*, 934 F.3d at 1238. The “first and most important question” concerning Barwick’s request for a stay is whether he can demonstrate a substantial likelihood of success on the merits. *Jones v. Comm’r, Ga. Dep’t of Corr.*, 811 F.3d 1288, 1292 (11th Cir. 2016). As it turns out, our discussion begins and ends there.

The merits of Barwick’s arguments turn on whether the State’s clemency process in his case violated the Due Process Clause of the Fourteenth Amendment. Barwick contends that the State deprived him of due process because there are no standards governing clemency decisions and because the Commissioners ignored the only ostensible standard—that the process is not concerned with Barwick’s guilt for his crimes—by focusing this clemency interview on the circumstances of his crime and his prior criminal conduct.

The Supreme Court has recognized that death-row prisoners have a due-process interest in the context of state clemency proceedings. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272 (1998). Justice O’Connor’s concurring opinion provides the holding in *Woodard*. See *Wellons v. Comm’r, Ga. Dep’t of Corr.*, 754 F.3d 1268, 1269 n.2 (11th Cir. 2014) (acknowledging that Justice O’Connor’s concurrence “set binding precedent”); see also *Gissendaner*, 794 F.3d at 1331. Her opinion recognizes that a death-row prisoner’s life interest secured by the Due Process Clause necessitates that “some *minimal* procedural safeguards apply to clemency proceedings.” *Woodard*, 523 U.S. at 289 (O’Connor, J., concurring in part and concurring in the judgment) (emphasis in original).

Justice O’Connor explained that “[j]udicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process.” *Id.* But in *Woodard* itself, Ohio’s clemency procedures—which provided the prisoner with three days’ notice of his clemency interview, ten days’ notice of his hearing, excluded his counsel at the interview, and prohibited evidence at the hearing—did not violate the Due Process Clause. *Id.* at 289–90.

In the years following *Woodard*, we have said that “[t]he key word” in Justice O’Connor’s opinion “is ‘minimal.’” *Gissendaner*, 794 F.3d at 1331. And we have emphasized that clemency is “discretionary” and is “granted as ‘a matter of grace.’” *Valle*, 654 F.3d at 1268 (quoting *Woodard*, 523 U.S. at 280–81 (plurality opinion)); see also *Bowles*, 934 F.3d at 1242. Based on those governing standards, we have repeatedly upheld state clemency proceedings when they have been challenged under the Due Process Clause.

For example, in *Gissendaner*, the prisoner argued that the state violated her constitutional rights after she lost the opportunity to obtain and present evidence because corrections-staff members allegedly feared losing their jobs if they testified on her behalf. 794 F.3d at 1332. A panel of this Court said that Justice O'Connor's opinion in *Woodard* did not “suggest[] that a clemency board's compliance with state laws or procedures is part of the ‘*minimal* procedural safeguards’ protected by the Due Process Clause,” and therefore upheld the state's procedures, even if they violated state law. *Id.* at 1333; *see also Wellons*, 754 F.3d at 1296 (holding prisoner's due-process interest was not violated after a corrections officer who had been willing to support clemency later refused to do so for fear of losing his job).

And in *Mann*, we rejected a prisoner's argument that he was entitled to a new clemency hearing after the Governor of Florida considered an updated clemency investigation before signing the death warrant. 713 F.3d at 1316. Neither state law nor the Due Process Clause required additional procedures before the Governor's decision, we said. *Id.* at 1316–17; *see also Gilreath v. State Bd. of Pardons & Paroles*, 273 F.3d 932, 934 (11th Cir. 2001) (holding clemency board members' absence from clemency meeting and their appearance of impropriety did not violate Due Process Clause).

Here, Barwick argues that the State violated his due-process rights because it did not provide any standards that would govern the clemency decision. But under our binding precedent, we cannot agree that the Due Process Clause requires the State to provide any such standards.

An initial problem with Barwick's argument about the State's lack of standards is that it runs counter to Supreme Court authority, which has explained that “[i]t is not for the Judicial Branch to determine the standards” for the executive's clemency discretion. *Cavazos v. Smith*, 565 U.S. 1, 9 (2011) (per curiam). Any grievances that “the clemency power is exercised in either

too generous or too stingy a way” must be resolved by “political correctives, not judicial intervention.” *Id.* While *Cavazos* was decided under different circumstances and therefore does not squarely control the outcome here, its discussion bears on whether the Constitution imposes the requirement for clemency standards that Barwick seeks.

With respect to the Due Process Clause’s effect on clemency proceedings, the controlling opinion in *Woodard* is clear that the clemency process is only subject to “*minimal* procedural safeguards.” *Woodard*, 523 U.S. at 289 (O’Connor, J., concurring in part and concurring in the judgment). And the only tangible examples of due-process violations that the Supreme Court has set forth include “truly outrageous ones, such as (1) ‘a scheme whereby a state official flipped a coin to determine whether to grant clemency,’ or (2) ‘a case where the State arbitrarily denied a prisoner any access to its clemency process.’” *Gissendaner*, 794 F.3d at 1331 (quoting *Woodard*, 523 U.S. at 289) (emphasis omitted).

The State’s decision to provide the Governor and the Clemency Board with wide discretion to make clemency decisions without tangible standards does not resemble these scenarios that *Woodard* outlines. That is especially true where, as here, the Commission conducted a clemency interview with Barwick in which Barwick had an opportunity to discuss several potentially mitigating circumstances, including the abuse he suffered during his childhood and the learning challenges he faced in school.

To be sure, the Commissioners also asked several questions about Barwick’s criminal history and the facts surrounding the crime that resulted in his death sentence. But we cannot say that those inquiries suggest that the State’s clemency process was arbitrary or otherwise violated the Due Process Clause. To the contrary, the clemency interview indicates that the Commission

sought to obtain information that would assist the Clemency Board's decision on whether Barwick should receive clemency.

Nor can we agree with Barwick's argument that his clemency proceeding was arbitrary because the Commission allegedly "provided false guidance" when it said it was not concerned with his guilt, but then "myopically focused on [his] crime."

Commissioner Davison told Barwick that the purpose of the clemency interview was "to give [Barwick] an opportunity to make any statements or comments concerning commutation to life of the death sentence imposed." And the interview did that. Barwick, assisted by his counsel, described his life experiences both before his crimes and after his incarceration. Following his presentation, the Commissioners asked Barwick about his crimes and also about the experiences he described. And they asked about his physical and mental health, including whether he has been diagnosed with any type of brain injury. It is therefore not accurate to suggest that the Commission "myopically focused" on Barwick's crime.

Barwick makes several other arguments about the alleged deficiencies in the State's process here, including that there "was no exploration of [Barwick's] individual characteristics," that "nothing [Barwick] presented was considered because the singular focus of the clemency proceeding concerned the crime itself," and that the "[c]lemency consideration in Barwick's case was essentially nonexistent." But the record does not support his arguments. As we've explained, the Commissioners asked Barwick several questions about his background as well as several questions about his crime. The most reasonable reading of the record here is that the Clemency Board considered Barwick's candidacy for clemency and determined that clemency was not warranted. And we can find no basis to conclude that the Board's determination was arbitrary.

Finally, Barwick argues that he did not know what standards governed his clemency proceeding and he therefore had no opportunity to obtain a different result. We agree with the district court that “[a] more detailed set of criteria would serve a purpose, helping to avoid arbitrariness and unwarranted disparity.” But under existing precedent, we cannot conclude that the Constitution requires the State to provide such criteria. Nor can we conclude that additional criteria were likely to change the result here. Ultimately, the Clemency Board retains wide latitude to render its decisions, and judicial review of those decisions is quite limited. *See Bowles*, 934 F.3d at 1242. Any additional information about the relevant factors that are considered in the executive clemency process must come from the political branches, such as the Clemency Board itself.⁴

IV. CONCLUSION

Barwick’s due-process claim does not have a substantial likelihood of success on the merits. We must therefore deny his motion for a stay of execution pending appeal.

MOTION FOR A STAY OF EXECUTION PENDING APPEAL DENIED.

⁴ We also disagree with Barwick’s argument that the district court injected facts outside the record or otherwise abused its discretion. The district court determined that, as a matter of law, Barwick’s allegations about the deficiencies in the Florida clemency process could not satisfy the standard articulated in *Woodard*. Its decision did not depend on any assessment of the competence of Barwick’s clemency counsel. And Barwick’s challenge here is not based on allegations of ineffective assistance from his clemency counsel. *See Bowles*, 943 F.3d at 1242 n.8 (“[G]iven that there is no constitutional right to clemency, there is no constitutional right to effective assistance of counsel in clemency proceedings.”).

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
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David J. Smith
Clerk of Court

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April 26, 2023

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Appeal Number: 23-11277-P
Case Style: Darryl Barwick v. Governor of Florida, et al
District Court Docket No: 4:23-cv-00146-RH

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The enclosed order has been ENTERED.

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MOT-2 Notice of Court Action

ATTACHMENT B

DECLARATION OF BARRY M. CROWN, Ph.D.

My name is Barry M. Crown, Ph.D. I am a licensed psychologist and a Diplomate of the American Board of Professional Neuropsychology. Neuropsychology is the study of the relationship between brain function and behavior. Other credentials and qualifications are stated in the attached CV.

On April 6, 2023, I examined Darryl Barwick, a death row inmate under imminent execution warrant, at the Florida State Penitentiary in Raiford, Florida. I also reviewed testimony transcripts and other documents pertaining to Mr. Barwick, including school testing records from as early as four years of age.

The purpose of my record review and examination was to determine whether Mr. Barwick has a neuropsychological impairment (organic brain damage). Upon determining that such an impairment was present, I was asked to opine on possible causation, period of onset, and its effect on Mr. Barwick's behavior.

All opinions herein are stated to a reasonable degree of professional certainty, and are supported by my comprehensive record review and in-person evaluation of Mr. Barwick. However, due to the time constraints of Mr. Barwick's warrant litigation schedule, these opinions are incomplete and I recommend additional neuropsychological testing and other available procedures to expand upon my current findings. Specifically, Mr. Barwick should undergo functional brain imaging. I believe the results of Diffusion Tension Imaging (DTI) and Functional Magnetic Resonance Imaging (fMRI) would provide further support for the opinions below.

Preliminary conclusions

Mr. Barwick's brain never had a chance to fully develop. He suffers from lifelong significant, widespread, organic brain damage that is bilateral (on both sides of the brain), present in his parietal lobes, and especially pronounced in the frontal and temporal lobes.

Mr. Barwick's impairments likely began with early trauma *in utero*, and manifested at an young age (documented in school records by the time he was four years old) through speech impediments and learning impairments. Mr. Barwick's speech and communication was so delayed that, at the age of four, he received an IQ score of only 16. Although Mr. Barwick later achieved an improved IQ score, the speech deficit was still detectable in pretrial expert evaluations when he was a late teenager. There are indications that he heard mumbling and ringing in his ears, which is also consistent with organic brain damage.

Importantly, Mr. Barwick's brain damage rendered him unable to engage in language-based critical thinking. This had several effects. Because an individual must be able to use language and absorb it in order to establish memories, he has severely limited recall of his life before the age of ten, which is very unusual, even for trauma survivors. For comparison purposes, most individuals are able to remember their lives by age four or five. He was unable to read until approximately the tenth grade, and was unable to spell.

And, it resulted in a lack of intellectual efficiency (in laymen's terms, "being able to use the brain you've got"), which put simply means Mr. Barwick's functional abilities are far below his IQ score.

Additionally, Mr. Barwick suffers from adaptive functioning deficits, creating difficulty integrating information coming into his brain and rendering him socially inept; unable to reason or exercise sound judgment; unable to read and understand facial expressions and tone of voice. This meant that despite Mr. Barwick's empathy and efforts, he was unable to comprehend whether someone was angry, happy, or sad, and adjust his behavior accordingly. He is concrete and does not have the ability to engage in abstract reasoning. He is impaired in the areas responsible for understanding time and controlling emotional responses. At the time of his trial, Mr. Barwick had a mental age between 11 and 13.

These impairments were compounded as Mr. Barwick progressed through childhood and adolescence. He has a documented history of head injuries from parental abuse, including beatings which "cracked his head open" and resulted in loss of consciousness. As the youngest child, Mr. Barwick was utilized as the scapegoat of his family. His older siblings blamed him when things went wrong in an effort to deflect abuse from themselves. Mr. Barwick received no medical treatment for the resultant injuries, because Mr. Barwick's parents were concerned that their family would be reported to a child protective agency. Additionally, he suffered additional head injuries and apparent concussions as a wrestler and football player in middle and high school.

Mr. Barwick's deficits were further exacerbated with the onset of puberty. This is because the tertiary area of the brain (the area of the frontal lobe nearest the forehead) does not begin to develop until after the adolescent growth spurt. The tertiary area is also the most susceptible to injury, and due to Mr. Barwick's organic damage did not develop. Thus, Mr. Barwick's impairments became more pronounced as he entered his teenaged years, manifesting in increased impulsivity.

The field of neuropsychology has evolved since the close of World War II with little progress until the last ten years. Because of this, even the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) has limited information and diagnostic labeling for organic brain damage and neuropsychological impairments other than dementia. I am, however, able to opine that Mr. Barwick, in his adolescence, appears to have met the criteria for neurodevelopmental disorder. Because neurodevelopmental disorders are typically diagnosed prior to the conclusion of the developmental period, and my evaluation of Mr. Barwick took place at the age of 56 (in other words, after the conclusion of his developmental period), the most appropriate diagnosis to attach now is a cognitive disorder. This is coded in the International Classification of Diseases (ICD-10-CM) as Frontal lobe syndrome with symptoms and signs involving cognitive function and awareness.

Vulnerabilities of prior expert findings

Prior expert testimony in Mr. Barwick's case lacked the knowledge base of current neuropsychological research findings and test accessibility. For instance, one of the prior tests relied upon at Mr. Barwick's penalty phase—the Halstead Reitan Neuropsychological Battery—is used by less than five percent of neuropsychologists today due to its obsolescence compared to newer and better test instruments. Another of the tests relied upon at the penalty phase—the Bender Gestalt—was not originally intended for use as a neuropsychological instrument.

Moreover, none of the testimony at Mr. Barwick's penalty phase came from a neuropsychologist. This is significant because there is a significant causative difference between behavioral disorders and neuropsychological disorders. Unlike strictly behavioral disorders, neuropsychological disorders are an immutable, organic problem. Put more simply, although a neuropsychological disorder is not visible to the naked eye, its disabling effect is as physical as a missing limb.

Areas for further exploration

The field of neuropsychology has experienced tremendous scientific growth since the time of Mr. Barwick's trial proceedings, and even since the postconviction testimony of Dr. Eisenstein in the 2000s. Many tests and imaging procedures exist now that can confirm and interpret symptoms such as Mr. Barwick's in a way that was not previously possible.

For example, we now know that the brain does not fully develop into young adulthood and that early injuries have further long-term effects. Over the past decades, considerable new scientific evidence indicates that, compared to adults, adolescents are less able to control impulses, less likely to be able to consider future consequences as opposed to present stimuli, and more likely to engage in risky or reckless behavior. These characteristics are driven by the automatic process of brain maturation, beginning as early as age 10 and persisting well into the 20s. Importantly, these characteristics are true of adolescents generally, so even healthy, intelligent, and otherwise "normal" adolescents are impacted by these processes. This means that Mr. Barwick's additional risk factors and brain damage would have exacerbated the effects of the ongoing developmental processes he was experiencing in his late teenage years.

Brain imaging techniques have also greatly advanced since the time of Mr. Barwick's trial and post-trial proceedings, and even in the past few years. For example, a relatively new option that I highly recommend in Mr. Barwick's case is the use of Diffusion Tensor Imaging (DTI) and Functional Magnetic Resonance Imaging (fMRI). Functional MRI measures small changes in blood flow as a person performs tasks while in the MRI scanner. Unlike other imaging studies that only focus on the structure of the brain, fMRI looks at the brain in action (e.g. during thoughts, speech, movement) and is better able to assist in contextualizing real-world implications of the data it detects. It demonstrates which areas of the brain are activated in particular contexts, which is critical to understanding how brain impairments actually impact how the impaired person proceeds through life.

DTI detects white matter fibers that connect different parts of the brain. It was originally designed to assist neurosurgeons in avoiding critical areas in the brain during surgery, but is now being used to assist in understanding other forms of behavior, such as violence and Alzheimer's disease.

These are new technologies that have only been fully accepted and used in the criminal legal context over the past two to three years. However, they are fully reliable, and many major medical facilities in the United States, Europe, and Australia are gravitating toward their use. It is my opinion that the use of DTI/fMRI would provide additional and valuable insight into Mr. Barwick's brain impairment.

Under the penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true and correct.



Barry M. Crown, Ph.D.
Diplomate, American Board of
Professional Neuropsychology

Added Qualifications in
Forensic Neuropsychology
and
Developmental Disabilities

Associate Professor of Translational Medicine
and Neuroscience
Wertheim College of Medicine

ATTACHMENT C

DECLARATION OF HEATHER HOLMES, Psy.D.

I am a clinical psychologist in the State of Florida, where I have been licensed since 2005. I have worked in the State of Maryland prison system and for the Florida Department of Corrections. Further details of my education and experience are in the attached curriculum vitae.

I was asked to review documents relating to Darryl Barwick, an inmate currently on Death Watch at Florida State Prison in Raiford, Florida. Records reviewed included the expert testimony from the penalty phase; expert testimony of Dr. Hyman Eisenstein; penalty phase testimony of the victim in an earlier crime; educational records; 2021 Clemency Packet and the 2023 Declaration of Dr. Barry Crown. Because of the extraordinary time constraints of death warrant litigation—particularly during the week of a major religious holiday—my review is necessarily incomplete. However, I have been able to reach the preliminary conclusions below to a reasonable degree of professional certainty.

The records reviewed date back to 1972. Mr. Barwick was deemed to have a significant speech and language delay, which led to academic and social difficulties from the age of 4. His language problems were so pronounced that they were noted in pre-trial expert evaluations when he was 19-years old. Each psychologist that evaluated him, pre-trial as well as post-conviction, obtained test scores that were commensurate from early childhood until 2006 when he was last tested. They all show a statistically and clinically significant difference between Mr. Barwick's intelligence (ability) and his achievement (learning). In fact, the difference was 2 standard deviations, which is clinically quite substantial.

Mr. Barwick was noted to have some social oddities and/or difficulties. This was noted as early as age 4. The testimony of the victim in an earlier crime highlights lack of social awareness and Mr. Barwick's inability to appropriately read emotional and/or facial expressions of others. After committing sexual assault against her, he asked her why she was trembling. He later told her if she were to become pregnant he would help with the baby. As a clinician with a sub-specialty in the evaluation of sexual offenders, I found this to be quite unusual as it suggests a lack of understanding regarding how the victim viewed him.

Prior to Dr. Crown's examination on April 6, 2023, Mr. Barwick's only evaluation by a neuropsychologist was by Dr. Eisenstein in 2000 (who conducted some additional academic testing in 2002). His findings for both I.Q. and achievement scores was commensurate with previous doctors. However, the neuropsychological testing conducted at that time revealed definitive left and right brain impairment as well as language impairment. There were noted deficits in memory, executive functioning, and rigidity of thought.

At the time of the penalty phase, Dr. Annis opined that Mr. Barwick did not suffer from a mental disorder or mental disease. A neurologist at that time had performed a CT scan as well as a sleep EEG. Neither indicated abnormal findings. Given what information, research, and symptoms were cited in much earlier versions of the Diagnostic and Statistical Manual, these findings were not surprising, as these tests do not measure the type of dysfunction that was occurring in Mr. Barwick's brain. CT scans merely provide an image of structure, not function. Compared to an fMRI, it is the difference between a still photograph of an object and a video of that object in

use. Further, Mr. Barwick's difficulties are noted when he attempts to intake, interpret, and process information, all of which are done in a waking state.

It should be noted that when taken in totality, there is a strong likelihood that Mr. Barwick meets the criteria for a Neurodevelopmental Disorder. These disorders are characterized by "developmental deficits or differences in brain processes that produce impairments of personal, social, academic, or occupational functioning." (DSM-V-TR, 2022) They are present in early childhood and throughout development and are still typically present on testing throughout the lifespan. Unfortunately, many neurodevelopmental disorders were not known or not well-defined regarding their symptom presentation at the time of Mr. Barwick's trial. This group of disorders is typically diagnosed in childhood or adolescence; however, there was nothing within the reviewed records indicating that he was diagnosed. This is due to the lack of knowledge about many of these disorders at that time. The advancement of research, diagnostic tools and brain imaging have led to better understanding of these disorders and better diagnostic guidance that was not available at the time of the trial.

Mr. Barwick's symptoms, which have been well-documented and present throughout his lifespan, are similar to other clients that I have evaluated. Those clients have all met the diagnostic criteria for a Neurodevelopmental Disorder. Although I have not evaluated Mr. Barwick and cannot opine on a diagnosis at this time, his documented difficulties with speech and language, large split between Verbal and Performance I.Q. scores, social oddities, and noted difficulties with executive functioning warrant further exploration. Despite neurodevelopmental disorders being diagnosed in childhood, Mr. Barwick, by virtue of his age and the lack of knowledge about so many of these disorders at the time, was not diagnosed as a child. However, if he were going to trial today, he would have benefitted from more knowledge by evaluating experts, and modern imaging tools (fMRI, DTI) that have impacted not only the psychiatric community, but the legal community as well.

Individuals with global neurodevelopmental disorders often exhibit difficulties in various realms—social, emotional, behavioral, and cognitive domains. These all appear present in records reviewed for Mr. Barwick. He had been afforded several different diagnoses—language disorder, learning disability, depression, schizoid personality and antisocial personality. However, when examined in totality, it is likely that his deficits are all symptoms of a more global diagnostic category—neurodevelopmental disorder. Further, the Diagnostic and Statistical Manual, 5th edition, Text Revision (2022) states that an individual is precluded from a diagnosis of a personality disorder if "The enduring pattern is not better explained as a manifestation or consequence of another mental disorder." A neurodevelopmental disorder, because it impacts so many realms, would likely better explain the symptoms used to diagnose a personality disorder.

As is typical of individuals with neurodevelopmental disorders, a structured setting can be helpful in managing behavior. Although his DOC Classification records were not available for review under the current time restraints, records noted that Mr. Barwick has scant disciplinary difficulties in the 35 years of incarceration, none of which are violent. This was not unexpected as the severe structure of incarceration assists individuals with this disorder regarding management of their behavior. Conversely, the lack of structure in his home environment would have exacerbated his difficulties. As Mr. Barwick cannot perceive social situations correctly and

there was no inherent structure in his home environment, it is not surprising that he had more difficulty managing than his siblings, even though they were subjected to the same trauma and abuse.

Although a neurodevelopmental disorder is more likely than several of the diagnoses rendered by previous experts, the effects of this kind of disorder are quite substantial and impactful to Mr. Barwick's functioning. The comprehensive nature of a diagnosis such as this not only constitutes a major mental illness, it also impacts several domains—social, communication, processing of language, emotional, and behavioral. In my experience with recent capital cases, conditions/deficits of this type have led to sentences other than death, even in cases in which there were a higher number of victims. Thus, it is Mr. Barwick's age and the time in which his trial occurred, an era prior to experts' understanding of these conditions, that differentiate him from previous defendants that I have evaluated.

Mr. Barwick's Clemency Hearing was noteworthy for two reasons. First, he admitted to several "touching" episodes under questioning, which is another example of his inability to understand the ramifications of this admission as well as the social expectations of this interview. Second, hyper-sexualization or overfocus on sexual contact or things of a sexual nature can actually be a symptom of some neurodevelopmental disorders. Thus, his lack of understanding for how this admission could be viewed, as well as the content of that admission, are further evidence for a neurodevelopmental disorder that is quite global in scale.

If time permitted, I would meet with Mr. Barwick to conduct a full psychological evaluation. I would recommend that he undergo neuropsychological testing with a qualified examiner and updated test materials that are now standard in the field of forensic neuropsychology. I would recommend the appropriate imaging techniques such as fMRI and DTI, which are utilized to determine or rule out neurodevelopmental disorders, be conducted. Professional standards related to mental health and neuropsychology have significantly evolved since the time of Mr. Barwick's prior legal proceedings, and the factors and methodology discussed above have, in my professional experience as a forensic expert, been of great weight in court and jury determinations regarding whether a lesser penalty than death is warranted in a capital case.

Under the penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true and correct.



Heather Holmes, Psy.D.
Licensed Psychologist, PY#7125

ATTACHMENT D

DECLARATION OF LAURENCE STEINBERG

I, Laurence Steinberg, declare as follows:

1. My name is Laurence Steinberg. My address is 1924 Pine Street, Philadelphia, Pennsylvania, 19103, USA.

2. I hold the degrees of A.B. in Psychology from Vassar College (Poughkeepsie, New York) and Ph.D. in Human Development and Family Studies from Cornell University (Ithaca, New York).

3. I am a developmental psychologist specializing in adolescence, broadly defined as the second decade of life. Throughout this document, “adolescence” refers to the period of development from age 10 to age 20. Adolescence can be further divided into three phases: “early adolescence” (10 through 13), “middle adolescence” (14 through 17) and, “late adolescence” (18 through 20).

4. I am on the faculty at Temple University, in Philadelphia, Pennsylvania, USA, where I am a Distinguished University Professor and the Laura H. Carnell Professor of Psychology. I am a Fellow of the American Psychological Association, the Association for Psychological Science, and the American Academy of Arts and Sciences. I was a member of the National Academies’ Board on Children, Youth, and Families and chaired the National Academies’ Committee on the Science of Adolescence. I was President of the Division of Developmental Psychology of the American Psychological Association and President of the Society for Research on Adolescence.

5. I received my Ph.D. in 1977 and have been continuously engaged in research on adolescent development since that time. I am the author or co-author of approximately 450 scientific articles and 17 books on young people. Prior to my appointment at Temple University, where I have been since 1988, I was on the faculty at the University of Wisconsin—Madison (1983-1988) and the University of California, Irvine (1977-1983). From 1997-2007, I directed the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development

and Juvenile Justice, a national multidisciplinary initiative on the implications of research on adolescent development for policy and practice concerning the treatment of juveniles in the legal system. I also was a member of the MacArthur Foundation Research Network on Law and Neuroscience, a national initiative examining the ways in which neuroscientific research may inform and improve legal policy and practice.

6. Since 1997, I have been studying the implications of research on adolescent development for legal decisions about the behavior of young people. More specifically, my colleagues and I have been examining whether, to what extent, and in what respects adolescents and adults differ in ways that may inform decisions about the treatment of adolescents under the law.

7. I have been qualified as an expert witness in state courts in Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, the District of Columbia, Florida, Indiana, Kentucky, Massachusetts, Missouri, Nevada, Ohio, Oregon, Pennsylvania, and Wisconsin, as well as the United States District Courts for the Southern District of New York, the Eastern District of New York, and the District of Connecticut. I have also been deposed as an expert in cases in California, Colorado, Florida, Michigan, North Carolina, Pennsylvania, Rhode Island, and Wisconsin; in U.S. District Courts in the Eastern District of Michigan, the Western District of Washington and the District of Colorado; and in the Military Court of Commission Review in Guantanamo Bay, Cuba. In addition, I was the lead scientific consultant for the American Psychological Association (APA) when the Association filed Amicus Curiae briefs in *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2011); and *Roper v. Simmons*, 543 U.S. 551 (2005). One of my articles, “Less Guilty by Reason of Adolescence,” (co-authored with Elizabeth Scott),¹ was cited in the Court’s majority opinion in *Roper* and in *Miller*, as was the APA amicus brief that I helped draft.

¹ Steinberg, L., & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist*, 58, 1009-1018.

REFERRAL QUESTION

8. Ms. Linda McDermott, an attorney representing Darryl Barwick, requested that I outline the current understanding of neurobiological and psychological development during adolescence, the ways in which neurobiological immaturity impacts behavior and psychosocial development during this period, and the basis for and evolution of the understanding of ongoing behavioral development during these years. I have been specifically asked to summarize the state of the scientific literature on brain and psychological development during late adolescence. The scientific question I have been asked to address is whether individuals who are 19 years old also share the attributes of adolescents under 18 that trigger the constitutional protections the Supreme Court has already recognized for juveniles. Mr. Barwick was convicted of murder and received the death penalty. He was 19 years old in 1986, at the time of the capital crime of which he was convicted. He is now seeking review of his death sentence.

MATERIALS RECEIVED

9. I reviewed a set of materials (406 pages), including statements made by Mr. Barwick to law authorities in 1986; lay witness summaries; investigative reports from the Bay County Sheriff's office; reports of numerous psychiatric, psychological, neuropsychological, or forensic examinations conducted by Dr. Willard (1971), Ms. Richards (1972), Dr. Bartlett (1984), Mr. Bratsen (1986), Dr. Hord (1986), Dr. Annis (1986), and Dr. McClaren (1986), as well as a 1986 unsigned report believed to have been authored by Dr. McClaren; excerpts from the transcript of the penalty phase hearing conducted in 1992, which contained testimony of numerous mental health experts, including Dr. Eisenstein, Dr. Annis, Dr. McClaren, Mr. Beller, Dr. Warriner, Dr. Hord, and Dr. Walker (not present; his deposition was read to the court as if he were testifying). All materials were provided to me by counsel for Mr. Barwick.

OVERVIEW OF EXPERT OPINION

10. Over the past two decades, considerable scientific evidence has accumulated demonstrating that, compared to adults, adolescents are more impulsive, prone to engage in risky and reckless behavior, motivated more by reward than punishment, and less oriented to the future

and more to the present. These characteristics of adolescents are now viewed as normative, driven by processes of brain maturation that are not under the young person's control, and typically persist throughout adolescence in normally developing individuals ages 10 through 20 years.

11. In several landmark cases decided between 2005 and 2016, **the U.S. Supreme Court held that these aspects of juvenile immaturity mitigate criminal responsibility in ways that must be taken into account in sentencing decisions.**²

12. In the past ten years, additional scientific evidence has accrued indicating that **many aspects of psychological and neurobiological immaturity characteristic of early adolescents and middle adolescents are also characteristic of late adolescents.**

13. Although late adolescents are in some ways similar to individuals in their mid-20s, in other ways, and under certain circumstances, they are more like individuals in early and middle adolescence in their behavior, psychological functioning, and brain development. **Developmental science does not support the bright-line boundary observed in criminal law under which 18-year-olds are categorically deemed adults.**³

14. The recognition that the same sort of psychological and neurobiological immaturity characteristic of juveniles also describes individuals who are between 18 and 21 years old suggests that the logic reflected in the U.S. Supreme Court decisions in *Roper*, *Graham*, *Miller*, and in *Montgomery v. Louisiana*, applies with equal force to late adolescents, like the defendant in this case, who was 19 years old at the time of the alleged offense.

BRAIN DEVELOPMENT CONTINUES BEYOND THE TEEN YEARS

15. For most of the 20th century, scientists believed that brain maturation ended sometime during late childhood, a conclusion based on the observation that the brain reached its adult size and volume by age 10. Research examining the brain's internal anatomy and brain

² Steinberg, L. (2013). The influence of neuroscience on U.S. Supreme Court decisions involving adolescents' criminal culpability. *Nature Reviews Neuroscience*, 14, 513-518.

³ Scott, E., Bonnie, R. & Steinberg, L. (2016). Young adulthood as a transitional legal category, *Fordham Law Review*, 85, 641-666.

activity patterns – instead of focusing solely on the brain’s appearance – started challenging this widely held belief in the late 1990s.⁴

16. The advent of functional Magnetic Resonance Imaging (fMRI) permitted scientists and researchers to actually observe living individuals’ brains and examine their responses to various stimuli and activities. The results of these examinations demonstrated that key brain systems and structures – especially those involved in self-regulation and higher-order cognition – continue to mature throughout adolescence, until at least the age of 21, and likely beyond in some areas of function.⁵

17. In response to these revelations about ongoing brain maturation, researchers began to focus on the ways that adolescent behavior is more accurately characterized as reflecting psychological and neurobiological immaturity.⁶ The results of many of these studies and descriptions of adolescent behavior were used by the U. S. Supreme Court, first in *Roper v. Simmons*, and later in *Graham v. Florida*, *Miller v. Alabama*, and *Montgomery v. Louisiana*, as the foundation for the high court’s conclusions that adolescents younger than 18 should not be treated as adults by the criminal justice system. The Court, consistent with the prevailing science and the consensus among researchers in this field, reasoned that because the adolescent brain is still developing, adolescents’ often impulsive and ill-considered behavior is not fully mature, and their culpability cannot be compared to and should not be equated with that of presumptively mature

⁴ Gogtay, N., et al. (2004). Dynamic mapping of human cortical development during childhood through early adulthood. *Proceedings of the National Academies of Sciences*, 101, 8174–8179; Giedd, J., Blumenthal, J., Jeffries, N., Castellanos, F., Liu, H., Zijdenbos, A., . . . Rapoport, J. (1999). Brain development during childhood and adolescence: a longitudinal MRI study. *Nature Neuroscience*, 2, 861–863; Sowell, E., Thompson, P., Leonard, C., Welcome, S., Kan, E., & Toga, A. (2004). Longitudinal mapping of cortical thickness and brain growth in normal children. *Journal of Neuroscience*, 24, 8223–8231.

⁵ Casey, B. J., Tottenham, N., Liston, C., & Durston, S. (2005). Imaging the developing brain: What have we learned about cognitive development? *Trends in Cognitive Science*, 9, 104–110.

⁶ Steinberg, L., & Scott, E. (2003). Less guilty by reason of adolescence: Developmental immaturity, diminished responsibility, and the juvenile death penalty. *American Psychologist*, 58, 1009-1018.

adults.⁷ In addition, the Court noted that because psychological and neurobiological development are still ongoing in adolescence, individuals are still amenable to change and able to profit from rehabilitation.

18. Further study of brain maturation conducted during the past decade has revealed that several aspects of brain development affecting judgment and decision-making are not only ongoing during early and middle adolescence, but continue at least until age 21. As more research confirming this conclusion accumulated, by 2015 the notion that brain maturation continues into late adolescence became widely accepted among neuroscientists.⁸ This contemporary view of

⁷ The American Psychological Association filed briefs as amicus curiae in *Roper*, *Graham*, and *Miller*, outlining the state of neuropsychological and behavioral research on adolescent brain development and behavior for the Court. See Brief for the American Psychological Association, American Psychiatric Association, and National Association of Social Workers as Amici Curiae in Support of Petitioners, *Miller v. Alabama*, 567 U.S. 460 (2012) (No. 10-9646); Brief for the American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Mental Health America as Amici Curiae Supporting Petitioners, *Graham v. Florida*, 560 U.S. 48 (2010) (No. 08-7412), *Sullivan v. Florida*, 560 U.S. 181 (2010) (No. 08-7621); Brief for the American Psychological Association, and the Missouri Psychological Association as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

⁸ Dosenbach, N., et al. (2011). Prediction of individual brain maturity using fMRI. *Science*, 329, 1358–1361; Fair, D., et al. (2009). Functional brain networks develop from a “local to distributed” organization. *PLoS Computational Biology*, 5, 1–14; Hedman A., van Haren N., Schnack H., Kahn R., & Hulshoff Pol, H. (2012). Human brain changes across the life span: A review of 56 longitudinal magnetic resonance imaging studies. *Human Brain Mapping*, 33, 1987-2002; Pfefferbaum, A., Rohlfing, T., Rosenbloom, M., Chu, W., & Colrain, I. (2013). Variation in longitudinal trajectories of regional brain volumes of healthy men and women (ages 10 to 85 years) measured with atlas-based parcellation of MRI. *NeuroImage*, 65, 176-193; Simmonds, D., Hallquist, M., Asato, M., & Luna, B. (2014). Developmental stages and sex differences of white matter and behavioral development through adolescence: A longitudinal diffusion tensor imaging (DTI) study. *NeuroImage*, 92, 356-368. Somerville, L., Jones, R., & Casey, B.J. (2010). A time of change: behavioral and neural correlates of adolescent sensitivity to appetitive and aversive environmental cues. *Brain & Cognition*, 72, 124-133; Tamnes, C., Herting, M., Goddings, A., Meuwese, R., Blakemore, S., Dahl, R., . . . Mills, K. (2017). Development of the cerebral cortex across adolescence: A multisample study of inter-related longitudinal changes in cortical volume, surface area, and thickness. *Journal of Neuroscience*, 37, 3402-3412; Whitaker, K., Vértes, P., Romero-Garcia, R., Váša, F., Moutoussis, M., Prabhu, G., . . . Bullmore E. (2016). Adolescence is associated with genomically patterned consolidation of the hubs of the human brain connectome. *PNAS*, 113, 9105-9110.

brain development as ongoing at least until age 21 stands in marked contrast to the view held by scientists as recently as 15 years ago. **This research was not available at the time of Mr. Barwick’s trial or sentencing.**

19. We now know that, in many respects, **individuals between 18 and 21 are more neurobiologically similar to younger teenagers than had previously been thought, their character has not yet been fully formed (as those brain regions most determinant of character are the last to mature), they remain amenable to change, and they are able to profit from rehabilitation. Accordingly, predictions about adolescents’ future character and behavior based on assessments made prior to maturation amount to little more than speculation.** The APA’s observation in its brief in *Roper* therefore applies to individuals who are younger than 21: “The absence of proof that assessments of adolescent behavior will remain stable into adulthood invites unreliable capital sentencing based on faulty appraisals of character and future conduct.”⁹

20. Although mental health professionals are able to characterize the functional and behavioral features of an individual adolescent, their ability to reliably predict future character formation, dangerousness, or amenability to rehabilitation is inherently limited. This is true even for adolescents with histories of delinquent behavior, because misconduct diminishes at a high rate between adolescence and adulthood.¹⁰ Thus, mental health professionals’ ability to reliably distinguish between the relatively few adolescents who will continue as career criminals and the vast majority of adolescents who will, as adults, “repudiate their reckless experimentation is limited. As a general matter, litigating maturity on a case-by-case basis is likely to be an error-prone undertaking, with the outcomes determined by factors other than

⁹ Brief for the American Psychological Association, and the Missouri Psychological Association as *Amici Curiae* Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633), p. 24. The APA Amicus brief in *Roper*, for which I was the lead scientific consultant, and which I helped draft, did not address the death penalty for persons aged 18-20 because this issue was not before the court.

¹⁰ Sweeten, G., Piquero, A., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of Youth and Adolescence*, 42, 921-938.

psychological immaturity—such as physical appearance or demeanor . . . immaturity is often ignored when the facts of a particular case engender a punitive response; indeed, immaturity is likely to count as mitigating only when the offender otherwise presents a sympathetic case.”¹¹

21. Although various measures of antisocial character, including widely-used measures of psychopathy, may aid in making short-term predictions of violent behavior in adolescence, “they provide little support for the argument that psychopathy during adolescence is a robust predictor of future violence, particularly violence that occurs beyond late adolescence. . . . Because most adolescents manifest some ‘traits’ and behaviors during this period that may be phenotypically similar to symptoms of psychopathy, adolescence may be the most difficult stage of life in which to detect this personality pattern.”¹²

PSYCHOLOGICAL IMMATURITY IN ADOLESCENCE

22. Research conducted during the past 15 years also has led scientists to revise longstanding views of psychological development during adolescence. Conclusions drawn from this psychological research parallel those drawn from recent studies of brain development and indicate that **individuals in their late teens and early 20s are less mature than their older counterparts in several important and legally-relevant ways.**¹³ The results of these psychological studies, including many that have been conducted by my research group, have been

¹¹ Scott, E., & Steinberg, L. (2008). *Rethinking juvenile justice*. Cambridge, MA: Harvard University Press, pp. 140-141.

¹² Edens, J., Skeem, J., Cruse, K., & Cauffman, E. (2001). Assessment of “juvenile psychopathy” and its association with violence: A critical review. *Behavioral Science and the Law*, 19, 53-80.

¹³ Scott, E., Bonnie, R. & Steinberg, L. (2016). Young adulthood as a transitional legal category, *Fordham Law Review*, 85, 641-666 and Steinberg, L. (2014). *Age of opportunity: Lessons from the new science of adolescence*. New York: Houghton Mifflin, Harcourt.

found not only in the United States, but around the world.¹⁴ **This research was not available at the time of Mr. Barwick’s trial or sentencing.**

23. First, adolescents are more likely than adults to underestimate the number, seriousness, and likelihood of risks involved in a given situation. When asked to make a decision about a course of action, compared to adults, adolescents have more difficulty identifying the possible costs and benefits of each alternative, underestimate the chances of various negative consequences occurring, and underestimate the degree to which they could be harmed if the negative consequences occurred.¹⁵

24. Second, adolescents and people in their early 20s are more likely than older individuals to engage in what psychologists call “sensation-seeking,” the pursuit of arousing, rewarding, exciting, or novel experiences.¹⁶ As a consequence of this, young people are more apt to focus on the potential rewards of a given decision than on the potential costs. Other studies have indicated that heightened risk taking among adolescents is due to the greater attention they pay to

¹⁴ Duell, N., Steinberg, L., Chein, J., Al-Hassan, S., Bacchini, D., Chang, L, . . . Alampay, L. (2016). Interaction of reward seeking and self-regulation in the prediction of risk taking: A cross-national test of the dual systems model. *Developmental Psychology, 52*, 1593-1605; Duell, N., Steinberg, L., Icenogle, G., Chein, J., Chaudary, N., Di Giunta, L., . . . Chang, L. (2018). Age patterns in risk taking around the world. *Journal of Youth and Adolescence, 47*, 1052-1072; Steinberg, L., & Icenogle, G. (2019). Using developmental science to distinguish adolescents and adults under the law. *Annual Review of Developmental Psychology, 1*, 21-40. Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science, 21*, 1-13.

¹⁵ Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N., & Schwartz, R. (2003). Juveniles’ competence to stand trial: A comparison of adolescents’ and adults’ capacities as trial defendants. *Law and Human Behavior, 27*, 333-363.

¹⁶ Steinberg, L., Albert, D., Cauffman, E., Banich, M., Graham, S., & Woolard, J. (2008). Age differences in sensation seeking and impulsivity as indexed by behavior and self-report: Evidence for a dual systems model. *Developmental Psychology, 44*, 1764-1778.

the potential rewards of a risky choice relative to the potential costs. This tendency is especially pronounced among individuals between the ages of 18 and 21.¹⁷

25. Third, adolescents and individuals in their early 20s are less able than older individuals to control their impulses and consider the future consequences of their actions and decisions. In general, adolescents are more short-sighted and less likely to plan ahead than adults. Adolescents have more difficulty than adults in foreseeing the possible outcomes of their actions and regulating their behavior accordingly. **Importantly, significant gains in impulse control continue to occur beyond age 18 and into the early 20s.**¹⁸

26. Fourth, the development of basic cognitive abilities, including memory and logical reasoning, matures before the development of emotional maturity. Emotional maturity includes the ability to exercise self-control, rein in sensation seeking, properly consider the risks and rewards of alternative courses of action, and resist coercive pressure from others. A young person who appears to be intellectually mature may be socially and emotionally immature.¹⁹

¹⁷ Cauffman, E., Shulman, E., Steinberg, L., Claus, E., Banich, M., Graham, S., & Woolard, J. (2010). Age differences in affective decision making as indexed by performance on the Iowa Gambling Task. *Developmental Psychology, 46*, 193-207; Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science, 21*, 1-13.

¹⁸ Steinberg, L., Graham, S., O'Brien, L., Woolard, J., Cauffman, E., & Banich, M. (2009). Age differences in future orientation and delay discounting. *Child Development, 80*, 28-44); Steinberg, L., Albert, D., Cauffman, E., Banich, M., Graham, S., & Woolard, J. (2008) Age differences in sensation seeking and impulsivity as indexed by behavior and self-report: Evidence for a dual systems model. *Developmental Psychology, 44*, 1764-1778; Steinberg, L., Icenogle, G., Shulman, E., Breiner, K., Chein, J., Bacchini, D., . . . Takash, H. (2018). Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation. *Developmental Science, 21*, 1-13.

¹⁹ Icenogle, G., Steinberg, L., Duell, N., Chein, J., Chang, L., Chaudary, N., . . . Bacchini, D. (2019). Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a "maturity gap" in a multinational sample. *Law and Human Behavior, 43*, 69-85; Steinberg, L., Cauffman, E., Woolard, J., Graham, S., & Banich, M. (2009). Are adolescents less mature than adults? Minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop". *American Psychologist, 64*, 583-594.

27. A consequence of this gap between intellectual and emotional maturity is that the tendencies of adolescents and people in their early 20s, relative to individuals in their mid- or late 20s, are more focused on rewards, more impulsive, and more myopic. These tendencies are exacerbated when adolescents are making decisions in situations that are emotionally arousing, including those that generate or are characterized by strong negative emotions, such as fear, threat, anger, or anxiety.²⁰ Psychologists distinguish between “cold cognition” – which refers to the thinking abilities used under calm circumstances – and “hot cognition” – which refers to the thinking abilities used under emotionally arousing ones. **Adolescents’ deficiencies in judgment and self-control, relative to adults, are greater under “hot” circumstances in which emotions are aroused than they are under calmer, “cold” circumstances.**²¹

28. The combination of heightened attentiveness to rewards and still-maturing impulse control makes middle and late adolescence a time of greater risk-taking than any other stage of development. This has been demonstrated both in studies of risk-taking in psychological experiments (when other factors, such as outside influences, can be controlled) and in the analysis of data on risky behavior in the real world.²²

²⁰ Dreyfuss, M., Caudle, K., Drysdale, A. T., Johnston, N. E., Cohen, A. O., Somerville, L. H., Galvan, A., Tottenham, N., Hare, T. A., & Casey, B. J. (2014). Teens impulsively react rather than retreat from threat. *Developmental Neuroscience*, 36, 220-227.

²¹ Cohen, A., Breiner, K., Steinberg, L., Bonnie, R., Scott, E., Taylor-Thompson, K., . . . Casey, B.J. (2016). When is an adolescent an adult? Assessing cognitive control in emotional and non-emotional contexts. *Psychological Science*, 4, 549-562; Steinberg, L. (2014). *Age of opportunity: Lessons From the New Science of Adolescence*. New York: Houghton Mifflin Harcourt; Steinberg, L., Cauffman, E., Woolard, J., Graham, S., & Banich, M. (2009). Are adolescents less mature than adults? Minors’ access to abortion, the juvenile death penalty, and the alleged APA “flip-flop”. *American Psychologist*, 64, 583-594; Steinberg, L., & Icenogle, G. (2019). Using developmental science to distinguish adolescents and adults under the law. *Annual Review of Developmental Psychology*, 1, 21-40.

²² Duell, N., Steinberg, L., Icenogle, G., Chein, J., Chaudary, N., Di Giunta, L., . . . Chang, L. (2018). Age patterns in risk taking around the world. *Journal of Youth and Adolescence*, 47, 1052-1072.

29. In recent experimental studies of risk-taking, the peak age for risky decision-making has been determined to be in the late teens and early 20s.²³ This age trend is consistent with epidemiological data on age trends in risky behavior, which show peaks in the adverse outcomes of risk-taking in the late teens and early 20s in a wide range of behaviors, including driver deaths, unintended pregnancy, arrests for violent and non-violent crime, and binge drinking.²⁴

NEUROBIOLOGICAL ACCOUNTS OF ADOLESCENT IMMATURITY

30. Many scientists, including myself, believe that the main underlying cause of psychological immaturity during adolescence and the early 20s is the different timetables along which two important brain systems change during this period, sometimes referred to as a “maturational imbalance.”²⁵

31. The system that is responsible for the increase in sensation-seeking and reward-seeking that takes place in adolescence, which is localized mainly in the brain’s limbic system, undergoes dramatic changes very early in adolescence, around the time of puberty. Attentiveness to rewards remains high through the late teen years and into the early 20s. But the system that is responsible for self-control, regulating impulses, thinking ahead, evaluating the rewards and costs

²³ Braams, B., van Duijvenvoorde, A., Peper, J., & Crone, E. (2015). Longitudinal changes in adolescent risk-taking: A comprehensive study of neural responses to rewards, pubertal development and risk taking behavior. *Journal of Neuroscience*, *35*, 7226-7238; Shulman, E., & Cauffman, E. (2014). Deciding in the dark: Age differences in intuitive risk judgment. *Developmental Psychology*, *50*, 167-177.

²⁴ Willoughby, T., Good, M., Adachi, P., Hamza, C., & Tavernier, R. (2013). Examining the link between adolescent brain development and risk taking from a social-developmental perspective. *Brain and Cognition*, *83*, 315-323.

²⁵ Casey, B. J., et al. (2010). The storm and stress of adolescence: Insights from human imaging and mouse genetics. *Developmental Psychobiology*, *52*, 225-235; Shulman, E., Smith, A., Silva, K., Icenogle, G., Duell, N., Chein, J., & Steinberg, L. (2016). The dual systems model: Review, reappraisal, and reaffirmation. *Developmental Cognitive Neuroscience*, *17*, 103-117.

of a risky act, and resisting peer pressure, which is localized mainly in the prefrontal cortex, is still undergoing significant maturation well into the mid-20s.²⁶

32. Thus, during middle and late adolescence there is an imbalance between the reward system and the self-control system that inclines adolescents toward sensation-seeking and impulsivity. As this “maturational imbalance” diminishes, during the mid-20s, there are improvements in such capacities as impulse control, resistance to peer pressure, planning, and thinking ahead.²⁷

33. Studies of structural and functional development of the brain are consistent with this view. Specifically, **research on neurobiological development shows continued maturation into the early or even mid-20s of brain regions and systems that govern various aspects of self-regulation** and higher-order cognitive function. These developments involve structural (i.e., in the brain’s anatomy) and functional (i.e., in the brain’s activity) changes in the prefrontal and parietal cortices, as well as improved structural and functional connectivity between the limbic system and the prefrontal cortex. **This research was not available at the time of Mr. Barwick’s trial or sentencing.**

34. The structural changes are primarily the result of two processes: synaptic pruning (the elimination of unnecessary connections between neurons, which allows the brain to transmit information more efficiently), and myelination (the growth of sheaths of myelin around neuronal

²⁶ Shulman, E., Harden, K., Chein, J., & Steinberg, L. (2015). Sex differences in the developmental trajectories of impulse control and sensation-seeking from early adolescence to early adulthood. *Journal of Youth and Adolescence*, 44, 1-17; Steinberg, L. (2008). A social neuroscience perspective on adolescent risk-taking. *Developmental Review*, 28, 78-106; Van Leijenhorst, L., Moor, B. G., Op de Macks, Z. A., Rombouts, S. A. R. B., Westenberg, P. M., & Crone, E. A. (2010). Adolescent risky decisionmaking: Neurocognitive development of reward and control regions. *NeuroImage*, 51, 345–355.

²⁷ Albert, D., & Steinberg, L. (2011). Judgment and decision making in adolescence. *Journal of Research on Adolescence*, 21, 211-224; Blakemore, S-J., & T. Robbins, T. (2012). Decision-making in the adolescent brain. *Nature Neuroscience*, 15, 1184-1191.

connections, which functions as a form of insulation that allows the brain to transmit information more quickly).

35. Although the process of synaptic pruning is largely finished by age 16, myelination continues into the late teens and throughout the 20s.²⁸ Thus, although the development of the prefrontal cortex is largely complete by the end of middle adolescence, the maturation of connections between this region and regions that govern self-regulation and the brain's emotional centers, facilitated by the continued myelination of these connections, continues into late adolescence (at least through age 20) and may not be complete until the mid-20s.²⁹ As a consequence, late adolescents often have difficulty controlling their impulses, especially in emotionally arousing situations.

36. Recent studies that my colleagues and I conducted, of middle adolescents, late adolescents, and individuals in their mid-20s, illustrate this point. We assessed individuals' impulse control and brain activity while experimentally manipulating their emotional state. Under conditions during which individuals were not emotionally aroused, individuals between 18 and 21 exhibited impulse control and patterns of brain activity comparable to those in their mid-20s. But under emotionally arousing conditions, 18- to 21-year-olds demonstrated levels of impulsive behavior and patterns of brain activity that were comparable to those in their mid-teens.³⁰ In other

²⁸ For reviews of changes in brain structure and function during adolescence and young adulthood, see Blakemore, S-J. (2012). Imaging brain development: The adolescent brain. *Neuroimage*, 61, 397-406; Engle, R. (2013). The teen brain. *Current Directions in Psychological Science*, 22 (2) (whole issue); and Luciana, M. (Ed.) (2010). Adolescent brain development: Current themes and future directions. *Brain and Cognition*, 72 (2), whole issue; and Spear, L., & Silveri, M. (2016). Special issue on the adolescent brain. *Neuroscience and Biobehavioral Reviews*, 70 (whole issue).

²⁹ Khundrakpam, B, Lewis, J., Zhao, L., Chouinard-Decorte, F., & Evans, A. (2016). Brain connectivity in normally developing children and adolescents. *NeuroImage*, 134, 192-203.

³⁰ Cohen, et al. (2016). When is an adolescent an adult? Assessing cognitive control in emotional and non-emotional contexts. *Psychological Science*, 4, 549-562; Rudolph, M., Miranda-Dominguez, O., Cohen, A., Breiner, K., Steinberg, L., . . . Fair, D. (2017). At risk of being risky: The relationship between "brain age" under emotional states and risk preference. *Developmental Cognitive Neuroscience*, 24, 93-106.

words, **under some circumstances, the brain of a 18- to 21-year-old functions in ways that are similar to that of a 16- or 17-year old.**

DESISTANCE FROM CRIME AFTER YOUNG ADULTHOOD

37. Research in developmental psychology has produced a growing understanding of the ways in which normative psychological maturation contributes to desistance from crime. My colleagues and I have shown that normal and expected improvements in self-control, resistance to peer pressure, and future orientation, which occur in most individuals, are related to desistance from crime during the late adolescent and young adult years.³¹

38. Scientists have also shown that the human brain is malleable, or “plastic.” Neuroplasticity refers to the potential for the brain to be modified by experience. Certain periods in development appear to be times of greater neuroplasticity than others. There is growing consensus that there is considerable neuroplasticity in adolescence, which suggests that during those time periods, there are greater opportunities for individuals to change.³² In *Graham*, the United States Supreme Court recognized that adolescents’ brains are not fully developed, and their

³¹ Monahan, K., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and desistance from antisocial behavior during the transition to adulthood. *Developmental Psychology*, *45*, 1520-1530; and Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2009). Trajectories of antisocial behavior and psychosocial maturity from adolescence to young adulthood. *Developmental Psychology*, *45*, 1654-1668). This observation is consistent with findings from developmental neuroscience, noted earlier (for example, Liston, C., Watts, R., Tottenham, N., Davidson, M., Niogi, S., Ulug, A., & Casey, B.J. (2006). Frontostriatal microstructure predicts individual differences in cognitive control. *Cerebral Cortex*, *16*, 553-560).

³² For a discussion of adolescent neuroplasticity, see Aoki, C., Romeo, R., & Smith, S. (2017). Adolescence as a critical period for developmental plasticity. *Brain Research*, *1654*, 85-86; Guyer, A., Pérez-Edgar, K., & Crone, E., (2018). Opportunities for neurodevelopmental plasticity from infancy through early adulthood. *Child Development*, *89*, 687-297; Kays, J., Hurley, R., Taber, K. (2012). The dynamic brain: Neuroplasticity and mental health. *Journal of Clinical Neuropsychiatry and Clinical Neuroscience*, *24*, 118-124; Steinberg, L. (2014). *Age of Opportunity: Lessons From the New Science of Adolescence*. New York: Houghton Mifflin Harcourt; and Thomas, M., & Johnson, M. (2008). New advances in understanding sensitive periods in brain development. *Current Directions in Psychological Science*, *17*, 1-5.

lack of maturity and capacity for growth led the Court to hold that youth who commit serious crimes must have an opportunity for release based on demonstrated maturity and rehabilitation.

39. Very few individuals who have committed crimes as juveniles continue offending beyond their mid-20s. My colleagues and I have found, as have other researchers, that approximately 90 percent of serious juvenile offenders age out of crime and do not continue criminal behavior into adulthood.³³

40. Longitudinal studies documenting this pattern of desistance are consistent with epidemiological evidence on the relation between age and crime. In general, sociological studies demonstrate what scientists describe as an “age-crime curve,” which shows that, in the aggregate, crime peaks in the late teen years, and declines during the early 20s.³⁴ For example, according to recent data from the United States Federal Bureau of Investigation, on arrest rates as a function of age, arrests for property crime and for violent crime increase between 10 and 19 years, peak in the late teens or early 20s, and decline most dramatically after 25.³⁵ This is a robust pattern observed not only in the United States, but across the industrialized world and over historical time.³⁶

41. Research in developmental psychology has produced a growing understanding of the ways in which normative psychological maturation contributes to desistance from crime. My

³³ Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2013). Psychosocial (im)maturity from adolescence to early adulthood: Distinguishing between adolescence-limited and persistent antisocial behavior. *Development and Psychopathology*, 25, 1093–1105; and Mulvey, E., Steinberg, L., Piquero, A., Besana, M., Fagan, J., Schubert, C., & Cauffman, E. (2010). Trajectories of desistance and continuity in antisocial behavior following court adjudication among serious adolescent offenders. *Development and Psychopathology*, 22, 453–475.

³⁴ Sweeten, G., Piquero, A., & Steinberg, L. (2013). Age and the explanation of crime, revisited. *Journal of Youth and Adolescence*, 42, 921–938.

³⁵ U.S. Department of Justice. (2020). *Crime in the United States*, 2019.

³⁶ Farrington, D. (1986). Age and crime. In M. Tonry & N. Morris (Eds.), *Crime and justice: An annual review of research*, vol. 7 (pp. 189–250). Chicago: University of Chicago Press; Hirschi, T., & Gottfredson, M. (1983). Age and the explanation of crime. *American Journal of Sociology*, 89, 552–84; and Piquero, A., Farrington, D., & Blumstein, A. (2007). *Key issues in criminal careers research: New analysis from the Cambridge study in delinquent development*. Cambridge: Cambridge University Press.

colleagues and I have shown that normal and expected improvements in self-control, resistance to peer pressure, and future orientation, are related to desistance from crime during the late adolescent and young adult years.³⁷ This observation is consistent with findings from developmental neuroscience, noted earlier.³⁸

42. In summary, there is strong scientific evidence that (1) most adolescent offending reflects transient developmental immaturity rather than irreparably bad character; (2) this developmental immaturity has been linked to predictable patterns of structural and functional brain development during adolescence; (3) this process of brain maturation continues through the late teens and into the early 20s; (4) the adolescent brain is especially “plastic,” or susceptible to environmental influence, which makes juveniles more amenable to rehabilitation; and (5) the vast majority of adolescent offenders age out of crime as they mature into their mid-20s.

CONCLUSION

43. Extensive studies demonstrate that important neurobiological development is ongoing throughout the teenage years and continues into the early 20s. As a result of neurobiological immaturity, young people, even those past the age of majority, continue to demonstrate difficulties in exercising self-restraint, controlling impulses, considering future consequences, making decisions independently from their peers, and resisting the coercive influence of others. Heightened susceptibility to emotionally laden and socially charged situations renders adolescents more vulnerable to others’ influence, and in such situations young people are even less able to consider and weigh the risks and consequences of a chosen course of action.³⁹

³⁷ Monahan, K., Steinberg, L., & Cauffman, E. (2009). Affiliation with antisocial peers, susceptibility to peer influence, and desistance from antisocial behavior during the transition to adulthood. *Developmental Psychology, 45*, 1520-1530; Monahan, K., Steinberg, L., Cauffman, E., & Mulvey, E. (2009). Trajectories of antisocial behavior and psychosocial maturity from adolescence to young adulthood. *Developmental Psychology, 45*, 1654-1668.

³⁸ For example, see Liston, C., Watts, R., Tottenham, N., Davidson, M., Niogi, S., Ulug, A., & Casey, B.J. (2006). Frontostriatal microstructure predicts individual differences in cognitive control. *Cerebral Cortex, 16*, 553-560.

³⁹ Scott, E., Duell, N., & Steinberg, L. (2018). Brain development, social context, and justice policy. *Washington University Journal of Law and Policy, 57*, 13-74.

Many of the same immaturities that characterize the brains of individuals younger than 18, and that have been found to mitigate their criminal culpability, are characteristic of the brains of individuals between 18 and 21. As I noted earlier, this research was not available at the time of Mr. Barwick’s trial or sentencing.

44. **Criminal acts committed by adolescents, even those past the age of 18, are best considered in light of their neurobiological and psychological immaturity. For this reason, it is inappropriate to assign the same degree of culpability to criminal acts committed at this age to that which would be assigned to the behavior of a fully mature and responsible adult.**

45. In his majority opinion in *Roper v. Simmons*, Justice Kennedy noted three characteristics of juveniles that diminish their criminal responsibility: their impetuosity, their susceptibility to peer influence, and their capacity to change. In Justice Kennedy’s opinion in *Graham v. Florida*, as well as Justice Kagan’s opinion in *Miller v. Alabama*, the Court noted that the characterization of juveniles as inherently less mature than adults, and therefore less responsible for their crimes, was supported by a growing scientific literature affirming adolescents’ neurobiological as well as psychological immaturity.⁴⁰ In the nine years that have elapsed since *Miller*, scientific evidence consistent with these arguments has continued to accrue.

46. Recent discoveries in psychological science and in brain science, as well as societal changes, should urge us to rethink how we view people in late adolescence and young adulthood in terms of their treatment under the law. It is now clear that neurobiological and psychological immaturity of the sort that the Supreme Court referenced in its opinions on juveniles’ diminished culpability is also characteristic of individuals in their late teens and early 20s. **For the very same reason that the Supreme Court found capital punishment in cases involving defendants under the age of 18 to be unconstitutional, this penalty should be prohibited in all cases involving defendants who are under the age of 21.**⁴¹ Individualized assessments of adolescents

⁴⁰ Steinberg, L. (2017). Adolescent brain science and juvenile justice policymaking. *Psychology, Public Policy, and Law*, 23, 410-420.

⁴¹ This view is consistent with that recently adopted by the American Bar Association (“The American Bar Association, without taking a position supporting or opposing the death penalty, urges each jurisdiction that imposes capital punishment to prohibit the imposition of a death

conducted for the purpose of predicting future offending are unreliable, influenced by factors that have nothing to do with future criminal behavior (such as a defendant's physical appearance), and easily tainted by conscious and unconscious biases.⁴²

47. In short, "the likelihood of error in ascertaining putatively enduring features of an adolescent's behavior is high. The fundamental problem is found in the inability to distinguish in a reliable way between the few adolescent offenders who may not be amenable to rehabilitation and the many who will spontaneously desist or who will respond to sanction or intervention."⁴³

48. Attempts to predict at capital sentencing an adolescent offender's character formation and dangerousness in adulthood are inherently prone to error and create an obvious risk of wrongful execution. **The same evidence which could be used to argue that a death sentence is warranted in a case of an adult defendant may, in an adolescent, may very well reflect transitory behavior that would not support such an argument.** A strong presumption that mitigation applies categorically to individuals under 21 avoids both innocent errors and more pernicious influences that may distort individualized determinations.

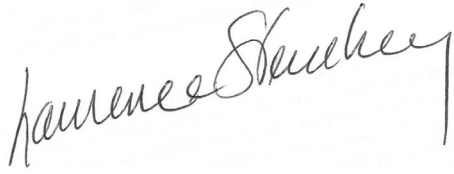
49. In my opinion, this scientific evidence should be taken into account with respect to Mr. Barwick's request for review of his death sentence.

50. I believe that the facts I have stated in this report are true and that the opinions I have expressed are within a reasonable degree of scientific certainty.

sentence on or execution of any individual who was 21 years old or younger at the time of the offense," Resolution, Death Penalty Due Process Review Project, Section of Civil Rights and Social Justice, American Bar Association, February, 2018).

⁴² Tonry, M. (2019). Predictions of dangerousness in sentencing: Déjà vu all over again. *Crime and Justice: A Review of Research*, 48, 439-482.

⁴³ Brief for the American Psychological Association, and the Missouri Psychological Association as *Amici Curiae* Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 (2005) (No. 03-633).

A handwritten signature in black ink, reading "Laurence Steinberg". The signature is written in a cursive style and is positioned above the typed name.

Laurence Steinberg, Ph.D.

Philadelphia, PA

March 27, 2021

ATTACHMENT E

Darryl Barwick
April 29, 2021

RE:

FLORIDA COMMISSION ON OFFENDER REVIEW

Clemency Interview of Inmate

DARRYL BARWICK

Thursday, April 29th, 2021

11:45 a.m. - 12:46 p.m.

Union Correctional Institution

25636 FL-16

Raiford, Florida 32083

Stenographically Reported By:

Carol Baer, Florida Professional Reporter

Job No. 179890

1 APPEARANCES:

2

3 On behalf of the Inmate:

4 Richard Greenberg, Clemency Counsel
5 101 N. Monroe Street, Suite 120
6 Tallahassee, Florida 32301

7 On behalf of Florida Commission on Offender Review:

8 Richard D. Davison, Commissioner

9 David A. Wyant, Commissioner

10 John Steve Dawson, Commission Investigator Supervisor

11 Brandy Fortune, Capital Punishment Research Specialist

12 Florida Commission on Offender Review
13 Clemency Investigation
14 4070 Esplanade Way
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16 johndawson@fcor.state.fl.us

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1 (Proceedings commenced at 11:46 a.m.)

2 COMMISSIONER DAVISON: We are present
3 today for an interview being held at the Union
4 Correctional Institution in Raiford, Florida,
5 April 29th, 2021. The time is now 11:46 a.m.

6 Present is David Wyant, Commissioner,
7 Florida Commission on Offender Review,
8 Tallahassee, Florida. Steve Dawson, Commission
9 Investigation Supervisor, Florida Commission on
10 Offender Review, Tallahassee, Florida. Brandy
11 Fortune, Capital Punishment Research
12 Specialist, Florida Commission on Offender
13 Review, Tallahassee, Florida. And myself,
14 Richard D. Davison, D-A-V-I-S-O-N,
15 Commissioner, Florida Commission on Offender
16 Review, Tallahassee, Florida.

17 Counsel, would you please state your name
18 and address for the record.

19 MR. GREENBERG: Richard Greenberg, 101
20 North Monroe Street, Suite 120, Tallahassee,
21 Florida.

22 COMMISSIONER DAVISON: Mr. Barwick, would
23 you please state your full name, prison number
24 and date of birth for the record?

25 MR. BARWICK: Darryl Brian Barwick,

1 092501.

2 What was the other? Oh, September 29th,
3 1966.

4 COMMISSIONER DAVISON: Mr. Barwick, would
5 you spell your middle name?

6 MR. BARWICK: Ooh. B-R-A-I-N, I believe.
7 I think.

8 COMMISSIONER DAVISON: As previously
9 stated, I am Commissioner Richard D. Davison.
10 To my left is Commissioner David A. Wyant. We
11 are members of the Florida Commission on
12 Offender Review, and we are here today at the
13 request of the governor and cabinet who serve
14 as members of the executive clemency board.

15 We're here to take testimony as to whether
16 your case should be heard for clemency before
17 the governor and cabinet sitting as the board
18 of executive clemency. The commission will
19 record and transcribe for review by the
20 governor and cabinet any and all statements
21 made at this interview. The commission is not
22 here to review what happened during your court
23 proceedings or to determine your innocence or
24 guilt. The purpose of this interview is to
25 give you an opportunity to make any statements

1 or comments concerning commutation to life of
2 the death sentence imposed.

3 The commissioners present here today will
4 prepare a final report to include a brief
5 summary of the issues presented and our
6 findings and conclusions which will be provided
7 to the governor and cabinet. If following this
8 interview you desire to provide additional
9 information in this case to the governor and
10 cabinet, it should be submitted in accordance
11 with the rules of executive clemency to the
12 Capital Punishment Research Specialist, Office
13 of Clemency Investigations, 4070 Esplanade Way,
14 Tallahassee, Florida 32399-2450.

15 Counselor, you may proceed at this time.

16 MR. GREENBERG: Mr. Barwick, if you will,
17 please tell the commission a little bit about
18 your background.

19 MR. BARWICK: Okay. Ladies and gentlemen,
20 let's see. I guess, not a whole lot, I guess.
21 I was born in Chicago, Illinois and we moved to
22 Florida when I was about nine months to Panama
23 City, Florida. That's where I grew up till I
24 was 15.

25 I got four sisters, two brothers, had a

1 normal house. I don't know what to say.

2 MR. GREENBERG: You say you had a normal
3 house. This is your opportunity and I know
4 it's not easy for you to talk about this
5 because you love your parents, but tell the
6 commission about your father.

7 MR. BARWICK: All right. My father was a
8 very abusive man. And he believed when it come
9 time to whoop somebody, fist, two-by-four,
10 baseball bat, half-inch rebar, shovel.
11 Whatever he could get his hands on, that's what
12 he'd beat you with.

13 And it didn't matter. I mean, everybody
14 knew it. The family, the neighbors. And, yes,
15 even the police knew it. But that's just the
16 way it was. And you never know with him.
17 Anything could set him off. He could be really
18 nice and sweet one minute and the next minute
19 he'd go off. And when he'd go off, everybody
20 would run for cover.

21 MR. GREENBERG: Now, where did you fall --
22 you said you had four sisters, two brothers,
23 correct?

24 MR. BARWICK: Right.

25 MR. GREENBERG: Where did you fall in the

1 family?

2 MR. BARWICK: I was the youngest. And the
3 majority of the time when he would go off,
4 everybody would scatter but they figured they'd
5 throw me at him because I was the youngest and
6 he'd take it easy on me. So I did take the
7 majority of the punishment. And it did get
8 bad. You know, get knocked out, get cuts and
9 sometimes I probably should have had stitches.

10 You know, and when it got bad like that,
11 you didn't go to school the next couple days
12 until you healed up. And, like I say, they --
13 I say they knew because I know for a fact that
14 the cops were called on numerous occasions and
15 they even had the -- I forget what it's
16 called -- HRS or something, something to do
17 with kids back in the day. They'd come by the
18 house and check, but they'd always do what they
19 call a surprise inspection. They'd call you on
20 Tuesday and say I'm going to come see you on
21 Thursday and we'll be there about 1:00 o'clock
22 and give you a heads up. So it wasn't a
23 surprise.

24 So before they'd show up, he'd sit us all
25 down and let us know if you say anything or do

1 anything you shouldn't, soon as you leave, I'm
2 going to whoop you.

3 Being the cops never did anything about it
4 before, we kept our mouth shut and kept on
5 going.

6 MR. GREENBERG: Were you actually knocked
7 out by your father?

8 MR. BARWICK: Yes, a few times. I mean, I
9 guess the latest one, I messed around and
10 dropped some groceries on his foot and he went
11 off and started hitting me. I got hit and I
12 fell back. The next thing I know, I was waking
13 up a couple hours later, laying on the floor
14 and was a contusion in the back of my head. It
15 got cut open. He said I hit my head on a
16 rocking chair when I fell.

17 MR. GREENBERG: Did you work for your
18 father at some point?

19 MR. BARWICK: Yeah. He had a construction
20 company, Barwick and Sons. And all of us --
21 all the boys worked with him. And, I mean,
22 even at work, you know, if stuff don't go the
23 way he wanted, he'd go off and hit us there at
24 work. Other employees see it, other
25 businesses, people see it working there. It

1 was no big deal to him, you know. He'd take a
2 shovel or an axe handle and chase you around
3 and hit you with a two-by-four. And it was
4 just the way it was. It's how we grew up. You
5 know, no one seemed to say anything else about
6 it because no one complained about it so...

7 MR. GREENBERG: How old were you when you
8 were first sent to prison?

9 MR. BARWICK: I was 15. Fifteen when I
10 got arrested.

11 MR. GREENBERG: When you were 15, you were
12 sent to --

13 MR. BARWICK: Lancaster. Lancaster
14 Correctional.

15 MR. GREENBERG: Were you sentenced as a
16 youthful offender or were you --

17 MR. BARWICK: Yes. It was a youthful
18 offender prison camp at the time. I believe,
19 if I'm not mistaken, right before I left, it
20 got moved up a little, you know. It was a
21 youthful offender camp.

22 MR. GREENBERG: At the age of 15, were you
23 one of the youngest inmates there?

24 MR. BARWICK: It's hard to say. It was
25 somewhere around, yeah, about 15, yeah.

1 MR. GREENBERG: How long did you serve at
2 Lancaster?

3 MR. BARWICK: I believe it was 28 months.
4 A little over two years.

5 MR. GREENBERG: What were you serving the
6 sentence for?

7 MR. BARWICK: It was rape, burglary of a
8 dwelling. I think -- I'm not sure what else.
9 I know those two.

10 MR. GREENBERG: And Commissioner Davison
11 had said we're not going to really talk about
12 the events that brought you here today as far
13 as the facts of the case. But what would you
14 like to say to the commission about your
15 feelings about that case and what you would
16 like them to recommend to the governor?

17 MR. BARWICK: Well, I'm going to start off
18 and be honest with you. Yes, I'm guilty of
19 this. I'm going to take the blame, take the
20 consequences for what I did. I'm not trying to
21 deny that.

22 Oh, man. I do regret what I did. And I
23 am sorry. And I can't even imagine what it was
24 like for her family and friends to lose someone
25 like that for no reason at all. And it's got

1 to be horrible. And I got no excuse. I don't
2 know if ever you could, you know, redeem
3 yourself back from something like that, but I
4 have tried. I've been here 35 years, and I
5 don't have very, very many DRs. I have been
6 able to stay out of trouble. I try to help out
7 when I can with other people.

8 I'm sure if you look somewhere around,
9 they got some where I've been recently moved to
10 a place next to a guy by the name of James Rose
11 who's blind, and I help him out and do things
12 for him, letters, e-mails, help him with his
13 tablet, sync it for him, fix it up for music to
14 listen to. Whatever he needs, that's what I'm
15 there to help him with.

16 And he's had other guys do it over the
17 years, but he always has conflict with people
18 because he's blind so he gets frustrated
19 sometimes and he doesn't pay attention to what
20 he's saying. He just says things that offend
21 people so they move. He doesn't affect me.

22 I've showed that I'm kind of easy and laid
23 back and I handle it. I think if I was lucky
24 enough to get a life sentence, then I could
25 always work with somebody like that to help out

1 and give something back to show that even
2 though, yes, I did this horrible thing, there
3 is some way of me contributing in, you know,
4 prison to help out. I don't know if it would
5 do any good, but that's basically my idea.

6 I mean, I have -- like I say, I stayed out
7 of trouble. I mean, you seen my DRs, I'm sure.
8 There have been a few. But, basically, I have
9 no violence. Never been in a fight, nothing to
10 do with violence. I stay pretty calm.

11 MR. GREENBERG: In regards to inmate Rose,
12 were you asked to assist him or how did that
13 come about?

14 MR. BARWICK: Well, I saw him in the yard.
15 He didn't say nothing to me at first. But the
16 guy that was staying in that cell next to him
17 asked me about it. And I said, I didn't know.
18 You have to talk to James and see if he'd be
19 all right with it, the guards would be all
20 right.

21 He came and talked to me in the yard about
22 it. Because, at that time, they was allowing
23 you to go to the yard still. And I said sure,
24 no problem. The next thing I know, they packed
25 me up and moved me over there next to him and

1 I've been helping him out ever since.

2 MR. GREENBERG: How long has that been?

3 MR. BARWICK: It's been a couple years now

4 I would say. I haven't even paid attention
5 about exactly when they moved me over there.

6 It's been a couple years.

7 MR. GREENBERG: Do you have some people
8 that you've become a pen pal with?

9 MR. BARWICK: Well, I got few, like 10, 11
10 people over the years I've met and been
11 writing. Some have been overseas, some have
12 been here in the states. A couple of them, you
13 know, have been anywhere from teachers to even
14 nuns. But some have been just very good
15 friends, you know, I met over the years
16 writing. Or writing somebody else and I asked
17 them to find somebody to write me and they said
18 yes. Find somebody and I start writing them.
19 I've been writing and some visit.

20 So it's been nice, you know. Most of them
21 it's been 10 years or more, so it's not like
22 it's brand new, new people I just started
23 writing.

24 MR. GREENBERG: What type of programs have
25 you tried to participate in while incarcerated?

1 MR. BARWICK: In here on death row,
2 there's not that much you can do. Basically,
3 the only thing I'm aware of is Bible study,
4 stuff like that. I don't have the money to
5 take college courses, so I can't do that.
6 Bible study is the only thing I've been doing
7 for, I guess, the last four, five years, maybe
8 longer than that. I'm not exactly sure when it
9 started.

10 MR. GREENBERG: Now, since you were
11 incarcerated the first time at age 15, did you
12 get a GED?

13 MR. BARWICK: Not yet. When I went to
14 prison the first time, I was in the -- I did
15 like one year of the 11th grade and so I got my
16 GED kind of fast when I first got to Lancaster
17 back in -- it would have been back in -- I want
18 to say '84, '84, early '84.

19 After that, let's see, what did I do? I
20 took a vocational auto mechanics class. That
21 was the only vocation I can remember taking at
22 the time.

23 Other than that, I did -- mostly I did
24 construction work when I was in there. I know
25 we built a canteen when I was there and a

1 couple of sheds. I worked in construction
2 work, basically the same thing I did when I was
3 on the street.

4 MR. GREENBERG: You mentioned that you
5 take full responsibility for this crime that
6 brought you here.

7 MR. BARWICK: Yes.

8 MR. GREENBERG: Again, what do you
9 believe -- I mean, do you have any problem
10 accepting, if it's granted to you, a life
11 sentence?

12 MR. BARWICK: No. If I could get it,
13 yeah, I'd love to have a life sentence. I've
14 been here 35 years. Don't get me wrong, I know
15 what I did was wrong and it was rape. There's
16 no argument there.

17 But I'm not the same person I was at 19.
18 I'm 54 now. But it doesn't change what I did.
19 But maybe, like I said, I could do something to
20 help out other than, you know, what I've done
21 so far.

22 To me, a life sentence would be nice.

23 MR. GREENBERG: Do you accept that if
24 that's granted that that would be an
25 appropriate sentence for you?

1 MR. BARWICK: Obviously, I would say yeah.
2 I mean, me spending the rest of my life in
3 prison. I'm not trying to get out. Obviously,
4 I'm not trying to argue whether I'm guilty or
5 innocent so I won't be trying to file any legal
6 motions or anything to the courts. That's over
7 with.

8 So I'll be able to just go on and live
9 what life I do have left in prison. Hopefully,
10 it'll be like the rest of my life so far, no
11 trouble, keep it clean, keep out of trouble,
12 and just help out when I can.

13 MR. GREENBERG: No other questions.

14 COMMISSIONER WYANT: First off, thank you,
15 Mr. Barwick, for spending your morning with us.
16 I appreciate the opportunity to ask you
17 questions, should Commissioner Davison and I
18 have any. Independently, we've both had a
19 chance to review your case in preparation for
20 today's meeting.

21 Just briefly, I know you were 15 when you
22 were at Lancaster doing 28 months on a rape and
23 burglary charge and then you were 19 when you
24 committed this.

25 MR. BARWICK: Yes.

1 COMMISSIONER WYANT: So if my math is
2 right, you were out of prison maybe a year?

3 MR. BARWICK: No. It was actually about,
4 I want to say, 92, 93 days.

5 COMMISSIONER WYANT: Okay, before you
6 committed this offense?

7 MR. BARWICK: Yes. Well, actually before
8 I got locked up for this offense.

9 COMMISSIONER WYANT: Okay. In total, if
10 you can tell me, how many women have you
11 victimized prior to getting this sentence?

12 MR. BARWICK: Top of my head? I've only
13 had the -- obviously the one case before
14 regarding the rape case, but there's been, I
15 guess you could say molesting, cop a feel here
16 and there. But how many?

17 COMMISSIONER WYANT: Yeah.

18 MR. BARWICK: I must say 15, maybe 20.

19 COMMISSIONER WYANT: So best estimate, 92,
20 to 93 days when you were released from
21 Lancaster till you were arrested on this
22 charge?

23 MR. BARWICK: Yes.

24 COMMISSIONER WYANT: How many days, if you
25 remember, were there between the act and the

1 arrest date?

2 MR. BARWICK: Two weeks, maybe three.

3 COMMISSIONER WYANT: Do you have any
4 relationship with your family today?

5 MR. BARWICK: Yes. I correspond with two
6 of my sisters.

7 COMMISSIONER WYANT: Which sisters?

8 MR. BARWICK: Sheila Santiago and Barbara
9 Corvin or Corben.

10 MR. GREENBERG: How about Cochran.

11 MR. BARWICK: Cochran, yeah.

12 The rest of my -- I got one sister Lovey
13 Rod -- I think it's Rodriguez. She writes
14 every so often, about once or twice a year.
15 And my brothers are the same way. You know,
16 birthday, Christmas, send cards and stuff.

17 COMMISSIONER WYANT: When's the last time
18 you had a visitor?

19 MR. BARWICK: A visitor? Last weekend.

20 COMMISSIONER WYANT: And who was that?

21 MR. BARWICK: Benjamin Weekly.

22 COMMISSIONER WYANT: He's just a friend?

23 MR. BARWICK: Yes.

24 COMMISSIONER WYANT: In looking at the
25 facts of the case, the victim of your case, you

1 didn't know her --

2 MR. BARWICK: No, sir.

3 COMMISSIONER WYANT: -- is that right?

4 MR. BARWICK: No, sir.

5 COMMISSIONER WYANT: Okay. And you
6 actually killed her because she could identify
7 you later, is that why you decided to kill her?

8 MR. BARWICK: No, not in my recall.

9 COMMISSIONER WYANT: So why did you kill
10 her?

11 MR. BARWICK: That's a good question. To
12 be honest, I really don't know. I mean, to be
13 honest, I don't know.

14 COMMISSIONER WYANT: Do you know how many
15 times you stabbed her or slashed her?

16 MR. BARWICK: Not off the top of my head.
17 I know what the papers said. I think it was 37
18 I think, something like that.

19 COMMISSIONER WYANT: And the knife you
20 used, you went to your house, obtained it, and
21 then came back, is that right?

22 MR. BARWICK: Yeah. Technically, yeah.
23 But not really because the weapon I used, I
24 didn't actually stab her with it. It was one
25 of hers.

1 COMMISSIONER WYANT: Okay. I don't think
2 I have any other questions at this time.
3 Appreciate it.

4 COMMISSIONER DAVISON: Good afternoon,
5 Mr. Barwick. As I said in the introduction,
6 I'm Commissioner Davison, and we're going to
7 spend just a little bit of time trying to learn
8 more about you as a person.

9 We generally know the facts that have been
10 presented in your legal proceedings. There
11 were several questions asked, and what is
12 important to me is the whys. Why this, why
13 that.

14 And you talked about your father being
15 very abusive.

16 MR. BARWICK: Yes.

17 COMMISSIONER DAVISON: And you said
18 everybody knows it, even the police.

19 MR. BARWICK: Yes.

20 COMMISSIONER DAVISON: So how did the
21 police know that your father was abusive?

22 MR. BARWICK: One, they seen it and, two,
23 they have reports, people reported it and they
24 just -- they get there to the house, they look:
25 Oh, we didn't see anything, let's go.

1 COMMISSIONER DAVISON: Name an instance
2 where the police have seen the abusiveness.

3 MR. BARWICK: Oh, that's easy. We was
4 working in construction at the time. In Panama
5 City, we was doing some concrete, we were
6 pouring a floor. And the cop was there when my
7 dad went off one time. He took an axe
8 handle -- he took an axe, actually to start off
9 with, and chopped up the water cooler because
10 everybody was going up to the water cooler a
11 little too much. We was working during the
12 summer and he got mad and he felt we was going
13 there a little too many times, so he took the
14 axe to the water cooler. When the axe broke,
15 he got mad. And the cops were standing right
16 there. And he went to hitting us with it.
17 They just went to laughing. To them it was
18 funny.

19 COMMISSIONER DAVISON: When you say
20 hitting "us"?

21 MR. BARWICK: Well, I got hit, my brother
22 got hit. So, I mean, I don't recall him
23 hitting anybody else. I got hit a couple
24 times. I took off.

25 COMMISSIONER DAVISON: And you have two

1 brothers?

2 MR. BARWICK: Two brothers.

3 COMMISSIONER DAVISON: And this instance
4 that you're describing, your father hit you and
5 your two brothers?

6 MR. BARWICK: He hit at least one of them
7 that I saw. One of them, William I believe it
8 was, yeah.

9 COMMISSIONER DAVISON: You said he was
10 hitting them with the water cooler?

11 MR. BARWICK: No, axe handle.

12 COMMISSIONER DAVISON: Axe handle.

13 Did you suffer any injuries from that?

14 MR. BARWICK: Not really, no. I don't
15 think I did. I didn't get knocked out. I
16 didn't break any bones.

17 COMMISSIONER DAVISON: And after you were
18 hit with the axe handle, were you able to go
19 back to work?

20 MR. BARWICK: Yeah, once things calmed
21 down, I came back.

22 COMMISSIONER DAVISON: William, your
23 brother, William Barwick, you say, did he run
24 off or did he remain at the scene?

25 MR. BARWICK: I don't remember what he

1 did. I took off.

2 COMMISSIONER DAVISON: You took off?

3 MR. BARWICK: I took off. I saw him, my
4 dad, finally leave for a little while, then I
5 came back. And then when he came back, he
6 didn't seem to be all upset and mad anymore, so
7 I stayed.

8 COMMISSIONER DAVISON: I know you
9 mentioned earlier that you were the youngest of
10 seven?

11 MR. BARWICK: Right.

12 COMMISSIONER DAVISON: A lot of times you
13 would receive a lot of the, I guess, ire of
14 your father?

15 MR. BARWICK: Yeah. They seemed to think
16 because I was the so called baby of the family,
17 that my dad wouldn't be as, I guess, rough with
18 me as he would be with them. So I, a lot of
19 times, got pushed in front to make sure I was
20 the one that took all the beating and they'd
21 take off. It was a current theme in the
22 family. Anytime he'd go off, they'd throw
23 somebody at him and everybody else would run.

24 COMMISSIONER DAVISON: So in the various
25 beatings that you were referring to, were you

1 ever hospitalized?

2 MR. BARWICK: No, no, no.

3 COMMISSIONER DAVISON: Did you ever
4 receive any injuries that required medical
5 treatment?

6 MR. BARWICK: No.

7 COMMISSIONER DAVISON: The difference is,
8 that required medical treatment, less than
9 hospitalization?

10 MR. BARWICK: No, it wasn't necessary. I
11 probably should have but we never did. We'd
12 stay at home, doctor it up ourselves, and that
13 was it.

14 COMMISSIONER DAVISON: And although you
15 say the focus many times was on you, did your
16 father beat your two brothers?

17 MR. BARWICK: He beat them all. All of
18 us, even my mom.

19 COMMISSIONER DAVISON: Your father beat
20 your four sisters?

21 MR. BARWICK: Yes.

22 COMMISSIONER DAVISON: And would you say
23 that your beatings were about the same as
24 theirs or worse or less?

25 MR. BARWICK: That would depend on him

1 sometimes. Sometimes they got it worse than I
2 did. Most of the times, I would say I did. I
3 did get it more frequently than what they did.
4 They didn't get it as much. Our ages were so
5 different that by the time I got to even close
6 to being 8, 9 years old, most of them was gone.
7 So I didn't get to see a lot. I did get to see
8 like with William and Lovey. They were close
9 to my age. But I did seem to get the brunt of
10 it. Most of the time he went off, it was me he
11 went off on.

12 COMMISSIONER DAVISON: Your siblings are
13 Sheila?

14 MR. BARWICK: (Nodding head.)

15 COMMISSIONER DAVISON: Barbara, William?

16 MR. BARWICK: Yeah.

17 COMMISSIONER DAVISON: Lovey. And who are
18 the other two?

19 MR. BARWICK: Glenn and Debra.

20 COMMISSIONER DAVISON: And Debra.

21 So tell me, to your knowledge, has Debra
22 ever been incarcerated?

23 MR. BARWICK: I'm the only one that I know
24 of.

25 COMMISSIONER DAVISON: So Debra has not

1 been incarcerated?

2 MR. BARWICK: Not that I'm aware of.

3 COMMISSIONER DAVISON: Glenn has not been
4 incarcerated?

5 MR. BARWICK: No.

6 COMMISSIONER DAVISON: Lovey has not been
7 incarcerated?

8 MR. BARWICK: No, sir.

9 COMMISSIONER DAVISON: William has not
10 been incarcerated? Barbara has not been
11 incarcerated?

12 MR. BARWICK: No.

13 COMMISSIONER DAVISON: Sheila has not been
14 incarcerated?

15 MR. BARWICK: Correct.

16 COMMISSIONER DAVISON: So you were the
17 only one of the seven who has been
18 incarcerated?

19 MR. BARWICK: Correct.

20 COMMISSIONER DAVISON: But all of the
21 seven of you were all beaten by your father?

22 MR. BARWICK: Absolutely, yeah.

23 COMMISSIONER DAVISON: And so is there
24 anything particular about your beatings that
25 would cause you to go down a path of criminal

1 activity and not your brothers and sisters?

2 MR. BARWICK: Not that I'm aware of. I
3 always kind of thought it was the same as the
4 rest of them. I just, I guess, took it
5 different from what they did is what I can
6 think of. I really couldn't say.

7 We all -- I guess we all act different
8 from different things, and I took the abuse one
9 way and they took it another. The only thing I
10 can think of.

11 COMMISSIONER DAVISON: Moving forward a
12 little bit here. You were 15 years old when
13 you were first in prison and you went to
14 Lancaster as a youthful offender?

15 MR. BARWICK: Yes, sir.

16 COMMISSIONER DAVISON: And you spent 28
17 months thereabouts at Lancaster. And you said
18 the two crimes that you can remember that you
19 went to prison for at 15 were rape and burglary
20 of a dwelling.

21 MR. BARWICK: Burglary of a dwelling.

22 COMMISSIONER DAVISON: There were probably
23 other crimes, you just can't remember what they
24 are?

25 MR. BARWICK: I think there's one more,

1 but it had to do with a burglary. It was like
2 burglary of a dwelling and a burglary of
3 something else. All in the same crime.

4 COMMISSIONER DAVISON: And so correct me
5 if I'm mischaracterizing it, but you said rape
6 and burglary. Do you consider rape a
7 significant offense?

8 MR. BARWICK: Yes, yes.

9 COMMISSIONER DAVISON: So what was going
10 on with 15-year-old Darryl Barwick that would
11 lead him to rape somebody at that age?

12 MR. BARWICK: I couldn't tell you. I
13 don't -- I don't know. To be honest, I don't
14 know, I mean...

15 COMMISSIONER DAVISON: And so the rape --
16 and there are different types. And one of the
17 categories is forcible rape.

18 MR. BARWICK: That would be a forcible
19 rape I would think.

20 COMMISSIONER DAVISON: Definitely forcible
21 rape?

22 MR. BARWICK: Yeah.

23 COMMISSIONER DAVISON: And who was the
24 victim?

25 MR. BARWICK: I don't know.

1 COMMISSIONER DAVISON: Did you know her?

2 MR. BARWICK: No.

3 COMMISSIONER DAVISON: How did you decide
4 to rape her?

5 MR. BARWICK: That I couldn't tell you.

6 COMMISSIONER DAVISON: So where did you
7 rape her?

8 MR. BARWICK: Her apartment.

9 COMMISSIONER DAVISON: Did you break into
10 her apartment?

11 MR. BARWICK: Yes, sir.

12 COMMISSIONER DAVISON: How did you decide
13 to break into that apartment and to rape that
14 woman?

15 MR. BARWICK: Just followed her in. Why,
16 I don't know.

17 COMMISSIONER DAVISON: Have you ever seen
18 that victim since you raped her?

19 MR. BARWICK: She was in the court, yes.

20 COMMISSIONER DAVISON: Since your court
21 proceedings, did you ever see her again?

22 MR. BARWICK: Not -- just in court.

23 COMMISSIONER DAVISON: And so when you
24 were released from Lancaster, it was
25 approximately 90 days before you committed the

1 crime that we're here for today?

2 MR. BARWICK: Something like that. At
3 least that's when I got locked up was like
4 90-something days later.

5 COMMISSIONER DAVISON: Do you know the
6 victim's name for the crime that you're here
7 for today?

8 MR. BARWICK: Rebecca (inaudible.)

9 THE STENOGRAPHER: What was the last name?

10 MR. BARWICK: Wendt, W-E-N-D-T I think it
11 is.

12 COMMISSIONER DAVISON: Rebecca Wendt?

13 MR. BARWICK: Yes.

14 COMMISSIONER DAVISON: And how do you know
15 Rebecca Wendt?

16 MR. BARWICK: I don't, other than this
17 crime.

18 COMMISSIONER DAVISON: When's the first
19 time you saw Rebecca Wendt?

20 MR. BARWICK: The day of the crime.

21 COMMISSIONER DAVISON: How many times did
22 you see her on that day before you decided to
23 commit this offense?

24 MR. BARWICK: Once.

25 COMMISSIONER DAVISON: Just one time?

1 MR. BARWICK: One time.

2 COMMISSIONER DAVISON: What triggered --
3 and I know you were asked by Commissioner Wyant
4 like why, and you said you don't know why.

5 MR. BARWICK: I don't know.

6 COMMISSIONER DAVISON: But if you don't
7 know why, what happened just prior to you
8 deciding to do this?

9 MR. BARWICK: I was getting off work.
10 There was no reason for it. I had been
11 working.

12 COMMISSIONER DAVISON: And so the reports
13 that I've read says that when you went into her
14 apartment that you decided to kill her because
15 she could identify you. Is that not correct?

16 MR. BARWICK: To be honest, I don't know.
17 I don't remember that. If that's what it says,
18 I can only see what it says. I don't know.

19 COMMISSIONER DAVISON: Did you go there
20 with the specific purpose of killing her?

21 MR. BARWICK: No, no.

22 COMMISSIONER DAVISON: So why did you go
23 some other place, get a knife, and then go back
24 if you did not intend to use the knife against
25 her?

1 MR. BARWICK: The only thing I can say, to
2 be honest, is because it worked the first time.

3 COMMISSIONER DAVISON: It worked the first
4 time?

5 MR. BARWICK: It worked the first time.

6 COMMISSIONER DAVISON: And that's when you
7 were 15 years old.

8 MR. BARWICK: Fifteen. And the first one,
9 she didn't fight me back, didn't argue with me.
10 She complied and it went smoothly. And just
11 the second one didn't go that way.

12 COMMISSIONER DAVISON: So you went and got
13 a knife and came back, and so your intent was
14 to rape her?

15 MR. BARWICK: Yes.

16 COMMISSIONER DAVISON: Like you did when
17 you were 15?

18 MR. BARWICK: Yes, sir.

19 COMMISSIONER DAVISON: And so you said she
20 didn't cooperate?

21 MR. BARWICK: (Nodding head.)

22 COMMISSIONER DAVISON: How did it occur
23 that you did not use the knife that you brought
24 and wound up using one of her knives?

25 MR. BARWICK: The knife that I brought got

1 lost in the shuffle. We were fighting. She
2 was fighting with me.

3 COMMISSIONER DAVISON: Fighting with you
4 for what?

5 MR. BARWICK: To get me out of the house.

6 COMMISSIONER DAVISON: And what did she
7 do? How did she fight you?

8 MR. BARWICK: She jumped on me, tried
9 pushing me away and fell over and started
10 rolling back and forth fighting each other.

11 COMMISSIONER DAVISON: How long did this
12 fight take place?

13 MR. BARWICK: Couldn't -- I would say
14 probably within -- I know it was within 30
15 minutes because the TV show was still on when I
16 left, so it couldn't have been that long.

17 COMMISSIONER DAVISON: So before we got to
18 this instance, you talked about the 15-year-old
19 offense and the 20-year-old offense, then you
20 characterized about 15 to 20 instances over a
21 course of a period where your words were "would
22 cop a feel"?

23 MR. BARWICK: Yes.

24 COMMISSIONER DAVISON: What do you mean?

25 MR. BARWICK: Back before I got the case I

1 went to Lancaster, yeah, I'd be walking down
2 the street and I'd reach over and grab a
3 woman's behind or touch her breast, something
4 like that.

5 COMMISSIONER DAVISON: Why?

6 MR. BARWICK: Just did it. There was no
7 reason why. I can't -- I can't come up with a
8 reason just to come up with a reason. I just
9 don't know. To be honest, I just don't know.

10 COMMISSIONER DAVISON: Did you know any of
11 these women?

12 MR. BARWICK: No, never knew none of them.

13 COMMISSIONER DAVISON: Did you think it
14 was okay?

15 MR. BARWICK: No, no.

16 COMMISSIONER DAVISON: So you knew it was
17 wrong?

18 MR. BARWICK: I knew it was wrong.

19 COMMISSIONER DAVISON: But you did it --

20 MR. BARWICK: Anyway.

21 COMMISSIONER DAVISON: -- time and time
22 and time and time again?

23 MR. BARWICK: Yes, sir.

24 COMMISSIONER DAVISON: But you knew it was
25 wrong?

1 MR. BARWICK: (Nodding head.)

2 COMMISSIONER DAVISON: Which takes me to
3 this incident where your words here today is
4 that you are guilty of this horrible thing and
5 you take the blame for it and you're not trying
6 to deny it.

7 MR. BARWICK: That's correct.

8 COMMISSIONER DAVISON: And so what is
9 horrible about this thing that you did?

10 MR. BARWICK: What is horrible? Well,
11 first of all, not just that I did it; I killed
12 somebody. What I was trying to do, again, was,
13 you know, the rape. To violate somebody like
14 that, that's horrible in itself. But then to
15 take somebody's life, you know, that's -- I
16 don't know how to put it. It's just -- it's
17 something you just don't do.

18 COMMISSIONER DAVISON: Again, your
19 statement was that you knew what you did was
20 wrong?

21 MR. BARWICK: Yes.

22 COMMISSIONER DAVISON: And you knew it
23 before you did it?

24 MR. BARWICK: (No oral response.)

25 COMMISSIONER DAVISON: Did you know what

1 you were doing was wrong before you did it?

2 MR. BARWICK: I want to say yes. I would
3 say yes.

4 COMMISSIONER DAVISON: So if you did not
5 know that it was wrong before you did it --

6 A It's still wrong.

7 COMMISSIONER DAVISON: -- when did you
8 realize that it was wrong?

9 MR. BARWICK: I'm sure later on that day I
10 knew it, I knew it was wrong.

11 COMMISSIONER DAVISON: I'm sorry, I didn't
12 understand.

13 MR. BARWICK: Later on that day.

14 COMMISSIONER DAVISON: That day.

15 MR. BARWICK: That afternoon.

16 COMMISSIONER DAVISON: That afternoon you
17 knew that what you did was wrong?

18 MR. BARWICK: Right. I mentioned that I
19 went and talked to a probation officer about
20 it. Well, not about that exact incident, but I
21 knew then I needed to get some help. And I
22 went to see my probation officer and asked for
23 a recommendation for a psychiatrist to see
24 somebody, and they arranged one meeting before
25 I got locked up.

1 COMMISSIONER DAVISON: What's your
2 mother's name?

3 MR. BARWICK: Emma Jean.

4 COMMISSIONER DAVISON: What's your
5 father's name?

6 MR. BARWICK: Ira.

7 COMMISSIONER DAVISON: Did they teach you
8 right from wrong?

9 MR. BARWICK: Technically, yeah.

10 COMMISSIONER DAVISON: Your six siblings
11 that we talked about, did they teach them right
12 from wrong?

13 MR. BARWICK: Yeah.

14 COMMISSIONER DAVISON: So the seven of you
15 were taught by your parents right from wrong.
16 And the six of your siblings, the six of them
17 were very clear what was right and what was
18 wrong and did not, as far as you know, ever get
19 incarcerated for anything?

20 MR. BARWICK: Right.

21 COMMISSIONER DAVISON: But you, who was
22 raised in the same household, correct, by your
23 parents and your six siblings, decided to take
24 a different route. And so I use the word
25 "decided" because I want to know about the

1 decision and how did you come about that
2 decision to not abide with what was right and
3 wrong as you have been taught by your parents?

4 MR. BARWICK: I couldn't tell you. And
5 I've always said the same thing, I need to
6 figure out why I did what I did, but I can't --
7 I just don't know.

8 COMMISSIONER DAVISON: So you're pen pals
9 with a few people?

10 MR. BARWICK: Yes, sir.

11 COMMISSIONER DAVISON: You said probably
12 10 years or more that you've been pen pals with
13 these people. What type of things do you write
14 to your pen pals?

15 MR. BARWICK: We talk about stuff I do in
16 here. We talk about what they do and their
17 families, the work they do, stuff like that.

18 COMMISSIONER DAVISON: Have you ever
19 talked about your crimes?

20 MR. BARWICK: No.

21 COMMISSIONER DAVISON: Do they know what
22 you're in prison nor?

23 MR. BARWICK: I believe so, yes.

24 COMMISSIONER DAVISON: Have they ever
25 asked you about your crimes?

1 MR. BARWICK: No.

2 COMMISSIONER DAVISON: Is it, as far as
3 your knowledge, not important to them?

4 MR. BARWICK: I think it's important to
5 them. They just never got -- we just never got
6 in that conversation.

7 COMMISSIONER DAVISON: So have you talked
8 with anyone about your crimes?

9 MR. BARWICK: No.

10 COMMISSIONER DAVISON: Have you ever
11 talked to, before your parents died, either of
12 your parents about your crimes?

13 MR. BARWICK: No. We weren't even allowed
14 to -- it's somewhere in the record, you can
15 probably find where, we was -- I want to say we
16 was recommended to go see a psychiatrist at one
17 time. And when we went, they mentioned it
18 could be a thing where maybe it's the parents'
19 fault. But dad said no more. As long as you
20 live in this house, you ain't seeing no doctor
21 no more. So, you know, we never went back.

22 COMMISSIONER DAVISON: So I know you talk
23 occasionally to William, Lovey, Glenn and
24 Debra.

25 MR. BARWICK: Right.

1 COMMISSIONER DAVISON: But you talk
2 regularly with Sheila and Barbara.

3 MR. BARWICK: Right.

4 COMMISSIONER DAVISON: Have you ever
5 talked to Barbara or Sheila about your crimes?

6 MR. BARWICK: No. Never even mentioned
7 it.

8 COMMISSIONER DAVISON: You know what they
9 talk about when they mention the elephant in
10 the room?

11 MR. BARWICK: Yeah.

12 COMMISSIONER DAVISON: The fact that
13 they're talking to you in prison after 35 years
14 of incarceration on death row, you've never had
15 a discussion with either Sheila or Barbara
16 about why you're here?

17 MR. BARWICK: No, they've never -- the
18 subject's never been brought up. Like I say,
19 we just talk about what they normally do in
20 their life, what they're doing.

21 COMMISSIONER DAVISON: So, Mr. Barwick,
22 you're currently incarcerated under a death
23 sentence.

24 MR. BARWICK: Yes, sir.

25 COMMISSIONER DAVISON: And your statement

1 here today is that a life sentence would be
2 nice.

3 MR. BARWICK: Yes, sir.

4 COMMISSIONER DAVISON: That you believe
5 that it would be an appropriate sentence.

6 So why would a life sentence be more
7 appropriate than the sentence that you're
8 currently under?

9 MR. BARWICK: Well, I mean, death is
10 death. Once you're dead, that's it obviously.
11 But life -- I mean, I'll still be paying for
12 what I did, living with it every day of my life
13 out here, even if I'm -- if you're alive,
14 you've got to live with it. It's not an easy
15 thing to take somebody's life and you got to
16 get up every day and look through these bars.
17 It's not as easy as people might think it is.

18 COMMISSIONER DAVISON: Let me hone in on a
19 particular word.

20 MR. BARWICK: Go ahead.

21 COMMISSIONER DAVISON: And your particular
22 word was that it would be more appropriate. So
23 why would a life sentence be a more appropriate
24 than the sentence you're currently under?

25 MR. BARWICK: To me, I don't think that

1 would be right for me to say what would be
2 appropriate or not because I'm the one doing
3 the time. It's actually better for me, but it
4 would be wrong for me to say that.

5 Would I like a life sentence? Yes. Would
6 it be appropriate? That's hard to say. I
7 mean, because of what kind of crime it was and
8 obviously I've committed crimes in the past, so
9 it would be wrong for me to say it would be
10 appropriate.

11 COMMISSIONER WYANT: I've got a couple
12 follow-ups.

13 Again, I'm David Wyant. Just briefly,
14 just a couple follow-ups from what I gleaned
15 from your and Commissioner Davison's
16 interactions.

17 You went there to commit a rape. Were you
18 successful in that intent?

19 MR. BARWICK: No, sir.

20 COMMISSIONER WYANT: So later during the
21 crime scene, biological evidence belonging to
22 you was found on the blanket. Do you know what
23 I mean by that?

24 MR. BARWICK: Yes, sir.

25 COMMISSIONER WYANT: How did that occur if

1 the rape wasn't successful?

2 MR. BARWICK: That I'm not -- to be honest
3 with you, I don't know. I know there wasn't no
4 rape. Even the doctor said. I know I didn't
5 rape her, but I might have ejaculated all over
6 her, I guess.

7 COMMISSIONER WYANT: So you don't
8 remember, don't know, don't have any
9 recollection of masturbating afterwards?

10 MR. BARWICK: No, I don't.

11 COMMISSIONER WYANT: So we don't know how
12 your biological evidence ended up on the
13 blanket?

14 MR. BARWICK: No. Like I said, since she
15 wasn't raped, that's the only thing I said, I
16 must have ejaculated all over her or nearby
17 her, you know.

18 COMMISSIONER WYANT: And you and
19 Commissioner Davison spoke a little bit about
20 whether you knew it was wrong before the
21 incident, you knew it was wrong after the
22 incident. You wore a mask?

23 MR. BARWICK: No.

24 COMMISSIONER WYANT: You didn't wear any
25 face covering?

1 MR. BARWICK: Not that I remember.

2 COMMISSIONER WYANT: Did you wear gloves?

3 MR. BARWICK: I did have some gloves.

4 COMMISSIONER WYANT: So you wore gloves.

5 What was the reason of wearing gloves?

6 MR. BARWICK: I just put them on.

7 COMMISSIONER WYANT: But why? Was it to
8 keep yourself from leaving fingerprints? There
9 had to be a reason. I mean, it's Florida. It
10 doesn't get that cold.

11 MR. BARWICK: I can't -- well, I know you
12 can say it' fingerprints.

13 COMMISSIONER WYANT: Well, I don't want to
14 say it. I'm asking why you did it?

15 MR. BARWICK: That's what I'm saying, I
16 couldn't tell you because I know she would be
17 able to recognize me.

18 COMMISSIONER WYANT: So it seems to me,
19 and I'm not trying to be controversial, but
20 when we come to the hard questions of why, you
21 don't have an answer for any of this. Why did
22 you do it? Why did you wear gloves? Why did
23 you do this? Why did you do that? You don't
24 have any answer for why.

25 MR. BARWICK: I don't.

1 COMMISSIONER WYANT: Okay. Thank you. I
2 don't have any further questions.

3 COMMISSIONER DAVISON: Just a couple
4 follow-up questions, Mr. Barwick.

5 Do you recall in 1979 being charged with
6 exposure of sexual organs?

7 MR. BARWICK: 1979? I could have.

8 COMMISSIONER DAVISON: Do you recall in
9 1980 being charged with exposure of sexual
10 organs?

11 MR. BARWICK: I remember one time being
12 charged with that, yeah. But I don't know on
13 these other times.

14 COMMISSIONER DAVISON: Do you recall in
15 1983 being charged with sexual battery?

16 MR. BARWICK: Eighty-three? No.

17 COMMISSIONER DAVISON: Do you recall -- in
18 1983, you don't recall being charged with
19 sexual battery, burglary of a dwelling with
20 assault, that which you went to prison for?

21 MR. BARWICK: That was '83? Okay. Yeah,
22 that's the only time I've known to being
23 charged for anything was '83 for that rape I
24 went to Lancaster for.

25 COMMISSIONER DAVISON: So I've identified

1 several instances where you either were charged
2 or convicted of sex offenses which is exposure
3 of sexual organs or sexual battery.

4 MR. BARWICK: Yes, sir.

5 COMMISSIONER DAVISON: Would you, based
6 upon this history, some of which you recall and
7 some of which you don't, would you consider
8 yourself a sexual deviant?

9 MR. BARWICK: Yes, sir.

10 COMMISSIONER DAVISON: And so is that past
11 or current?

12 MR. BARWICK: Well, I know it's past. And
13 I'm going to say it's current because I haven't
14 had any help, to be honest. I mean, I just
15 haven't had any help. I haven't seen anybody,
16 not taken any medication or anything like that
17 so I would have to say it's both, from my
18 opinion anyway.

19 COMMISSIONER DAVISON: Do you know who
20 Michael Wendt is?

21 MR. BARWICK: Michael Wendt?

22 COMMISSIONER DAVISON: Michael Ann Wendt?

23 MR. BARWICK: I don't recognize the name.

24 COMMISSIONER DAVISON: That's Rebecca's
25 sister, her roommate at the time. Did you see

1 her at all on that date you committed this?

2 MR. BARWICK: No, sir.

3 COMMISSIONER DAVISON: We talked about the
4 siblings. The fact that none of your six
5 siblings have been incarcerated. And you said
6 that you haven't had a discussion with any of
7 them --

8 MR. BARWICK: No.

9 COMMISSIONER DAVISON: -- about these
10 crimes?

11 MR. BARWICK: I had -- before I got
12 arrested, I explained to my father and my
13 brother what I had done, and that was it.

14 COMMISSIONER DAVISON: Do you recall at
15 that time, when you were explaining to them,
16 what you had done?

17 MR. BARWICK: Do I recall?

18 COMMISSIONER DAVISON: Do you recall when
19 you explained to them or told them what you had
20 done. The question is, talking about why you
21 did it?

22 MR. BARWICK: No, we never talked about
23 why. You know, because I got picked up and
24 questioned about it. And when they let me go,
25 we got in the room and we talked and they asked

1 me about it and I told them what happened and
2 that was it. It was never discussed why or
3 anything like that.

4 COMMISSIONER DAVISON: I don't have any
5 further questions.

6 Mr. Greenberg, do you have any questions
7 that you'd like to ask at this time?

8 MR. GREENBERG: Yes, I do have a few more
9 questions for Mr. Barwick.

10 And this may be a sensitive question. But
11 did your father rape your mother?

12 MR. BARWICK: Well, to me, I would have
13 to -- looking back, I would say yes. At the
14 time, I would say no. But yeah, I would say
15 that.

16 MR. GREENBERG: Looking back, what makes
17 you say that it did occur?

18 MR. BARWICK: Well, because when I think
19 back, especially the fact that she would say
20 no, and he wouldn't have it. He wouldn't hear
21 it. He'd take her and snatch her up and take
22 her back to the bedroom and close the door.

23 MR. GREENBERG: Did you ever actually
24 witness what was happening with your mother and
25 father or just did you hear it?

1 MR. BARWICK: I heard it. Never seen it,
2 other than him, you know, him getting a little
3 frisky with her in the kitchen. She'd keep
4 telling him no, leave me alone, stop, I'm busy,
5 no, no, no. And after a few minutes it's, no,
6 let's go now. And he'd snatch her and took her
7 to the bedroom. That would be all I'd see.

8 MR. GREENBERG: Did you see your father
9 physically abuse your mother?

10 MR. BARWICK: Oh, yeah, yeah, yeah. And
11 any time she tried to get in the middle of him
12 abusing us, he'd beat her too.

13 MR. GREENBERG: Have you ever had your IQ
14 tested?

15 MR. BARWICK: I know I have, yes. I don't
16 know what it was.

17 MR. GREENBERG: Did you have any learning
18 disabilities in school?

19 MR. BARWICK: Growing up, I knew I
20 couldn't read. I couldn't read and couldn't
21 spell. I think I got to like tenth grade
22 before they realized it. I guess they noticed
23 it in first grade and didn't say anything
24 because they kept me back in first grade, but
25 then I made it all the way to the tenth before

1 some of them realized it.

2 MR. GREENBERG: Did you ever receive any
3 counseling of any type in your life?

4 MR. BARWICK: The only counselor I saw
5 was, I think, once when I was 12 or 13. We
6 went that one time and that was it. And then I
7 went one time after this murder, I went once
8 and I got locked up.

9 MR. GREENBERG: You mentioned the
10 counseling at age 12 or 13. Was that after a
11 criminal charge?

12 MR. BARWICK: I want to say -- I'm not for
13 sure, but I think it was. I think it was. It
14 could have been one of those indecent
15 exposures. I'm not for sure exactly what it
16 was. I know we went and we saw a psychiatrist
17 one time. And he started tilting the language
18 towards the parents' fault and dad said that
19 was it, no more. The way the court mandated
20 it, that was it.

21 MR. GREENBERG: In other words, you went
22 for some kind of family counseling, not
23 individual?

24 MR. BARWICK: It wasn't individual. It
25 was family. Yeah, because my parents were

1 there.

2 MR. GREENBERG: After the murder, did you
3 have any kind of individual counseling?

4 MR. BARWICK: I went one time and saw one.
5 I couldn't even tell you his name now it's been
6 so long ago.

7 MR. GREENBERG: I know we kind of talked
8 about this already. But when you went to Ms.
9 Wendt's residence on the day of this crime, did
10 you go there for any purpose other than to rape
11 her?

12 MR. BARWICK: I would say no.

13 MR. GREENBERG: You mentioned that you
14 used a knife because you used it before. Did
15 you use it to threaten the person, excuse me,
16 the woman to get her --

17 MR. BARWICK: Yeah.

18 MR. GREENBERG: -- to comply?

19 MR. BARWICK: Threatened her and she went
20 along with what I did. I didn't have any --
21 there was no problems with that one. This one
22 was different.

23 MR. GREENBERG: Did you make -- did you
24 confess to law enforcement in Ms. Wendt's case?

25 MR. BARWICK: I did eventually, yes.

1 MR. GREENBERG: And did you -- were you
2 able to tell the police back then when you were
3 19 years old why you did it?

4 MR. BARWICK: I don't believe I did. I
5 don't believe so.

6 MR. GREENBERG: So were these crimes --
7 again, is it safe to say that you just don't
8 have the insight to yourself to know why you
9 did these things?

10 MR. BARWICK: No. No, I don't. I don't.
11 No idea.

12 MR. GREENBERG: Did you ever have any
13 intent to kill anybody before you killed
14 Ms. Wendt?

15 MR. BARWICK: No.

16 MR. GREENBERG: So it's safe to say that
17 you had, like you said, like Commissioner
18 Davison asked you about sexual deviance. You
19 had deviant sexual thoughts, but did you have
20 any homicidal or murderous thoughts?

21 MR. BARWICK: I would say no other than
22 probably to kill myself. But other than that,
23 no.

24 MR. GREENBERG: No other questions.

25 COMMISSIONER DAVISON: Just a few

1 follow-ups.

2 Mr. Barwick, what's your medical
3 condition?

4 MR. BARWICK: I'm in good health.

5 COMMISSIONER DAVISON: Can you run a
6 marathon?

7 MR. BARWICK: Ooh, I don't know if I could
8 run that far without stopping.

9 COMMISSIONER DAVISON: But you feel like
10 you could?

11 MR. BARWICK: I feel like I could.

12 COMMISSIONER DAVISON: Hyperlipidemia,
13 have you ever heard that before,
14 hyperlipidemia?

15 MR. BARWICK: Not that name, but I do take
16 a couple medications. I know one's for
17 cholesterol and two others, but I'm not for
18 sure. He just told me to take it, I take it.

19 COMMISSIONER DAVISON: But generally in
20 good health?

21 MR. BARWICK: Yes.

22 COMMISSIONER DAVISON: To the point you
23 feel like you could run a portion of a
24 marathon?

25 MR. BARWICK: I could try. I go out and

1 play a little basketball in the yard about
2 three hours. That's about all the exercise I
3 get in here.

4 COMMISSIONER DAVISON: What about your
5 mental health? How's your mental health?

6 MR. BARWICK: Other than reading a little
7 bit, that's it.

8 COMMISSIONER DAVISON: Other than what?

9 MR. BARWICK: Reading a little bit. Never
10 been big on reading, but I do try.

11 COMMISSIONER DAVISON: So you've never
12 been diagnosed with like paranoia or
13 schizophrenia?

14 MR. BARWICK: Oh, something like, no.

15 COMMISSIONER DAVISON: Bipolar, anything
16 like that?

17 MR. BARWICK: No, no. At least not that
18 I'm aware of.

19 COMMISSIONER DAVISON: How's your brain?

20 MR. BARWICK: Slow.

21 COMMISSIONER DAVISON: Slow? Does it
22 work?

23 MR. BARWICK: It works but it's...

24 COMMISSIONER DAVISON: Does it allow you
25 to think through things?

1 MR. BARWICK: Sometimes it takes longer
2 for me to get things, to be honest.

3 COMMISSIONER DAVISON: What do you mean
4 like?

5 MR. BARWICK: Like somebody trying to
6 explain something, it takes a little longer for
7 me to get it. They'll tell me a few times.
8 Sometimes I don't even get it then. You have
9 to show me instead of telling me.

10 COMMISSIONER DAVISON: Is that more of a
11 result of your age or something else?

12 MR. BARWICK: I've been like that for
13 years. That's something else. I've been like
14 that as far back as I can remember. If
15 somebody's telling me something, I didn't
16 grasp. But if he shows me, I pick it up
17 better.

18 COMMISSIONER DAVISON: Has anybody ever
19 diagnosed you with any type of brain injury?

20 MR. BARWICK: Not that I'm aware of. I've
21 been tested for a couple things, but I don't
22 know what the results were.

23 COMMISSIONER DAVISON: Have you ever heard
24 the term "organic brain injury" before?

25 MR. BARWICK: I've heard the term. But do

1 I know what it is? No.

2 COMMISSIONER DAVISON: But has that ever
3 been applied to you?

4 MR. BARWICK: Not in the front of me if it
5 has, that I'm aware of.

6 COMMISSIONER DAVISON: Thank you. I don't
7 have any additional questions. Commissioner
8 Wyant?

9 COMMISSIONER WYANT: No, sir.

10 COMMISSIONER DAVISON: Mr. Greenberg, you
11 have the opportunity, either you or
12 Mr. Barwick, to make any further comments you
13 have.

14 MR. GREENBERG: Mr. Barwick, do you want
15 to say anything?

16 MR. BARWICK: The only thing I would tell
17 you, is I do regret what I did. I know it
18 might not sound like it when you look at my
19 records. And I've done a lot of things that I
20 shouldn't have did, but I do regret it. I feel
21 for the family. There's nothing you can do
22 about that. I mean, I can't -- I wouldn't even
23 know how to begin to tell them, you know, sorry
24 for what I've done. But I just don't know
25 because I don't know why I did the things that

1 I did, but I do regret it.

2 I just wish there was some way to explain
3 that would make some kind of sense, but I
4 can't. Maybe there is and I just don't know
5 it. But I do regret it and I am sorry for what
6 I've done.

7 MR. GREENBERG: I'll just go ahead and
8 state for the record, I'm going to provide a
9 report on behalf of Mr. Barwick that will have
10 a lot of corroboration for what he talked about
11 today as far as his family upbringing and the
12 abuse that he suffered from his father, as well
13 as quite a bit of letters and other documents
14 that support Mr. Barwick.

15 COMMISSIONER DAVISON: Thank you,
16 Mr. Greenberg. Okay. It is 12:46. We are
17 going to conclude today's interview.

18 (Examination concluded at 12:46 p.m.)

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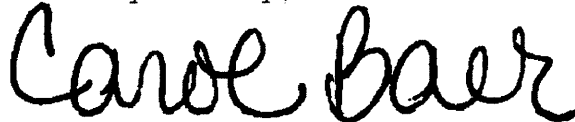
CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF ALACHUA)

I, CAROL BAER, Florida Professional Reporter,
certify that I was authorized to and did
stenographically report the foregoing proceedings and
that the transcript is a true and complete record of my
stenographic notes.

Dated this 25th day of May, 2021.



CAROL BAER, Florida Professional Reporter

ATTACHMENT F

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FLORIDA COMMISSION ON OFFENDER REVIEW

CLEMENCY INTERVIEW

OF

GARY RAY BOWLES

Thursday, August 2, 2018, at 2:03 p.m.
Union Correctional Institution
Raiford, Florida

APPEARANCES:

RICHARD D. DAVISON, Commissioner, Vice-Chair
DAVID A. WYANT, Commissioner, Secretary
S. MICHELLE WHITWORTH, Commission Investigator
J. STEVEN DAWSON, Capital Punishment Research Specialist
ALEC YARGER, Director, Legislative Affairs

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Attorney for GARY RAY BOWLES

REPORTER: Ingrid T. Cox, RPR
Notary Public, State of
Florida at Large

1 MR. DAVISON: For the record we have present here
2 today for the interview being held at the Union
3 Correctional Institution in Raiford, Florida, on
4 August 2nd, 2018. The time is 2:03 in the afternoon.
5 David Wyant, commissioner, Florida Commission on
6 Offender Review; Michelle -- or S. Michelle
7 Whitworth, commission investigator/supervisor for the
8 Florida Commission on Offender Review, Tallahassee,
9 Florida; J. Steve Dawson, capital punishment research
10 specialist, Florida Commission on Offender Review,
11 Tallahassee, Florida; Alec Yarger, legislative
12 director, Florida Commission on Offender Review,
13 Tallahassee Florida; and myself, Richard D. Davison,
14 commissioner, Florida Commission on Offender Review,
15 Tallahassee Florida.

16 Counselor, would you please state your name and
17 address for the record?

18 MR. SIMMONS: Nah-Deh Simmons, attorney for Mr.
19 Gary Bowles. 903 West Union Street, Suite 102,
20 Jacksonville, Florida 32202.

21 MR. DAVISON: Thank you. Mr. Bowles, would you
22 please state your full name, prison number, and date
23 of birth for the record?

24 INMATE BOWLES: My name is Gary Ray Bowles.
25 086158 is my DC number. And I was born January 25th,

1 1962.

2 MR. DAVISON: What's your DC number?

3 INMATE BOWLES: 086158.

4 MR. DAVISON: As previously stated, I am
5 Commissioner Richard D. Davison. To my left is
6 Commissioner David A. Wyant. We are members of the
7 Florida Commission on Offender Review and we are here
8 today at the request of the governor and the cabinet
9 who serve as members of the board of executive
10 clemency. We're here to take testimony as to whether
11 your case should be heard for clemency relief before
12 the governor and the cabinet sitting as the board of
13 executive clemency. This commission will record and
14 transcribe for review by the governor and the cabinet
15 any and all statements made at this interview.

16 The commission is not here to review what
17 happened at your trial nor to determine your guilt or
18 innocence. The purpose of this interview is to give
19 you the opportunity to make any statements or
20 comments concerning commutation to life of the death
21 sentence that was imposed. The commissioners present
22 here today will prepare a final report to include a
23 brief summary of the issues presented and our
24 findings and conclusions, which will be provided to
25 the governor and the cabinet.

1 If following this interview you desire to provide
2 additional information in this case to the governor
3 and the cabinet it should be submitted in accordance
4 with the rules of executive clemency to the Capital
5 Punishment Research Specialist, Clemency
6 Investigations, at 4070 Esplanade Way, Tallahassee,
7 Florida 32399-24506.

8 Counselor, you may proceed at this time.

9 MR. SIMMONS: Good afternoon.

10 MR. DAVISON: Good afternoon.

11 MR. SIMMONS: We are here for Mr. Bowles'
12 clemency interview, and previously I notified the
13 commissioner and clemency board that Mr. Bowles
14 currently still has pending litigation in Duval
15 County on his intellectual disability. The captain
16 in his unit, I've had opportunity to speak with him
17 regarding the pending litigation, and we have
18 submitted some information regarding that pending
19 litigation in writing and they are most familiar with
20 his case as it relates to that issue.

21 We did ask for him to be present during this
22 hearing. However, that was denied. And I am
23 prepared to go forward in regards to this interview
24 to present information that I have investigated in
25 the time that I had regarding that. And I have a

1 two-part presentation today.

2 First I would ask questions of Mr. Bowles and
3 then I'm going to give a brief synopsis of what we're
4 asking here from the board as it relates to clemency,
5 as it relates to his intellectual disability, and
6 where we are in that process. And because of where
7 we are in that process there will be a request to
8 submit further information down the line that's going
9 to come in writing, and also after that litigation is
10 potentially concluded we can actually have a full
11 presentation to the board. I would like to present
12 to the board what the clemency will be requested
13 based upon Mr. Bowles' intellectual disability.

14 MR. DAVISON: Counselor, I'll just let you know
15 that I and Commissioner Wyant will be hearing
16 separate reports and it's going to be based upon
17 what's in our files and what's gathered here today
18 during the interview. And so anything that may or
19 may come from any pending litigation, unless that
20 litigation is resolved prior to the completion of my
21 recommendation, it will not be included.

22 MR. SIMMONS: Okay. Mr. Bowles -- and I'm going
23 to first ask some questions of Mr. Bowles.

24 BY MR. SIMMONS:

25 Q. Mr. Bowles, when you were arrested for the crimes

1 you were convicted of was it overwhelming to you?

2 A. Yes, very overwhelming.

3 Q. Now, during that timeframe in your life were you
4 -- where did you live?

5 A. I was homeless. I lived on the streets. Slept
6 in the woods here and there.

7 Q. Okay. Was it during that time hard to understand
8 the legal process?

9 A. Yes.

10 Q. Did you do the best to try to understand what
11 your attorneys were telling you during that timeframe?

12 A. Well, the lawyers they gave me -- the lawyer they
13 gave me, Bill White, I pretty much followed his
14 directions on what I should do.

15 Q. And at this point in the process do you
16 understand your appeals?

17 A. Yes.

18 Q. Have the attorneys tried to explain that to you?

19 A. Well, yes. They -- the lawyers I have working on
20 my case now have done a lot of work. But as far as my
21 life history, the lawyers I had at the beginning, they
22 didn't put on much of a defense in my case. There was
23 just my mom and brother, that was pretty much it.

24 Q. Okay. And even after they have explained this
25 process to you, do you understand it?

1 A. Well, I understand some of it. I mean, I don't
2 understand all of the legal technicalities of it.

3 Q. And because this process has been going on for
4 quite some time do you sometimes pretend to understand
5 even though you don't?

6 A. Sometimes.

7 Q. Now --

8 A. As I said, I don't understand some of the laws,
9 the laws their self.

10 Q. I'm going to ask you specifically about your
11 crimes. Are you sorry for what you did?

12 A. Oh, yes. I'm very sorry. I didn't -- I never
13 wanted my life to be this way. I never wanted to hurt
14 nobody, let alone kill somebody.

15 Q. And since you've been here have you spent a lot
16 of time thinking about what you've done?

17 A. I think about it every day, not only what I did
18 to their family, but to my own family as well. I've
19 been ostracized from my own family. I haven't seen or
20 talked to my half-brother and sister since I was ten
21 years old. I haven't seen my mom since she came to
22 court in '96.

23 Q. And if you could say anything to the people that
24 you hurt what would you want to say to them?

25 A. I would tell them that I'm really sorry for all

1 the pain I've caused them. I hope one day that, you
2 know, they can find it to forgive me. I know it's not
3 easy to, you know, look at what I did, but that's pretty
4 much it.

5 MR. SIMMONS: Thank you, Mr. Bowles.

6 Now, during this process I had the opportunity to
7 do some research on intellectual disability and I
8 just want to present a few of the prongs and go over
9 regarding that and how it relates to Mr. Bowles.

10 The first prong is an IQ test that is done to
11 determine whether or not a person can be mentally
12 disabled. And there is a variance in that IQ test of
13 about ten points. So, for example, if somebody was
14 to score 75 it could range from 70 to an 80. And
15 that qualifying IQ score then gets into the next step
16 to see if there is any deficits of that. And those
17 deficits come in different aspects of their lives.
18 It could be conceptual, it can be social, it can be
19 practical, and once that individual falls into one of
20 those phase in regards to those deficits, they then
21 would test him for evidence of when that onset of
22 that intellectual disability actually occurred.

23 And the writings that were submitted from the
24 board -- I mean, to the board as it relates to Mr.
25 Bowles and also what I am going to be submitting

1 afterwards is going to further explain Mr. Bowles'
2 qualification for that intellectual disability and
3 where it put him in his life to get potentially in
4 the position that he was in that actually got him
5 right here.

6 When it comes to intellectual disability people
7 have several disorders and some of the disorders were
8 exhibited by Mr. Bowles during the timeframe that
9 these incidents that occurred actually happened here
10 in prison. And he is significantly impaired by his
11 intellectual functioning. He also has those deficits
12 and during his life those deficits came out in
13 various different ways. And because they weren't
14 caught or because he wasn't in a position to where he
15 was able to get help, he didn't get that help and
16 ultimately from a young age because of where he was
17 and actually, you know, being homeless he actually
18 ended up in prison on several occasions ultimately
19 leading to us being here to where he has these
20 sentences as we speak.

21 Before his arrest in the case he had been
22 struggling with many aspects of his life. He wasn't
23 really able to keep a job for an extended period of
24 time. He always was dependent on individuals to
25 actually take care of him. What I plan on doing in

1 regards to supplement what his intellectual
2 disability is and what we're trying to do with
3 regards to actually help Mr. Bowles, I would actually
4 submit in writing a long history of Mr. Bowles'
5 history and ask him where he is in that process.

6 What we are asking for from the clemency board
7 is, because there has been litigation and Mr. Bowles
8 is intellectually disabled, we're asking for mercy
9 based upon his intellectual disability. And like I
10 said previously, I don't know the timeframe between
11 the decision of what the board is going to make, but
12 because there is this pending litigation and we would
13 have an opportunity to supplement in writing to the
14 board information regarding that, I will definitely
15 supplement my information to the board regarding that
16 that I'm able to gather in between now and then.

17 And also during the timeframe if there is any
18 information from that litigation I will definitely
19 supplement it to any hearings.

20 I thank you for this opportunity and I do turn it
21 back over to the board.

22 BY MR. DAVISON:

23 Q. Okay. Mr. Bowles?

24 A. Yes, sir.

25 Q. Both Commissioner Wyant and I have some questions

1 and hopefully you'll be able to answer them. And, as I
2 said in the opening statements that we're not here to
3 retry your case, I don't believe that there are
4 questions of guilt or innocence that we're dealing with,
5 what we're trying to do is to make a determination of
6 whether or not there should be a commutation of the
7 death sentence to a life sentence without parole. And I
8 will prepare a report for the governor and the cabinet
9 that are in the capacity of the clemency board, and that
10 in large part will be based upon everything that I have
11 reviewed and the files that have been provided to me,
12 but it will initially include the things that we talk
13 about here today.

14 And I know that the issue of intellectual
15 disability has been raised by your counsel, that's
16 currently being litigated, but that is outside of the
17 normal appellate process that has already been concluded
18 in the legal system. So that's something in addition
19 to.

20 But in the assessment that was done, both
21 psychiatric and psychological, there was a determination
22 that you displayed no significant impairment in your
23 ability to adjust within the institutional environment
24 and that you did not exhibit any symptoms of mental
25 disorder and that specifically included the question of

1 intellectual disability. And so that report that was
2 prepared by the psychiatrist that did your evaluation
3 I'm going to presume going forward is correct, that
4 there are no significant impairments. And so what I'd
5 like to get a better idea of is the crimes, and
6 specifically the crime that we're dealing with today
7 involving Walter Hinton. Are you familiar with that
8 name, Walter Hinton?

9 A. Yes, sir.

10 Q. Who is Walter Hinton?

11 A. He is the person that I killed to receive this
12 death sentence.

13 Q. And you were living with or spending significant
14 time at Walter Hinton's mobile home?

15 A. Well, originally I met him in -- we worked out an
16 agreement for me to stay there if I helped him fix up
17 the trailer. And then I eventually left. I stayed
18 there only a short time.

19 Q. How long was that?

20 A. Probably maybe a month or so.

21 Q. And during the time that you stayed at Mr.
22 Hinton's place, is there anything that occurred that
23 would cause you to kill him?

24 A. No.

25 Q. Okay.

1 A. No. There was no -- the events that led up to me
2 killing him were I was drunk and high. And I really had
3 no reason to do it. I just -- I don't -- I kind of had
4 like a blackout or I didn't really realize what I was
5 doing until it was over with. I went outside and I
6 picked up a brick and brought it back in and hit him
7 with the brick. And I later found out there was already
8 bricks, the same bricks, inside the house.

9 Q. So you said you went outside?

10 A. Right.

11 Q. You got a brick?

12 A. Right.

13 Q. Would you describe the brick? Because when I
14 think of a brick I'm thinking about a little
15 rectangular --

16 A. Well, it was like a stepping stone that you lay
17 out, that you put in your yard and walk on. I think
18 they call them --

19 Q. Pavers?

20 A. I don't know what they're called. I just call it
21 a brick.

22 Q. Okay. And so do you know approximately how much
23 this brick weighed?

24 A. I think they said it weighed like 40 pounds.

25 Q. How many pounds?

1 A. 40, 40 pounds or 50 pounds.

2 Q. So 40 to 50 pounds?

3 A. Right.

4 Q. Which is a fairly significant weight?

5 A. Right.

6 Q. And you carried this from outside the house into
7 the house?

8 A. Right.

9 Q. And what did you do with it?

10 A. I dropped it on his head.

11 Q. Why?

12 A. Like I said, I didn't have a reason. I was drunk
13 and high and there was no reason to do it. I don't know
14 why I did it. Really there was nothing for me to gain
15 by doing it. I mean, the guy didn't have any money, he
16 was poor. And, like I said, I just kind of blacked out
17 or snapped or whatever it was. That's the term that I
18 would use.

19 Q. So, Mr. Bowles, you say you didn't have anything
20 to gain, but did you not take money from him after you
21 dropped the brick on him?

22 A. He didn't have any money.

23 Q. Did you take jewelry or other property?

24 A. No. He didn't have any jewelry. He didn't have
25 nothing. He was a crack head. He used drugs a lot. We

1 used drugs a lot together. He had his own stuff in
2 pawn. He didn't have any money. The trailer was -- it
3 was run down. It wasn't very nice, you know.

4 Q. So, Mr. Bowles, you said you didn't take any
5 money, you didn't take any jewelry. What did you take?

6 A. Well, I left in his car just to leave the scene.

7 Q. So you took his car?

8 A. Yeah. I drove away in his car and then I later
9 just left that at a grocery store. I didn't keep the
10 car for very long. I never -- I just kind of dumped the
11 car off and I didn't leave the area. I stayed in the
12 same area.

13 Q. Mr. Bowles, after you took his car and left and
14 before you left it at the grocery store did you do
15 anything else with it?

16 A. Not that I recall.

17 Q. Did you ever -- when you left the mobile home did
18 you ever return there?

19 A. Yeah.

20 Q. After you killed Mr. Hinton?

21 A. Yes. I came back a couple days later, I think.

22 Q. Did you come back with his car?

23 A. Yeah.

24 Q. All right. So you actually used the car for
25 transportation before you dumped it at the grocery

1 store?

2 A. Oh, yeah. Yeah, a couple of days. Now that I
3 think about it, yeah, I did keep it for a couple of
4 days. It wasn't for very long, though.

5 Q. And so when you came back to his house or mobile
6 home did you return alone?

7 A. No. There was a girl from the streets that I
8 met. She was kind of sick and we were drinking and
9 doing drugs together.

10 Q. What's the significance of saying she was kind of
11 sick?

12 A. She had -- well, she was -- she was just -- I
13 don't know how to describe it. She was sick. She was,
14 I guess, going through DTs or whatever you call it. She
15 was a drug addict or alcoholic. And so we got some
16 drugs and alcohol. And there was like a nor'easter
17 going on at the time, like a 50-mile-an-hour rainstorm.

18 Q. Mr. Bowles, where was Mr. Hinton at that point?

19 A. Well, he was in the other side of the trailer.

20 Q. Dead of course?

21 A. Yes.

22 Q. And so how long were you in the mobile home or
23 with the woman you described as being sick?

24 A. For about two or three hours.

25 Q. Two or three hours?

1 A. Yeah. It wasn't very long.

2 Q. Did you have a discussion with her about the odor
3 that was in the mobile home?

4 A. I don't remember. I think I just told her not to
5 go to that side of the trailer.

6 Q. And when you left with her was it that same
7 night?

8 A. Yes.

9 Q. Did you return to the trailer?

10 A. No.

11 Q. And why did you bring her there?

12 A. Well, like I said, to get out of -- there was a
13 real bad storm going on.

14 Q. So the storm was gone in two hours?

15 A. It was a couple of hours. It was before
16 daylight.

17 Q. So you said you had no reason to kill Mr. Hinton?

18 A. No.

19 Q. And you're saying you don't know why you killed
20 Mr. Hinton?

21 A. No.

22 Q. And is there anything that you did subsequent to
23 killing Mr. Hinton that would show that you had any sort
24 of remorse for killing him? Is there anything that you
25 did that would demonstrate that?

1 A. I don't understand the question.

2 Q. The question is you killed Mr. Hinton for no
3 reason?

4 A. Right.

5 Q. Did you do anything after killing him that would
6 show any sort of remorse or compassion or human response
7 to the fact that you just killed this person?

8 A. No, no. I guess I left. I didn't -- I mean,
9 when I got arrested I pled guilty and confessed to the
10 crime and I assisted the police as best I could.

11 Q. How many days after the murder were you arrested?

12 A. It was probably maybe about a week. I don't
13 really know the timeframe. Maybe a week to ten days.
14 It wasn't very long.

15 Q. And in that week to ten days did you make any
16 attempt to reach out to law enforcement?

17 A. No.

18 Q. Or a friend?

19 A. No.

20 Q. Or anybody --

21 A. No.

22 Q. -- to show that you had any kind of compassion
23 for the fact that you just murdered this person seven to
24 ten days earlier?

25 A. No. I didn't really know his family or -- like I

1 said, I was high on drugs and alcohol and that was
2 basically my daily existence. I was drunk and high
3 constantly.

4 Q. So being drunk and high would prevent you from
5 showing any sort of compassion or remorse or
6 demonstrating anything that would might show that you --
7 the fact that you committed this murder and there's
8 something about it that you as a human being are saying
9 I've got to acknowledge this murder in some way?

10 A. No. I don't -- like I said, I don't understand
11 the question because, I mean, I killed the guy. Of
12 course I didn't want to kill the guy and I didn't plan
13 to kill the guy, and then I just left. I didn't...

14 Q. But, Mr. Bowles, if you drop a 40 to 50-pound
15 weight on somebody's head, is that not a demonstration
16 that you wanted to kill them?

17 A. Right. But, like I explained, I don't really
18 know why I did that. I didn't have a reason to do that.
19 It was like an out of -- like it was outside of me. I
20 didn't realize that that's what -- that that's what I
21 was doing. I didn't -- I wasn't subconsciously saying,
22 well, I'm going to go out here and get this rock and I'm
23 going to drop it on this head.

24 Q. So when you dropped this 40 to 50-pound rock on
25 his head, did you at that point come back to your senses

1 or whatever and say I need to do something to help this
2 person?

3 A. No.

4 Q. So after dropping the rock on his head what did
5 you do?

6 A. I left.

7 Q. Before you left?

8 A. That's all I did. I left the scene.

9 Q. Did you asphyxiate him in any way?

10 A. Well, I don't -- no. I don't recall doing the
11 things that they said I did.

12 Q. So you don't remember sticking things down his
13 throat?

14 A. No.

15 Q. You don't remember putting a towel in his mouth?

16 A. No.

17 Q. You don't remember basically strangling him?

18 A. No.

19 Q. So the only thing you remember is dropping this
20 40 to 50-pound rock on him and then leaving and then
21 subsequently coming back?

22 A. Right. I don't even -- the going outside and
23 getting the brick, that is the facts of the case. I
24 don't remember even doing that. That's what I'm saying.
25 It was like I blacked out and I don't remember doing any

1 of the things that they said I did. I don't have a --
2 there was no rhyme or reason for me to do that. I drank
3 four quarts of malt liquor. We were smoking crack and
4 smoking pot and I don't remember any of those things.
5 Those were just the -- going outside and getting the
6 brick, that was just the fact of this of what I did.
7 That's where the rock came from.

8 Q. Mr. Bowles, do you know what an MO is?

9 A. Yes.

10 Q. It's better referred to as modus operandi?

11 A. Yes, sir.

12 Q. What is the MO?

13 A. It's kind of like a signature.

14 Q. Basically it's the way you go about doing things.

15 A. Yes, sir.

16 Q. And so do you remember killing Albert Morris?

17 A. Yes.

18 Q. Do you remember what you did to Albert Morris in
19 terms of his throat?

20 A. No. I shot him.

21 Q. Did you not shove anything down his throat?

22 A. I don't recall shoving anything down his throat.
23 I recall shooting him.

24 Q. Do you remember John Roberts?

25 A. Yes.

1 Q. Do you remember killing him?

2 A. Yes.

3 Q. How did you kill him?

4 A. I hit him with a lamp.

5 Q. And then after you hit him with the lamp do you
6 remember shoving anything down his throat?

7 A. No.

8 Q. You did not shove anything down his throat?

9 A. I may -- I put a rag in his mouth.

10 Q. Okay. In his mouth?

11 A. Right.

12 Q. Did you put a rag in Morris' mouth?

13 A. I don't remember.

14 Q. Did you put a rag in Mr. Hinton's mouth?

15 A. Like I said, I don't remember.

16 Q. David Jarman, do you remember that name?

17 A. Yes.

18 Q. Who is David Jarman?

19 A. He is a guy that I met in Maryland.

20 Q. And what happened with this guy that you met in
21 Maryland?

22 A. What do you mean?

23 Q. Did you kill David Jarman?

24 A. Yes, sir.

25 Q. All right. How did you kill David Jarman?

1 A. I strangled him.

2 Q. And after you strangled him did you put anything
3 down his throat?

4 A. No. I don't remember.

5 Q. Do you know Milton Bradley?

6 A. Yes.

7 Q. Who is that?

8 A. That was a guy I met in Georgia.

9 Q. Okay. And did anything happen with this guy you
10 met in Georgia?

11 A. Well, yeah. I killed the guy, I mean --

12 Q. That's an important part of it.

13 A. Yes.

14 Q. So you killed Milton Bradley in Georgia?

15 A. Yes.

16 Q. And did you shove anything down his throat?

17 A. I think I put some leaves and dirt in his mouth.

18 Q. Some dirt and leaves?

19 A. Yeah. We were fighting behind the shed.

20 Q. And you put dirt and leaves in his mouth and down
21 his throat?

22 A. Well, I don't know if it went down his throat or
23 not.

24 Q. So I asked you earlier about an MO, modus
25 operandi, and although you have no specific

1 recollection, but actually the reports show each one of
2 them the MO is murder either by trauma, blunt force, by
3 strangulation or by shooting. And so those are all the
4 different types of ways to commit a murder, but the
5 signature, as you say, the modus operandi, is in every
6 one of them you need to shove things in their mouth or
7 down their throat. Are you saying that you did not do
8 that with Walter Hinton, Albert Morris, John Roberts,
9 David Jarman and Milton Bradley?

10 A. Well, not subconsciously. I don't -- like I
11 said, those are the facts of the case. That's the facts
12 of the case, but that's not something that I planned. I
13 didn't -- I mean, it's like a crime of opportunity, you
14 know. It was like, you know, if I was strangling the
15 guy, you know, I grabbed it to, you know, make sure that
16 he was dead. It's not like what you're saying, the MO.
17 That's not -- I wasn't trying to leave some kind of
18 message or something like that.

19 Q. When you killed Albert Morris in Nassau County,
20 Florida, do you have anything that you did that would
21 demonstrate any sort of remorse or demonstrate regret?
22 To say I am remorseful or I regret is one thing, but did
23 you take any actions that show or demonstrate that you
24 were remorseful or regretful for killing Albert Morris?

25 A. No.

1 Q. What about with John Roberts, did you take any
2 action --

3 A. No.

4 Q. -- to show regret or remorse?

5 A. I ran from the law. I didn't -- I was running
6 from the law.

7 Q. What about David Jarman, did you take any action
8 to show regret or remorse?

9 A. No.

10 Q. What about Milton Bradley?

11 A. No.

12 Q. And so out of the five murders that I've listed,
13 you at no point demonstrated any sort of regret or
14 remorse that would demonstrate that you had some sort of
15 human feelings for these people that you murdered?

16 A. No.

17 Q. There is a sixth person that you've admitted to
18 murdering that's not on this list who is also from
19 Georgia. Who is that person?

20 A. I don't know his name right off the bat.

21 Q. And how did you kill him?

22 A. I stabbed him.

23 Q. Why did you stab him?

24 A. Because he was attacking me.

25 Q. Why was he attacking you?

1 A. Because he wanted to have sex with me and he was
2 trying to force me to do something that I didn't want to
3 do.

4 Q. Had you had sex with him before?

5 A. No.

6 Q. How did you get in a situation where there's a
7 question of you having sex with him?

8 A. Well, we were at his apartment, we were smoking
9 dope. And he got real aggressive towards me and it was
10 like a line of self-defense.

11 Q. So this is just some -- he just unknowingly
12 arbitrarily decided that he wanted to have sex with you?

13 A. Yes.

14 Q. And there was nothing that happened before then
15 that would move this interaction in that direction?

16 A. No.

17 Q. And did you try to leave that situation?

18 A. No. I grabbed a knife and I stabbed him. I
19 mean, that was my way to get away.

20 Q. And so was he trying to kill you?

21 A. Well, he was trying to rape me. So I don't know
22 what his intention would have been after that.

23 MR. DAVISON: I've got a series of other
24 questions, but before I go to them I'm going to go to
25 Mr. Wyant.

1 MR. WYANT: Thank you.

2 BY MR. WYANT:

3 Q. Thank you, Mr. Bowles, for speaking with us
4 today. Just a couple of follow-up questions kind of to
5 what you and Mr. Davison have talked about already.

6 After you dropped the brick on Mr. Hinton's head
7 did you check for any signs of life or injury?

8 A. No. I wasn't in my right state of mind. Like I
9 said, I was very high and drunk and the things that they
10 said transpired, I don't recall those things happening.
11 The records show what I did and that's all I can say is
12 that that's what I did. I don't remember doing those
13 things, but that's what they said happened.

14 Q. Okay. And what name did Mr. Hinton know you by?

15 A. Tim.

16 Q. Tim. Now, how did he come to know you by that
17 identity rather than Gary Ray Bowles?

18 A. That was a fake name I was using.

19 Q. Okay. And you actually had a Florida driver's
20 license or a Florida ID card with that name on it?

21 A. Yeah. I had a picture ID.

22 Q. Okay.

23 A. I found a birth certificate and a Social Security
24 card with that name and I took it town to the DMV and
25 had an ID made.

1 Q. Okay. And I know your counsel is arguing
2 intellectual disability and stuff like that and I
3 understand that, but how did you know if you got these
4 two forms of ID you could go down to the DMV and get you
5 a fake ID made?

6 A. Well, I knew I could get it from -- I know that's
7 where you go to get IDs.

8 Q. Where did you find the information you needed to
9 get the fake ID?

10 A. Well, I found it in a wallet.

11 Q. Whose wallet?

12 A. His wallet.

13 Q. Where at, though? Where did you find Tim's
14 wallet at?

15 A. Well, I found it at the guy's house in Hilliard,
16 Florida.

17 Q. What's his name?

18 A. I don't remember.

19 Q. One of your victim's houses?

20 A. Yes.

21 Q. Okay.

22 A. Morris.

23 Q. Okay. So you leave there, you find Tim's
24 information or wallet, and you go to the DMV and you get
25 a fake ID made, I mean, a state issued ID with your

1 picture and his information; is that right?

2 A. Yes.

3 Q. Okay. So when you meet Mr. Hinton he knows you
4 as Tim, not Gary?

5 A. Yes.

6 Q. Okay. What was your drug of choice at that time?
7 Did you have a favorite?

8 A. Crack.

9 Q. Crack?

10 A. Crack.

11 Q. Okay.

12 A. Crack and pot.

13 Q. Okay. Do you remember doing an A&E special in
14 2014 on TV?

15 A. I did an interview with --

16 Q. On TV?

17 A. Yes.

18 Q. Okay. Do you remember or did you tell him during
19 that special that all your victims got what they
20 deserved?

21 A. Well, that's what I felt at the time.

22 Q. You felt that way in 2014 or you felt that way
23 when the crimes occurred?

24 A. When the crimes -- well, see, the lifestyle that
25 I was living then, I was a street hustler, a male

1 prostitute, and these men were all interested in sex
2 with -- having sex with young kids. And that's -- and I
3 told them that -- at that time I felt that what I was
4 doing was okay, or after I did it that's what I felt
5 then. That's not how I feel now, of course, but that's
6 how I felt then.

7 Q. So you felt then they wanted to have sex with
8 children so you were doing the right thing then?

9 A. Right.

10 Q. That's what your mindset was then?

11 A. Right.

12 Q. Okay. Because there was never any evidence to
13 show any of your victims were involved in pedophilia or
14 anything like that; is that right?

15 A. Well, no, because I didn't tell them until after
16 I was arrested. They had no reason to think that.

17 Q. Okay. So if you could say anything to your
18 victims today what would it be?

19 A. Well, I would say to them that I'm very sorry
20 for, you know, all the pain I caused you, I didn't mean
21 to kill your loved one, I never wanted this to -- I
22 never wanted my life to turn out this way. I never
23 wanted to become a -- or ever kill anybody or, you know,
24 do the things that I've done. The things just got so
25 out of control, the drugs and alcohol, that -- I mean, I

1 was trying to do the right thing and I was trying to
2 live my life the best I could and it just got so out of
3 control so fast. It all happened within such a short
4 period.

5 Q. I know other people that have struggled with
6 drugs and alcohol their whole life and it never reaches
7 or escalates to killing people. What do you think
8 separates you from them?

9 A. I can't answer that. I can't speak for other
10 people. I just -- like I said, the things just got so
11 out of control so fast. I don't see how it happened,
12 but I know it happened. I know, you know, I'm here and
13 that's what happened.

14 Q. In the case of Mr. Hinton it was recommended by
15 the jury 12 to zero for your sentence.

16 A. The second time.

17 Q. Right, the second time.

18 MR. WYANT: I'll come back. Mr. Davison?

19 BY MR. DAVISON:

20 Q. Mr. Bowles, the -- why did you kill these men?

21 A. I don't really know why I did it. Like I said, I
22 didn't have a reason to.

23 Q. The reason I ask that again is because I'm having
24 a little bit of difficulty reconciling what you just
25 said a few moments before that because you said that you

1 believe that all the victims were interested in having
2 sex with young kids and that they all got what they
3 deserved. That's the statement that you made here to
4 Mr. Wyant that that's what you believed and that's the
5 statement that you made on tape during the A&E special
6 that was broadcast. And so I'm having difficulty
7 reconciling that general statement, that they all got
8 what they deserved or they deserved because they wanted
9 to have sex with young kids, with what you're saying
10 several times here today that as it relates to Walter
11 Hinton you don't know why you killed him, you just did
12 it for no reason.

13 A. Yeah. But I didn't -- his case wasn't included
14 in those others. When I gave my confession to, you
15 know, meeting him and being around him it didn't have
16 nothing to do with like any of the other people.

17 Q. So this is the first time I'm hearing that
18 explanation, Mr. Bowles, because, you know, that's why I
19 went back to ask the question again. And of course now
20 it's, I guess, a modifier, a different response, from
21 what you said a few times here today. And so that's the
22 challenge that I'm having trying to reconcile the
23 different responses.

24 Let's go back a little bit to your childhood.
25 And there was a lot of discussion in the documents that

1 I have about abuse. Talk to us about your childhood.

2 A. Well, I was raised by an alcoholic stepdad. My
3 real father was a coal miner, he passed away before I
4 was born. And my mom remarried. My mom was 18 when she
5 had me and I already had a two-year-old brother. She
6 remarried and she stayed remarried to the guy. They had
7 two kids together. And he was an alcoholic, drunk, he
8 beat me and my brother a lot. And she divorced him at
9 age ten.

10 And then my sister and my brother -- we had a
11 third dad, and me and my brother went with my mom and we
12 kind of moved around a lot. Between age of ten, 11, 12
13 she moved around three or four or five different places
14 and she was with a lot of different guys. And she got
15 remarried again to another guy and he was even more
16 abusive than my first stepdad. And I ended up getting
17 in a big fight with him and that was what led me to
18 leave home.

19 The guy's name, Chad, he put my mom in the
20 hospital a couple times, beat me a lot. I think they
21 showed some pictures where my whole face was like
22 swollen shut. The guy, he wasn't very nice. He kicked
23 me out of the house. I had to live in the garage. I
24 wasn't even allowed inside.

25 Finally at the age of 13 I'd had enough and I

1 told my mom it was him or me and she chose him. And I
2 left home at the age of 13.

3 Q. Who is William Bowles?

4 A. Pardon me?

5 Q. Who is Williams Bowles?

6 A. William Franklin Bowles was my dad. And William
7 Franklin Bowles, Jr., was my brother.

8 Q. So William Franklin Bowles, Jr., who is two years
9 older than you?

10 A. Yes.

11 Q. And he was -- grew up in the same household as
12 you?

13 A. Yes.

14 Q. And --

15 A. Suffered the same beatings I did.

16 Q. Took the same beatings?

17 A. Uh-huh.

18 Q. By your first and second stepfather?

19 A. Well, not so much the second stepdad because he
20 had left and joined the Army Corps, like a Job Corps.
21 He wasn't around the second stepdad.

22 Q. But the same beatings?

23 A. Yes.

24 Q. Same abuse as you?

25 A. Yes.

1 Q. And he went off and joined the Job Corps?

2 A. He went in the Job Corps, yes. And then he
3 joined the Army.

4 Q. And then joined the Army. And where is he today?

5 A. He's deceased.

6 Q. And how long has he been deceased?

7 A. 2005.

8 Q. And prior to him dying in 2005 what was his
9 lifestyle?

10 A. He was married and got divorced. And he was a
11 pot head. He got kicked out of the Army for the drugs.
12 And he kind of moved around. He lived on an Indian
13 reservation, lived with different women.

14 Q. How did you and he get along?

15 A. Well, there wasn't much contact. Like I said, I
16 left home when I was 13 and I didn't have any contact
17 with my --

18 Q. In the years that you guys were children up until
19 the time that you left and the time that he left, when
20 you guys lived together in the same household as two
21 brothers and then three brothers and a sister, tell me
22 about your relationship with your brother William
23 Franklin Bowles during that time.

24 A. Well, we were brothers. I mean, I followed him
25 around. He was a couple of years older than me, but our

1 life was -- it was like in two parts. My dad worked
2 during the day, my mom worked at night, so we were
3 pretty much all -- all the kids except for the two
4 little ones were -- me and my brother were pretty much
5 on our own. We didn't -- he had his friends and I had
6 my friends so we didn't -- we wasn't super close.

7 Q. But before the murders, the six murders that you
8 confessed to, there were other crimes, robbery and
9 sexual battery.

10 A. Well, the sexual battery charge was the first
11 time I ever got in trouble. That was -- I was a male
12 prostitute and she was a prostitute. I was living with
13 two prostitutes. I didn't do the crime that I went to
14 prison for, but the lawyer got me to plead no contest to
15 the charge. I didn't --

16 Q. So you went to prison two times before you went
17 to prison for the murders?

18 A. Three times.

19 Q. Three times?

20 A. Yeah. They gave me probation. They gave me -- I
21 pleaded no contest to aggravated battery and attempted
22 sexual battery. They gave me three years in prison for
23 the aggravated battery. I did like 18 months for that.
24 And then when I got out I got probation.

25 I transferred my probation to Virginia. And I

1 did two years of probation and the people told me that
2 they were terminating my probation, but it never got
3 terminated.

4 Q. With those three prison sentences and probation
5 and all, and before that when you were a child, did you
6 sniff glue and did other things related to --

7 A. Yeah. I started sniffing glue, huffing paint,
8 smoking pot, shooting up drugs when I was young,
9 Quaaludes, acid. I did it all and tried it all.

10 Q. And William, what was he doing at that time?

11 A. Like I said, he -- well, when we were little kids
12 he was doing the same thing I was doing, but we pretty
13 much separated when I was like 12 and he left. I might
14 have seen him one, two more times after that.

15 Q. Prior to William's death how many times did he go
16 to prison?

17 A. I can't -- I don't remember.

18 Q. Do you even know if he went to prison or not?

19 A. I think he did.

20 Q. You think he did. What did he go to prison for?

21 A. I don't know. Like I said, I didn't have a lot
22 of contact with him. But I think he got in some
23 trouble.

24 Q. Do you know if he raped anyone?

25 A. I don't know.

1 Q. Do you know if he robbed anyone?

2 A. I don't know.

3 Q. Do you know if he murdered anyone?

4 A. No.

5 Q. So the reason -- what I'm trying to do is do this
6 comparison. The person that you say was William
7 Franklin Bowles, Jr., your brother, the two of you grew
8 up in the same abusive household and you went down this
9 track of rape, robbery and murder. And you say --

10 A. Well, there was a lot of -- my life was a lot
11 different than his. He didn't have to sell his ass and
12 dick on the street from the age of 13. He didn't have
13 to do those things. That's the things I did.

14 Q. Did you have to --

15 A. Yeah. I had to survive.

16 Q. So -- but your brother had to survive, too?

17 A. But he was in a different situation. He was in a
18 -- he had people helping him. I didn't have nobody
19 helping me.

20 Q. Did he -- was he older or younger?

21 A. He was older. He was in the Army, in the Job
22 Corps. His life started in a different direction.

23 Q. So did you have the opportunity to go into the
24 Job Corps?

25 A. No.

1 Q. You did not have the opportunity?

2 A. No.

3 Q. Why not?

4 A. Well, I wasn't old enough, for one.

5 Q. But your brother was two years older when you
6 said he left.

7 A. Yes.

8 Q. All right. And so -- and he left before you. So
9 did you leave at the same time your brother did or right
10 after your brother did?

11 A. No. He was already gone. He was gone for --
12 when he left I was like 12 and he was like 14 or 15.

13 Q. And so you left when you were 13?

14 A. I left home.

15 Q. Right. So you're saying although he was 14 when
16 he left and you were 13 when you left that he had
17 because of his age much more opportunity than you did?

18 A. Well, when I was 13 he was 15.

19 Q. But you said he left when he was 14?

20 A. Right.

21 Q. And you left when you were 13?

22 A. Right.

23 Q. And so -- but you're saying the big difference
24 between you and him was that he was older and he had
25 more opportunities, although when you guys left he was

1 only one year older than you?

2 A. Right. But he had an opportunity to do that, to
3 go, to join that corporation and I didn't have that
4 opportunity. That's what I'm saying.

5 Q. So I guess, Mr. Bowles, the question that I'm
6 trying to get to is that you and your brother were very
7 similarly situated in terms of the things that occurred
8 in your household that caused your brother at 14 to
9 leave and you at 13 to leave. And so you're saying that
10 your brother didn't have to -- and I'm not going to use
11 the same words, but basically sell yourself on the
12 street, your brother didn't have to do that. So why did
13 you have to do that and your brother did not?

14 A. That was my way to survive. I didn't -- I
15 couldn't do -- I couldn't go and do the things that he
16 did. That's what I'm saying. When I left I did what I
17 had to do to survive.

18 Q. So then --

19 A. The day that I left home my stepdad was either
20 going to kill me or I was going to kill him. He
21 attacked me, we were fighting. The fighting went out
22 into the driveway. And my mom came running outside,
23 pulled me off of him. And the cops came, he went to the
24 hospital, and I told my mom that's it, him or me. And
25 she said don't make me choose. I put my stuff in a

1 garbage bag and I left. I didn't have no other choice.

2 Q. Let me go back to you and William Franklin. And
3 when you guys were children was William sniffing glue?

4 A. Yes, sir.

5 Q. Was he sniffing paint?

6 A. Uh-huh.

7 Q. Was he doing acid?

8 A. Yes.

9 Q. Was he shooting up?

10 A. Yes.

11 Q. The same things that you were -- the both of you
12 were doing?

13 A. Uh-huh.

14 Q. And -- but at some point there had to be a choice
15 made of leaving and what you do after you left. And so
16 your choice was to basically become a child prostitute?

17 A. Right.

18 Q. And his choice was to join the Job Corps and then
19 the military?

20 A. Well, if you want to word it like that, I mean,
21 you can say that, yeah. That was the choices.

22 Q. And so then --

23 A. But I don't feel that what I -- that I had a
24 choice. I did what I did to survive. I don't feel like
25 I chose that. The way you're wording it is that I chose

1 to live this life, I chose to do these things. I didn't
2 choose that.

3 Q. But let's go to the things that were a choice.
4 Did you choose to commit sexual battery on the person
5 that you went to prison for committing sexual battery?

6 A. No. I didn't do it.

7 Q. You did not?

8 A. No.

9 Q. Did you choose to rob?

10 A. Well, yes, sir. At the time, yes. Yes, I would
11 say I chose it.

12 Q. And did you choose to kill Milton Bradley, David
13 Jarman, John Roberts, Alan Morris and Walter Hinton?

14 A. Well, again, I mean, the way you're wording it is
15 you're making it seem like -- that I wanted to do it. I
16 didn't want to do it. I did it, but I didn't choose to
17 do it.

18 Q. You were forced to do it?

19 A. No, I wasn't forced to do it. Like I said, I
20 didn't choose to -- there's no other way to say it. I
21 mean, you're making it seem like that's what I wanted.
22 That's not what I wanted.

23 MR. DAVISON: Okay. Part of -- well, Mr. Wyant?

24 BY MR. WYANT:

25 Q. On that same note when we discussed earlier your

1 interview on A&E, if you remember, we talked about that.
2 On that same -- during that same interview you made the
3 statement that, and I'm trying to quote this as close as
4 possible, you may remember it, I wanted to kill as many
5 people as I could before I got caught. Do you remember
6 making that statement?

7 A. Yeah. That's the way I felt then.

8 Q. What made you want to kill as many people as you
9 could before you caught got?

10 A. Because the mindset I had was that these people
11 were pedophiles. That's what I had in my mind.

12 Q. Do you feel today they weren't pedophiles?

13 A. Yes.

14 Q. So they were not?

15 A. Yes.

16 Q. Okay. That's where I'm kind of running into some
17 confusion as to how you felt then versus how you feel
18 now.

19 A. Right.

20 Q. Okay. So thank you for clarifying that.

21 A. Yeah. Like I said, I was out of my mind. I was
22 smoking a thousand dollars a day in crack and I had it
23 in my mind that these were bad people.

24 Q. Right. How were you financing your drug habit?

25 A. By prostituting. And I would do day labor, you

1 know, odd jobs. I would steal, rob.

2 Q. Earlier when you said the girl that came over was
3 -- that you came to Mr. Hinton's residence with you was
4 sick. Did you mean she was dope sick or was she with
5 the flu?

6 A. Well, she had got bit by a spider and the spider
7 was poisonous and it ate a big hole in her leg. And
8 that was what was wrong with her.

9 Q. Okay. And you said earlier your brother passed
10 away in what year?

11 A. I think it was 2005.

12 Q. Do you know why he passed away?

13 A. He got hit by a drunk driver and the medication
14 that he was taking caused one of his heart valves to
15 clog up and he vomited in his sleep and choked to death.

16 Q. Had he straightened his life up before he passed
17 away?

18 A. No. He was staying with my mom. He was still a
19 drug addict. He never -- once he got kicked out of the
20 Army his life never really amounted to much. I mean, he
21 didn't end up like me, but he didn't really have a good
22 life.

23 Q. And I know you've been asked this a few times
24 today and probably many times over the years. You don't
25 recall forcing the items into your victims' mouths or

1 throats, that was something that just happened; is that
2 right? Is that how you worded that?

3 A. Well, the way I worded it was that it was like, I
4 think, psychologically I did that to make sure they were
5 dead.

6 Q. Okay.

7 A. It wasn't a plan or something that I wanted --
8 you know, that I was trying to do.

9 Q. When it comes to Mr. Hinton, the way he had a rag
10 of some sort in his throat or it was recovered from his
11 mouth or throat, do you know if you did that before you
12 dropped the brick or after you dropped the brick?

13 A. They said I did it after when he was laying on
14 the floor.

15 Q. Did you cover him with a sheet before you left?

16 A. I don't remember. I think a blanket.

17 Q. Was he already covered when you dropped the brick
18 or could you see him?

19 A. It was dark. I really couldn't see him.

20 Q. You just knew where his head was as far as the
21 positioning goes?

22 A. Right, right.

23 Q. Okay. And you said you had been staying there
24 about a month; is that right?

25 A. Well, I stayed there for a short time and then I

1 left. And then I came back to get my stuff and that was
2 when me and another guy were -- we went out partying
3 with him and drinking and smoking. And then we dropped
4 the friend off and then that was when we went back to
5 the trailer and that was when I did it.

6 Q. Did you consider Mr. Hinton a friend?

7 A. Yes.

8 Q. Do you regret killing him?

9 A. Very much so.

10 Q. And I'm not asking that because you're sitting
11 here in your current situation today, but are you sorry
12 you killed him?

13 A. I'm very sorry because, like I said, he wasn't
14 like the other people. There was no kind of sexual
15 relationship or none of that. That's why I don't have
16 an explanation of why I killed him, because I didn't
17 think he was a pedophile or none of that kind of stuff
18 and he helped me out. And, yeah, I thought of him as a
19 friend.

20 MR. WYANT: Okay. Thank you.

21 BY MR. DAVISON:

22 Q. Just to wrap it up with my last round of
23 questions. Mr. Bowles, at the time that you murdered
24 Walter Hinton were you able to distinguish right from
25 wrong?

1 A. No. Like I said, I mean, after, yeah. But I
2 don't -- I don't recall the situation so I can't say if
3 I was right or wrong or not.

4 Q. So I want to be very clear that at the time that
5 you dropped the 40 to 50-pound brick on Walter Hinton's
6 head, you're telling me at that time you were not able
7 to distinguish right from wrong?

8 A. No.

9 Q. You could not?

10 A. No.

11 Q. So --

12 A. Because I wasn't in my right mind.

13 Q. You had been drinking?

14 A. I drank.

15 Q. You were high on drugs?

16 A. Yes.

17 Q. But did you know what you were doing?

18 A. No.

19 Q. You didn't know that you were going outside and
20 getting a brick?

21 A. No.

22 Q. You didn't know that you were bringing it back?

23 A. No.

24 Q. You didn't know that you were going specifically
25 into Walter Hinton's bedroom and dropping it on his

1 head?

2 A. No.

3 Q. You didn't know that you were strangling him
4 afterwards?

5 A. No.

6 Q. You didn't know that you were putting things down
7 his throat afterwards?

8 A. No.

9 Q. You didn't know that you were covering him up
10 with a sheet?

11 A. No.

12 Q. You didn't know that you left and came back a few
13 days later and specifically told the young lady that you
14 were with don't go into that room?

15 A. Well, yeah, I remember that.

16 Q. Okay. So, I mean, you can't like not know this
17 part, but know this part. I know that I've got this
18 dead body in this room of this person I've killed. I
19 don't want her to go in there, but I don't remember what
20 I did to put that dead body in that room.

21 A. Well, I think you can. Like I said, I was in
22 like a stage of blackout. I don't -- there was no
23 planning. I don't remember doing it. I'm going by the
24 facts of what they said. I don't have a memory in my
25 head of doing those things. I have a memory in my head

1 of going back to the place, yes, after.

2 Q. This is difficult for me because today you're
3 saying I was in a state of blackout.

4 A. Uh-huh.

5 Q. In 1994 when you were asked about this you said I
6 just snapped.

7 A. Right. That's what I'm saying, I don't recall
8 doing it. That's the term I used. I snapped, blacked
9 out, it's the same thing.

10 Q. You're not differentiating between the two?
11 Because blacking out means it's a dark space, I don't
12 remember what happened.

13 A. Right.

14 Q. I just snapped is more consistent with what you
15 were describing to me that I did it, I don't know why I
16 did it, but I just did it, as opposed to I don't
17 remember doing it because it's a black hole.

18 A. Right.

19 Q. There's a difference between -- there's a
20 difference.

21 A. I understand, right. Yes, sir, there is.

22 Q. Okay. And do you remember seeing a psychiatrist
23 during this process who assessed and evaluated you and
24 said it is therefore my opinion that Mr. Bowles was able
25 to distinguish right from wrong at the time of the

1 alleged charges?

2 A. Well, I don't remember seeing any psychiatrist.
3 The only person that I remember talking to, Bill White,
4 my attorney, had me talk to a woman, a Dr. McMahon, I
5 think, was her name. That's the only person that I
6 recall talking to.

7 Q. Do you remember talking to Dr. Daniel Spree?

8 A. No.

9 Q. Do you remember talking to Dr. A.G. Gonzalez?

10 A. No.

11 Q. Do you remember talking to Dr. Elizabeth McMahon?

12 A. Yeah. That's the woman that I'm talking about.

13 Q. And so you remember her assessing you and making
14 a determination as to your mental status?

15 A. Well, I don't know what her determination was
16 because she -- her testimony was never presented in
17 court. I can't say what her evaluation was.

18 Q. Did you see Dr. McMahon prior to going into the
19 -- you pled guilty, but going into the sentencing trial?

20 A. Yes.

21 Q. You saw her before that sentencing trial?

22 A. Yeah. Bill White, my attorney -- my attorney
23 that I had, my original attorney, I basically followed
24 his instructions. And they took me over to her office
25 and I had a short conversation with her, maybe for an

1 hour or two, I don't know how long it was, and that was
2 before the penalty phase.

3 Q. So Dr. McMahon was basically hired on by your
4 attorney, Bill White --

5 A. Uh-huh.

6 Q. -- to examine you?

7 A. Yes.

8 Q. And make a determination about your competency?

9 A. I guess. I don't --

10 Q. Did the sentencing -- did the sentencing phase
11 and sentencing trial go forward?

12 A. I had a penalty phase, yeah. Bill White got me
13 -- told me to plead guilty. And then they picked the
14 jury and I had a penalty phase. But, like I said, her
15 testimony -- as far as I know, her testimony wasn't
16 used.

17 Q. The report of Dr. Elizabeth McMahon is that Dr.
18 McMahon determined that the inmate was competent to
19 proceed to trial and found that the inmate was not
20 insane at the time of the offense. Are you aware of
21 that?

22 A. Well, no. Like I said, I don't know what was on
23 the record.

24 Q. But the sentencing portion went forward?

25 A. Yes.

1 Q. And that was after your examination by Dr.
2 McMahon?

3 A. Well, yes, I guess.

4 Q. And if Dr. McMahon had determined that you were
5 insane or not competent do you think that sentencing
6 phase would have gone forward?

7 A. No.

8 Q. It would not have gone forward?

9 A. I don't think so, no.

10 Q. And she determined that you were sane and that
11 you were competent to go forward with the sentencing
12 aspects of this whole process.

13 So in terms of your childhood, how would you
14 character your childhood?

15 A. Messed up. I mean, I didn't have any real role
16 models. I didn't go to school. I never got out of --
17 the highest grade I completed was fifth grade, you know.
18 I left home when I was 13. I lived on the streets
19 basically my whole life, sold my body for money. I
20 never had...

21 Q. You told Dr. McMahon about your childhood?

22 A. I told her the same thing I'm telling you.

23 Q. This is what you told Dr. McMahon about your
24 childhood. You said not very good. Lonely. Couldn't
25 have any friends over. Not much fun. Not happy.

1 Scary. Not peaceful. Chaotic. Not loving. However,
2 you were pretty secure financially, but it was very
3 unpredictable and not emotionally secure.

4 A. That's pretty much it.

5 Q. Those are all the things that you told Mr.
6 McMahon about your childhood.

7 A. That's pretty much how it was.

8 Q. And is this the same childhood that William
9 Franklin Bowles, Jr., had? Would you describe the same
10 thing for his childhood?

11 A. Yes.

12 Q. Your brother?

13 A. Yes.

14 Q. All right. And so, however, very different
15 routes beyond the childhood?

16 A. Well, every person is wired different, you know.
17 Like I said, he was presented an opportunity that he got
18 and I didn't get that opportunity. He suffered a lot,
19 too. I mean, he didn't have a great life. Sure, he
20 didn't have it like me, but no two brothers usually do
21 end up exactly alike.

22 BY MR. WYANT:

23 Q. Mr. Bowles, for my own thinking to clarify, you
24 don't -- you do or do not remember killing Walter
25 Hinton?

1 A. No.

2 Q. Do you remember killing any of your victims?

3 A. Yes.

4 Q. How many of the victims do you remember killing?

5 A. All the other victims.

6 MR. WYANT: Okay. Thank you. Mr. Bowles, I
7 appreciate you answering my questions. I don't have
8 any further questions for you. Mr. Davison might.

9 MR. DAVISON: I am looking over -- I may be done
10 as well. I do have one more.

11 BY MR. DAVISON:

12 Q. Mr. Bowles, are there any victims out there that
13 we don't know about that you didn't tell the police
14 about?

15 A. No. I assisted the police and FBI as best I
16 could.

17 Q. Mr. Bowles, the last question I have is we talked
18 about MOs. We talked about the differences in the six
19 murders. We talked about the similarities in the six
20 murders and the similarities which I have referred to as
21 your modus operandi. What you are saying here today is
22 you don't remember doing the things that are consistent
23 throughout the six murders, you don't remember that
24 part. And so -- but I think what is also clear here is
25 that the murders were each committed in a cold,

1 calculated and apparently premeditated manner.

2 And so my question, the last thing before we give
3 you the opportunity and your attorney to make closing
4 statements, is do you, Gary Ray Bowles, have any regard
5 for human life?

6 A. Yes, I have regard for human life. The murders
7 were bad, yes, I grant that, but they wasn't
8 premeditated or calculated. I didn't plan -- I never
9 planned to kill each person. It was more of an
10 opportunity and the weapons of choice were weapons of
11 opportunity.

12 Q. And so in your response to that question that
13 you, Gary Ray Bowles, have regard for human life, that's
14 your response, yes?

15 A. Uh-huh.

16 Q. How is that regard for human life demonstrated in
17 the murders?

18 A. Well, they're not. Like I said, I was completely
19 out --

20 Q. Milton Bradley, David Jarman, John Roberts,
21 Albert Morris or Walter Hinton, how is your regard for
22 human life demonstrated in any of those murders?

23 A. Well, they're not, but --

24 Q. Isn't it a clear disregard for human life?

25 A. Well, sure, it is at the time, yeah.

1 Q. So what's changed since then? Because if it was
2 a disregard for human life in 1994 when you were
3 committing the murders how has that changed?

4 A. Well, it's changed a lot. I mean, I'm drug and
5 alcohol free for over 20 years. I've got more of a
6 clear mind. I don't -- I'm not living in the same
7 environment. I don't have to sell my ass for money. I
8 don't have to, you know, jump from place to place. I
9 have a more clear understanding about things.

10 Q. So your regard for human life has evolved into --
11 your disregard for human life has evolved into now a
12 regard for human life?

13 A. Well, I don't think I had a disregard for life at
14 all. I mean, you can word it like that if you want, but
15 I don't feel like I had a disregard for life at all. I
16 mean...

17 MR. DAVISON: Thank you. I don't have any
18 additional questions. We'll give you the opportunity
19 to make any closing statement you'd like to make as
20 well as you, Mr. Simmons.

21 BY MR. SIMMONS:

22 Q. Now, Mr. Bowles, you had an opportunity to
23 actually speak about those crimes. How do you feel
24 about what you've done and how do you feel right now
25 about what happened?

1 A. I feel terrible about what I did. Like I said, I
2 never wanted to kill anybody. I never wanted to end up
3 in prison the rest of my life or be executed or
4 whatever. I'm very sorry. I know I caused a lot of
5 pain to a lot of people, including my own family. I
6 ostracized myself. Like I said, I haven't seen my mom
7 in over 20 years. I'll probably never see her again.
8 My sister and brother don't have no contact with me.
9 And I'm pretty much alone in my cell.

10 Q. And since 13 years old when you left your home
11 did you ever live independently on your own in a
12 meaningful way?

13 A. No, no. I have -- I started prostituting and I
14 did that back in the late '70s and early '80s. My life
15 was totally different than it is now. Underage
16 prostitutes were everywhere. The police didn't care.
17 There was groups of people banded together and there
18 might be eight, ten people in a motel room a night.

19 Q. And that was your existence at the time?

20 A. Yeah. That was my existence from 13 until when I
21 got in the situation I got in in Tampa where I went to
22 prison.

23 MR. SIMMONS: And in regards to closing for the
24 board, I do understand that this process is going to
25 come to a conclusion at some point. There is

1 evidence, again, that Mr. Bowles' case is still open,
2 which I presented to the board for consideration
3 before making their conclusion. I will try to gather
4 all that information and try to get it to the board
5 subsequently in writing. And because there is still
6 a pending claim, once that information is available
7 from that claim I will take every opportunity to get
8 that to the board as quickly as I can.

9 MR. DAVISON: Thank you. Anything else?

10 MR. SIMMONS: No.

11 MR. DAVISON: Mr. Bowles?

12 INMATE BOWLES: Uh-uh, no. I would just like to
13 say thank you for this opportunity to speak with me.
14 And I would like you-all to know that I truly am very
15 sorry for what I did. I never wanted this to happen.
16 I was in a different mindset then and the things that
17 I thought and the way that I lived my life was
18 totally fucked up. I mean, no person should have to
19 leave home at 13. That's it.

20 MR. DAVISON: Thank you. We're concluding the
21 clemency interview for Gary Ray Bowles. It is
22 3:27 in the afternoon on the day of August 2nd, 2018.

23 (The proceedings were adjourned at 3:27 p.m.)
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STATE OF FLORIDA

COUNTY OF ALACHUA

I, Ingrid T. Cox, Court Reporter and Notary Public, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings on Thursday, August 2, 2018, pages 1 through 58, and that the transcript is a true record.

Dated this 15th day of August, 2018.



INGRID T. COX, RPR

ATTACHMENT G

Neuropsychological Associates LLC

Hyman H. Eisenstein, Ph.D., A.B.N.

Board Certified Diplomate in Neuropsychology

Esther L. Selevan, Ph.D.

Florida Licensed Clinical Psychologists

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RE: Darryl Barwick v. State of Florida
Case No. 5:12cv159-RH

Florida Commission on Offender Review
Quincy Annex
2225 Pat Thomas Parkway
Quincy, Florida 32351

Dear Commissioners:

I was contacted by an attorney for Darryl Barwick who informed me that a clemency review was scheduled on his behalf. I was specifically asked to review my file and meet with Mr. Barwick in order to address how Mr. Barwick's mental health issues and functioning may impact the clemency process and may also be germane to the clemency determination.

I first met Darryl Barwick in August 2000, when he was being represented by CCRC in his post-conviction appeals. I completed a comprehensive evaluation at that time, working with Mr. Barwick on 4 occasions for a total of 15 hours. I testified in November 2006, on behalf of Mr. Barwick before the Honorable Don T. Sirmons. I re-evaluated Mr. Barwick in 2021, spending a total of 10 hours on two occasions with him. Throughout my evaluation with Mr. Barwick, rapport was easily established, there was no malingering, and Mr. Barwick was pleasant and totally compliant with all aspects of the evaluation.

Results of the evaluations were indicative of a 4th grade reading level, both in 2000 and in 2021. Reading decoding was extremely low and indicative of a major reading disability. Comprehension was in the borderline range of functioning. Expressive language was in the borderline range and receptive language was slightly higher, in the low average range. This means that Mr. Barwick has great difficulty expressing himself verbally. His disabilities would make it very difficult for him to answer questions and elaborate verbally in a clemency hearing where he is being asked questions. I would recommend that Mr. Barwick be permitted to prepare a statement to read and that any follow-up questions be provided in writing for him.

Mr. Barwick accepts full responsibility for the crime and is extremely remorseful. However, he does not remember details or the sequence of events from the crime. He cannot differentiate what he recalls independently versus what has been told to him over the years. I believe Mr. Barwick's faulty memory also complicates his ability to communicate much about the crime for which he is convicted. I do believe that his inability to remember the specifics about the crime and why it occurred are genuine and a product of the brain injuries and trauma he suffered as a child and not a way to avoid accepting responsibility or answering for his crime.

As stated, Mr. Barwick has a history of multiple brain injuries. This has caused executive functioning impairments, resulting in great difficulty with planning, decision making, impulsivity, and regulating his emotional state. In addition, the crime was committed when he was 19 years old, an age where the brain is immature and not fully developed.

Moreover, Mr. Barwick has a long history of physical, emotional, and sexual abuse, perpetrated by family members, that has been corroborated by numerous witnesses with whom I personally interviewed when conducting my evaluation which resulted in my 2006 testimony. He has never had any treatment for his multiple trauma and has stated: "If I would have gotten help, I wouldn't be in this mess." My most recent evaluation confirms that Mr. Barwick remains with long term effects of Post-Traumatic Stress Disorder and even after all this time, does not trust himself.

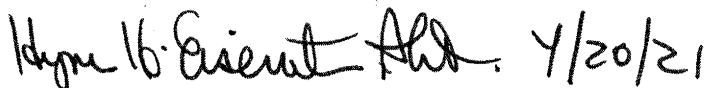
I discussed the issues of Mr. Barwick's brain injuries, age, and trauma more fully in my 2006 testimony. I submit that these issues serve to mitigate his culpability for this offense and should be considered in determining whether Mr. Barwick deserves clemency.

Mr. Barwick clearly states that he should remain in prison for the rest of his life. He has demonstrated exemplary behavior over his many decades in prison, has never been in a fight or in confinement, and has never been a threat to cellmates or staff. And, having evaluated hundreds of criminal defendants over several decades, Mr. Barwick is one of the most respectful and compliant individuals I have had the opportunity to evaluate. His compliant disposition makes him a good candidate to follow prison rules, respect correctional officers, and assist other inmates even in population.

As I evaluate criminal defendants who have been accused and convicted of horrible crimes, I seek to determine what factors caused their violent behavior in order to explain or mitigate the crimes. Sometimes the answer is apparent. I believe that is the case here. Mr. Barwick was subjected to violent and relentless trauma from pre-birth until he was arrested for this crime. He had nowhere to turn and the few attempted interventions by neighbors and school personnel were thwarted by his vicious and unbalanced father. Mr. Barwick's already damaged brain simply could not process or cope with the trauma and the result was his crime.

If I can be of any further assistance in this matter, please do not hesitate to contact me.

Sincerely,

 Hyman H. Eisenstein, Ph.D., A.B.N. 4/20/21

Hyman H. Eisenstein, Ph.D., A.B.N.

ATTACHMENT H

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

DARRYL BRYAN BARWICK,

Plaintiff,

v.

CASE NO. 4:23cv146-RH

GOVERNOR RON DESANTIS et al.,

Defendants.

**ORDER DENYING THE MOTION
FOR A STAY OF EXECUTION**

A Florida jury convicted Darryl Bryan Barwick of murder and other offenses. The judge sentenced him to death. The conviction and sentence were upheld on appeal and in state and federal collateral attacks. On April 3, 2023, his clemency application was denied, and his execution was scheduled for May 3, 2023. He promptly filed this action under 42 U.S.C. § 1983 asserting he was denied due process in connection with the clemency application. The defendants are state officials involved in the clemency process.

Mr. Barwick has moved for a stay of the execution. This order denies the motion.

There may be some question whether a due-process claim of this kind can properly be brought under § 1983 rather than by a habeas petition under 28 U.S.C. § 2254. In *Spivey v. State Board of Pardons & Paroles*, 279 F.3d 1301 (11th Cir. 2002), the Eleventh Circuit held that such a claim must be brought under § 2254. That seems incorrect, and in similar, more-recent cases, the Eleventh Circuit has addressed death-sentenced prisoners' § 1983 challenges to clemency procedures on the merits without even citing *Spivey*. See *Bowles v. DeSantis*, 934 F.3d 1230, 1239-42 (11th Cir. 2019); *Gissendaner v. Comm'r, Ga. Dep't of Corr.*, 794 F.3d 1327, 1330-33 (11th Cir. 2015); *Mann v. Palmer*, 713 F.3d 1306, 1316-17 (11th Cir. 2013); *Valle v. Sec'y, Fla. Dep't of Corr.*, 654 F.3d 1266, 1267-68 (11th Cir. 2011).

As the oldest case, *Spivey* may be the law of the circuit. See *Monaghan v. Worldpay US, Inc.*, 955 F.3d 855, 862 (11th Cir. 2020) (“Our adherence to the prior-panel rule is strict, but when there are conflicting prior panel decisions, the oldest one controls.”). But perhaps it could be said *Spivey* did not survive *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005) (“§ 1983 remains available for procedural challenges where success in the action *would not necessarily* spell immediate or speedier release for the prisoner”) (emphasis in original) and *Nance v. Ward*, 142 S. Ct. 2214 (2022). This order assumes without deciding that Mr. Barwick’s claim can properly proceed under § 1983.

It is clear that a death-sentenced person has a right to due process in connection with a state-authorized clemency application. *See Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998) (O’Conner, J., concurring) (stating that “some *minimal* procedural safeguards apply to clemency proceedings”) (emphasis in original); *Wellons v. Comm’r, Georgia Dep’t of Corr.*, 754 F.3d 1268, 1269 n.2 (11th Cir. 2014) (treating Justice O’Conner’s *Woodard* concurrence as controlling). The defendants do not assert the contrary. They assert, instead, that the procedures afforded Mr. Barwick provided whatever minimal level of process was due.

The defendants are correct. Mr. Barwick was represented in the clemency proceeding by an able attorney—one who is a member of this court’s Criminal Justice Act panel and appears regularly in this court. Mr. Barwick was allowed to make a written submission and to appear in person for an interview with representatives of the clemency board. In this proceeding, Mr. Barwick has not alleged he was denied the opportunity to present any information he wished to present. He has alleged no *facts* suggesting the members of the clemency board made their decision based on anything other than the merits. He was afforded process as good or better than that afforded the plaintiffs in *Woodard* and *Gissendaner*. Here, as in *Woodard* and *Gissendaner*, the due-process claim falls short.

Three other points deserve mention.

First, Mr. Barwick complains about the conduct of his interview by the clemency board's representatives. The representatives started the interview by saying they were not there to determine "innocence or guilt." Mr. Barwick asserts that despite this statement, the interviewers asked detailed questions about the crime and "myopically focused" on it. That overstates what happened. Mr. Barwick himself brought up his guilt as part of his presentation and did so before the interviewers asked him anything. And while the interviewers later asked a limited number of detailed questions about the crime, they also asked about the mitigating circumstances Mr. Barwick had emphasized. The interviewers showed little sympathy, but they were not myopic.

Second, Mr. Barwick says no death-sentenced applicant has been granted clemency in Florida in the last 40 years. Without knowing the facts of the other cases, not much can be said about them. The issue here, though, is what happened in just this *one* case. In *this* case, there were facts supporting both sides of the clemency issue. In Mr. Barwick's favor were substantial mitigating circumstances, including that as a child he suffered relentless abuse from his father, he was developmentally delayed, he now has substantial mental and psychological deficits, and he apparently has compiled a good record while in custody. On the other side, Mr. Barwick committed this horrific crime, and it was not his first. At

least insofar as shown by this record, Mr. Barwick was denied clemency because the members of the clemency board found the mitigating circumstances insufficient to outweigh the crime and the criminal history.

Third, Mr. Barwick complains that Florida has not set out sufficiently detailed criteria governing the merits of clemency applications. But the Florida clemency standards are sufficient, as the Eleventh Circuit apparently has recognized. *See, e.g., Valle v. Sec’y, Fla. Dep’t of Corr.*, 654 F.3d 1266, 1268 (11th Cir. 2011) (referring to Florida’s clemency procedures as “constitutionally adequate”); *see also Banks v. Sec’y, Fla. Dep’t of Corr.*, 592 F. App’x 771, 773-74 (11th Cir. 2014). A more detailed set of criteria would serve a purpose, helping to avoid arbitrariness and unwarranted disparity. On the other hand, mitigating circumstances come in all shapes and sizes; criteria ought not be adopted that would constrain a clemency board from considering mitigating circumstances of every kind, even if not identified in advance. And experience with the United States Sentencing Guidelines teaches that no matter how detailed the criteria spelled out in advance, there is no substitute for an honest decisionmaker’s considered judgment. The process provided here was sufficient to allow that kind of judgment by any decisionmaker willing to exercise it. More-detailed criteria set out in advance would not likely have made a difference.

For these reasons,

IT IS ORDERED:

The motion to stay execution, ECF No. 5, is denied.

SO ORDERED on April 18, 2023.

s/Robert L. Hinkle
United States District Judge

ATTACHMENT I

Neuropsychological Associates LLC Florida Licensed Clinical Psychologists

Hyman H. Eisenstein, Ph.D., A.B.N.

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Esther L. Selevan, Ph.D.

Email: mbphds1@gmail.com

April 11, 2023

Re: Darryl Barwick
Case No.: 5:12-cv-00159-RH

I was asked to review the transcript of Darryl Barwick's 2021 clemency interview and comment on what was and what was not discussed. I have known Darryl Barwick since 2000, when he was 33 years of age and I was asked to evaluate him psychologically and neuropsychologically to assist in his defense. I have seen Darryl Barwick most recently in April 2021, in preparation for his clemency interview. At that time, I prepared a letter directed to the Florida Commission on Offender Review, in which I expressed a concern that Darryl "has great difficulty expressing himself verbally" and that "[h]is disabilities would make it very difficult for him to answer questions and elaborate verbally in a clemency hearing where he is being asked questions." I provided this letter to counsel for Mr. Barwick with the expectation that it would be used to advise the Commission prior to the interview.

In reviewing Darryl Barwick's responses to the Commission during his interview, I see that my concerns materialized. It is notable that Darryl was unable to answer most questions and verbalize his thoughts adequately. This is the result of his lifelong speech and language delays. He repeatedly had significant problems with expressive language or the ability to verbally express and explain things. Darryl stated "my brain is slow" and he does better when things are shown to him rather than said to him. This is accurate according to the testing performed and clearly put Darryl at a disadvantage during the Clemency Interview. It is also consistent with my April 2021 recommendation that Darryl "be permitted to prepare a statement to read and that any follow-up questions be provided in writing for him."

I found it incongruous that although one of the commissioners began the interview by stating that the Commission was not here to determine innocence or guilt, and although Darryl has never contested his guilt, there appeared to be a singular focus on the crime itself. This included repetitive, detailed questioning regarding the motive, mechanism, and mens rea of the crime, despite my mention in the April 2021 letter that "Mr. Barwick accepts full responsibility for the crime and is extremely remorseful. However, he does not remember details or the sequence of events from the crime." Faced with this incongruity, I have no doubt that someone with Darryl's cognitive limitations would have been utterly unable to comprehend what he was being asked to speak about.

This lack of comprehension is apparent in several portions of the interview transcript where Darryl appears unable to parse out what information is relevant to the interview and what is not. For instance, when asked to tell the Commission a little bit about his background, Darryl states: "Okay. Ladies and gentlemen, let's see. I guess, not a whole lot, I guess. I was born in Chicago, Illinois and we moved to Florida when I was about nine months to Panama City, Florida. That's where I grew up till I was 15. I got four sisters, two brothers, had a normal house. I don't know what to say."

Further, Darryl's social limitations are also exemplified in his responses to the commissioners' questions about the crime. Despite what appears from the transcript to be an accusatory line of inquiry, Darryl's answers reflect an eagerness and desire to please the questioners that is not in keeping with the tone of the questioning. I was also surprised that Darryl's clemency attorney did not interject, especially as that attorney would have had my April 2021 letter indicating that Darryl would have difficulties self-advocating in this context.

Overall, I was dismayed by the Commission's nearly singular focus on the crime itself, and its emphasis on Darryl's purported "decision not to abide with what was right and wrong as you have been taught by your parents" as compared to his siblings. This was nonsensical to me in light of the Commission's statement that ascertaining Darryl's guilt was not the purpose of the interview. Further, I would expect anyone who has passing familiarity with this case to comprehend why Darryl was more vulnerable than his siblings: he has organic brain damage that was a focus of my 2006 testimony, and the symptoms of which have been noted since he was a toddler (including during the laywitness testimony at his trial).

Had this interview been conducted in such a manner as to reasonably accommodate Mr. Barwick's disabilities, and had the questioning been focused on obtaining a true understanding of Mr. Barwick as an individual, the following—more relevant—background information could have been presented:

Mr. Barwick was the seventh and youngest child in his family. He was unwanted due to his mother being overwhelmed raising the other six children. She tried to abort him unsuccessfully. Mrs. Barwick fell down a flight of stairs and was injured during the pregnancy, probably resulting in trauma to Darryl.

Darryl was developmentally delayed from birth. He suffered from speech and language difficulties including a speech impediment and stuttering. His parents were told that he was in need of Special Education and treatment, but his father refused to acknowledge his deficits.

Darryl Barwick failed and had to repeat the first grade. He had great difficulty reading and his reading scores never exceeded a fourth grade level. He admitted to not being able to properly read until tenth grade, but was promoted in spite of his multiple deficits.

Darryl Barwick committed the offense at 19 years of age. Although he is considered an "adult" Darryl's brain was not fully developed at the time the crime was committed. Science reveals to date that even those without developmental delays continue to have brain development ongoing into their twenties. The area of most continued development is the frontal lobes. Darryl was 19 and had developmental delays throughout his life, meaning that his brain development was slower than that of the average person.

Darryl Barwick has a history of multiple head injuries. At nine years of age he was pushed into a table by his father, hitting his left temporal lobe and suffering a loss of consciousness. At age 16 Darryl was attacked from the back of his head and suffered a loss of consciousness for 1.5 hours. At age 17 Darryl was hit with a baseball bat resulting in a loss of consciousness for 30 minutes. At age 18 Darryl was hit in the head by a saw and suffered a brief loss of consciousness. Multiple head injuries were the result of abuse by his father including being hit over the head with a 2 x 4, a shovel, baseball bat, rebar, and his fists.

Darryl Barwick was involved in school football, playing on the line, which involved a lot of banging around as well as head injuries. Darryl was on the wrestling team in school for four years and reported multiple incidents of hits to the head and recurring dizziness. At the time of Darryl's injuries little was known about repeat blows to the head but at this later date science has made us aware of brain diseases such as Chronic Traumatic Encephalopathy (CTE) that are the result of multiple head injuries.

Salient neuropsychological findings on Darryl Barwick include a reading level in the borderline range and at the 4th grade level. Reading Comprehension in the borderline range. Expressive Language in the

borderline range and Receptive Language in the low average range. Measures of Executive functioning were significantly impaired. These measures were consistent over testing done in 2000 at age 33 and in 2021 at age 54. Executive functioning, or the processes responsible for guiding, directing, and managing cognitive, emotional, and behavioral functions, is a frontal lobe function.

Summary & Conclusions

Mr. Darryl Barwick was more vulnerable than most people from the beginning of his life. He was delayed developmentally but did not receive any special schooling or interventions for these disabilities. Many exacerbating instances made his life situation worse including academic failure, rejection by his parents, physical and emotional abuse at the hands of his father, multiple serious repeated head injuries or possible CTE, as well as an immature and underdeveloped brain.

Mr. Darryl Barwick was unable to use the Clemency Process appropriately and effectively due to his multiple disabilities. Due to his speech and language disabilities, he was unable to advocate on his own behalf. Darryl Barwick is not capable of elaborating and elucidating when questioned. In addition, he lacks awareness regarding his past behavior and what motivated it. The passage of time has not helped him gain insight into his past behavior or the multiple causes behind it.

The structure of the Clemency Interview placed an onerous burden upon Darryl Barwick—who could not even spell his own middle name when asked—to explain sophisticated psychological concepts (such as the disparate impact of trauma on one sibling as compared to another, or what mental processes lead to criminal behavior) that would have been more appropriately explored by a mental health professional such as myself.

Due to Mr. Barwick's numerous deficits, experts and scientists should have been consulted to help the Commission understand the multiple circumstances involved in this case. I have known Mr. Barwick for many years. I was, and remain, willing to explain the aforementioned issues to the Commission to help clarify them. If I can be of any further assistance, please contact me.

Hayma H. Eisen, PhD 4/11/23

CERTIFICATE OF SERVICE

On April 28, 2023, undersigned counsel for Petitioner satisfied Supreme Court Rule 29 by serving, via electronic mail and United States Postal Service, postage prepaid, Petitioner's application for a stay of execution, petition for a writ of certiorari, appendix to petition, and motion to proceed *in forma pauperis*, on counsel for Respondents, Senior Assistant Attorney General Charmaine Millsaps, and Assistant Attorney General Jason Rodriguez, at PL-01, The Capitol, Tallahassee, FL 32399-1050; Tel. No.: (850) 414-3300; Email: capapp@myfloridalegal.com; charmaine.millsaps@myfloridalegal.com.

/s/ LINDA McDERMOTT
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APRIL 28, 2023