

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**APPEAL FROM THE COURT OF APPEALS
(CAVANAGH, P.J., and BORELLO and REDFORD, JJ.)**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD GERALD MUSSELMAN,

Defendant-Appellant.

Supreme Court No. 163290

Court of Appeals No. 351700

Circuit Court No. 80-000118-FY

**DEFENDANT-APPELLANT'S
APPENDIX TO BRIEF ON APPEAL**

TIMOTHY A. DOMAN, ESQ., PLLC
Timothy A. Doman (P77811)
23169 Michigan Avenue
P.O. Box 2723
Dearborn, MI 48123
(734) 642-7916

ARNOLD & PORTER KAYE SCHOLER LLP
R. Stanton Jones*
Andrew T. Tutt*
Stephen K. Wirth*
Catherine Langhans*
601 Massachusetts Avenue NW
Washington, DC 20001
(202) 942-5000 (phone)

*pro hac vice

Attorneys for Defendant-Appellant

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STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD GERALD MUSSELMAN,

Defendant-Appellant.

UNPUBLISHED

May 20, 2021

No. 351700

Saginaw Circuit Court

LC No. 80-000118-FY

Before: CAMERON, P.J., and BORRELLO and REDFORD, JJ.

PER CURIAM.

On June 25, 1980, a jury found defendant, a 15-year-old juvenile, guilty of two counts of first-degree murder, MCL 750.316, two counts of assault with intent to commit murder (AWIM), MCL 750.83, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. On August 26, 1980, the trial court sentenced defendant to serve life in prison without parole for the first-degree murder convictions, life in prison for the AWIM convictions, and two years in prison for the felony-firearm conviction. Following the decisions of the United States Supreme Court in *Miller v Alabama*, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012), and *Montgomery v Louisiana*, 577 US 190; 136 S Ct 718, 726, 732; 193 L Ed 2d 599 (2016), which require resentencing of juvenile defendants who were sentenced to life imprisonment without the possibility of parole, the prosecution moved to resentence defendant to life imprisonment without parole. After holding a *Miller* hearing, the resentencing court again imposed sentences of life without parole for defendant’s first-degree murder convictions. We affirm.

I. FACTUAL BACKGROUND

For purposes of this appeal, the underling facts are not in dispute. On January 3, 1980, defendant and two others, Vance DUBY and Harry Varney, perpetrated a “shooting rampage” in which two people were killed. A third shooting victim survived. DUBY drove the vehicle and defendant used a “12-gauge shotgun” to shoot the victims. At the time of the shooting, defendant was 15 years old, DUBY was 23, and Varney was 19. The group used a spotlight and defendant wielded the shotgun to “terrorize and kill other motorists at various locations in Saginaw.” The

group chased, rammed into, and shot at numerous motorists. Most of the victims were African-American. Evidence revealed that defendant made numerous disparaging comments toward African-Americans; therefore, the prosecution's theory had been that the crimes were racially motivated.

At the *Miller* hearing, defendant called Dr. Jeffrey Wendt, a forensic psychologist, to testify concerning his evaluation of defendant. Overall, Dr. Wendt testified favorably about defendant and believed that he showed good potential for rehabilitation. Similarly, Larry Gudith, a Certified Recovery Coach, chaplain, and founder and director of Lifeline Prison Ministry, opined that defendant could successfully integrate back into society. The prosecution did not present any witnesses at the hearing. The resentencing court provided a detailed analysis of the attributes of youth discussed in *Miller* and considered and applied the factors articulated therein, and it ultimately concluded that defendant's case was the "rare case" in which life without parole continued to be the appropriate sentence. It found no *Miller* mitigating factors, and it explained its analysis of numerous factors in support of its sentence, including defendant's disturbing behavior before commission of the offenses, his need for psychiatric help, his failure to seek such help in prison, and the heinous nature of the murders. Accordingly, the court resentenced defendant to life in prison without parole.

II. STANDARDS OF REVIEW

We review sentencing decisions for an abuse of discretion. *People v Skinner*, 502 Mich 89, 131; 917 NW2d 292 (2018). A court abuses its discretion when its decision falls outside the range of principled outcomes. *Id.* at 133. The trial court's fact-finding is reviewed for clear error and questions of law are reviewed de novo. *Id.* at 137 n 27.

III. ANALYSIS

A. THE MILLER FACTORS

In a recent decision, this Court summarized the procedure for use in resentencing in a "juvenile-lifer" case:

Anticipating that the United States Supreme Court would give *Miller* retroactive effect, Michigan's Legislature designed a system for resentencing all prisoners serving life without parole who were under the age of 18 when they committed the offense. MCL 769.25a. In such cases, the resentencing court must select either life without parole or a term-of-years sentence. MCL 769.25a(2). Prosecutors seeking imposition of a life-without-parole sentence are obligated to file a motion specifying the grounds for imposing that punishment. MCL 769.25a(4)(b). The resentencing court then must hold a hearing to consider the juvenile sentencing factors set forth in *Miller* and other relevant information, including the defendant's "record while incarcerated." MCL 769.25(6). The court is additionally obligated to "specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed." MCL 769.25(7). If the court elects a term-of-years sentence rather than life without parole, "the court shall sentence the individual to a term of

imprisonment for which the maximum term shall be not less than 60 years and the minimum term shall be not less than 25 years or more than 40 years.” MCL 769.25(9). [*People v Bennett*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 350649); slip op at 2.]

This Court observed that the “*Miller* factors” and *Miller*’s holding are

grounded in the propositions that “children are constitutionally different from adults for purposes of sentencing,” “have diminished culpability and greater prospects for reform,” and “are less deserving of the most severe punishments.” The “distinctive attributes of youth” render the customary penological justifications for harsh sentencing—retribution, deterrence, and incapacitation—far less relevant in the context of minors. Rather than focusing on that traditional trio of sentencing factors, *Miller* requires judges to bear in mind that youth “is a time of immaturity, irresponsibility, impetuosity[,] and recklessness.” These qualities, the Court stressed, are almost always “transient.” [*Id.* at ___; slip op at 2-3 (citations omitted; alteration in original).]

This Court instructed that the *Miller* factors require that a trial court consider:

“[T]he family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional,” “the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him,” that a youthful offender “might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys” and “the possibility of rehabilitation[.]” [*Id.* at ___; slip op at 4 (citation omitted; third alteration in original).]

The trial court must also consider the defendant’s “immaturity, impetuosity, and failure to appreciate risks and consequences.” *Id.* at ___; slip op at 6.

A trial court may also “consider the traditional objectives of sentencing or other factors,” including “(a) the reformation of the offender, (b) protection of society, (c) the disciplining of the wrongdoer, and (d) the deterrence of others from committing like offenses.” *Id.* at ___; slip op at 4 (quotation marks and citations omitted). Resentencing a juvenile lifer

requires restructuring the evidentiary review; the older the adult, the larger the predictive canvas becomes. While the *Miller* factors remain highly relevant, a judge resentencing an offender who has served many years in prison has the benefit of actual data regarding whether the offender’s life in prison is truly consistent with “irreparable corruption,” the only ground *Miller* specifically identified for imposing a life-without-parole sentence. [*Id.* at ___; slip op at 5 (citation omitted).]

Although it will be a “rare” juvenile who is “irreparably corrupt” such that a life-without-parole sentence is warranted, *Miller* and *Montgomery* do not “require trial courts to make a finding of fact regarding a child’s incorrigibility.” *Skinner*, 502 Mich at 106, 122-123.

The United States Supreme Court recently revisited its *Miller* and *Montgomery* holdings in *Jones v Mississippi*, ___ US ___; ___ S Ct ___; ___ L Ed 2d ___ (2021) and clarified that, although a sentencing court should follow the process specified in *Miller* before sentencing a juvenile defendant convicted of murder, as explained in *Montgomery*, a sentencing court does not have to make a finding of incorrigibility, because sentencing courts are not constitutionally required to make a separate factual finding that the defendant is permanently incorrigible before sentencing a juvenile offender to life without parole. *Id.* at ___; slip op at 7, 9, 11-14 (favorably quoting *Skinner*, 502 Mich at 122). Further, a sentencing court is not constitutionally required to provide an on-the-record sentencing explanation with an implicit finding of permanent incorrigibility. *Id.* at ___; slip op at 14-19.

B. APPLICATION OF THE *MILLER* FACTORS

1. DEFENDANT'S AGE

Regarding defendant's age and his immaturity, impetuosity, and ability to appreciate consequences of his actions, the resentencing court did not find this a mitigating factor. It examined defendant's extensive school record and his disruptive, disturbing, and violent behavior. The court considered the extensive record evidence including the testimonies of many of defendant's teachers and social workers regarding defendant's behavior in school. A substitute teacher for defendant's sixth-grade class testified that defendant told her that he was going to kill someone and spend the rest of his life in prison, and he drew a violent, graphic picture that shocked her. A social worker testified that she and others were increasingly concerned by defendant's disturbing behavior, and that she believed defendant had been a "severely disturbed young man who needed psychiatric help" and who could "be a danger to himself or to others." Another social worker testified that defendant discussed "blow[ing]" people "away if they kept messing with him."

One of defendant's teachers had testified that defendant began exhibiting increasingly aggressive behavior toward other students in the month immediately preceding the murders, including locking an autistic student in a bathroom while laughing and enjoying it. Defendant had a habit of purposely targeting other students' weaknesses. Defendant told a classmate that he was capable of shooting someone. Another teacher testified that defendant used racist and violent language against African-Americans, intentionally injured students in gym class, and was "destined to hurt someone badly, possibly kill him, probably kill him, and probably sooner than later." The court also considered the testimony of Dr. Margaret Cappone, an expert psychologist, who had evaluated defendant and found that he exhibited sadistic pleasure from inflicting pain on others, and he displayed narcissistic, hostile, and antisocial personality traits. She also testified that defendant had a predisposition to be violent toward others.

Defendant's actions and predispositions prior to the offense supported the resentencing court's conclusion that, although young, defendant appreciated the nature of his violent actions, and that the attributes of youth, i.e., impetuosity and immaturity, were not mitigating factors. The court did not clearly err in this regard.

2. THE FAMILY AND HOME ENVIRONMENT

Regarding defendant's family and home environment, the resentencing court did not find this a mitigating factor because defendant had not been neglected and had been loved by his grandparents. The record evidence supported this conclusion. Defendant grew up living with his grandmother because his own mother gave birth as a teenager and could not properly care for him. Defendant had been very close to his grandfather prior to his death. Defendant and his grandmother "spent quite a bit of time together" and did things like chores, gardening, and mowing together. The record does indicate that defendant had less supervision as he grew older and spent his time with older individuals who were not good influences and that he also lacked a stable male role model, but defendant also had a "Big Brother" mentor with whom he did various activities, such as hunting, and the two had a good relationship. The record contains no evidence of physical or sexual abuse, or that defendant's household had been filled with criminality. The resentencing court did not clearly err regarding this factor because record evidence amply supported its conclusion.

3. THE CIRCUMSTANCES OF THE MURDERS AND PEER PRESSURE

Regarding the murders themselves and effects of any peer pressure, the resentencing court concluded from the record evidence that peer pressure, if any, had been minimal. The court gave little weight to Dr. Wendt's testimony to the contrary. The court also found that the circumstances of the murders were particularly heinous.

The record reflects that Dr. Cappone testified that she found that defendant did not like people, especially African-Americans, whom he "hate[d]." Defendant exhibited hostile, violent, and antisocial behavior, as well as elements of sadism. Dr. Cappone concluded that defendant was a sociopath. As previously discussed, the record contained the testimonies of various teachers and school officials regarding defendant's disturbing and violent actions before his commission of the charged offenses. While awaiting his trial, defendant told a juvenile inmate that he, DUBY, and Varney planned to shoot some African-Americans. Defendant used the n-word regarding his targeted victims. Defendant told a jail inmate that he would "get off the hook" by "play[ing] crazy." As for the murders, the record supports the resentencing court's conclusion. Defendant and his codefendants purposely drove around looking for victims to target and defendant repeatedly shot at and otherwise terrorized several unsuspecting African-American motorists with the shotgun.

Ample record evidence supported the resentencing court's conclusion that defendant had not been subjected to pressure to commit the murders. The evidence established that defendant had disturbing, violent tendencies, hated African-Americans, exhibited sociopathic behavior, and enjoyed inflicting pain on others. Based upon the witnesses' testimonies and defendant's own admissions, the court could rationally conclude that, far from being pressured into committing the offenses of which he had been convicted, defendant purposely shot his victims. Defendant relies on evidence of his passive behavior and various conclusions drawn by Dr. Wendt, and contends that his witnesses were more credible and that the court should have given them more weight in its decision. The record reflects that the resentencing court considered defendant's witnesses' testimonies but appropriately found that the record evidence weighed against defendant regarding this *Miller* factor.

4. THE EFFECTS OF YOUTH

Regarding the effects of youth on defendant's ability to assist in his own defense and the possibility of being charged with a lesser crime, the resentencing court concluded that this was not a mitigating factor. We discern no error in this finding. Defendant presented no persuasive evidence demonstrating that his youth negatively affected his ability to present his defense. Defendant points to his incriminating admissions made to others after the murders. However, the fact that defendant incriminated himself to fellow inmates and to a neighbor is not dispositive; defendant fails to adequately establish how these instances were due specifically to his youth. Finally, defendant presents no persuasive evidence showing that, but for his youth, he would have been charged with a lesser offense. Based upon the evidence in this case, we are unpersuaded that defendant might have been charged with a lesser offense but for his youth and inexperience.

5. POSSIBILITY OF REHABILITATION

Regarding the possibility of rehabilitation factor, the resentencing court found that, although defendant had significantly improved his behavior and character in prison, this factor, one among many, in light of the totality of the circumstances did not outweigh all other factors. The record in this case supported the court's conclusion. As previously discussed, testimony of several witnesses in the record established that defendant exhibited particularly troublesome behavior before he went on his murder spree. Further, Dr. Cappone performed a thorough psychological evaluation, which included speaking to friends and family, as well as conducted a complete battery of various tests, from which she came to several troubling conclusions regarding defendant, including that he derived pleasure from inflicting pain on others. The court found Dr. Cappone's evaluation more credible than Dr. Wendt's. As a general matter, appellate courts refrain from interfering with a fact-finder's role of assessing the weight and credibility of evidence. *People v Kosik*, 303 Mich App 146, 150; 841 NW2d 906 (2013). The resentencing court also found it particularly troublesome that defendant had sought no psychological treatment in his entirety of time in prison. Moreover, defendant's supportive network outside of prison was dubious. Defendant presented nothing showing concretely where he would live, what he would do for work, and what his support structure would be if released. We discern no clear error in the court's findings and we decline to substitute our judgment for that of the resentencing court which had extensive knowledge of the facts and direct familiarity with the circumstances of the offense and the offender. See *Skinner*, 502 Mich at 134.

6. CONCLUSION

The resentencing court concluded that, although a juvenile rarely may be sentenced to life without parole, this case presented the rare instance necessitating such resentencing because defendant "was the only shooter and directly responsible for the death of both victims. Prior to these offenses, the defendant was fascinated with violence and openly discussed a desire to kill, particularly African-Americans." The court believed "that the defendant's conduct during these offenses and his behavior before these crimes reflect irreparable corruption, not merely the transient immaturity associated with youth," and that there were no mitigating *Miller* factors. The court opined that "the protection of society, punishment, and deterrence" weighed against a sentence for a term of years. The court neither clearly erred nor abused its discretion in resentencing defendant to life without parole.

C. DR. CAPPONE'S EVALUATION

Defendant also contends that Dr. Cappone's evaluation lacked reliability by modern standards and that this requires remand for a proper diagnosis and resentencing. This contention is unpersuasive because his own expert had limited knowledge of the evaluation and did not indicate that the 1980 evaluation was invalid.

Although Dr. Wendt expressed doubts about Dr. Cappone's evaluation and opined that it was "incomplete," he acknowledged that he did not "know every method and procedure that [Dr. Cappone] engaged in to come to these conclusions, so I can't speak to the thoroughness at the time." Dr. Wendt also testified that he had "no reason to say that it's inaccurate in terms of what she had to work with at that time." He further acknowledged he did not know on what Dr. Cappone had based her conclusions and opinions. On appeal, defendant compares the "Diagnostic and Statistical Manual of Mental Disorders" from 1980 with today's version. Defendant, however, did not proffer such a comparison at the *Miller* hearing. Further, at the *Miller* hearing, Dr. Wendt did not state that Dr. Cappone's evaluation lacked validity; he merely expressed his opinion that Dr. Cappone's evaluation was incorrect and perhaps incomplete, but admitted that he had no reason to believe it lacked accuracy by 1980's standards. Dr. Wendt simply came to a different conclusion than Dr. Cappone. We decline to interfere with the fact-finder's role of assessing the weight and credibility of evidence. *Kosik*, 303 Mich App at 150; *Skinner*, 502 Mich at 134. The resentencing court did not clearly err in this regard.

D. BURDEN OF PROOF

Finally, defendant argues that the prosecution should have borne the burden of proving beyond reasonable doubt that defendant was irreparably corrupt. We disagree.

As defendant acknowledges, there is nothing in *Miller*, Michigan statutory law, or Michigan caselaw that places a burden, or even suggests there is a burden, on the prosecution to prove beyond a reasonable doubt that a juvenile is irreparably corrupt. See *Miller*, 567 US at 489; MCL 769.25; MCL 769.25a; *Bennett*, ___ Mich App at ___; slip op at 2. The United States Supreme Court has recently clarified that a court sentencing a juvenile offender convicted of murder is not constitutionally required to find that the defendant is permanently incorrigible before sentencing such offender to life without parole. *Jones*, ___ US ___; slip op at 7-19. As previously discussed, although it will be a "rare" juvenile who is "irreparably corrupt" such that a life-without-parole sentence is warranted, neither *Miller* nor *Montgomery*, "require[s] trial courts to make a finding of fact regarding a child's incorrigibility" nor the juvenile's irreparable corruption. *Skinner*, 502 Mich at 106, 122-123, 126; *Jones*, ___ US ___; slip op at 14. Given that there is no requirement for a trial court to make a finding on whether a youth is irreparably corrupt, it follows that the prosecution does not bear the burden of proving beyond a reasonable doubt that a defendant is irreparably corrupt.

Further support against defendant's position lies in *Skinner*, in which our Supreme Court explicitly stated that there is no presumption against life without parole. *Skinner*, 502 Mich at 131. In fact, the Court stated that "there is language in *Montgomery* that suggests that the *juvenile*

offender bears the burden of showing that life without parole is not the appropriate sentence by introducing mitigating evidence.” *Skinner*, 502 Mich at 131 (emphasis added).¹

Therefore, in light of *Miller*, *Montgomery*, *Jones*, *Skinner*, and our Legislature’s intent as evidenced in the plain language of MCL 769.25 and MCL 769.25a, which provide no suggestion of a burden of proof, we find defendant’s position to be without merit. The resentencing court properly analyzed the record evidence and did not clearly err in its findings, and therefore, did not abuse its discretion by resentencing defendant to life without parole.

Affirmed.

/s/ Thomas C. Cameron
/s/ Stephen L. Borrello
/s/ James Robert Redford

¹ We note that our Supreme Court recently asked for briefing on the question of “which party, if any, bears the burden of proof of showing that a *Miller* factor does or does not suggest a LWOP sentence.” *People v Masalmani*, 503 Mich 1007 (2019). However, after considering the parties’ briefs and arguments, the Court subsequently vacated its order and denied leave to appeal for failure to be “persuaded that the questions presented should be reviewed by this Court.” *People v Masalmani*, 505 Mich 1090 (2020), cert pending.

SAGINAW PSYCHOLOGICAL SERVICES, INC.

Director:
Margaret K. Cappone, Ph.D.
Certified Consulting Psychologist

714 S. Michigan Avenue
Saginaw, Michigan 48602
Telephone (517) 799-2100

PSYCHOLOGICAL EVALUATION

NAME: Richard Musselman
 BIRTHDATE: 9-9-64
 CHRONOLOGICAL AGE: 15-4
 DATE EVALUATED: 1-16-80 (interview with maternal grandmother, natural mother), 1-18-80, 1-22-80, 1-28-80, 1-28-80 (interview, Tom West, Gloria Novak).
 REFERRED BY: Judge Gilbert, Saginaw Juvenile Court; Mr. Patrick Meter, Saginaw County Prosecutors Office; Ms. Diane Cady, Defense Attorney.
 TESTS ADMINISTERED: Structured Clinical Interview, Wechsle Intelligence Scale for Children-Revise Slosson Intelligence Test for Children House-Tree-Person, Bender-Gestalt, Thematic Apperception Test, Wide Range Achievement Test, Incomplete Sentences Test, Minnesota Multiphasic Personalit Inventory, Medical-Social History (maternal, grandmother), Interviews: Mrs. Lois Priest, natural mother, Mrs. Ruby Musselman, maternal grandmot Mr. Thomas West, Social Worker, Oppor-tunity School, Mrs. Gloria Novak, Soci-Worker, Bridgeport Schools.

REFERRAL QUESTION:

Richard Musselman was referred for psychological evaluation as part of a waiver hearing to determine his suitability to stand trial as an adult. Specific question was raised as to his mental maturity at this time.

BACKGROUND INFORMATION:

Richard has been raised by his maternal grandmother since the age of three days; his mother subsequently married and has five other children, however, Richard has never lived with her on a continuing basis; she visits him frequently since she, herself, is very close to her mother, and visits her. Neither Richard nor his mother have expressed any desire to live together; Richard apparently does not like her current boyfriend. According to the grandmother, her husband passed away four years ago and Richard was very close to him; they apparently did numerous things

Richard Musselman
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together from working to recreation; she describes Richard as being "upset and since then has stayed more by himself". The maternal grandmother describes that Richard is very helpful to her and that without him it would be difficult for her to live alone due to her increasingly poor health. She has diabetes and high blood pressure; she is frequently ill and has been hospitalized a number of times. She does not drive. She depends upon Richard for companionship and physical assistance around the home. Mrs. Musselman is very aware of the impact of her limitations upon Richard's life as a teenager; she expressed concerns about what he did when she does allow him to go out. Her description of his behavior at home is that he is good, listens, and adheres to the rules, is helpful and concerned. She describes that within the past year or so he has become increasingly more involved with an older boy whom she disapproved of and she conveyed this to Richard. She did state that when she imposed time limits, that the older boy (Vance Duby) would more than not, bring him home on time.

According to the mother and grandmother, birth and prenatal history were within normal limits; development was within normal limits and all milestones were reached at expected times; health history was normal; he did not present any discipline problems; in general, he was "a good child and boy". She describes him as sleeping a lot, between eight and ten hours, and that she must wake him up in order to have him go about school; she stated that this has always been the case. She does not know for sure of any drug use; she states that if there is any drug use, it has been as a result of his more recent involvement with the older boy, Vance. Socially, she states that he got along well with others in the home when they did visit. She states that he has a Big Brother whom she requested. She stated that the request was made shortly after he got into trouble with another older boy for shooting deer, 1½ to 2 years ago. At that time, Richard had his gun taken away by the officers and she set limits with regards to his seeing this boy; he discontinued his friendship with this boy. She states that the Big Brother was very close to Richard and that Richard liked him very much, and that they got along well, and that he made good progress with him, becoming less quiet, and more outgoing. Personally, she describes him as quiet, obedient, and concerned about her welfare. She states that in his spare time he listens to his stereo, watches television, does the house chores, and generally takes care of his dog and cat. She states he has very few friends and is not close to anybody except older boys such as Vance and his cousin, Varney. She describes that his school has been "pretty good" until last year and she interprets the difficulty as being because he did not like going to Bridgeport in the seventh grade and having to be transferred in the eighth grade to the Fort School. She describes his difficulties in school as one resulting from not getting along with the teacher. She states he only occasionally skipped school until he went to the Opportunity School and he became very good at attendance and was very infrequently missing it. She stated he liked his attendance at the Opportunity School. When asked about his school performance, the grandmother stated that she "didn't know too much about his school activities". As far as she knows, he "didn't flunk anything". She states that last year, in November, he left school and did not go back and they would not let him go back because he was suspended. She could not clarify the reason for the suspension. As far as she knew, things were going very well for Richard and there was a very good chance that he was going to be going to a regular classroom in Birch Run, Bridgeport or Frankenmuth.

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Discussion and interview with Thomas West and Gloria Novak, and examination of academic school records, reveals that Richard has had consistently slow progress in his elementary school; according to the school social worker, Gloria Novak, he was never identified as a behavioral or school problem in any formal way by the school system prior to the seventh grade. In the seventh grade he was referred to the Fort School for attendance problems, lack of motivation, and lack of achievement. Apparently his attendance became progressively worse and in the social worker's view, the grandmother could not remedy the situation. Richard then did not obtain whatever credits were necessary to pass into the intermediate school. His adjustment at the Fort School was not good; there were numerous efforts by the staff to assist him; he was described as consistently withdrawing himself from both social and academic activities to the point of not even conversing with other students, he refused to do work, he would break rules, was moody, easily distracted, and showing significant underachievement in the basic skill areas. He continued to have attendance problems in spite of numerous incentives offered at the school for good attendance. Also, it was cited that Richard had on several occasions come to school under the influence of marijuana "..... possibly combined with other substances". Apparently there were innumerable conferences between the staff, his maternal grandmother, Mrs. Musselman, and Richard himself. Richard apparently always wanted to stay in school but would draw contracts and bargains which he would inevitably not maintain. Whenever confronted with his school behavior and with the consequences of the behavior, Richard was described as "withdrawing or becoming surly".

Richard was transferred to the Saginaw Opportunity School in September of 1979. Transfer was made on the recommendation of the school social worker, the staff at the Fort School, and psychological evaluation undertaken at the school system. Apparently, an EPPC meeting was held and recommendations were made that he be certified as an emotionally impaired student, transferred to the Handley School, and receive ongoing therapy at the Child Guidance Clinic. The concensus at this time was that the regular classroom setting was not appropriate and that special services were required for Richard. Upon entrance to the Saginaw Opportunity School in September of 1979, his attendance became more regular, he became more willing to attend school, and in general, his attitude towards school improved; however, withdrawal, lack of participation, and passive behaviors on his part still remained. Drug usage was still reported during this period of time, and at this time, the use of harder substances such as LSD began to emerge. Discussion with the social worker revealed that Richard's most animated conversations and involvement appeared to revolve around hunting. In general, the description emerging from his school seemed to be that Richard was very reluctant to verbalize anger, was passive, showed a pervasive lack of respect for others' rights and concerns, saw rules, especially for firearms, as unimportant and restricted himself from involvement with his peers.

Previous psychological evaluation conducted in February of 1979 indicates, at that time, that Richard was functioning overall within the low normal range; he had slightly lower verbal scores than performance scores, which were higher; they indicated ability to concentrate and to use both visual and auditory memories,

but did show difficulty with verbal relationships and need for concrete demonstrations and examples in the giving of instructions. He was shown to be significantly underachieving with regards to basic skills (reading at the 3.9 grade level, spelling at the 3.7 grade level, and performing arithmetic functions at the 2.3 grade level). Further, it was the interpretation of the psychologist that his emotional behavior was more than likely the significant influence upon his lowered functioning. It was the psychologist's view at this time that he would be appropriately eligible for an emotionally impaired certification, and recommendation to that effect was made. Additionally, at this time, need for ongoing therapy was presented.

INTERVIEW WITH RICHARD MUSSELMAN

vell oblige
[Richard states that he does not like living in the city; he also states he did not like being in Juvenile Detention, he states he "is sick in here".] Richard describes his relationship with his Big Brother as being very close. He said that he would see him three to four times per week over the last year and a half. When queried as to previous involvement or trouble with anyone, he states that he once had a charge brought against him for buying "a hot stereo" but that it was thrown out of court; he thought it was some time last Spring. When asked about the reason why he was currently in detention, he stated that he "would not talk about it to nobody on his lawyer's advice". He says that his friends consist of Vance who is one to three years older, and his cousin, Harry, and that he "liked riding around with Vance". He also liked to go hunting and fishing with his cousin. He states that he would listen to stereo with his own peer mates but didn't like them because he could not ride around with them because they didn't have cars. He states that occasionally he drinks, and then only on holidays, and then only beer. He indicates that he does not smoke; occasionally he states he has "smoked pot". He said that a couple weeks before New Years he had "dropped acid with Harry, and only with him". He indicates that he used acid last "New Years Day". When asked to describe the effect, he indicated that he laughed, would find himself having to stay up, and couldn't sleep. [He indicated that he had not used it since that time.] [He did not describe any flashbacks, nor any unusual mood shifts other than the laughing.] In school he described that he got C's, B's and A's and that he most liked math, and did worse in English. He felt that his teachers were "crazy" and that they wanted "me to go to the Opportunity School". He felt that especially Mr. Stegmeyer at the Fort School was "against" him, and that he was "that way with everybody and got them kicked out". He describes his suspension of a half year resulted from Mr. Stegmeyer. He felt that he did better at the Opportunity School, and that he liked it there. He describes his health as good, and that he has had no previous hospitalizations. He states that he was close to his grandfather, and when asked when his grandfather passed away, he thought "two to three years ago, but I'm not sure". He did say though that he was real close to him and missed him because they would "do things together". He described a real like for hunting and described in detail the training of his hound dog by killing a rabbit and leaving a trail of blood and slowly shaping the dog to follow a trail. He states he worries about his grandmother being alone; he states that she cannot visit him at the Juvenile Home because the doctor counseled her against it due to her heart problems. He indicates that he does not have any desire, nor had any desire, to live with his

Richard Musselman
Page five

mother because "there is too much noise there, and I like it quiet". When queried, he stated that the five children, all younger, made the noise. When queried as to his relationships or dating, he states that he has a girlfriend that he "saw every night" and that she wrote to him "while in the Juvenile Home". He also felt that she was pretty and "that she wouldn't be my girlfriend if she wasn't".

BEHAVIORAL OBSERVATIONS:

Physical appearance, on first interview, was clean; he was somewhat disheveled; he was submissive and passively cooperative; his general manner was one of being quiet. He had long hair. It was fly-away and dry. He would stare blankly on occasion; his nails were quite short and his cuticles dry and cracked. He had numerous facial scratches that looked like old scars. Throughout the examination and interview, he expressed a lot of dislike for being in detention. Motor behavior was slow; but essentially, gait and posture were within normal limits. He was underproductive and required direct questions to elicit information and even these were scant and required repeated probing. Progression was logical; affect was appropriate; mental trend at this time revealed a mild degree of preoccupation with his dislike for being within the Juvenile Center; he was relatively unconcerned about the reason for his incarceration and/or pending trial. Orientation with regards to time, place and person was within normal limits; memory for remote, recent and immediate events was within normal limits. Comprehension, concentration, and apperception, as well as attention, were within normal limits. Minor confusion and apathy was noted at this point in time; this necessitated and required the repetition of several of the instructions, or clarification on repeated tasks.

PSYCHOMETRIC EVALUATION:

The overall cognitive profile presented by Richard Musselman is that of a young man of low normal intellectual ability who is underachieving academically and who is exhibiting significant affective and adjusted disturbances. Specifically, Richard obtained a Verbal IQ of 80, Performance IQ of 86, and a Full Scale IQ of 81 on the Wechsler Intelligence Scale for Children; this indicates that he has lower average verbal performance with higher performance abilities but that he is functioning in what is diagnostically considered to be a "slow learner" capacity. His basic achievement is equivalent to that of a fourth-grader with specific grade equivalents in reading of the 4.4 grade level, spelling at the 3.7 grade level, and performing arithmetic functions at the 3.4 grade level. There does not appear to be any perceptual motor, nor organic, dysfunction operating to compromise cognitive ability. In the context of the significant affective and adjusted disturbances, several factors are of importance with regards to Richard:

In general, Richard's responses are indicative of disturbed interpersonal relationships. He may be best described psychologically as a "loaner"; he feels inadequate, weak, and powerless socially. It is in the safety of passive-aggressive and negative affect (for example, lying, being the "victim", and withdrawing psychologically) and potentially in aggressive, often antisocial, and acting-out, that he feels better.

Richard closes himself off emotionally from people, and in general, he is emotionally aloof, inaccessible socially, and detached. He displays limited interest in, or feeling towards, people; he perceives them negatively ("women and girls are ugly", "people bug me"), punitively, and for the most part, scornfully. He has underlying feelings of personal vulnerability and helplessness in relation to people; and because of this, he relates either by passive-aggressiveness (withdrawal, lack of participation, picking on a younger boy) or by a facade of superficial conformity which is not only difficult to maintain but often fails to protect him from his own insecurities and hypersensitivity to the reactions of others. It is important to note that internalized socialization is low and that without this very essential affective affiliation, the potential for antisocial behavior (especially in any context in which he can demonstrate his power, express his hostility towards people, and allay his anxiety and personal inadequacy) is quite evident.

It appears that these interpersonal and relational difficulties are chronic, long-term, and deeply ingrained in his personality. There is evidence to strongly suggest that they are related to disturbed parent-child relationships, much of which appears to center on the absence of a father and anger directed at his mother. In the former, he is angry at not having a father, and angry at his mother as being the perpetrator for this; additionally, he perceives his mother as deliberately rejecting him. Closely related to this is the presence of intense, anxiety-producing psychosexual concerns. Much of the antisocial and passive-aggressive behavior is interpreted to be a facade to cover and compensate for deeply seated fears about his masculinity. He associates himself with extreme roles which are culturally locked into masculinity, (for example, hunting, killing deer, male dominance) to prove his virility and masculinity both to himself and to others, however, psychologically he experiences and feels impotent, sexually inadequate, and with poorly established male identification. In fact, many of his needs appear to be passive, dependent and nurturant, and instead he experiences severe anxiety relative to virility, feelings of male-female confusion.


An additionally and significantly dominant characteristic in his personality profile is the presence of immaturity. Many of his needs and drives are of a regressive-passive, dependent, oral nature and as such, he obtains little satisfaction from his environment or from the people in it. Thus, he is extremely egocentric and narcissistic and his thinking reflects an element of grandiosity or "I'm better than all" and includes intellectualizing defenses, denial, displacement, interpersonal manipulation, and the sociopathic detachment to treat people as if they were made to serve only his ends. Thus, he experiences very strong, primitive drives and impulses (nurturance, aggression) which are poorly held in check by the rigid, controlling and constricting defenses that he has developed. As such, this makes him potentially explosive, irritable, and unable, without difficulty, to withstand or tolerate frustration, blocking, delay of gratification or stress without striking out. Striking out takes

many forms from withdrawal, intolerance, lying, passive-aggressive acts, verbal outrage.

In general, there is indication that he has, in large part, turned into himself for gratification because he has found that reality and other people especially have failed to meet whatever his needs and demands are. He perceives his environment as being threatening and punitive as well as very restricting and overly demanding. To handle this, he defends against the feelings of anxiety with the use of rationalization, displacements, and blaming others for his obvious inadequacies and failures; by withdrawing further into himself, by lying, and by generally verbally expressing dissatisfaction with people, blacks, women, and others who oppress him. Reality contact and reality testing is intact, and as such, he is fully aware of what he is reacting to, or doing relative to others, and to the outside world, but he is choosing to withdraw from them and it, and instead substituting passivity, blaming others, displacement and a victim attitude as the major sources of his gratification. Further, there is evidence of the presence of very intense hostile, angry, and sadistic affect permeates his interpersonal interaction. He actively hates ("ugly women", "blacks"), resents (schoolwork, routines, rules, being "bugged") and feels justified in breaking rules to eliminate his discomfort and perceived pain because he feels threatened, deprived, weakened and rejected by people. He has gotten even with the injustices that he has perceived inflicted upon him to date by passive withdrawal, lack of conformity to rules, increasingly becoming more verbally combative.

SUMMARY AND RECOMMENDATIONS:

In specific response to the referral issue, the psychometric evaluation indicates that Mr. Musselman is in contact with reality, exhibits no thought or cognitive disorder, and does know right from wrong. Further, that he is asocial, and a narcissistic personality who possesses strong hostile and a high acting-out potential and a grandiose, power-seeking need structure that would, and could, predispose him to violent, pain-inflicting, antisocial behaviors. Lastly, that although he does possess dynamics in his personality structure that in fact predispose him to violent and antisocial reactions, rather than alternative means of gaining need satisfaction, nevertheless, there is no indication in the personality profile that he would be in any way impelled or forced to act at all, or to act in this specific way in a given circumstance. He does exhibit the ability to inhibit impulses and does exhibit the ability to exhibit freedom of choice in his action. It is probable that he acted fully aware of what he was doing and chose to act this way because of the gratification it would afford him, and also because he felt that he could control the situation sufficiently to get away with it.


Margaret K. Cappone, Ph.D.
Certified Consulting Psychologist
MKC/sg Date typed: 1-31-80

MICHIGAN DEPARTMENT OF CORRECTIONS
CHJ-171 PSYCHOLOGICAL REPORT

FACILITY: KCF SITE: HTF

COMPLETED BY: Elgie E. Dow, ACSW

11/13/2009 3:04 PM

Offense: Weapon-Firearm, Assault with Intent to Commit Murder, 1st Degree Murder and 1st Degree Murder

Term: Life

Interview Date: 11/13/2009

Type of Report: Parole Board Evaluation

Referral Source: Non-Custody Staff Referral

Referral Urgency: Routine

Reason for Referral: The Parole Board requested an evaluation on prisoner MUSSELMAN, number 162008. When initiating this interview, prisoner Musselman was informed of the nature of this evaluation, limits of confidentiality, and that the Parole Board would receive a copy of the report generated by this evaluation. Prisoner Musselman conveyed an understanding of the limits of confidentiality and that his participation in this evaluation was of his own free will. A review of the offenders health record and institutional file was completed. The prisoner was interviewed for 1 ½ hrs. The ARUS and the regular Resident Unit Officers of the offenders housing unit were interviewed.

ESSENTIAL IDENTIFYING/BACKGROUND INFORMATION:

A. Criminal History: The offender was 15 years of age when he committed the 4 felonies that led to his incarceration. Offender has served 29 years plus of a Life sentence. Prior to these offenses the offender had a game violation as a juvenile. The offender was found guilty of 2 counts of First Degree Murder, Assault to Commit Murder and Weapons-Felony Firearm. According to the Pre Sentence Investigation report the offender and 2 adult male associates (one who is the offenders cousin), 20 and 25 years of age went on a shooting spree shooting cars. As a result they killed 2 male victims and wounded a third. During the interview with the offender he admitted to doing the shooting when the 2 individuals were killed. He stated that it was not their purpose to kill anyone but just to shoot cars. The offender verbalized his remorse for having killed 2 people. He knows the names of his victims and expressed a desire to apologize to the dead mens families. The offender appeared to be sincere and genuine in his remorse and feeling towards the victims families.

B. Mental Health History: No documentation was found in the records of any mental health treatment prior to incarceration or since incarceration.

C. Developmental History

1. Family History: The offender (d.o.b. September 9, 1964) was raised by his maternal grandparents. He reported that his grandfather died when he was 8 or 9 years old and from that time he grew up with out a male in the home. The offender reports that his grandmother was over indulgent and he was not discipline or structured in his growing up. The Pre Sentence Investigation report has an excellent social history regarding the offender.

Institutional File; Medical Record; Therapy File; Parole Board; Prisoner
G.

NAME: MUSSELMAN, RICHARD

NUMBER: 162008

D.O.B: 09/09/1964
16a

MICHIGAN DEPARTMENT OF CORRECTIONS
CHJ-171 PSYCHOLOGICAL REPORT

FACILITY: KCF SITE: HTF
COMPLETED BY: Elgie E. Dow, ACSW

11/13/2009 3:04 PM

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2. **School History:** The offender reports that he attended school until the 9th grade when he was placed in special education. He stated he believe that he was diagnosed as autistic but does not remember any tests or contact with mental health professionals. The offender reports that he never did well in school and the Pre Sentence Investigation reports in the family narrative that his grandmother said he was bored with school. During the 9th grade is when he committed the shootings he is currently incarcerated for. While at MCF in 1987 he completed the G.E.D.

3. **Substance Abuse History:** The offender reports that he began using alcohol and marijuana when he began hanging out with older persons. He reports that he abused substances up and until 1995 when he had a change of heart. He stated he started taking substance abuse treatments and stopped using drugs. Offender appears to be genuine in his reporting that he has not used drugs since.

4. **Occupational and Military History:** As reported in the Pre Sentence Investigation report and according to the offender he worked at the school as a janitor for a short period of time prior to getting into trouble. He stated the union protested that he was not old enough to be a janitor and he was terminated. The offender speculated whether or not he would have done the offenses he did if he was allowed to remain employed. The offender received a training in custodial services and has a certificate that allows him to deal with blood and other pathogens spills. He is employed at this time as a porter in his housing unit and has excellent work evaluations.

5. **Medical History:** The offender reports that he suffers from high blood pressure, cloistral and a thyroid condition that he will be required to medicate the rest of his life.

CLINICAL IMPRESSIONS/SUMMARY:

A. **Summary of Treatment:** Offender reports no treatment other than the treatment for substance abuse.

B. **Institutional Adjustment:** The Assistant Resident Unit Manager and the regular Resident Unit Officers were interviewed and they report that the offender is not a management problem and gets along with staff and other offenders well. Offender has received 20 major misconducts in 29 years of incarceration. The most recent misconduct was a Disobeying a Direct Order. The offender explained that he was at a facility where there were persons who were harassing him regarding his offense being racially motivated. The offender reports that the offenses were not racially motivated and that it was a shooting spree with no purpose.

C. **Clinical Impressions:** The offender appears to be genuine and sincere. He appears to be remorseful for causing the death of his 2 victims and appears to hold empathy for the victims families and others. I see no major mental disorders regarding the offender. It is my observation that he has the ability to understand any decision that the Parole and Commutation Board provides.

RECOMMENDATION/SUMMARY:

A. **Clinical Findings:** No pathological findings. Offender appears to be relatively of normal intelligence and mentally stable. No major mood or thought disorder was observed. Prisoners responses were practical and cooperatively provided.

B. **Relapse Preemption Plan:** Offender has not developed a relapse prevention plan. However he has some plans and goals. He states he plans to live with his aunt, Helen Bryce of Bridgeport MI, and eventually move to Tennessee if permitted to live with relatives there. He relates that he plans to continue his employment in custodial services or in the construction area. The offender reports that

Institutional File; Medical Record; Therapy File; Parole Board; Prisoner
G.

NAME: MUSSELMAN, RICHARD

NUMBER: 162008

D.O.B: 09/09/1964

MICHIGAN DEPARTMENT OF CORRECTIONS
CHJ-171 PSYCHOLOGICAL REPORT

FACILITY: KCF SITE: HTF

COMPLETED BY: Elgie E. Dow, ACSW

11/13/2009 3:04 PM

he has a friend in the construction business who has offered him a job in Saginaw MI. The offender states he plans to attend N.A. and A.A. the rest of his life and would like to speak to youth about his experiences to dissuade them from following in his footsteps. The offender plans to fish for a hobby as he remembers that fishing and hunting occupied his life activity as a youth. He stated he knows he will not be able to hunt ever again due to his offense.

C. **Weaknesses Observed:** The only weakness that this clinician can foresee is that the offender has been incarcerated for a long period of time and will require a great deal of support and assistance in integrating into the community.

D. **Recommendations if continued incarceration:** To continue as is with good management.

E. **Recommendations if paroled:** It is recommended that offender attend frequent A.A. and N.A. meetings. That he receive structured and close supervision in regards to his parole in order for him to make the adjustment to the community.

A. THOUGHT PROCESSES

FLOW OF THOUGHT:

- normal -

ASSOCIATIONS:

- appropriate -

THOUGHT CONTENT:

- other: No pathological findings.

PERCEPTION:

- other: No pathological findings.

MEMORY IMPAIRMENT:

None

ATTENTION:

- other: No pathological findings.

ABSTRACTING ABILITY:

- functional -

FUND OF KNOWLEDGE:

Institutional File; Medical Record; Therapy File; Parole Board; Prisoner
G.

NAME: MUSSELMAN, RICHARD

NUMBER: 162008

D.O.B: 09/09/1964

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MICHIGAN DEPARTMENT OF CORRECTIONS
CHJ-171 PSYCHOLOGICAL REPORT

FACILITY: KCF SITE: HTF
COMPLETED BY: Elgie E. Dow, ACSW

11/13/2009 3:04 PM

RECEIVED by MSC 6/7/2023 7:39:16 PM

Current events: average General: average

INTELLIGENCE:

How was intelligence determined? Estimated

Level of intelligence: Average

B. MOOD/AFFECT (Facial expression, appropriateness, etc.)

AFFECT/MOOD:

- happy -

FACIAL EXPRESSION:

- animated -

C. BEHAVIOR AND MOTOR ACTIVITY:

POSTURE AND PSYCHOMOTOR ACTIVITY:

- relaxed -

INTERACTION AND COOPERATION:

- cooperative -

D. PHYSICAL APPEARANCE:

GENERAL APPEARANCE:

- neat and well groomed -

E. SUICIDAL THOUGHTS (Frequency, plans, previous attempts):

SUICIDALITY:

Patient has no history of suicide attempts.

Patient does not have current suicidal thoughts.

Patient has no current suicidal plans.

F. SENSORIUM: clear

ORIENTATION:

Time: Satisfactory

Place: Satisfactory

Person: Satisfactory

Institutional File; Medical Record; Therapy File; Parole Board; Prisoner
G.

NAME: MUSSELMAN, RICHARD

NUMBER: 162008

D.O.B: 09/09/1964

MICHIGAN DEPARTMENT OF CORRECTIONS
CHJ-171 PSYCHOLOGICAL REPORT

FACILITY: KCF SITE: HTF

COMPLETED BY: Elgie E. Dow, ACSW

11/13/2009 3:04 PM

Situation: Satisfactory

G. INSIGHT: Appears to have good insight to circumstances and the seriousness of his behavior.

DSM Diagnosis:

Diagnosis Date: Diagnosis as of: 11/13/2009

Axis I:

Primary:

No Diagnosis or Condition on Axis I V71.09

Secondary:

Axis II:

Primary:

No Diagnosis on Axis II V71.09

Axis III:

<u>Diagnosis</u>	<u>Description</u>	<u>Onset</u>	<u>Resolved</u>	<u>Notes</u>
401	Hypertension, Essential	02/12/2007		
272.4	Hyperlipidemia Nec/nos	04/12/2006		
244.9	Hypothyroidism Nos	04/12/2006		

Axis IV: Other

Axis V: 70

Current Suicide Risk Level: Low

NOTE: This is a report on the prisoners current mental status in a prison community and should not be taken to predict future mental/behavior status of the prisoner either in the prison community or in the free community. The material contained in this report is confidential and any release of said information to a private or public party should receive prior authorization from the prisoner.

Institutional File; Medical Record; Therapy File; Parole Board; Prisoner
G.

NAME: MUSSELMAN, RICHARD

NUMBER: 162008

D.O.B: 09/09/1964

TO: Richard Musselman # 162008

DATE: August 9, 1988

CHIGAN
EPARTMENT
F
ORRECTIONS

FROM: C/S S. Fitzhugh

SUBJECT: Commendation

On 8-5-88 Mr. Musselman # 162008 assisted me in restraining a prisoner who was attempting to choke another prisoner. The action, on the part of Mr. Musselman, helped to defuse a potentially dangerous situation. Mr. Musselman showed a lot of responsibility and maturity; he should be commended for his action.

Respectfully,

S. Fitzhugh

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7/20/18 12:57 PM
SEP 18 2018

APPENDIX E

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

THE PEOPLE,

Plaintiff,

vs.

Case No. 1978-353-FY

GARY LEE PETERS,

Defendant.

PROCEEDINGS

BEFORE THE HONORABLE JAMES M. BIERNAT, JR.

Mount Clemens, Michigan - Thursday, September 6, 2018

APPEARANCES:

FOR THE PEOPLE: [REDACTED] WILLIAM CATALDO (P37673)
(586) 469-5350

FOR THE DEFENDANT: [REDACTED] MARILENA DAVID-MARTIN (P73175)
(313) 256-9833

TRANSCRIBED BY: ANGELA M. LITTLE, CSR-6444, RPR
Certified Court Reporter
(586) 469-5832

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

THE PEOPLE,
Plaintiff,
vs.
GARY LEE PETERS,
Defendant.

Case No. 1978-35J-PY

PROCEEDINGS

BEFORE THE HONORABLE JAMES M. BIERNAT, JR.
Mount Clemens, Michigan - Thursday, September 6, 2018

APPEARANCES:

FOR THE PEOPLE: WILLIAM CATALDO (P37673)
(586) 469-5350
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I N D E X

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E X H I B I T S

<u>NUMBER</u>	<u>IDENTIFICATION</u>	<u>ADMITTED</u>
Joint Exhibit A	Binder of stipulated Exhibits	6

1 Mount Clemens, Michigan
2 September 6, 2018
3 AT about 9:26 a.m.
4 (REPORTER'S NOTE: "Inaudible" or
5 "indiscernible" means a word or
6 words were not heard well
7 enough to be able to discern a
8 proper interpretation either because
9 of shuffling of papers, or the
10 speaker did not amplify loud enough
11 or was not picked up by a
12 microphone.)
13 * * *
14 (Court, Counsel and parties present.)
15 THE COURT: People versus Peters. Put your
16 appearances on the record.
17 MR. ABBOTT: Josh Abbott, appearing on behalf of
18 the People, Your Honor.
19 MR. CATALDO: Bill Cataldo appearing as second
20 chair to Josh Abbott on this, Your Honor.
21 THE COURT: Okay.
22 MS. DAVID-MARTIN: Marilena David-Martin from the
23 State Appellate Defender Office on behalf of Mr. Peters and
24 --

1 MS. OLSON: Tina Olson from the State Appellate
2 Defender Office on behalf of Mr. Peters as well.
3 THE COURT: All right. And, we have two witnesses
4 today, correct?
5 MS. DAVID-MARTIN: We do.
6 THE COURT: And, I'm just going to do, get a
7 couple things out of the way and then we'll start right
8 away, okay?
9 MS. DAVID-MARTIN: Sounds good. Thank you, Your
10 Honor.
11 (Off the record at 9:27 a.m.)
12 (Back on the record at 9:40 a.m.)
13 THE COURT: People versus Peters. Again, put your
14 appearances on the record.
15 MR. ABBOTT: Josh Abbott appearing on behalf of
16 the People, Your Honor.
17 MR. CATALDO: Bill Cataldo on behalf of the
18 People.
19 MS. DAVID-MARTIN: Good morning, Marilena David-
20 Martin from the State Appellate Defender Office on behalf
21 of Mr. Peters.
22 MS. OLSON: Tina Olson from the State Appellate
23 Defender's Office on behalf of Mr. Peters.
24 THE COURT: And this is a Miller hearing,
25 correct?

1 MS. DAVID-MARTIN: That's correct.
 2 THE COURT: And this is the first of two dates?
 3 MS. DAVID-MARTIN: That's correct.
 4 THE COURT: And, and I'm sorry, you wanted to say
 5 something?
 6 MS. DAVID-MARTIN: Yes, I wanted to say Mr.
 7 Peters is in the back --
 8 THE COURT: Oh yeah.
 9 MS. DAVID-MARTIN: -- so if we could bring him --
 10 THE COURT: We'll, we'll get him.
 11 MS. DAVID-MARTIN: And then I also wanted to give
 12 you our binder of exhibits.
 13 THE COURT: Okay. Have they been stipulated to by
 14 the People?
 15 MR. ABBOTT: Yes, Your Honor.
 16 THE COURT: Thank you.
 17 MS. DAVID-MARTIN: You're welcome. And we were
 18 going to just mark the binder as one exhibit if that's okay
 19 with you.
 20 THE COURT: That's fine.
 21 MS. DAVID-MARTIN: And get the --
 22 THE COURT: Okay. Jessica do we have a --
 23 (Off the record at 9:41 a.m.)
 24 (Back on the record at 9:41:44)
 25 THE COURT: All right. Okay. All right. We're

1 back on People versus Peters. Okay. Can you get Mr. Peters?
 2 THE DEPUTY: Yep. Your Honor, counsel table or?
 3 THE COURT: Yeah, put him at the counsel table.
 4 This Exhibit A that I have here? That's the, that's the
 5 defense's, this is your exhibit correct?
 6 MS. DAVID-MARTIN: It's a joint exhibit.
 7 THE COURT: Joint exhibit and it's the same, I
 8 got a copy so this is the same?
 9 MS. DAVID-MARTIN: You have the copy, that's just
 10 your copy.
 11 THE COURT: So we'll give you that. We'll give
 12 you this back. You can give that back to her.
 13 MS. DAVID-MARTIN: Thank you.
 14 THE COURT: And Jessica can you put A on this?
 15 All right, are we ready to proceed?
 16 MS. DAVID-MARTIN: We are.
 17 THE COURT: Okay. Your first witness?
 18 MS. DAVID-MARTIN: If you don't mind may I just
 19 make a brief opening statement?
 20 THE COURT: Oh, I'm sorry. Go ahead.
 21 MS. DAVID-MARTIN: It's okay. Thank you, Your
 22 Honor. Again, I just wanted to verify what is in the
 23 stipulated binder of exhibits before we get started. There
 24 is a, the pre-sentence report. There's the pre-sentence
 25 report from 1978 that was prepared. A stipulated statement

1 of facts of the case which contain a little bit more detail
 2 than the facts that are in the pre-sentence report. We also
 3 have a stipulated social history from the case and that's
 4 based on interviews that we conducted that gives background
 5 to Mr. Peter's life and his child and family, in home
 6 environment which is one of the crucial Miller factors. So,
 7 I'm not gonna ask to read all of this out loud, but, Your
 8 Honor, if you, if you wouldn't mind reading it because it
 9 is crucial to one of the Miller factors and we have
 10 stipulated to it. I didn't want to, you know, take up time
 11 reading that into the record but it is crucial to the
 12 Miller factor that you'll be considering in this case. We
 13 also have an affidavit from Gary's mothers.
 14 THE COURT: Just, just before you go any further,
 15 that's the statement of facts and the social history you
 16 want me to read?
 17 MS. DAVID-MARTIN: I'd like you to read the, the
 18 stipulated social history, most importantly.
 19 THE COURT: Okay.
 20 MS. DAVID-MARTIN: And the affidavit from his
 21 mother and his sister.
 22 THE COURT: Okay.
 23 MS. DAVID-MARTIN: That, that's evidence we're
 24 not presenting live.
 25 THE COURT: Okay.

1 MS. DAVID-MARTIN: Because we've stipulated to
 2 the admission of some of that evidence.
 3 THE COURT: Fair enough.
 4 MS. DAVID-MARTIN: Okay. We also have --
 5 THE COURT: Oh, and by the way, I will read the
 6 whole binder.
 7 MS. DAVID-MARTIN: I knew you would, thank you.
 8 THE COURT: For the record. It all will be read.
 9 MS. DAVID-MARTIN: Yes, I knew, I knew you would.
 10 Just wanted to highlight some certain things. We also have
 11 the CV of the experts who are gonna be testifying today
 12 along with the reports that they prepared. If you want more
 13 information on what they're gonna testify to we also have
 14 a, you know, the next hearing that we have on September
 15 20th we'll hear from an MDOC expert, but his report and
 16 CV's in here as well along with a write up of all of Mr.
 17 Peter's misconducts over his 41 years of incarceration. So
 18 you'll see that so that you can get details on what those
 19 offenses were.
 20 THE COURT: Okay.
 21 MS. DAVID-MARTIN: And then we also have his
 22 certificates and accomplishments. You can see the things
 23 that he's done with programming. We have work assignment
 24 evaluations and block reports from Corrections staff who
 25 have interacted with Mr. Peters. We have a couple of

1 letters of support from prisoners who worked with Mr.
 2 Peters. Mr. Peters is a foreman, was a foreman at Kihross,
 3 he's just been transferred to Macomb for this hearing,
 4 overseeing 150 prisoners and some letters from those people
 5 he worked with are in here as well. And then he has a
 6 comprehensive re-entry plant that details the things that
 7 he would be doing, places he would be living, things like
 8 that upon release.

9 THE COURT: Okay.

10 MS. DAVID-MARTIN: And then just brief
 11 statements. The purpose of the hearing today and then part
 12 2 in a couple of weeks is for Your Honor to determine
 13 whether or not Mr. Peters should be resented to life
 14 without parole or if he should be resented to a term of
 15 years, which gives him an opportunity for release. The U.S.
 16 Supreme Court has held that a life without parole sentence
 17 is dis -- a disproportionate sentence for all but the rare,
 18 rarest of children and is only appropriate for a youth
 19 whose crime reflects irreparable corruption.

20 Mr. Peters will have served 41 years this
 21 December for a crime committed when he was 17 years old.
 22 You don't have to speculate as to whether or not Mr. Peters
 23 is that irreparably corrupt youth because the 41 years that
 24 he's been incarcerated have shown that he is not. He is a
 25 person who has been rehabilitated. Not only does he have

1 the potential for rehabilitation, which is one of the
 2 Miller factors, he has been rehabilitated and you will hear
 3 that from our expert.

4 His growth and rehabilitation and accomplishments
 5 will speak for themselves and we hope at the end of the
 6 hearing you will decide to impose a term of year sentence
 7 so that he can be given the opportunity for release by the
 8 parole board.

9 THE COURT: Okay.

10 MS. DAVID-MARTIN: And --

11 THE COURT: Oh, go ahead, continue.

12 MS. DAVID-MARTIN: I was gonna say with that I
 13 will call Dr. Keating.

14 THE COURT: Okay. If the witness can come up
 15 here. You can come right over here.

16 THE WITNESS: Over here?

17 THE COURT: Yeah.

18 THE WITNESS: Thank you.

19 THE COURT: Can you raise your right hand? Do you
 20 swear the testimony you're about to give is the truth, the
 21 whole truth, and nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE COURT: Okay, please be seated. Proceed.

24 DR. DANIEL KEATING
 25 was examined and testified on his oath as follows:

1 MS. DAVID-MARTIN: Good morning, Dr. Keating.
 2 THE WITNESS: Good morning.

3 DIRECT EXAMINATION

4 BY MS. DAVID-MARTIN:

5 Q. Can you please put your name on the record one more time?
 6 A. Sure, it's Daniel P. Keating.

7 MS. DAVID-MARTIN: Okay. And I, you do have a lot
 8 of qualifications and publications and things like that.
 9 The prosecutor has agreed we don't have to go through those
 10 today and I'd like to move to get him admitted based on
 11 stipulation from the prosecutor as an expert in adolescent
 12 brain development.

13 THE COURT: All right. Does the prosecutor want
 14 to voir dire or is --

15 MR. CATALDO: No. Dr. Keating has testified in
 16 several hearings that we've done, Your Honor, and he is
 17 imminently qualified in the field that he is going to be
 18 testifying in. We have no objection.

19 THE COURT: Okay. So he, he will be recognized as
 20 such in this court.

21 MS. DAVID-MARTIN: Thank you, Your Honor.

22 THE COURT: Okay.

23 BY MS. DAVID-MARTIN:

24 Q. Dr. Keating, turning to the question at hand, were you
 25 asked to prepare two summaries relating to adolescent brain

1 development for purposes of this hearing?
 2 A. I was.

3 MS. DAVID-MARTIN: And, those reports, Your
 4 Honor, are in the stipulated binder of exhibits that were
 5 admitted.

6 THE COURT: Okay.

7 BY MS. DAVID-MARTIN:

8 Q. Are you familiar with the circumstances of Mr. Peter's
 9 case?
 10 A. No, I am not.

11 Q. Did you ever review any documents related to this case?
 12 A. No, I have not.

13 Q. Did you ever talk with Mr. Peters?
 14 A. No, I have not.

15 Q. Is it necessary for you to have done those things in order
 16 to give testimony that we're asking you to give today?
 17 A. I do not believe so. I'm testifying to the general science
 18 around adolescent development and early trauma as it
 19 relates to adolescent development based on developmental
 20 science and developmental neuro science. My background is
 21 not in clinical psychology nor in forensic psychology so
 22 I'm not qualified to be able to address specific, aspects
 23 of specific cases.

24 Q. I'd like to ask you about some of your findings in the
 25 report. First, very broadly, and then I'll get to more

1 specific findings. Broadly, if you had to explain the
 2 concept of adolescent development to somebody during an
 3 elevator ride, what would your, what would your explanation
 4 be?
 5 A. Well, in, at that level it's actually fairly
 6 straightforward, and that is that there is a, number one
 7 there's a very significant changes in the adolescent brain
 8 coming out of childhood. There are two major systems that
 9 bear on the issues at hand. One, is what's known as the
 10 prefrontal cortex, and sometimes abbreviated as the PFC.
 11 That prefrontal cortex is typically seen as and is known to
 12 be the seat of executive functions, judgment, the ability
 13 to inhibit impulsive behaviors, effortful thinking through
 14 of problems. That is kind of the role and the job of the
 15 prefrontal cortex. The second major system here is actually
 16 a number of different systems that are linked together in
 17 what's called the limbic system and it includes elements of
 18 emotional arousal, which is largely in the amygdala, the
 19 ventral striatum, which is the system which carries that
 20 information to the prefrontal cortex and interacts with it,
 21 and a third system which is really an incentive and reward
 22 system which the ventral striatum is also involved, but has
 23 the ability to recognize and identify things that are
 24 pleasurable, incentivized, rewarded, and through primarily
 25 dopamine receptors located there. Those two systems show a

1 differential pattern of growth. So the prefrontal cortex --
 2 Q. And I'm gonna just stop --
 3 A. Oh yeah, sure.
 4 Q. Now we're in the lobby of the elevator and we have to get
 5 off.
 6 A. Okay. So the prefrontal system grows more slowly and comes
 7 in to play later. The activated system for sensation
 8 seeking and so forth reaches a peak in mid adolescence,
 9 higher actually than it will be even in adulthood. That
 10 mis-match between those two makes it difficult for
 11 adolescents to regulate their behavior.
 12 Q. Okay. Thank you. And we are gonna go into more detail about
 13 that but thank you for that broad explanation. When we say,
 14 when we use the word adolescent what age ranges are we
 15 talking about?
 16 A. Generally speaking, I mean, there's no fixed definition.
 17 Let me just say that for the record, but generally speaking
 18 we think about it as having an onset around 11 to 12 to 13
 19 years old, generally speaking. Traditionally, we've, it's
 20 been associated with the teen years so you're looking at 18
 21 or 19, but current brain science is suggesting that major
 22 brain developments do not end until the mid 20's so there's
 23 a great deal of interest in research currently on the
 24 concept of either elongated adolescence or emerging
 25 adulthood that would take that period into the mid 20's.

1 So, it's not a fixed definition or a settled issue
 2 particularly in how long we should regard the adolescence
 3 as lasting. Traditionally, we've said well it's about to
 4 age 18 or 19.
 5 Q. Okay. And you're aware that the U.S. Supreme Court cut off
 6 the juvenile life or resentencing issue at age 18?
 7 A. I am.
 8 Q. Is that age cut off consistent with the scientific
 9 consensus about adolescent brain development?
 10 A. I would say it is not necessarily so. No, I do not think, I
 11 think that, that the current research is suggesting that if
 12 we were looking at it from the perspective of developmental
 13 neuroscience we would probably extend that period of time.
 14 Although there are no fixed points at which we could do
 15 this. I mean, we need to have fixed points I understand for
 16 legal purposes, but there's no developmental science or
 17 neuroscience reasons to say this is the absolute onset or
 18 this is the absolute offset.
 19 Q. Is there a term in your field called elongated adolescence?
 20 A. Yes, there is.
 21 Q. Or emerging adult, adulthood?
 22 A. That's correct.
 23 Q. And what age period is that?
 24 A. Those would generally take that, what we typically have
 25 thought of as the adolescent period up until the roughly

1 into the mid-20's. The, whether to call it one or the other
 2 is just a matter of semantics at this point and how people
 3 perceive it. When I teach my large undergraduate class in
 4 adolescence and I ask them, they very much don't like the
 5 term elongated adolescence. They prefer the term emerging
 6 adulthood, but they basically refer to the same phenomenon.
 7 Q. Mr. Peters was 17 years old and nine months when he
 8 committed the offense in this case. Was his brain
 9 development at 17 years and nine months much different than
 10 that of a 15 or a 16 year old?
 11 A. It would be a bit more mature but it's on a continuum and
 12 so the, the notion that it was still within the range of
 13 what we would typically think of as development immaturity
 14 would certainly have applied.
 15 Q. Can you make, if you were to look at a brain, such a fine
 16 grain distinction between a 16 year old and a 17 year old
 17 brain?
 18 A. No.
 19 Q. If you had to draw a line just as the Supreme Court draw a
 20 line in Miller, what would that age range be?
 21 A. I'm sorry, can you clarify a line for?
 22 Q. A line for when, so the, the holding of Miller of course is
 23 based on the lesser culpability and diminished culpability
 24 of youth. If you're talking about adolescent brain
 25 development and when maybe a person might have the, I don't

1 want to say proper functioning brain, but a fully mature
 2 functioning brain, what age would you say?
 3 A. Well from a scientific perspective one might argue that,
 4 that somewhere in the early to mid-20's might be a more
 5 appropriate point at which to draw that line. I, from my
 6 own perspective I think that we would need to know a good
 7 deal more about exactly how to draw that line in the sense
 8 that it is, it is a curve, it is, you know, sort of going
 9 down a slope and whether you put it here or at the absolute
 10 end when it reaches a kind of a level flat place I think
 11 there are more aspects that going into thinking about that
 12 then just simply what, what is the prefrontal cortex itself
 13 doing during that period of time. But I would certainly not
 14 move it below 18. I would be inclined to think about moving
 15 it higher.
 16 Q. And you mentioned the prefrontal cortex, the limbic system
 17 and the incentive and reward systems as --
 18 A. So the incentive and reward system would be part of the
 19 limbic system.
 20 Q. Can, I want to talk a little bit about the prefrontal
 21 cortex.
 22 A. Sure.
 23 Q. So that we can understand exactly what that means and what
 24 it does. Can you tell us how the prefrontal cortex works
 25 for an adolescent?

1 prefrontal cortex to in a sense marshal the resources of
 2 the rest of the brain, control how the rest of the brain to
 3 some extent is going to function. So, basically its job is
 4 as a judge, and inhibitor of poor decisions, and a
 5 governor of a lot of the brain activity going on at that
 6 point in time. And that is all increasing slowly during the
 7 period of adolescence.
 8 Q. Okay. And so the prefrontal cortex is not fully mature in
 9 an adolescent?
 10 A. It is not. The evidence suggests that it, on average, does
 11 not reach full maturity for most individuals until the mid-
 12 20's.
 13 Q. When you talk about decision making and the prefrontal
 14 cortex being crucial to that decision making, are there
 15 various circumstances, for example, where decision making
 16 of an adolescent if they're in a high stress environment or
 17 situation, might be even more affected than regular
 18 (inaudible)?
 19 A. Right, so in the literature we, that's become pretty solid,
 20 very solid by this point. Is we talk about sort of a dual
 21 systems thing. And a dual systems notion means that there
 22 is a pathway or a patter to decision making that heavily
 23 relies on the prefrontal cortex that we might think of as
 24 effortful decision making, actually putting our minds to
 25 the task of coming up with what's a good decision and so

1 A. Sure. So, well, and it works, its, its role is essentially
 2 the same for everyone it just the, the, it becomes more
 3 mature, slowly more mature during the adolescent period.
 4 Its primary functions are what are considered to be
 5 executive functions. So that means things like working
 6 memory, how much memory you can hold and how many items of
 7 information you can hold in your brain during a particular
 8 period of time. That increases through the, into and
 9 through the adolescent period. There, the aspect of
 10 thinking, which has to do with our ability to attend to
 11 things, both to focus on something for some period of time
 12 and the ability to appropriately switch to something else,
 13 so the attentional system, both focusing and switching is a
 14 key part of the executive function and the ability inhibit
 15 impulsive behavior. So, in a sense, to make a more
 16 appropriate judgment about what other thing, what, what to
 17 do in a particular situation. So when we think through an
 18 issue in a, a effortful way about what's a good decision to
 19 make here, that's the prefrontal cortex in action. Another
 20 part that does appear to be primarily a major
 21 accomplishment of adolescence that involves the prefrontal
 22 cortex is that the prefrontal cortex becomes a system. And
 23 that means that it belongs to be more tightly tied as a
 24 system to other parts of the brain. So in the sense then
 25 takes on a governor function. It's the ability of the

1 forth. The other system, which is, you know, largely driven
 2 by this limbic system, or sometimes colloquially referred
 3 to as the bottom brain, can make decisions independent of
 4 the prefrontal cortex. That is a kind of a snap decision, a
 5 gut instinct decision, a decision under stress, a decision
 6 under high emotional arousal, or even without those
 7 stressors, if we have a line of behavior where we're
 8 deciding which parking lot to go to, we may not make that
 9 decision without it, with much involvement at all from the
 10 prefrontal cortex. We just see an open spot and go to it.
 11 So there's kind of this automatic decision making that's
 12 based on experience and so forth. That range of decision
 13 making doesn't really invoke the prefrontal cortex. Either
 14 arousal, stress, automaticity, or other things can in a
 15 sense move us toward a, a, decision, a gut instinct
 16 decision, if you will, that bypasses primarily, mostly
 17 bypasses that prefrontal cortex.
 18 Q. If an adolescent were making a, were asked to make a
 19 decision with no stressors involved, they're in a
 20 controlled environment, they're asked to say "is this right
 21 or wrong?", would you expect their decision making to be
 22 similar to that in an adult?
 23 A. Yes, certainly by age 14, 15, 16, certainly by age 16.
 24 Those circumstances that we describe often in the
 25 literature as cold cognition, where there's nothing

1 pressing going on, and we are specifically putting people
2 in the context to say, do the best you can with this task
3 that I'm giving you, or answering this questions that I'm
4 giving you. The tests of logic given to students in school
5 would be a good example of that. We're asking you
6 explicitly to engage your best thinking and most effortful
7 thinking about that. By age 15, 16 you really cannot
8 distinguish much between the performance of an individual
9 of that age and, and an adult. Which is not to say that
10 either group is always right, it's just that they're not,
11 you know, adults make lots of errors in those circumstances
12 too, it's just that you cannot really distinguish between
13 them and the older, and that you know sort of fully mature
14 adult.

15 Q. And what you're talking about now is in, we're talking
16 about cold cognition in very controlled environments?

17 A. Correct.

18 Q. Okay. And what about then hot cognition environments and
19 decision making?

20 A. So the, when the, in hot cognition essentially refers to
21 the case where there are decisions or behaviors that are
22 being enacted where the, the limbic system or bottom brain
23 is highly activated, right? So there's a lot going on that
24 is, has to do with the emotional system, it has to do with
25 social judgment, it has to do with stressful input to, to

1 the situation, so that hot cognition pathway tends to park
2 the prefrontal cortex off to the side. It essentially is
3 not being engaged in an effortful decision making process.
4 It's going with what, in a sense, feels right at the time,
5 right? And so whatever feels like something that you should
6 do for all sorts of reasons, to maintain status among
7 peers, to, which is another major factor that can affect
8 how that limbic system functions, or because you yourself
9 are highly emotionally aroused, or have something that is
10 causing you fear or is leading, is desire driven behavioral
11 pattern. Those factors are activated. Now that can be true
12 for adults as well. It's just that the, that the, that
13 limbic system, as I mentioned in the original, in my
14 original comments, is at a, at a high peak. By 13, 14 it
15 starts to ramp up and it gets to a higher level of arousal
16 than will be ever and incentivized thinking than will ever
17 be the case in, in adulthood, right? So, it's, it's
18 essentially an upside down U. It goes to a high peak and
19 then begins to taper off. So, that is driving the system
20 and the prefrontal cortex is not fully mature so it lacks
21 the same ability that a mature adult would have, generally
22 speaking, to step in and say wait, stop, take a step back,
23 you need to actually think this thing through. You need to
24 engage some effortful decision making here. Is this what
25 you should be doing? That is weaker relatively speaking

1 compared to mature adults and that incentivized system is
2 stronger and more driving for an adolescent compared to an
3 adult on average.

4 Q. Okay. And so is there a name for the difference between the
5 top brain and the bottom brain and how that's interacting?

6 A. So in adolescence the, the, the most common
7 characterization of that is called a developmental maturity
8 mismatch or a DMM, and the developmental maturity and
9 mismatch essentially just says that you have this
10 relatively slower growing, linearly growing prefrontal
11 cortex, this inverted U with a high peak in mid adolescence
12 of the bottom brain, or limbic system, and that mismatch
13 creates a, a space, if you will, where there is the, the
14 greatest opportunity for unthoughtful, unjudged behavior to
15 occur. And we know that that's true, not just through
16 developmental neuroscience. We began looking at this in the
17 neuroscience by looking at the general developmental
18 science which says on the behavioral level, things like
19 sensation seeking peak during the same period of time,
20 things like behavioral misadventure, where kids are taking
21 lots of risks that they shouldn't. One of my areas of
22 research is looking at that as it relates to kids taking
23 risks in their own health. Health behavior, health risk
24 behavior peaks during that period of time, so there's a
25 convergence of the developmental neuroscience evidence, the

1 developmental science evidence and the epidemiology of risk
2 behavior and the health consequences of that, that, that
3 contributes to that developmental maturity mismatch, or how
4 we characterize or think about it.

5 Q. And would it be common for adolescents, or can you say that
6 adolescents, let me ask you this question, do adolescents
7 value the potential benefits of risky behavior more highly
8 than adults do?

9 A. Yes. Well, certainly for a number of characteristics that
10 adults would regard as highly risky behaviors, adolescents
11 will typically see the benefits of that as more valuable or
12 beneficial than adults would. And that's a normative
13 characteristic of adolescents partly because what they're,
14 because of what we just discussing in terms of how the
15 brain is maturing during that period of time, there is a
16 drive towards higher levels of sensation seeking, there's a
17 drive towards higher levels of exploration, and a higher
18 drive, a higher drive towards risk behavior in general.
19 So those patterns are patterns of normative adolescent
20 behavior. In fact, they're important patterns of adolescent
21 behavior as individuals grow and begin to expand their
22 world and, and learn how to be individuals. So there, that,
23 that is a both, you know, sort of characteristic of what
24 adolescents, how adolescent brain matures, but also it's
25 normative in terms of adolescent development for that to go

1 on.

2 Q. And I don't think, I don't think there's much dispute but,

3 they typical 17 year old knows right from wrong?

4 A. Yes.

5 Q. Okay. How would you explain a 17 year old or an adolescent

6 committing a crime like murder even though they know right

7 from wrong?

8 A. Well I would refer back to what we've just been talking

9 about. Essentially there are circumstances, there are

10 contexts, there are both internal drives as well as

11 external contexts which essentially lead the individual to

12 make an unconsidered decision, to make a, an emotionally

13 driven decision, to make a decision that's driven by the

14 social context, to make a decision that is not thought

15 through in any meaningful way and so therefore doesn't

16 invoke a variety of those things of how to, that the

17 prefrontal cortex is responsible for to inhibit a response.

18 To sort of, you have an impulsive, you have an impulse to

19 do that but your ability to control that impulse, or

20 redirect that impulse is weaker than it would be for an

21 adult.

22 Q. Is adolescent culpability attributable to immaturity of

23 brain development?

24 A. Well I think the culpability is, and, and this is obviously

25 a part of, of a number of relevant Supreme Court decisions,

1 is, should be seen as being mitigated by reasons of

2 developmental immaturity. So it's not as though there's an

3 absence of culpability, but that the culpability is

4 diminished or mitigated once we understand the nature of

5 adolescent development and adolescent brain development.

6 Q. So what, if anything, will cause the limbic system to slow

7 down in the prefrontal cortex to mature for better decision

8 making (inaudible)?

9 A. Right. Well those are both parts of just normative

10 adolescent, normative brain development as individuals get

11 later into adolescence and then eventually move into

12 adulthood. And for specifically looking at the limbic

13 system, the biggest contributor to that decline is that,

14 and if I get too far into the weeds here I'm sorry, but

15 basically what, what's happening, part of all of this

16 change of the circuitry during adolescent brain development

17 is that at the beginning of adolescence there's a very

18 substantial increase in the amount of neuro material that

19 is available to the brain. That's, those are synapses, the

20 process is known as synaptogenesis. So there's a huge

21 proliferation in the womb and in infancy, large numbers of

22 them. A lot of those, that material gets pruned away as

23 circuits get built. It's a redundant system, lots of extra

24 material there and it gets pruned away. There is, and then

25 it's relatively stable through childhood. Then in

1 adolescence there's another big surge of that neuro

2 material comes into, into the system. New synapses are

3 born. Synaptogenesis means the birth of synapses. Lots of

4 new things get born. Lots of new neuro material gets born.

5 And that enables the adolescent brain to both be plastic

6 during this period of development and to become to some

7 extent re-wired in response to what the actual current

8 environment that that individual is in. So it's being

9 shaped by the circumstances that they're in. As we age out

10 of that period of time, a lot of those, a lot of that

11 material, particularly for the limbic system, becomes, is

12 pruned away, or dies off. So one of the biggest influxes in

13 the synaptogenesis that's related to adolescence is in what

14 are known as dopamine receptors. Dopamine is the,

15 essentially the brain, the parts of the brain system that

16 tags something as good, or pleasurable, or desirable, or

17 something that you want to repeat. So it links a memory to

18 a, a memory to a feeling, if you will, or a memory to an

19 experience and it says we'd like more of that please,

20 right? So that's kind of the role of the, the dopamine

21 system. So that dopaminergic system, which is heavily

22 integrated within that limbic system, during that

23 adolescent surge a lot of that is new dopamine receptors,

24 and so they're clamoring for all kinds of sensations,

25 exploration, new things. They die off right, during the,

1 that period in the late teens to early 20's a lot of them

2 go away, and so that in the normal course of events a lot

3 of them go away. So that's a big reason that that limbic

4 system becomes less activated in adults than it does in

5 adolescents. They can under certain circumstances remain,

6 so, but, but in the normal course of events they would die

7 off.

8 Q. Okay. So, just to simplify, is it fair to say that

9 adolescent, the bad decision making we know is common in

10 adolescents is due in large part to a, an immature

11 prefrontal cortex and a highly active limbic system?

12 A. Yes.

13 Q. And that developmental maturity mismatch often causes

14 adolescents not to make the best decisions that they, or

15 not to make better decisions that maybe an adult would

16 make?

17 A. It would, yes, to make a less well considered decisions.

18 Q. Okay. When an adolescent makes a bad decision is it more

19 difficult to him to divert, to stop engaging in that bad

20 behavior than it would be for somebody who's 25 years old?

21 A. Yes.

22 Q. Can you explain why?

23 A. Sure. So basically the, what happens is that one, when one

24 is engaged in a course of behavior, and some risk behaviors

25 that adolescents engage in are planned and some are

1 impulsive, but once that behavior is underway, whatever its
 2 origin, if those, if things start to go wrong in that
 3 stream of events, in that stream of behavior, there is much
 4 less resource available from the prefrontal cortex to be
 5 able to bring it under control. So in a sense one can think
 6 about there, a good metaphor, and it's in the report, is
 7 that it's one, the prefrontal cortex may not be making the
 8 best decisions about whether to get on a train of behavior
 9 that's going somewhere, but once that train is going along
 10 it's even harder for the prefrontal cortex to come in and
 11 stop that runaway train, to get off of that runaway train.
 12 So the, the, once the sequence of behavior is engaged in,
 13 it is much harder for the adolescent compared to the
 14 average adult to stop, or get off, or deviate from that
 15 course of behavior.

16 Q. And is that, is that because that course of behavior is
 17 what we talked about earlier as being an, a hot cognition
 18 decision making?

19 A. Yeah, right, so exactly, so that, I mean, particularly in
 20 those circumstances. If it's a neutral behavior it probably
 21 doesn't matter very much but if it's a behavior that has
 22 some elements of arousal, sensation seeking, incentivized
 23 reward behavior, and so forth, then it's much harder to do.

24 Q. So if an adolescent is in a hot cognition scenario, decides
 25 to do a robbery, they have a peer present, do they have the

1 figure, you know, law enforcement and so forth, it might
 2 very well make you far less likely to be cooperative or to
 3 provide information, or to report what you did. You're much
 4 more likely to try to, you know, sort of in that hot
 5 cognition scenario to avoid those kinds of situations. If
 6 you were in a group of peers it might have a different
 7 effect. You might be more likely to describe it to others
 8 because it may enhance your peer status with your peer
 9 group depending what the peer group is like. But, you might
 10 very well use that as a, a circumstance to report it so as
 11 to, if it's a, given the kind of peer group, to enhance
 12 your own peer status in that group. So, it would depend,
 13 how it would be would depend on the context. Relative to
 14 adults, that might be more likely to try to figure out what
 15 happened and how do I try to make it right. That is
 16 somewhat less likely depending on the circumstances,
 17 sharply less likely for an adolescent to pursue that kind
 18 of restorative or figure out how to do deal with that
 19 situation in a more appropriate way.

20 Q. Okay. And would you, would you expect an adolescent to be
 21 able to explain the why behind a crime or a bad decision
 22 that he or she made?

23 A. In terms of self-insight I think it is probably somewhat
 24 less. I mean, there, we certainly know that the development
 25 of the self, self-awareness, and self-concept and so forth

1 same ability as an adult to say "hey, wait, we shouldn't go
 2 through with this"?

3 A. No, for just the reasons we describe which is the, that
 4 the, the prefrontal cortex ability to inhibit impulsive
 5 behaviors is diminished. When you put a peer into the
 6 situation we have pretty good neuroscience evidence that
 7 says that that limbic system is even amplified further
 8 under the presence of a peer. So when a peer is in the
 9 situation, or even if you know that a peer is observing you
 10 in some behavior, you're much more likely to pursue that
 11 whatever that sort of emotional and social system of
 12 arousal is driving you towards.

13 Q. Okay. And what happens, so we're, we just talked about a
 14 robbery or scenario like that, what about after commit, you
 15 know if an adolescent were to commit a murder, how is the
 16 decision making, the judgment, the reasoning, after
 17 committing that offense affected in an adolescent?

18 A. Well in the sense that, in the same sense that the
 19 prefrontal cortex would be less likely to provide guidance
 20 towards what would be appropriate behavior, having
 21 knowledge that you have engaged in that behavior would
 22 maintain that kind of, you know, sort of hot cognition
 23 scenario. How it specifically would play out in any given
 24 circumstance would depend on the social context that occurs
 25 after that. So if you were in the presence of an authority

1 are, which are linked to a substantial to the prefrontal
 2 system, are less developed and so the ability to understand
 3 the course of one's own behavior, to understand and explain
 4 the mechanisms internally that lead to that, it's not the
 5 case that adults are great at that but they are able to do
 6 so with a bit more self-awareness and a bit more ability to
 7 look at from a judge, you know, well-judged situation as
 8 opposed to a, you know, sort of being involved where the
 9 arousal and so forth is still gonna be active.

10 Q. I'd like to ask you now about the impact of trauma or early
 11 life adversity on what we just learned about adolescent
 12 brain development. And you have just in 2017 authored a
 13 book on this topic, correct?

14 A. Correct.

15 Q. And so before we get into the details and the specifics I'd
 16 like to just first ask you if the experience of trauma does
 17 affect adolescent brain development?

18 A. Yes, it does.

19 Q. And broadly, what, what types of things are considered
 20 trauma or life adversity?

21 A. Well there's a range of things that are considered
 22 adversity, early, we're talking now about early life
 23 adversity. There are a range of things that fall into this.
 24 At the most extreme polarity would be things like physical
 25 abuse, sexual abuse, severe neglect, and so forth would be

1 at the polarity of clearly highly traumatic experiences.
 2 And, going, exactly how far down you need to go to have it
 3 be considered highly stressful enough or highly adverse
 4 enough to affect the biology of the individual in this way,
 5 there's no clear line, you know, in the way that we would,
 6 drugs, we would look for a dose response relationship, we
 7 can't do that, but if there is still, if there is
 8 substantial stressors that are occurring and that stressor
 9 can be occurring not only to the child but to the parents
 10 and particularly even to the expectant mother who is
 11 extremely stressed can make the biological changes that we
 12 see as part of the trauma dimensions can occur and
 13 certainly in the first year or so of life. Absent parenting
 14 or non-nurturing parenting or problematic parenting at that
 15 level, and again we don't have a dose response
 16 relationship, but if the stress is sufficiently high it can
 17 cause changes to the, particularly to the brain and
 18 subsystems of the brain that will show up throughout life
 19 or, and during life. So it's, that's the range we're
 20 talking about, you know, sort of the, and this is captured
 21 in a variety of different ways of measuring it that has
 22 been widely used recently.

23 Q. Would something like as a ten year old being left home
 24 alone without food or parents be considered a trauma?
 25 A. That certainly would be on that dimension towards trauma.

1 It would, it's an item like that that would show up say on
 2 the child trauma questionnaire, which is a widely used
 3 measure of that.

4 Q. What about living in multiple youth homes and transferring
 5 to fosters, things like that?
 6 A. Things that break any kind of an attachment relationship
 7 between a child and a parent would definitely contribute to
 8 traumatic, possibility of traumatic experience, yes.

9 Q. Can you, so we know now you said that trauma does affect
 10 adolescent brain development. Can you tell us how that
 11 affects adolescent brain development?
 12 A. So to some extent it depends on the period at which occurs.
 13 The, the most vulnerable periods are in early life and that
 14 includes it being in the womb. And basically what happens
 15 at, or in the first couple years of life, and basically if
 16 the level of stress or trauma reaches a toxic level during
 17 that period of time, there are a variety of changes that
 18 are occurring. Some of them appear to not appear, some of
 19 them are clearly observed in the, in, in studies of actual
 20 brain development so cortical thickness, for example, and
 21 which will eventually mature to a, as part of the system of
 22 the prefrontal cortex, will be affected so that, that
 23 individuals with a history of, of toxic stressor trauma
 24 will have different cortical thickness for individuals
 25 without it, that history. Another large class that we're

1 now beginning to get a much better handle on are what are
 2 known as epigenetic changes and epigenetic changes
 3 essentially means that those experiences alter the way in
 4 which a particular gene functions. It doesn't change the
 5 gene but it does tell particular genes to turn on, to turn
 6 off, at times that are different because of that history of
 7 trauma. So for example, the best studied example in that
 8 area is on the, our stress response system, which is known
 9 as the HPA axis, it's short for the hypothalamic pituitary
 10 adrenal axis, and essentially what that does is stress has
 11 an impact, excess stress, whether experienced by the mother
 12 while the baby's still in the womb or in the first year or
 13 so of life will have the effect of altering how that stress
 14 response system functions. Without getting into the
 15 details, there is a particular gene, a key gene in that
 16 sequence that ought to be able to shut that stress system
 17 down when, when it's a minor threat or when it's a threat
 18 that is now passed, that is disabled. So then in a sense
 19 you have this kind of free flowing stress response
 20 primarily in terms of release of cortisol, which is our
 21 fight or flight response, and so that will alter as well.
 22 So what you have is an individual whose ability to think
 23 through situations is going to be compromised and whose
 24 ability to avoid hair trigger responses is gonna be
 25 compromised. And if you think of how that then goes into

1 adolescence, it amplifies that developmental maturity
 2 mismatch, so the prefrontal cortex is even weaker, the hair
 3 trigger response, fight or flight, other kinds of things
 4 are enhanced. One of the, you know, sort of metaphors,
 5 another metaphor that gets used in the field is in terms of
 6 normative adolescent development because of that
 7 developmental maturity mismatch we have what's typically
 8 known as a lot of ability to accelerate behavior in risky
 9 directions and fewer brakes on that acceleration. This
 10 history of early trauma and the changes that it causes
 11 biologically to the individual, that are enduring changes
 12 to the individual, essentially amplify that developmental
 13 maturity mismatch almost to the point where you'd say what
 14 you have is all accelerator and no brakes. It's basically
 15 an interaction between the history of early trauma and
 16 normative adolescent development that we see as a
 17 developmental maturity mismatch.

18 Q. Can an adolescent who has experience trauma recover or
 19 bounce back from those developmental delays you just
 20 described?
 21 A. Yes. And there's a large and much more hopeful area of
 22 research that's associated with the detailed study of early
 23 trauma that's come about and it, the general category is
 24 resilience, or bouncing back. And basically there are two
 25 ways of looking at that. One, is to look at large

1 population studies and look at individuals who have had
 2 early trauma, early adverse experiences, and what we
 3 observe is that some percentage of them are able to recover
 4 from that. And then that line of research has then been
 5 pursued to say well how, in what ways did those individuals
 6 differ from individual who don't bounce back, who have the
 7 more predictable, negative outcomes over the course of
 8 their life in terms of developmental success and in their
 9 health and the length of their lives for that matter. What
 10 are different about them? And generally speaking, that line
 11 of research has been able to point towards particular
 12 characteristics that have the capability of mitigating, or
 13 working around those impacts of early trauma in terms of
 14 how the individual behaves and how their brain works.

15 Q. Is it consistent with science to say that one would expect
 16 an adolescent offender to become rehabilitated over time
 17 under the proper circumstances?

18 A. Well, yes. I mean that, before we even get to developmental
 19 neuroscience, there's a huge literature on the age crime
 20 curve, which essentially says that for the same reason we
 21 strongly suspect that you see this age crime curve, which
 22 itself peaks in, in mid to later adolescence and then by
 23 later, even later in adolescence and into early adult
 24 starts dropping off into a desistance pattern, and then as,
 25 you know, sort of continues to drop off even beyond that,

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1 change remains high. So there's, I mean is high, so neuro
 2 plasticity plays in if the circumstances are supportive,
 3 but even independent of that, the normative patterns of
 4 adolescent behavior will lead toward a desistance in
 5 criminal activity.

6 Q. And you're familiar with the decision in Miller vs.
 7 Alabama?

8 A. I am.

9 Q. Some of your work was cited in the amicus briefs in that
 10 case?

11 A. Yes it was.

12 Q. In your professional opinion, how would one know if a youth
 13 is irreparably corrupt?

14 A. It's, the, the, notion of whether a individual can be
 15 determined to be irreparably corrupt, at this point there
 16 is, well, let me say first, it's still a point of
 17 contention scientifically, right? I think that the evidence
 18 though suggests that it is an extraordinarily rare
 19 circumstance and close to impossible to predict with any
 20 accuracy. So then if you want to say is a person never
 21 going to be able to escape this situation of being, you
 22 know, sort of, high propensity for serious and particularly
 23 violent offenses, can you predict that from what we know
 24 about them during the adolescent period? I would say the
 25 answer is not that we know how to do at this point in time.

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1 that pattern of, of increase in criminal behavior and
 2 desistance from criminal behavior matches pretty much
 3 identically that developmental maturity mismatch curve that
 4 we see in the brain, that and the sensation seeking
 5 behaviors in normative adolescents that we see when we look
 6 at adolescent behavior. So, on a statistical basis alone we
 7 would certainly expect that most individuals will be
 8 adolescent limited in their criminal behavior. Some
 9 individuals are more life course persistent and, but even
 10 among serious offenders, still the majority of individuals
 11 will show this pattern of desistance going beyond the
 12 adolescent period.

13 Q. Okay. And, and, in addition to them, sorry if I missed it,
 14 but you did mention neuroplasticity and the concept that in
 15 adolescents that's even higher?

16 A. Right. So because the synaptogenesis, the additional neuro
 17 material, the, adolescence is generally regarded as a very
 18 prime time for intervention, adolescence into the elongated
 19 adolescence because the wiring is still being, is still
 20 happening, right? So there's a highly changeable brain,
 21 during that period of time it becomes a bit less changeable
 22 as time goes by. During that high changeable period the
 23 receptivity to positive change is, is pretty significant,
 24 but, well of any change, but particularly in talking of
 25 resilience, the, the, possibility, probability of positive

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1 Serious offenders, serious violent offenders, the
 2 literature suggests they may take a little bit longer to
 3 desist than individuals who have not had that criminal
 4 history, but most individuals, even in that group of
 5 serious violent offenders do desist from that pattern of
 6 behavior. Part of the reason it's very hard to, there are
 7 two reasons it's very hard to predict whether someone is
 8 irreparably corrupt. One, is that that base rate of
 9 individuals who will remain, you know, very high
 10 probability of serious violent offenses, is a very small
 11 base rate of individuals. When you're statistically trying
 12 to predict a very small base rate from measures that are
 13 themselves have a lot of, you know, noise, even if they're
 14 valid measures there's a lot of noise. It's very difficult
 15 to predict which individual out of a group of individuals
 16 is going to, is going to continue to show that pattern. So
 17 that's reason number one. Reason number two, it's well
 18 know, you know, not just in this field, but any field that
 19 involves any kind of psychological assessment, that our
 20 ability to predict is worse the further away from what
 21 we're, in time it is from what we're trying to predict. So
 22 there's a long distance of time between what we're
 23 collecting as information now and what we want to predict
 24 in some future time. The longer the time, the worse that
 25 prediction gets. It's just simply when things, if you're

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1 gonna predict tomorrow what somebody is gonna do based on
 2 what they did today, you have a much better shot of doing
 3 it. If it's a year, or five years, or a decade, or decades
 4 later, it's much more difficult. So irreparable corruption
 5 is relatively difficult and I would say there's no
 6 convincing evidence, at least to me, that you can do that
 7 in adolescents, that an individual is irreparably corrupt.
 8 If you want to find out whether or not they're likely to go
 9 forward is to do, is to do it closer to the time when
 10 they've reached full maturity based on their then history
 11 of behavior in adulthood and based on, you know, clinical
 12 and forensic evaluations at the time that you're
 13 considering that they might re-enter society.
 14 Q. So examining an individual when they're 58 years old might
 15 give you a better idea than at 17?
 16 A. A, a, a proper assessment at 58 is gonna be much more
 17 likely to be an accurate prediction of what they're gonna
 18 do at 59 or 60 than if you assess them at 16, or 17, or 18.
 19 MS. DAVID-MARTIN: Thank you. Can I have one
 20 moment, please?
 21 THE COURT: Go ahead.
 22 MS. DAVID-MARTIN: No further questions.
 23 THE COURT: All right. Cross?
 24 MR. CATALDO: Did you want to do another case or
 25 two before I start?

1 professionals in your field about the development of the
 2 adolescent brain.
 3 A. "Hmm-hmm".
 4 Q. But would it also be safe to say that even though you're
 5 probably on the side that indicates there should never be a
 6 situation where there is a sentence of life without parole,
 7 that the system still is inadequate at some level because
 8 there is no, I guess, intermediate test in, I guess, built
 9 in these cases where there would be some future testing
 10 done on an individual that is sentenced as a result of a
 11 crime committed as a child? Let me put it this way, Mr.
 12 Peters is a unique situation, okay? Even though you're
 13 testifying here, Mr. Peters has been in prison for 41
 14 years.
 15 A. "Hmm-hmm".
 16 Q. Normally your testimony may come in and probably has in a
 17 series of cases across the state or across the nation where
 18 you've got somebody who is currently 17 or 18 sitting
 19 there, and the decision is going to be made by a court as
 20 to whether or not it should be life without parole or it
 21 should be an extensive number of years. All that is a
 22 precursor to this question, that is, would you advocate in
 23 the future that the system consider some sort of mid-point
 24 set of evaluations to determine when that offender has
 25 matured to make a further determination on what the actual

1 THE COURT: How long do you think cross is gonna
 2 take?
 3 MR. CATALDO: Not very long.
 4 THE COURT: So we'll just, after this then I'll
 5 just, go ahead and we'll --
 6 MR. CATALDO: All right.
 7 THE COURT: I'm gonna handle the docket between
 8 this witness and the next witness.
 9 MR. CATALDO: Okay. Morning, Dr. Keating.
 10 THE WITNESS: Good Morning.
 11 MR. CATALDO: I must indicate in my opening
 12 statement to you, that I completely lack dopamine at this
 13 part and my advanced age prefrontal cortex would indicate
 14 it's very intimidating standing before you knowing I'm
 15 about to get my butt handed to me, so we can start with
 16 that.
 17 CROSS-EXAMINATION
 18 BY MR. CATALDO:
 19 Q. You talk a lot about the future and how we can, you talk, I
 20 think the term that you most recently use, irreparably
 21 corrupt?
 22 A. That is, yeah, that is, I believe the Miller term, right.
 23 Q. I guess would it be safe to say that you disagree with the
 24 Miller portion, the Miller portion, the Miller case has
 25 adopted your findings and the findings of those

1 sentence should be as opposed to doing it right at the time
 2 they're 18 years old?
 3 A. I think it would be more likely to be an accurate
 4 assessment at a later point in time, yes. I think that the,
 5 in terms of and now I'm out of my area of expertise but it
 6 seems to be if one's saying that there would be a life
 7 without parole sentence, but with a possibility that you
 8 could then come back and say we do a further assessment
 9 then it doesn't seem to be life without parole, but I may
 10 not understand the terminology. Having an extensive term of
 11 years essentially means that that, or you know, life at a
 12 minimum number of years before you can be considered for
 13 parole would seem to imply then that you're gonna be, as a
 14 matter of course, doing that kind of an evaluation closer
 15 to the point at which at some remove in time, whether it's
 16 20 years or 25, or 30 years, or whatever, but if it's
 17 without parole then I'm not sure how you can put into that
 18 life without parole with an asterisk that says you can
 19 maybe come back and take another look later. I mean, in a
 20 sense, that's what the, my understanding is that's what the
 21 resentencing hearings are about.
 22 Q. In your, I guess in your arena, your expertise, is it fair
 23 to sentence somebody whose 17 years old in that range of 25
 24 to 40 to the same number you would want to sentence
 25 somebody who would commit a heinous crime at the age of 30

1 or 35?

2 A. I would probably be more inclined to think about a, a,
3 shorter term of years for someone the more they are in the
4 category of the juvenile, yes. I mean, because at that
5 point, I mean part, you know of the three things that, that
6 were emphasized in the Miller hearing, the third one being
7 changeability, that's the part that's happening at the
8 point the sentencing is occurring and so having an
9 opportunity to take a look at that, not at a near point,
10 but at a nearer point then would be the case for a full
11 adult would seem to me to be, you know, sensible because
12 you'd want to assess has that potential for changeability
13 been realized in any meaningful way.

14 Q. Would it be safe to assume, yet again, that, you and I have
15 talked about this on a prior occasion, the law seems to
16 have created a bright line age of 18. Could I safely assume
17 that you disagree with that sort of parameter, I guess
18 based on your field and your studies?

19 A. I would say that there's no scientific basis for a bright
20 line age.

21 Q. And in fact then what we're asking you to do is sort of put
22 a round peg in a square hole and vice versa because this
23 hearing only happens if you're below the age of 18, but to
24 your studies there's no difference if somebody's 17 years
25 old and nine months versus maybe 18 years old and 1 month?

1 A. Correct.

2 Q. But here we are making you make that, I, I guess, asking
3 you to expound on your findings in, in, a situation now
4 where in your field this wouldn't be done?

5 A. It would be the case that we would say that, that, that
6 pattern of the developmental maturity mismatch, which is at
7 the heart of this issue, right, in terms of, of what we're
8 talking about that there is no, there is no way that we can
9 draw a particular line on that curve and say here's the
10 point at which it's a different individual. But that's of
11 course true, I mean, in general adolescent development, the
12 science of adolescent development, that's true for many
13 things. I mean we predicted, we choose different bright
14 lines and we chose those, we alter them under different
15 circumstances, right? So, voting age used to be 21, it was
16 changed to 18 for political pressure reasons. The age at
17 which you can do contracts and so forth has changed over
18 time. What kinds of child labor laws, so we have lots of
19 things where we've got bright legal lines, which are
20 determined not on the basis of developmental science, that
21 are determined on the basis hopefully informed by some
22 developmental science, but they're not driven primarily or
23 exclusively certainly by our understandings of
24 developmental, what developmental science has to say.

25 Q. Based on developmental science, since you're an expert and

1 I've agreed and I'm giving you free reign now to be the
2 U.S. Supreme Court, what age would have you set this at?

3 A. Well, what I would say is that I think that we should,
4 well, the, the, pardon my hesitation, there's a lot of
5 debate going on at this point in time, and one of my close
6 colleagues has written a lot in this area and, and was one
7 of the authors of the amicus brief for Miller, Professor
8 Steinberg (phonetic) at Temple is arguing the case that
9 because of what we are now seeing in terms of research on
10 the brain on elongated adolescents, we should think about
11 extending the age below which we should not do life without
12 parole. Well, there are two parts, do it at all, or
13 certainly do it if you're a juvenile, that we should extend
14 that to older. I have not had a chance to study his
15 arguments in, in great detail, my, my partial reasoning on
16 this would say that yeah, I think it probably should be a
17 little older than 18. It probably should be more like 20
18 maybe, or 21, but I haven't studied enough to have a firm
19 opinion on that.

20 Q. Interesting you had mentioned Dr. Steinberg, I read a
21 summary of his pathways to desistance study in 2014. In
22 that study he seems to indicate very specifically that
23 neither the severity nor the frequency of adolescent
24 offending does a good job of predicting who will desist. Do
25 you agree with that statement?

1 A. Yeah, in general, I, I would agree with that. There have
2 been sub, subsequent studies by some of his colleagues in
3 that, in that pathway to desisted study, which suggests
4 that if you separated into the most serious offenders,
5 compared to the less, least, less serious offenders, that
6 desistance still continues to be the case, but that those
7 more serious offenders may take slightly longer time. Here
8 we're talking on the order of, you know, maybe five years
9 longer to show the same statistical pattern. So it's a
10 curve that maybe is pushed out a little bit, right, the
11 desist curve is pushed out in age, but still the pattern
12 tends to be one of desistance even for the more serious
13 offenders.

14 Q. You were asked on direct about childhood trauma and its
15 impact on the development and you linked it to the limbic
16 system and the PFC, is it outside of your comfort zone to
17 talk about young adolescents, or adolescents that would
18 have been diagnosed with say bipolar, or schizoaffective
19 disorder, are those individuals in the same category as the
20 ones that have a rough childhood based on the research that
21 you've done?

22 A. So the, the relationship between early adversity and
23 development, and, and, and childhood mental health
24 diagnosis is still being, is still evolving. It is the case
25 that for most individuals who have some mental health

1 diagnosis in childhood, they would tend to show patterns
 2 that are similar in terms of stress dysregulation to
 3 individuals who do not have a mental health diagnosis but
 4 have had that early adversity that has led them to have
 5 this kind of dysregulated stress system and so forth. So it
 6 is a fellow traveler, if you will, along with mental
 7 health, whether those early mental health diagnoses will,
 8 they tend to have differential pathways depending on which
 9 kinds of things they are, and by here I'm including in
 10 mental health, signora (phonetic) developmental disorder,
 11 so as far as we know for example, autism spectrum disorder,
 12 ASD, is a lifelong condition. We don't know that that goes
 13 away. Other kinds of things like childhood depression do in
 14 some circumstances go away, so each of those mental health,
 15 if they're a diagnosed mental health disorder, you'd have
 16 to look at what each of those, the trajectory of each of
 17 those is to know what their pattern will be going into
 18 adulthood. It differs depending on which one it is, and I'm
 19 not an expert on which each of those pathways looks like.
 20 Q. And that would then even narrow it down further to be more
 21 individualized and generalised in terms of that
 22 development, in terms of where the brain is?
 23 A. Both, yes, both in terms of diagnosis, in terms of what the
 24 underlying brain physiology would look like, and in terms
 25 of how that particular mental health condition would

1 manifest itself in different circumstances.
 2 Q. Far from it for me to, to know a lot about your field,
 3 although I do some occasional light reading, but as
 4 scientist, so I guess it was Ph.D.'s, do you work in
 5 conjunction with, I guess, the more objective sciences, the
 6 medical doctors, when we talk about MRI's, and we talk
 7 about physically, can you see if you were to have an MRI
 8 whatever source, whatever source would be used to analyze
 9 the brain, can you see a difference in the PFC between 17
 10 physically and 22 and 30?
 11 A. On average, yes.
 12 Q. Okay. And then, then plays into part of what you're talking
 13 about here as well as, as, as the studies that are, are
 14 reviewed?
 15 A. Right, that's correct.
 16 Q. To have you, since you're an expert in the field and an
 17 advocate, okay, I am fairly certain that you are, and you
 18 touched on it in direct, aware of whether or not, I mean,
 19 the, and I hate Tom Cruise, but the movie is Minority
 20 Report, okay, where they're able to figure it out in
 21 advance and get to the scene quickly. And I know in, in the
 22 arguments that go on in your field, are there any studies
 23 currently going on that are attempting to make, determine
 24 whether or not it can be predicted?
 25 A. You mean to use something like MRI or neuro --

1 Q. No, just in, just in any scientific studies in general, any
 2 research studies in general. If you were in my position,
 3 I'm asking you who would you recommend I look at to, as a
 4 study, to contrast what your testimony is? Are there
 5 studies out there, is there, I mean I'm aware of Miller
 6 Alabama, I'm aware that, that the vast majority of the, of
 7 the testimony you've given, the research is, is, is
 8 approved, but is there a group out there trying to say
 9 there isn't climate change? You know, I mean.
 10 A. There may be but I have to say I'd not be aware of them. I
 11 mean there are certainly folks who are, let's say with
 12 respect to the developmental maturity mismatch or dual
 13 systems, which is another way of saying the same kind of
 14 thing, who are saying that we need to have a more nuance to
 15 refine understanding of that, right? And we have to
 16 understand it in, how that operates in various contexts and
 17 so forth, but in terms of, even though we always want a
 18 whole lot more brains to look at, and one of my research
 19 projects is trying to collect that on high versus average
 20 risk brains of teens, we'd always have lots --
 21 Q. (Inaudible) physically?
 22 A. Beg your pardon?
 23 Q. Physically?
 24 A. Physically, yeah, right. So, so part of my research is to --
 25 -

1 Q. In a jar like --
 2 A. I'm sorry.
 3 Q. In a jar like --
 4 A. No, no, no, I'm sorry.
 5 Q. -- the Frankenstein movie?
 6 A. (Inaudible).
 7 Q. (Inaudible). Okay?
 8 A. It's still brains functioning in their head.
 9 Q. Okay.
 10 A. That we're looking at. And so what we're looking at there
 11 is using tools like fMRI, which is to look at how the brain
 12 is behaving when it's doing particular kind of tasks and we
 13 give people tasks that involve rewards and they're intended
 14 to provoke this reward system, where the amygdala, and see
 15 how that differs between individuals who have a self-
 16 reported pattern of very high risk behavior versus average
 17 risk behavior. We also use EEG, the electrode kind of thing
 18 to try to see, to localize and see what are the patterns
 19 of, where particularly it can localize where choices are
 20 being made, where cognitive choices are being made, in a
 21 standard task, not out in the real world, obviously. And,
 22 and another thing within that, within the MRI mechanism,
 23 methodology, we can look at something called DTI, which is
 24 diffusion tensor imaging, and that allows us to see where
 25 the, how the brain itself is actually getting wired, right?

1 And so we're looking at what are called, what's called
2 white matter in the brain and it shows up as white matter
3 because those are the pathways that are being
4 preferentially turned into circuits that will go quickly
5 and accurately from one thing to another. One of the, you
6 asked about 17 versus 19 versus 23 let's say, one of the
7 things that we would typically see there is that there is a
8 greater amount of white matter, particularly between the
9 PFC and the rest of the brain, which suggests that the PFC
10 is taking over that governor role. We would expect to see
11 more of that white matter and less gray matter with time,
12 which is stuff that has not been tied into those important
13 circuits. So, so that pattern I don't think that there are
14 any responsible scientists out there who are saying that's
15 not true. I mean, the evidence is just from so many
16 different labs and so many different places and so many
17 different variations on the techniques for gathering data,
18 I don't think that there are, you know, sort of white
19 matter denialists out there to my knowledge. Or if they
20 are, you know, maybe they're not getting published, but I
21 don't think they're out there. And so, so that would, that
22 would certainly be the case that we would not see those
23 kinds of things. In terms of how precisely that allows you
24 to predict other things, I think there is, you know,
25 there's, that's what we're working on, that's what we're

1 trying to understand more about how those are particularly
2 tied to it. So when we talk about developmental maturity
3 mismatch, yeah, that's pretty clear. When we talk about
4 behaviorally, the elevation of sensation seeking following
5 it, that's pretty clear. We talk about desistance in the
6 age crime curve, that's very clear. So those things all
7 hand together quite tightly. How much you can press that
8 knowledge to know about a given individual let's say, based
9 on that, as opposed to more traditional forensic or
10 clinical evaluations, is, is a matter of current research I
11 guess is a way I put it.
12 Q. We had talked a little bit, we talked a little bit earlier
13 about over time how the adolescents and the prefrontal
14 cortex and limbic system changes and matures and, and you
15 talked about the dopamine and everything. How, I guess
16 important is social structure to that development? The
17 point being, Mr. Peters is, again a different situation,
18 some of the other ones that we're going to see, but you
19 have individuals that you're testing in this area that are
20 still living at home, that are still free, that are college
21 students. But you also then have a system that we're
22 involved in day to day and that's the prison system where
23 there is a lack of opportunities, a lack of money, a very
24 sophisticated structure that is more, you know, engrained
25 with regimen and control than it is feeding that creative

1 portion, so is there going to be a difference in the
2 development of that ability to change between somebody
3 who's free versus somebody who is locked up?
4 A. With respect to the kind of things you are talking about
5 here I don't know that we have any neuro science evidence
6 that speaks to that. That is that the neuro science of the
7 effects of incarceration, to my extent, is very limited,
8 and you know, extremely limited and not able to draw
9 inferences from that. If we look at the more behavioral
10 patterns, I think that, as opposed to the neuro science
11 evidence, I think it would depend on the context, right? It
12 depends on, and I don't know the systems that well, where
13 Mr. Peters, or others that come before this court, are in,
14 and I am aware of the fact that there are differences among
15 jurisdictions and how much, how many resources are
16 available that can be considered rehabilitative, and, and,
17 the, and the effectiveness of those potential
18 rehabilitative opportunities. So in a general case, I don't
19 know that I would be able to, I certainly don't know the
20 literature well enough to answer that question. I know that
21 there are variations and that those variations are highly
22 likely to be related to behavior. How that would be related
23 to any evidence that we would consider to be kind of neuro
24 science or neuro imaging, I don't think that there is an
25 extent literature on that, or at least I'm not familiar

1 with it if there is.
2 MR. CATALDO: Thank you, Dr. Keating. I have
3 no further questions.
4 THE COURT: Anything else?
5 MS. DAVID-MARTIN: No.
6 THE COURT: Okay. Thank you, sir. You're
7 excused. And I'm gonna take a, I'm gonna take some cases
8 and then we'll do the second witness after that. Okay?
9 MS. DAVID-MARTIN: Okay.
10 (OFF the record at 10:50 a.m.)
11 (Back on the record at 11:05 a.m.)
12 THE COURT: All right. Are we ready to
13 proceed?
14 MR. CATALDO: Yes, Your Honor.
15 THE COURT: All right. Your next witness?
16 We're back on People versus Peters.
17 MS. DAVID-MARTIN: We need Mr. Peters.
18 THE COURT: Oh we've got to get Mr. Peters.
19 MS. DAVID-MARTIN: Your Honor, is, is he
20 able to have his hands unshackled?
21 THE COURT: We do it if they, they're in
22 trial, but let me talk to the -- Deputy Wallace, I know
23 trials are different, but with Walker hearings or
24 evidentiary hearings, are they, their hands are shackled?
25 Is there a policy with the --

APPENDIX F

JEFFREY WENDT, PH.D., P.C.
 FORENSIC PSYCHOLOGIST
 P.O. BOX 26282
 LANSING, MI 48909
 TELEPHONE (517) 614-0003
 JEFFREYWENDTPHD@HOTMAIL.COM

January 31, 2019

Attorney James F. Piazza
 120 North Michigan Avenue
 Saginaw, MI 48602

RE: MUSSELMAN, Richard G.
 DOB: September 9, 1964 (54)
 Case #: 80-0118-FY-12
 Subject: Psychological Evaluation

Dear Mr. Piazza:

This is my first examination of this 54-year-old man who was born on September 9, 1964. Richard Musselman was convicted in a jury trial of two counts of First Degree Murder, two counts of Assault with Intent to Commit Murder, and one count of Felony Firearms under Case Number 80-0118-FY-12 in the Circuit Court of Saginaw County. He was 15 years old at the time of the instant offenses. He was sentenced to life imprisonment without parole on 08/26/80 and has been imprisoned for over 38 years. Resentencing is required following *Montgomery*, per MCL 769.25a. The prosecutor initiated proceedings with a motion seeking life without the possibility of parole. He was referred for a psychological evaluation by appellate counsel. An order authorizing this evaluation was issued by the Honorable Darnell Jackson on 06/19/18.

Procedures In order to complete this evaluation, the following procedures were conducted: review of the Michigan Department of State Police and Saginaw Police Department reports describing the basis for the charges against Mr. Musselman, review of transcripts of Mr. Musselman's 01/04/80 and 01/05/80 detective interviews, review of case related motions, petitions, and orders, review of the transcripts of the Waiver Hearing, review of transcripts of the trial of Mr. Musselman and codefendant Duby, review of a Presentence Investigation Report dated 07/29/80, review of extensive records from the Michigan Department of Corrections, review of a psychological evaluation issued on 01/16/80 by Saginaw Psychological Services, administration of personality testing (Personality Assessment Inventory), administration of intellectual testing (Wechsler Adult

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Intelligence Scale-Fourth Edition), administration of the Hare Psychopathy Checklist-Revised (PCL-R) 2nd Edition, consultation with Mr. Musselman's attorney, and clinical interview with Mr. Musselman. Mr. Musselman was evaluated at the Muskegon Correctional Facility on 09/18/18 in a session lasting five hours.

Notification of Rights Prior to the interview Mr. Musselman was informed of the purpose of the evaluation, of the fact that a report would be issued, and that the examiner might be subpoenaed to testify about the report or anything else related to the examination. Mr. Musselman conveyed an understanding of the limits on confidentiality which pertain to this examination and participated in the interview.

Clinical Presentation Mr. Musselman was a prisoner at the Muskegon Correctional Facility at the time of the evaluation. Regarding his current placement, he said, "This is the honor prison, it's a lot better. More classes." He said that he spends large portions of each day training a service dog. He explained, "We train dogs for PAWS, service dogs, 24-7 the dog lives with me in my room. Me and my bunk. Only thing I hate it when they take it away because I have a bond with them." He was dressed in standard prison-issued clothing that appeared to be clean and fit properly. Hygiene and grooming were adequate. His hair was long and he wore a moustache. He said that he had several tattoos, and when asked to describe his tattoos, he said, "Got them in here, years ago. A lot of animals, a frog, buzzard, preying mantis, bird, dragonfly. I guess I didn't want to be like everyone else and get skulls. I wish I never got them. I got these probably in the early 90s, 91 or 92." He did not evidence any other physical anomalies. His speed of movement was normal. He said that he had never been prescribed medication for any psychiatric condition. He said that he was currently prescribed and taking medications to treat a thyroid condition, ulcerative colitis, and high cholesterol. Mr. Musselman was fully cooperative with the evaluation procedure. He made good eye contact during the clinical interview. He was aware of the specific date. His response latency was normal. His thoughts were goal-directed and followed a logical progression. He denied past or current symptoms of psychosis, and there was no indication in his behavior or flow of speech that he suffered from such symptoms. That is, his speech was not pressured, tangential, or circumstantial. Mr. Musselman's affective expression was somewhat restricted, but generally appropriate to the content of the interview. He did not report a history of sleep disturbance. He did not present with current symptoms of depression, but said that he had experienced fleeting feelings of hopelessness in the past in response to his life circumstances. When asked if he had ever been significantly depressed about being in prison with a life sentence, he said, "It would seem like I would when I got locked up, but I never knew what I was missing." He did not report or evidence symptoms of mania or anxiety. He said that he sometimes has intrusive memories of being physically and sexually assaulted in prison, but he said, "So I look to God." It did not appear that his victimization resulted in symptoms of PTSD. He said that he had never made a suicide attempt and he denied current suicidal ideation.

JEFFREY WENDT, PH.D. * PHONE (517) 614-0003 * JEFFREYWENDTPHD@HOTMAIL.COM

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An informal estimate of his intelligence suggested that he was functioning in the low-average to borderline range. This estimate was based on his general fund of information, comprehension, attention and concentration, working memory, vocabulary, and his reported educational history. The Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) was administered to accurately assess his intellectual level. Mr. Musselman obtained the following IQ/Index Scores:

	<u>IQ/Index Score</u>	<u>Percentile Rank</u>
Verbal Comprehension	80	9
Perceptual Reasoning	79	8
Working Memory	80	9
Processing Speed	86	18
Full Scale IQ	77	6

On the basis of this test of intelligence, the Mr. Musselman is currently functioning in the borderline range, at a level lower than 94% of same-aged peers.

Regarding his developmental history, the following is offered. When asked about his father, he said, "Never met him. My grandpa and grandma raised me. My mom was 17 when she had me, so they raised me. My grandpa was like a father figure." He said, "I lived with my grandparents when I was born and my mom lived in Saginaw. I had three brothers and two sisters." He said that his aunt and uncle also lived in his grandparents' home. When asked how often he saw his mother as a boy, he said, "She came over all the time to get her sister and leave to go out to the bars. I'd see her on the regular occasion." When asked how his grandmother had treated him as a boy, he said, "She babied me, gave me everything I wanted. I was like a son to her. She already had 12 or 13 kids of her own. I heard my mom was going to give me up for adoption, so they raised me." When asked if he had a family history of mental illness, he said, "Not that I recall." He said that he had been raised in Bridgeport, and said, "It was real country back then." He said, "And I had a lot of uncles who lived around there. I got along good with all of them." He said that he often used to hunt and fish as a boy. He said, "Then my grandpa died when I was young, like 76, so she filed to get me a big brother. He used to take me hunting. I got my first deer at 14. I liked him a lot. His name was Ron Waite." When asked if he had many friends as a boy, he said, "It was kind of country, but my aunt Helen had a bunch of boys, my cousins. That's where I used to hang around with. I grew up by myself, but see my cousins at school or in the neighborhood." When asked how his grandparents had disciplined him as a boy, he said, "None. She wanted me to go to school, which I didn't like, but I went and I passed. But they let me do whatever I wanted, hang out with older people, let me stay out late at night when I had school the next morning." He said that he had not been physically or sexually abused as a boy. When

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asked if he had ever witnessed violence in his neighborhood, he said, "Nope. Only thing serious I ever seen was probably a car accident." He said that he had never been placed in foster care or in a juvenile detention center as a youth prior to the current case. However, he stated, "I think when I got caught with that stereo, if they put me in a juvenile home I don't think I'd be caught up in this stuff. Didn't know the consequences of doing stuff." When asked if he had participated in special education in school, he said, "Yeah, a special school when I was 15. I think for autistic kids. A small school like a trailer, only six or seven of us kids went there." He said that he had never been suspended for fighting in school, but was suspended for skipping classes. When asked how his teachers might have described him in school, he said, "Shy, a loner, stayed by myself. I didn't like being involved with a lot of people. I wasn't mean or nothing." When asked if he earned a GED, he said, "Yes. In 1987. Once I got locked up, come to my senses." He said that he had briefly held a janitorial job at a school when he was a teenager, and indicated that he is currently a certified janitor in the prison. He said that he had never been eligible for disability benefits as a youth. He said that he had never run away from home as a youth. He said that he had not engaged in fire setting, bullying, inappropriate sexual behavior, or cruelty to animals as a youth. When asked if he had pets as a boy, he said, "Cats and dogs. One time my cat got hit by a car. I cried like a baby, so my grandma got me another one."

Mr. Musselman said that he often socialized and spent time with older people as a teen, particularly with his codefendants in the instant offenses. He said, "When I was 14, they had cars. They could drive me around and buy alcohol. I liked it because they could drive us around and pick up girls. They had weed. I'd smoke weed with them and do other drugs. I'd try to keep up with them because I was a kid. I thought they'd look at me... I don't know if it was respect, but I wanted to fit in with them." When asked who he was referring to, he said, "Varney was my cousin, my aunt's son. I seen him more than I seen Duby. Varney introduced me to weed and cocaine." When asked how much older these men had been than him, he said, "When we caught this case he was 20, so five years older. And Duby was 11 years older than me." When asked why these adult men were spending time with a 14 to 15 year old boy, he said, "Back then I never thought about it. Back then they let me come because I was his cousin. I had a lot of cousins. Then other guys would come into the crowd, they'd say who is this kid? They'd say that's my cousin, he's alright." When asked if it had felt good to be included, he said, "It sure did, because they'd always have girls." He said that he had witnessed regular drug and alcohol abuse by family, friends, and neighbors since early childhood, saying that it was a common thing in his community. He said that he had started smoking marijuana at age 13. He said that he started drinking alcohol when he was 14 years old, saying, "We used to drink regularly, five or six times a week. Mostly beer, once in a while I think it was whiskey. I didn't really like whiskey because I'd black out and not remember what I did that night. They used to

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tell me what I did the next day." He said that he had also used LSD, saying, "As much as I could get it, because I enjoyed it. It lasted all day long. Everybody had that back then. Even kids at school were selling it." He said that he had sold marijuana as a teen. He said, "The neighbors turned me on to weed. I'd buy a half ounce from them. They said you can sell it and get your weed for free. Selling joints and nickel bags. It put money in my pocket so I could go buy albums. I guess I thought it was a normal thing to do. That was maybe a year before I came in here." When asked about cocaine use, he said, "The neighbors with marijuana had cocaine, too. Want to try some of this? I said yeah. I never really used it a lot. Just if someone had some, I'd do some." He said that he had sometimes abused inhalants, saying, "Tried gas before with my cousin, just once or twice." He denied use of heroin, methamphetamine, or prescription pain medication. He said that prior to the instant offenses he used alcohol and marijuana "on a regular basis, almost every day." When asked if his teenage drug and alcohol use had helped him overcome being a shy boy, he said, "Yes, it would bring me out and I would want to talk."

When asked about his first contact with police, he said, "I bought a stereo in 78 from a kid in my neighborhood. He charged me \$20. And about a week later a van came and they said they wanted their stereo back. They said they contacted the police. I gave it back to them." He said that he had not known that the stereo was stolen. He said that he went to court for the stereo, but said, "The Judge dismissed it. He said you don't know that cost \$200 to \$300? I didn't know how much it cost. He dismissed it." He said that he had also been in trouble for poaching deer. He said, "Not with the police, it was the DNR. I was with the same guy, Duby, we were spotlighting deer. I shot it and he said give me the deer and the gun. I went to a hearing and they took my hunting license for a year." When asked how often he went hunting as a boy, he said, "All the time. I loved hunting." When asked if he had dated girls prior to his arrest for the instant charges, he said, "I never really did. Well, I did have one girlfriend until I caught this case. We'd have Duby go pick her up, he had the car. We'd go out partying. She was 14 and I was 15." He said that he never had any form of sexual contact with this girlfriend. When asked if he had ever had a one night stand, he said, "Nope, never. I was actually kind of shy as a kid. Grew up in the country, not around no girls. So when I was around them I was scared." He said that he had sex with a 16 year old girl twice when he was 15, and that represented his only sexual experience with a partner before prison.

He said that he had arrived in prison when he was still 15 years old. When asked to recount his violent experiences, he said, "All the way up until recent times. They sent me to the Michigan Reformatory. They sent kids under 21 to Riverside, and an officer said you want to go to protection, don't go to population. So I went to protection, mostly younger guys. But there were still predators in protection. I got raped in there. They caught the guy and wrote us tickets and put me in segregation for six months. Then I

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went to Huron Valley in 1982, stayed there for a year. Went to protection there, too." He said that he had been injured in prison, and when asked for an example, he said, "In the 80s in the bathroom a guy punched me, knocked me out. Broke my jaw, wired shut. Then in Kinross in 2011 there was an article about this in the paper. Someone hit me in the head a couple times with a lock. Another concussion." When asked if he had ever been in a gang, he said, "No, never." When asked if he had ever had problems with gangs in prison, he said, "Yeah. Had them trying to extort me out of stuff. If you don't give us this, we're going to pay these kids to hurt you with a lock. Stuff like that." When asked if he had ever started a fight in prison, he said, "No, I try to stay away from violence." He said that he had never actually been in a fight in prison, but said that he had been subjected to violence. He said, "I've been assaulted at least five times. Three or four of them they got caught." He said that he had only been sexually assaulted one time, and said, "Then when people press me about it, I'd say I'll go to the officers. They'd call me a rat. I'd say I'll be all that, just leave me alone." When asked if he had engaged in substance abuse in prison, he said, "I did do drugs at the beginning. I thought marijuana isn't no hard drugs, it won't hurt nobody. But it was hurting me, so I didn't mess with none of that stuff no more." He said that his substance misconducts were all during the early portion of his incarceration. He said, "I don't use drugs anymore at all. Last ticket for marijuana was in 96 (MDOC records indicate 1995). I changed the way I do stuff. It was being around people in here, like in the world, to fit in with people in here using drugs. So now I'm with better people in here, people who go to church. I don't like going out in the dayroom because people are talking about drugs and spud juice. I don't want that stuff to rub off on me." He said that he had not used drugs in over 20 years, saying, "I quit using that stuff, period. I didn't need it no more. Just get in trouble for it."

When asked about misconduct tickets in prison, he said, "A lot of substance abuse, like six or seven. And Disobeying a Direct Order tickets, an officer tells me to do something and I didn't do it. Being out of place. And some sexual misconducts, with my wife in the visiting room two or three times. And in the unit with another inmate." When asked about his wife, he said, "I was here in the 80s, had a friend here going home. He said he'd send a girl to see me, Donna. She came to see me and it went from there. We got married in 1990. I'm still married to her, but I ain't seen her in decades. She stayed with me until 97 or 98, but it was like I was holding her down. I matured. I told her to go her own way. I wanted to let her live her life." When asked about the sexual misconducts with his wife, he said, "Sitting in the visiting room and she played with my... and the officers caught us. In the early 90s. And I got caught with my hand in her dress and we snuck in the bathroom one time." When asked about the sexual misconduct with a fellow inmate, he said, "A guy, we was in there with our clothes off. Just one (ticket), probably in the late 80s." When asked why he decided to do this, he said, "Never been able to be with a girl most of my life, and something made me turn that way. But I no longer do stuff like that. Since I

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go to church, I know it's wrong. I stopped in the early 90s around when I married my wife." When asked about his most recent misconduct ticket, he said, "2012 for out of place. In Coldwater there's a pole barn with a yellow line by the weights. I stepped over the line. I believe it was a minor ticket." When asked about his last ticket before 2012, he said, "It was in Kinross. So in 2010 I was caught with some garlic from the garden. Officer wrote me a theft ticket. I was eating it." When asked about his last ticket before eating garlic in 2010, he said, "In Newberry in 09, an inmate, I seen him before, he was a predator. I seen him and I didn't want to be there. He threatened me before. So they gave me a direct order to go in the yard, and I wouldn't go. I got put in segregation. They rode me out three days later. I didn't want to go out there and get hurt. I've been hurt so many times, tired of getting hurt." He said, "In 2012 I got so hurt in Coldwater, they had to fly me out in a helicopter. Someone in the unit, guys were stealing stuff in the pole barns. Someone said I stole a guy's TV, but I didn't. I don't know what I got hit with. They wanted me to testify against him, but I didn't see him do it. Head injury. I didn't bleed or nothing. It was all internal, but they couldn't bring me to." When asked about a note that he assisted staff at MCF during a fight in 1998, resulting in a letter of commendation, he said, "I was here at this facility. They considered me a passive person, so a female guard, she looked out for me. Inmates were choking each other out, she was trying to get them apart but she couldn't. I couldn't see her getting hurt, so I went out and helped her."

Personality Assessment Inventory As part of the evaluation Mr. Musselman was asked to complete the Personality Assessment Inventory (PAI). This test is a self report questionnaire that assesses personality and psychopathology. When scored, the PAI yields two types of information: information about how an individual's attitude toward taking the test affected test results (validity), and information about the individual's general psychological functioning (clinical profile). Validity scales indicated that he responded in a consistent, nonrandom manner to the test items. Validity scales did not identify efforts to exaggerate or minimize psychiatric disturbance and his clinical profile is viewed as an accurate representation of his true psychological profile. Mr. Musselman's clinical profile did not identify any significant problems in the areas of mental illness, personality disorders, substance abuse, or aggression. Interpersonal scales revealed a relatively low score on the dominance scale, indicating that he approaches relationships in a passive manner and may lack confidence in social situations. Notably, his clinical profile did not identify the presence of antisocial personality traits, specifically, testing did not identify the presence of egocentricity (lack of empathy and an exploitative approach to relationships) or stimulus seeking (low tolerance for boredom and a tendency toward recklessness). In fact, his scores on the scales measuring egocentricity and stimulus seeking were two of the lowest scores in his generally low clinical profile. This examiner considered whether Mr. Musselman should be diagnosed with Antisocial Personality Disorder. Although he was truant from school, sold and used drugs, and poached deer, he did not meet the

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criteria for Conduct Disorder as a youth. In general, psychological testing identified Mr. Musselman as a relatively well adjusted man without significant mental health problems.

Hare Psychopathy Checklist-Revised (PCL-R) 2nd Edition The Hare Psychopathy Checklist-Revised (PCL-R) 2nd Edition was applied to Mr. Musselman. Psychopathy is a robust risk factor for criminality and violence. It is noted that two of the items (Parasitic Lifestyle and Many Short-Term Marital Relationships) were omitted because Mr. Musselman has been imprisoned his entire adult life, therefore his raw score of 5 was adjusted to 5.6 as indicated by the PCL-R2 manual. Mr. Musselman earned a raw score of 5 out of 36 on the PCL-R2. He earned one point for the item Shallow Affect, because although his emotional expression was generally restricted, he sometimes became tearful when discussing distressing topics. He earned two points each for the items Early Behavioral Problems and Juvenile Delinquency based upon his reported behavior as an adolescent, including substance use, selling drugs, poaching deer, and failure to follow school rules. A score of 5.6 is indicative of an absence of Psychopathy and this is consistent with the PAI results indicating a lack of significant Antisocial Personality Traits.

Record Review The PSI report described interviews with employees of the Big Brother Program that had provided services to Mr. Musselman. The report described treatment records from before the shooting, as it was noted, "It was noted in the opinion of the Big Brother Case Workers, much of the Respondent's problems stemmed from the home situation. The grandmother reportedly had little understanding of the respondent and little control over him. He was often left to his own devices. The grandmother reportedly remarked to the Big Brothers Case Worker that the respondent would raise himself. It was noted that a case worker felt the respondent would be better off in a foster home due to the lack of control in his grandmother's home. The respondent was described as being very quiet and observant. He was said to be distant from people and not to show a lot of feelings. He reportedly felt that school was boring and unnecessary. He had no complaints concerning his grandmother as she placed few restrictions on him. At the age of 12, he was reportedly already associating with an 18 year old male on a regular basis." The Big Brothers case worker, Richard Mieskowski, was interviewed and the report noted that he described Mr. Musselman as "a very different person." It was noted, "He stated that he was shy, withdrawn, and non-trusting. He added that the respondent showed very little affect or emotion. Mr. Mieskowski stated that he saw an emotional reaction from the respondent on only one occasion. He indicated that while en route to a hearing at the juvenile center on a deer poaching incident, the respondent was in tears. Mr. Mieskowski added that at that time, he could not tell if the tears were a result of anger, fear, or sadness. Mr. Mieskowski added that it was usually very difficult to tell where the respondent was coming from. He stated that the respondent's former big brother had told him that he felt that he did not know the respondent after a year of being with him. The

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former big brother reportedly felt that their activities together were their only link. Mr. Mieskowski stated that in his experience, the respondent's grandmother seemed very indifferent and uninvolved with the respondent. He added that he felt she exercised no control over the respondent. Mr. Mieskowski stated that he would recommend that the respondent receive counseling in prison so that he can develop better interaction skills and emotional releases which he now lacks."

The PSI also included information about Mr. Musselman's education, as it noted, "In grades k-5 the respondent's performance was rated slow. He received below average grades in grades 6 and 7. He received below average grades in the 9th grade. In September 1977 he began attending classes at the Fort School in Bridgeport because of attendance problems and a lack of motivation. It appears that the respondent's academic performance improved somewhat at the Fort School, but he continued to have attendance problems and remained withdrawn socially. He began attending Opportunities School in Saginaw in October 1979. His attendance improved but he refused to do almost all assignments. His usual excuse for not working was don't feel like working. He remained withdrawn socially. He reportedly was infrequently verbal or aggressive at the Opportunities School. He reportedly did tease weaker students, make anonymous phone calls, and hide other students' belongings. It was noted that the respondent seemed to have few emotional releases and had difficulty verbalizing his concerns." He was enrolled at Opportunities School at the time of the instant offenses.

The PSI described a psychological evaluation conducted prior to the instant offenses, as the report noted, "The respondent underwent a psychological evaluation in February 1979. The results of IQ testing on the Wechsler Intelligence Scale for Children indicated that respondent's verbal functioning was at the very upper end of the borderline range, his manipulative functioning was at the middle of the low normal range, and his overall functioning was at the middle of the low normal range. The results of a wide range achievement test placed his reading skills at the 3.9 grade level, his spelling skills at the 3.7 grade level, and his math skills at the 2.3 grade level. The results of Bender Gestalt Testing revealed impulsivity, inadequate emotional control, acting out tendencies, low self esteem, and poor ability to foresee consequences of actions. It was also noted, 'a very turbulent interior appears to be present under that placid exterior.' The Cooper Smith Self Esteem Inventory revealed that the respondent sees himself as a 'relatively average typical student.' It was noted that this was far different from his teacher's evaluations. He was said to maintain his favorable self-image by interacting with peers holding similar views (peers were also at odds with society's views and values). He showed little interest in school and reportedly saw himself as a victim of rather than a controller of situations. It was recommended that the respondent be placed in an emotionally impaired program at Handley School and receive counseling at the Child Guidance Clinic."

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The PSI report described a school social work report, noting, "A school social work summary report was also prepared in February 1979. The respondent's withdrawal from social and academic activities in school were noted, along with his attendance problems. It was also reported that he came to school on a number of occasions under the influence of marijuana. The respondent was said to show very little enthusiasm for anything. He had expressed no career or job preferences. He was said to have few friends of his own age and to associate with older persons and others in trouble. He was said to perceive differently from others and to exhibit complete lack of concern for other's rights, safety, feelings, or property. This lack of concern was said to be coupled with occasional remarks threatening destructive acts to people or property. In the social worker's opinion, the respondent's passivity is masking severe emotional conflicts. She went on to state that hints of the anger, frustration, and hostility only occasionally are allowed to slip out."

The PSI report described a psychological evaluation conducted after the instant offenses but before Mr. Musselman's waiver hearing. The report noted that the psychologist "concluded that the respondent was in contact with reality, exhibited no thought or cognitive disorder, and did know right from wrong. She further concluded that the respondent was asocial, and a narcissistic personality who possesses strong hostile and a high acting out potential and a grandiose, power-seeking structure that would and could predispose him to violent, pain-inflicting, anti-social behaviors. She added that although the respondent's personality structure contains dynamics that might predispose him to violent and anti-social reactions, there is no indication that the respondent would be forced or impelled to act in any specific way or to act at all. He reportedly exhibited the ability to inhibit impulses and does exhibit the ability to exhibit freedom of choice in his action." The report concluded by stating that the psychologist offered the opinion that Mr. Musselman probably "acted fully aware of what he was doing and chose to act this way because of the gratification it would afford him, and also because he felt that he could control the situation sufficiently to get away with it."

Records from the Michigan Department of Corrections (over 2,000 pages) revealed the following. In a report issued by a psychologist on 09/12/80 it was noted, "Mr. Musselman presented himself as an extremely guarded, withdrawn individual who appeared to have some difficulty comprehending questions and answering them." Further, "This individual appears to be the product of a rather permissive and inadequate home environment where his grandparents had difficulty understanding and controlling him." Further, "This individual has apparently experienced serious adjustment problems within the school setting and has historically been very withdrawn, distrustful, and has had a high rate of truancy. He exhibited no psychotic symptoms, was well oriented, and appears to be functioning in the dull normal range of intelligence." The report noted, "Psychological

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testing suggest the profile of an extremely withdrawn and emotionally constricted individual who has generally remained distant from people avoiding close personal relationships. Testing suggests emotional shallowness with existing features of dependency which has exhibited themselves in what he describes as being a rather serious dependency on both alcohol and various conscious altering drugs. Testing suggests underlying hostility and interpersonal conflict which he appears to mask to a certain degree with his projected apathy, passivity, and inhibited personality structure. Testing further suggests an individual who is rather detached emotionally relying on defenses of denial and projection to avoid dealing with interconflicts and feelings. Regarding the instant offense it appears that he was under the influence of an excessive amount of alcohol and various other drugs and his memories of the instant offense seemed to be quite blurred. He also appears to be for the most part denying the reality of the instant offense." He subsequently participated in a Psychological Evaluation on 11/13/09. It was noted, "The offender verbalized his remorse for having killed 2 people. He knows the names of his victims and expressed a desire to apologize to the dead men's families. The offender appeared to be sincere and genuine in his remorse and feeling towards the victims' families." There was no records of mental health treatment during his imprisonment. The evaluation noted, "No pathological findings. Offender appears to be relatively of normal intelligence and mentally stable. No major mood or thought disorder was observed." Finally, in the section "Weaknesses Observed", it was noted, "The only weakness that this clinician can foresee is that the offender has been incarcerated for a long period of time and will require a great deal of support and assistance in integrating into the community." He was not given any psychiatric diagnosis.

Analysis of Factors Identified in Miller v Alabama (2012). It is my understanding that in determining whether juvenile offenders are to be considered to exhibit "irreparable corruption", the U.S. Supreme Court (Miller v. Alabama, 2012) identified several factors relevant for consideration.

Developmental Influences on Juvenile Decision Making and Understanding of the Criminal Justice System and Decision-Making Abilities It is well accepted that adolescents tend to evidence greater propensity for sensation-seeking, risk-taking, and poor judgment during decision making because of their developmental immaturity. Adolescents are more likely than adults to engage in risky behavior and are less able to anticipate the consequences of their conduct. In addition to the general adolescent characteristics, it is important to address the chronological age, character, and record of the individual offender. The factor involving a juvenile defendant's understanding of the criminal justice system and decision making abilities addresses whether the juvenile might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth. This does not specifically refer to the issue of competency to stand

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trial, but addresses the hallmark features of youth (such as impulsivity, risk versus reward evaluations, and capacity to change) influence how a youthful defendant interacts with the adult criminal justice system. Adolescents tend to have lower capacity in general for making decisions in the context of their arrest (e.g., interrogations) and adjudications (e.g., capacities to assist legal counsel) than adult defendants. As a result of his history of neglect, his poor adjustment in school, his heavy substance abuse, and his lack of supervision as a youth, Mr. Musselman failed to develop appropriate interpersonal skills and capacity for social judgment. The Waiver hearing transcript provided valuable information about Mr. Musselman's abilities to make decisions independently. In the Waiver hearing, Mr. Musselman's Big Brother Ron Waite described Mr. Musselman as "shy", "withdrawn", and "very quiet." He said that when he asked Richard to go into a store to buy a couple bottles of pop, he was "very shy. Didn't know what to do. Kind of afraid, you know, intimidated, he didn't know how to react to the situation. Like you know, he was on the spot, and he didn't know how to react." Mr. Waite described Mr. Musselman, testifying, "I think he was very intimidated by people, he was afraid of people... No self-initiative. I'd say very low self esteem, no self-confidence." When asked if Mr. Musselman would often take initiative on deciding what to do, Mr. Waite testified, "But as far as him coming up with the idea, or initiating anything, it was very seldom, if ever." In the Waiver hearing a school social worker testified that Mr. Musselman had been an "emotionally impaired" student who, at times, "would completely withdraw himself from the other students even, for instance, at lunch time... just wouldn't talk to the other kids. Wouldn't have anything to do with anybody." She concluded, "We felt that Richard was a severely disturbed young man who needed psychiatric help. Who could possibly be a danger to himself or others." However, she did not testify about initiating any such "psychiatric help" despite these concerns. Intellectual testing conducted in 1979 revealed that his verbal IQ fell at the upper end of the borderline range and an MDOC psychological report dated 09/12/80 noted, "Mr. Musselman presented himself as an extremely guarded, withdrawn individual who appeared to have some difficulty comprehending questions and answering them." Although he was 15 years old, his academic functioning was measured to fall at the second to third grade level. Despite his readily identified limitations, he was not referred for a pretrial competency evaluation. The available information supports a conclusion that Mr. Musselman's intellectual, social, and emotional development was likely at a much lower level than the average 15 year old at the time of the instant offenses, a factor that influenced his decision making abilities both at the time of the instant offenses and while making important pretrial legal decisions. In fact, the psychological evaluation from February 1979, less than one year prior to the instant offenses, noted, "Testing revealed impulsivity, inadequate emotional control, acting out tendencies, low self esteem, and poor ability to foresee consequences of actions."

Dependency and Environmental Influence One of the Miller factors involves

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adolescents' dependency and consequent lesser ability to avoid negative influences on their lives (such as family abuse and peer influences). Miller noted that "Children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." This involves capacity for independent judgment versus influence by others, self-confidence, and stability of self-identity and personal values. This includes the family and home environment as well as the community in which he was raised in terms of schooling and peer interactions. Mr. Musselman grew up in a home where he was loved by his grandparents but neglected, primarily in the form of inadequate structure and supervision. He grew up in a community with widespread substance abuse, a factor that normalized such behavior. Available research indicates that being neglected as a child can contribute to the development of criminal behavior and violence later in life. For example, in 1989, Widom (Widom, C.S. (1989). The cycle of violence. *Science*, 224, 160-166.) followed a large group of children with a documented history of abuse and neglect (N=908) matched with children without a history of abuse or neglect (N=667) and the collected criminal histories through law enforcement records. The study found that being abused and neglected as a child increased the probability of juvenile arrest by 53%. In addition, the study found that being an abused and neglected child increased the probability of adult arrest by 38% and of arrest for violent crime by 38%. More recent research, including a 2015 publication (Miliniak, I., & Widom, C.S., (2015). Does child abuse and neglect increase risk for perpetration of violence inside and outside the home? *Psychology of Violence*, 5(3), 246-255) indicated that individuals with histories of child abuse and/or neglect were significantly more likely to be poly-violence perpetrators (criminal violence, child abuse, and intimate partner violence). Other recent research has focused specifically on the relationship between neglect as a youth and later perpetration of violence. For example, a 2018 research review (Bland, V.J., Lambie, I., & Best, C. (2018). Does childhood neglect contribute to violent behavior in adulthood? A review of possible links. *Clinical Psychology Review*, 60, 126-135.) noted that neglect as a child "has been associated with impaired cognitive development, changes in brain structures and nervous systems, behavioral and personality disorders and poor academic performance." The Bland review presented research that indicates that child neglect might predict violence later in life just as well, or even better, than physical abuse. Further, the PSI noted, "The respondent appears to be a person of low average intelligence. He apparently has serious emotional and psychological problems. In addition, his involvement with alcohol and drugs appear to have been extensive. Many of the respondent's problems appear to have developed from a very permissive and inadequate home situation. It seems clear that the school system did not begin to deal with the respondent's many problems until after they were fully developed." Mr. Musselman's neglectful home environment and lack of appropriate supervision predisposed him to criminal behavior including violence. Additional

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environmental influences involving his interactions with his codefendants are discussed in the following section.

Offense Context Regarding the circumstances of the homicide offense, including the extent of his participation in the conduct and the familial and peer pressures and features of adolescence may have affected Mr. Musselman, the following is offered. The following official summary was provided in Mr. Musselman's 07/29/80 Presentence Investigation Report, "The instant offense occurred on 1-3-80. On that date, between the hours of 2:00am and shortly after 3:00am, the respondent and codefendants, Vance DUBY and Harry Varney, drove about the City of Saginaw and Bridgeport Township in Vance DUBY's 1970 Chevrolet Nova. A 12 gauge shotgun was fired from the Nova on three occasions at other motorists. Two of the victims, Ralph Miner and Alvin Swiney, were killed as a result of shotgun blasts to the head. The third victim, Meredith Davis, was not seriously injured. In all three cases, the shot was fired through the driver's side window of the vehicles. The three codefendants chased a fourth motorist from the intersection of E. Genesee and Holland Avenues to his residence at 325 S. 17th Street. During the chase, the shotgun was pointed at the fourth victim, Steve Miller, and DUBY's Nova struck the victim's vehicle on one occasion. Codefendant, Harry Varney, was arrested in the instant offense on 1-4-80. He made a statement to police in which he admitted being with DUBY and Musselman in DUBY's Nova during the shootings. According to Varney, Richard Musselman did all of the shooting at the other motorists. Richard Musselman and Vance DUBY were arrested on the instant offense on 1-5-80." He had no convictions as a juvenile. It was noted, "The respondent admits to having used a variety of drugs including marijuana, cocaine, LSD, and alcohol. He indicated that he sold marijuana in order to obtain marijuana for his own use. The respondent stated that his usual drink was whiskey. The respondent indicated that he smoked marijuana and drank practically every day."

When asked to describe the events leading to the instant offenses during this evaluation, Mr. Musselman said, "It started Christmas Eve of 79. Gathered up money, they had drugs, and we started partying. We were going to party through to the new year. They had a trunk full of alcohol and we started partying. I believe it was Christmas. I tried my best to do what they were doing. Then three or four days later, DUBY went and got his brother's shotgun." When asked if he had been sleeping during the days and nights they were partying, he said, "I think we stayed up, partied all night, napped at places we'd go to, crash on the couch and go right back at it. I think we went to my grandma's house for a couple days." When asked if he had been drinking every day leading up to the instant offenses, he said, "Yes, and some pills. I don't know what the pills were, I think they said it was speed. Smoking weed and hash, going to go straight through to the new year." When asked about why DUBY got his brother's shotgun, he said, "Me and Varney, DUBY had his girlfriend and a couple other girls. We said something about DUBY's girlfriend and

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he didn't like it. We was just joking, we were drunk. He went home and got the shotgun. We seen him come back. He's got the shotgun in his hand, standing on the hood of his car at my grandma's house. We wouldn't come out. Then Varney talked to him and calmed him down. He put the gun back in his car and we were off running again." When asked if he had been scared that Duby might shoot him, he said, "Yeah. Mostly guys in the neighborhood were scared of him. He was a bigger person, a biker-like guy." When asked if Duby had ever threatened him before that day, he said, "Yeah. I think he punched me a few times and the neighbor said you know you can go to jail for that? He's a kid." When asked how long the gun had been in the car before the shootings, he said, "He put it in the trunk and it stayed in there at least three or four days. It stayed in there until new years. We started shooting at stop signs, street lights, mailboxes. It was leading up to it." When asked if they had intended to go shine deer that night before the instant offenses, he said, "We did go out sometime between Christmas Eve and when we shot them people. We went to the Shiawassee game reserve." When asked about the instant offenses, he said, "I believe we shot at the people on the 4th or the 5th. We partied up through that day. They told me when we drive by these cars shoot at it. So I did what they said and two people ended up dying. I didn't know nobody was going to die." When asked why he didn't know people would die from being shot, he said, "For one, I grew up hunting. We used six and a half birdshot. I know shooting someone with a gun can kill them. I knew if I shoot a deer (with this ammunition) it will run off with BBs in it. It wouldn't die. And it didn't even do nothing to the streetlight. The BBs would just bounce off." When asked what happened when they shot at a stop sign, he said, "It would put little dents in it, make it rock a little." When asked what would happen when they shot at mailboxes, he said, "Put a bunch of little pinholes in it." When asked if he had been concerned that they could get arrested for firing the gun from the car, he said, "I knew it was against the law, but I didn't know the seriousness of it. I knew it wasn't right." He said that after the shootings, Duby had dropped him off at his grandmother's home. When asked how intoxicated he had been at the time of the shootings, he said, "I was the highest I've ever been because I never stayed up like that for two or three days. I never felt like I felt that night we did that." He said, "When we drove by, I had the shotgun out the window. I thought it was just a joyride. I didn't mean to kill nobody, but now I feel sorry for all them victims, Mr. Sweeney, Mr. Menard, Mr. Davis, Mr. Miller and all their families." He was tearful as he continued, "I feel sorry about that everyday and I will for the rest of my life."

When asked about what substances he had ingested prior to the shootings, he said, "We was doing stuff from New Years, right on through. We didn't sleep at all. They had pills that wouldn't let us sleep. We were out shooting up everything." When asked if he remembered shooting at the cars, he said, "Yeah, I remember driving by, shooting at cars." When asked if he had known that there were people in the cars, he said, "Yes."

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When asked about his intentions when shooting at the cars, he said, "I thought we were just trying to scare people, shock them. Just shooting at the cars." When asked how they had decided which cars to target, he said, "Duby was telling me, he was driving, said shoot at this one here when we get by this one. And even from the first to that day we were shooting at everything, streetlights, mailboxes. That was Duby's words, let's shoot up the town." When asked how Duby and Varney had reacted after he shot the gun, he said, "Cheering me on, good shot. Them guys, they were older." When asked if he had been able to see the victims in the cars before shooting, he said, "Well, when you pull up behind, you can see there's people in the car." When asked if he had known what the victims looked like before shooting, he said, "No, because it was winter. It was cold, they had the heat on, frost on the windows." When asked if they had intentionally targeted black drivers, he said, "I had no knowledge of that. Maybe Duby and Varney, maybe that's what they wanted to do." When asked what experience he had with black people prior to these shootings, he said, "No black people lived where I lived. I never really dealt with black people before." When asked if any black people attended his school, he said, "Not too many." When asked if he had ever heard friends or family making derogatory comments about black people while he was growing up, he said, "Oh yeah, all the time. Bad stuff like blacks ain't no good. Duby and Varney used to say it. Where I grew up, everybody talked like that."

An important factor to consider in the current case is Mr. Musselman's association with older men when he was 14 and 15 years old. Juveniles are generally more vulnerable than adults to the negative influence of peers. His sense of emptiness and loss due to never having known his father and losing his grandfather may have contributed to his tendency to spend time with older men rather than same aged peers. Available records have consistently described Mr. Musselman as being a loner who was withdrawn socially. He eventually spent time with men significantly older than him who provided him with drugs, alcohol, and transportation. When intoxicated he was able to socialize, and he became intoxicated with increasing frequency during the time leading up to the instant offenses. When asked what his grandmother thought about his use of alcohol and drugs, he said, "She didn't like it. She didn't want me doing it. She'd smell it if I smoked in my bedroom, or come home at 2am smelling like alcohol. She had my neighbor, an older guy, she had him go tell Duby and Varney don't come over here no more. Leave Richard alone. So she tried." He said that his grandmother had known that Varney and Duby were a bad influence on him. When police asked about Mr. Duby, Mr. Musselman's grandmother stated, "Cos I tell him to keep away from Richard cos he's so young. And I tell him he's too old for Richard. But he never listens to me that Vance. And I don't like the idea of it when he buys beer, you know, and I tell him about it but..." In the Waiver hearing Mr. Waite testified about Mr. Musselman's relationship with his codefendants. He said, "I told Rich, I said I thought they were a negative influence on him. Whenever I'd

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come over and they were there, they would be -- I'd talk to his grandmother about it, and she said yes, that she thought they weren't the best influence on him, too, but apparently they lived right next door, and he would, you know, they were easily accessible, he could get over there on days that he didn't go to school or like on the weekend, or days that I wasn't there." When asked about his interactions with Varney and Duby as a teen, Mr. Musselman said, "Seen them almost every day. They'd go buy alcohol and I'd try to keep up with them." He said that Varney had lived near Saginaw, but would often come to visit their grandmother and other family. He said, "And Duby lived right around the corner from me." He said that he had known Duby since he was a young boy, "since I can remember." When asked how he came to spend time with these two older men, he said, "There wasn't a whole lot of people back then. All the cousins knew each other and knew the people in the neighborhood that had kids." The transcript of police interview of Harry Varney indicated that Vance Duby had told Mr. Musselman to shoot the victim. When asked if there had been discussion of shooting the truck prior to the incident, Mr. Varney told the police, "No, we just got up alongside it and Vance said, 'shoot him.'" However, Mr. Varney also said that Mr. Musselman had discussed shooting someone before the incident, as he said that Mr. Musselman said, "Let's go shoot somebody." Mr. Varney told the police that he had been honorably discharged from the United States Military. When asked during the current evaluation if he had been trying to be "cool" and "fit in" with Duby and Varney, Mr. Musselman said, "Exactly. That was the reason right there. To impress them." When asked if he had looked up to these men, he said, "Yeah." It is clear that peer pressure from his two adult codefendants played a significant role in Mr. Musselman's commission of the instant offenses.

Rehabilitation Potential Mr. Musselman's adjustment in prison is one of the most salient factors identified by this evaluation, as he has increasingly demonstrated his potential for change over nearly four decades. He has received no tickets for violence through all of the years he has been imprisoned in the MDOC. He has been classified as a Level II security prisoner for over 20 years, the lowest level possible for a prisoner serving a sentence of life without parole. Mr. Musselman has participated in a variety of self-improvement courses and programs while imprisoned. He completed a GED on 02/02/88. On 06/14/04 he successfully completed a 13 session Substance Abuse education program. On 03/14/16 it was noted, "Congratulations! You have participated in and completed Chances for Life Tier 1: Critical Thinking, Communication Building Skills, Men Concerned with Youth, Family and Friends, and Substance Abuse Awareness." A Parole Eligibility/Lifer Review Report indicated that Mr. Musselman had completed all Reception Facility recommended programs and that at least 2/3 of all program reports were above average. A marriage license indicated that he was married to Donna Marie Uttenweiler on 05/21/92. He has been treated for physical health conditions, including hypothyroidism and hyperlipidemia, but not for mental health conditions. However, in a medical records

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dated 12/12/14 he was described as anxious and depressed and he was diagnosed with unspecified anxiety and personality disorders. He appears to have participated in individual therapy sessions in 2015 and 2016 to address his depressed mood and anxiety pertaining to his medical conditions. A letter of commendation dated 08/09/88 noted that Mr. Musselman helped a corrections officer in restraining a violent prisoner. The letter noted, "The action on the part of Mr. Musselman helped to defuse a potentially dangerous situation. Mr. Musselman showed a lot of responsibility and maturity; he should be commended for his action."

Mr. Musselman experienced difficulty adjusting during the early portion of his imprisonment. On 07/30/81 he was charged with Sexual Misconduct, after being found unclothed with another prisoner in a bathroom stall. Apparently as a result of this incident, a Security Classification Screen dated 04/09/91 noted that Mr. Musselman was an "Institutionally active homosexual." On 05/15/82 he was accused of Substance Abuse for possessing marijuana. On 05/06/86 he was accused of Theft/Possession of Stolen Property (yeast and hot chocolate from the kitchen) and Substance Abuse for a pipe with marijuana residue. Disobeying a Direct Order on 09/13/86. Substance Abuse on 09/30/86 for marijuana. On 12/08/86 he was accused of Disobeying a Direct Order. On 07/23/87 he was accused of Accomplice to Substance Abuse when he attempted to take the blame for marijuana found in another prisoner's cell. On 02/11/88 and 05/26/88 he was accused of Substance Abuse for marijuana. On 11/11/89 he was charged with Unauthorized Occupation of Room. On 01/22/90 he had a Substance Abuse misconduct for marijuana. On 03/11/90 he was accused of Substance Abuse, as he had a marker altered to function as a marijuana pipe. On 04/01/90 he was charged with being Out of Place or Bounds. On 08/01/90 he was charged with Sexual Misconduct, as he had his hand under the dress of his visitor, Donna Mapson, in the visiting room. On 11/06/90 he was accused of Sexual Misconduct after he was in the visiting room with Donna Mapson after she reportedly stroked his penis with her hand, over his clothing. On 12/25/90 he was accused of Unauthorized Occupation of a Cell or Room as it was noted that he had been in the bathroom in the visiting room and "Donna Mopson left the bathroom just prior to Musselman coming out." On 03/09/92 he had a Substance Abuse misconduct for marijuana. On 03/30/93 he was accused of having Dangerous Contraband, as he was in possession of permanent markers which he claimed he brought with him from a different facility. The report noted, "Inmate said he did not know these were dangerous contraband." On 03/18/93 he was accused of Disobeying a Direct Order after throwing a cigarette in the toilet rather than handing it to the officer. On 11/29/93 he was accused of Unauthorized Occupation of Cell or Room. On 07/09/94 he was accused of Unauthorized Occupation of Cell or Room and Insolence. The report on that misconduct noted that when asked for his ID, Mr. Musselman replied, "Write the fucking ticket. It don't mean a fucking thing to me, I'm doing life and you can put that in your fucking ticket, too!" On

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03/03/95 he pleaded guilty to Substance Abuse and it was noted that he said, "He did use marijuana as he is under a lot of stress." On 08/04/95 he pleaded guilty to Substance Abuse after his urine test indicated marijuana use. On 11/25/97 he was accused of Contraband- Excessive Store Goods, as he had more stamps than were allowed, with indications that the stamps were "being used for other than postage." On 08/09/00 he was accused of Theft or Possession of Stolen Property, as he had pieces of carpet that had been replaced and thrown out. On 11/08/00 Mr. Musselman was accused of Theft/Possession of Stolen Property as he had extra mattress pads and pillow cases from the laundry, as he worked in the laundry at that time. On 11/28/00 Mr. Musselman was accused of having a stolen coat, but he claimed that it was his coat and it was returned to him. On 05/07/06 he was charged with Unauthorized Occupation of a Cell or Room. On 07/31/09 he was charged with Disobeying a Direct Order as it was noted that he refused to enter an area where he claimed there were prisoners that had threatened him due to the racial element of his crime. On 11/10/10 he reportedly possessed garlic cloves from the prison garden. On 07/04/13 he had a Temporary Out of Place. Misconduct. On 09/23/13 he was reportedly out of place due to standing by the basketball court while watching the game and not participating in the game.

Mr. Musselman had a mix of positive and negative work reviews in the early 90s. For example, on 01/31/93 it was noted, "Musselman has stayed and worked late for me quite a few times and has put his all into it. Much appreciated." On 10/31/93 it was noted, "Motivation is still in need of improvement, but doing a good job." On 06/25/94 it was noted, "Musselman needs to show up on time." On 09/03/95 it was noted, "Musselman does a fine job." On 04/06/96 it was noted, "Inmate Musselman seems to have problems when asked to do extra work or cover for another porter on his off days. Inmate Musselman likes to argue and complain if he has to do showers or clean bathrooms. Request termination." However, his Work Assignment Evaluation reports have been consistently positive over the past 20 years. He has held a variety of jobs, including painter, porter, and food services worker. On 06/25/97 it was noted, "Musselman reports to work everyday, on time, completes job duties along with other jobs assigned. He works well amongst his peers and is dependable." On 02/16/99 it was noted, "He offers to do any additional jobs that need attention, and helps out other porters as well. He does more than is expected and has a positive attitude towards his job, and supervision." On 07/09/01 it was noted, "Mr. Musselman is an excellent worker. Takes his time in the jobs assigned to him. Will work extra when asked. Gets along with other porters and is respectful toward staff." On 11/09/01 it was noted, "Mr. Musselman is a good porter. Works well with staff. Is always willing to do extra duties whenever asked." On 05/02/02 he was recommended to receive a pay increase. On 02/02/04 it was noted, "Very good worker. Never missed a day of work. Very loyal and cooperative to staff and fellow prisoners." On 01/29/05 he was described as "Very Dependable." On 09/05/08 it was

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noted, "Prisoner Musselman works well with others, he does his job in a timely manner and works unsupervised." On 12/28/09 it was noted, "Works well with others and willing to do more." On 06/11/10 it was noted, "Inmate is placed on conditional status for 30 days" but the reason for this was not noted. On 01/04/12 it was noted, "Good worker." On 04/07/14 it was noted, "Good worker/ respectful toward staff." On 10/02/14 it was noted, "Excellent worker. Willing to help and do extra when needed." The contrast between his earlier negative reports and his more recent positive reports demonstrates growth over time.

Mr. Musselman has repeatedly turned to prison staff and asked for protective custody when he had been threatened or assaulted rather than responding violently. He has been transferred for his own protection on several occasions. On 11/03/81 he was placed in administrative segregation for protection following sexual misconduct. In a report dated 10/29/82 staff noted, "Musselman is a classic loner. He associates with basically one other resident. He's courteous and cooperative. I don't know if his age is suggestive of anything, but he's the youngest here and chooses to do his own time." His vulnerability to being exploited was identified by prison staff early on, as a 02/15/83 report noted, "Upon arrival at this facility, he was placed in protective segregation and has remained in that status throughout his stay at HVM. On May 24, 1982 Musselman was found guilty of substance abuse (marijuana). This is his only misconduct report he has received since his arrival at HVM. Because of his diminutive stature as well as his effeminate appearance, he is considered to be a long term protection case." On 09/26/85 he requested to be moved because he "feared for his life." On 03/09/91 it was noted, "Mr. Musselman was seriously assaulted in the upstairs Douglas bathroom... sustained injuries serious enough to necessitate treatment at Mercy Hospital Emergency Room." He reportedly sustained a broken jaw. On 09/22/09 it was noted that Mr. Musselman requested protective custody after he encountered a prisoner who had reportedly robbed him at knifepoint in the past, as it was noted, "Musselman states that --- is demanding payment or he is going to get hit and will be cut up bad." In a 01/24/12 Request for Protection form, it was noted that Mr. Musselman reported that he had been assaulted by two black prisoners, as they claimed that his crime was racially motivated. It was noted that Mr. Musselman had a two inch laceration on his forehead from the assault. In a 12/03/13 Request for Protection form, it was noted, "On 10/8/13, Prisoner Musselman was seriously assaulted by Prisoner --- resulting in hospitalization until 12/4/13.... Due to the seriousness of the assault and the potential for retaliation, it is believed prisoner Musselman cannot return to LCF at this time." On 01/08/14 it was noted, "Prisoner was assaulted in GP at LCF and prisoners from LCF have transferred are threatening him. Prisoner cannot be safely housed in General Population at JCF. Transfer to an alternate Level II facility." On 01/29/14 he reported that he had been threatened by a fellow prisoner. His MDOC file did not identify instances of violence toward staff or inmates. He has consistently remained at Security

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Level II for over 20 years, since he was classified as Level III on 12/17/96. He had previously been Level II in 1992 and 1993. His management level score of 0 as of 01/06/16, earning 0 points for unfavorable behavior and 18 points for favorable behavior. In summary, the information contained in Mr. Musselman's MDOC records was entirely inconsistent with a conclusion that he is irreparably corrupt.

Regarding his plan for the future, when asked where he intended to live if he is released from prison, he said, "With my mom and sister, live near Clair in Harrison. And I got a brother in Prescott, Arizona. He wants us to come out there." He appears to have good family support, as he stated that his mother and sister visit him in prison.

Summary and Conclusions Regarding his mental health condition, Mr. Musselman has no formal history of treatment for any psychiatric condition, other than periodic counseling in the MDOC. While not intellectually disabled, at best his IQ falls at the very bottom of the low-average range, measured during this evaluation to fall at a level lower than 96% of the general population. Despite his limitations, he has earned a GED and has consistently been able to maintain employment with good reviews in prison. He was exposed to substance abuse in the community and was neglected in the home since early childhood. His neglect took the form of concurrently being "babied" by his grandmother, and having a nearly complete lack of structure or supervision. He was reportedly able to do as he pleased as a boy. Despite his intellectual, academic, and social limitations, his grandmother reportedly told the Big Brothers case worker that he would "raise himself." In response, the case worker indicated that young Richard Musselman "would be better off in a foster home due to the lack of control in his grandmother's home." His lack of supervision became dangerous during early adolescence when he began spending time with his codefendants, two grown men. Although his grandmother voiced her displeasure with Mr. Musselman spending time with Duby and Varney, she was ineffective in putting an end to this pattern of behavior. It was recommended that he participate in mental health treatment prior to the instant offenses, however, his mental health condition was not being treated in any manner during the time leading up to the instant offenses. If he had been appropriately evaluated and appropriately treated at that turning point in his life, he may never have committed the instant offenses. He said that he was in the context of a prolonged substance binge during the time leading up to the instant offenses. That is, he said that he and his codefendants had stayed up for several days and nights using alcohol and a variety of drugs. He claimed that he was intoxicated at the time of the instant offenses. He described how he wanted to be accepted by the older men, as he said, "I wanted to fit in with them." When asked how Duby and Varney had reacted after he shot the gun, he said, "Cheering me on, good shot. Them guys, they were older." He was immature, intoxicated, in the midst of a prolonged substance binge, a 15 year old boy in the company of two grown men, one of them a military veteran. It is my opinion that Mr.

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Musselman takes full responsibility for the instant offenses and feels deep remorse for the pain he has caused. While he has a history of rule violations as an adolescent and during the early portion of his imprisonment, it is my opinion that this was more an expression of environmental factors that of his internal personality structure.

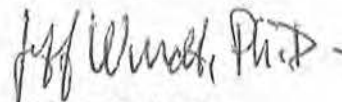
Perhaps the most remarkable finding in this evaluation was Mr. Musselman's pattern of improving behavior in prison over the course of nearly 40 years. He has made considerable changes as he matured, to the degree that he currently presents as a calm and reliable man at age 54. He developed a pattern of substance abuse at a very early age and it took years for him to overcome that problem. He continued to use marijuana in prison until 1995 (11 substance abuse misconducts in the first 15 years), but has had no substance abuse tickets in over 23 years. In fact, it appears that he has not had any form of misconduct ticket since 2012. In the past 23 years he appears to have four misconducts for possessing carpet, stamps, pillow cases, and garlic. During those 23 years he also had two misconducts for being out of place and one for unauthorized occupation of a cell or room. Finally, in these past 23 years he had one misconduct for disobeying a direct order when he refused to enter an area where he perceived he would be in danger of physical harm. In total, he had four tickets for disobeying an direct order and one for insolence over the entire 38 years of his imprisonment. Mr. Musselman has certainly demonstrated that he has developed into a reliable and rule-abiding adult, as evidenced by his positive work reviews and his overall scarcity of misconducts over the past 23 years in prison. He developed reliability and patience over the years, traits that have been well documented in his work evaluations. He has taken steps toward self improvement, as evidenced by his educational activities and completion of many certifications. He was able to overcome his substance addiction and has reportedly remained sober over the past two decades with no substance related misconducts since 1995. Psychological testing did not identify the presence of Antisocial Personality Traits or Psychopathy, and his behavior in prison was consistent with this finding. For example, he has been afforded the opportunity to care for and train dogs, for which he said that he develops a strong bond. He stepped in and helped a corrections officer in a dangerous situation, where an irreparably corrupt individual would likely have mere observed or even assisted the prisoner instead of the officer. He has consistently asked for help from the staff rather than responding to threats and assaults with violence. Perhaps most remarkably, he has no misconduct tickets for violent behavior during his entire period of imprisonment. He has consistently been placed at the lowest possible security level for his sentence over the past two decades.

Mr. Musselman admits that he committed terrible crimes, and he expressed remorse as he identified the victims by name. He was clearly a follower, as he was in the company of two adult men who provided him with drugs, alcohol, transportation, and eventually a loaded

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shotgun. However, it is my opinion that Mr. Musselman's crimes do not reflect permanent incorrigibility or irretrievable depravity to the degree that rehabilitation is impossible, to use the language of Miller and Montgomery. The available information supports a conclusion that the instant offenses were the result of environmental factors and transient adolescent developmental characteristics which did not persist as he developed into adulthood in the structured prison environment. It is my opinion that Mr. Musselman has demonstrated that he is amenable to rehabilitation. It is my opinion that Mr. Musselman is not the rare individual that would be considered irreparably corrupt. In fact, he has demonstrated rehabilitation during his decades of imprisonment, as the MDOC records reflect remarkable improvement over time as he matured into adulthood.

Respectfully submitted,



Jeffrey Wendt, Ph.D.
Forensic Psychologist
Certified Forensic Examiner

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN

vs.

File No. 80-000118-FY-5

RICHARD MUSSELMAN,

Defendant.

/

RESENTENCE

BEFORE THE HONORABLE DARNELL JACKSON, CIRCUIT JUDGE

Saginaw, Michigan - October 24, 2019

APPEARANCES:

For the People: MELISSA J. HOOVER (P75921)
ASSISTANT PROSECUTING ATTORNEY
111 S. Michigan Avenue
Saginaw, MI 48602-2019
(989) 790-5330

For Defendant: JAMES F. PIAZZA (P30172)
SAGINAW DEFENDERS' OFFICE
803 Court Street
Saginaw, MI 48602
(989) 577-5008

Reported by: ESTELLE B. PRZYBYLSKI, FCRR, CSR-3789
Official Court Reporter

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I N D E X

WITNESSES: PEOPLE

None

WITNESSES: DEFENDANT

None

EXHIBITS:

None

RCVD

* * *

1 Saginaw, Michigan

2 October 24, 2019

3 MS. LEWIS: All rise, please.

4 (Proceedings commenced at 9:35 a.m.)

5 MS. LEWIS: Court is again in session, the
6 Honorable Darnell Jackson presiding. You may be
7 seated.

8 THE COURT: Court will take up Case
9 No. 80-118-FY, People versus Richard Musselman.

10 This is the date and time set for
11 resentencing in this matter. And, Mr. Piazza, I'm
12 going to hand you Notices of Right to Appellate Review,
13 which your client must sign if he wishes appellate
14 review and will seek a lawyer for that purpose.

15 (Off-the-record discussion.)

16 MR. PIAZZA: May the record reflect that my
17 client has acknowledged notice of appellate rights and
18 received a copy of same.

19 THE COURT: All right. And, Mr. Piazza, have
20 you and he had a chance to review the presentence
21 report?

22 MR. PIAZZA: Yes, we have, Your Honor.

23 THE COURT: Any additions, deletions, or
24 corrections you wish to make?

25 MR. PIAZZA: Not to the presentence report

1 itself, Your Honor.

2 THE COURT: All right. Anything else you
3 wish to add at this time, Mr. Piazza?

4 MR. PIAZZA: Yes, Your Honor. We are before
5 this Court on resentencing pursuant to *Miller* decided
6 by the U.S. Supreme Court dealing with people who were
7 juveniles at the time of receiving a
8 life-without-parole sentence.

9 It's my understanding here that some family
10 members of the deceased in this particular matter would
11 like to address the Court, and that's all well and
12 good, but I'd just like to remind the Court that the
13 purpose of resentencing is for -- under the *Miller*
14 factors themselves. So we've got to take a look at
15 what happened since 1980 through the present time,
16 because under *Miller*, one of the issues is evidence
17 bearing on the possibility of rehabilitation, including
18 the individual's record while incarcerated, and whether
19 or not the individual is one of those rare individuals
20 who is permanently incorrigible. That's the issue
21 before this Court at this time for resentencing.

22 It is my belief, and as argued in the motion
23 and sentencing memorandum, the burden of proof on that
24 issue would be on the prosecution, because if it's for
25 the rare individual to be sentenced to life without

1 parole, that means the majority should be sentenced to
2 life with a term -- they're subject to a term of years
3 under the juvenile lifer laws. So the burden of proof
4 should be on the prosecution.

5 We had an evidentiary hearing in this
6 particular matter, in which I presented Dr. Jeffrey
7 Wendt and some other individuals. The prosecution, not
8 only at the evidentiary hearing but in their memorandum
9 of law, refers to Dr. Cappone's assessment of my
10 client. That occurred in 1980. Everything in the
11 sentence memorandum the prosecution filed refers to
12 what happened in 1980 and the opinions of what occurred
13 back then. That was 40 years ago, Your Honor.

14 What we have here in this case is unique
15 because we do have 40 years of post-conviction
16 incarceration to look at to see whether or not my
17 client is that rare individual or not. I submit to the
18 Court he's not that rare individual.

19 Take a look at the sentencing memorandum I
20 filed. The documentations of my client's work while in
21 prison, the classes he's attended to, the fact that
22 he's, you know, assisting and working with support
23 dogs, the fact that he's attended classes and has
24 helped other people in the prison itself.

25 Looking at the rehabilitation, my client, as

1 I indicated in my memorandum and Dr. Wendt's report,
2 for a murder case, he's in a Level II. He's not at the
3 highest severity level. He's obtained his GED. And,
4 as Dr. Wendt's report indicated, he is not that rare
5 individual.

6 One of the concerns the Court had and asked
7 questions regarding when Dr. Wendt was on the stand,
8 whether or not this was some type of animosity towards
9 blacks. My client is going to address that himself to
10 this Court.

11 THE COURT: I don't remember asking him that
12 question, Mr. Piazza, but that's all right.

13 MR. PIAZZA: There's some -- there's some
14 reference, at least in documentation about that, you
15 know, whether or not --

16 THE COURT: I didn't ask him about that.

17 MR. PIAZZA: The prosecution may have. I
18 just remember it came up.

19 THE COURT: Okay.

20 MR. PIAZZA: But my client will address that
21 himself.

22 But if you take a look at my client's
23 background, as put out in my sentence memorandum, the
24 fact that he was 15 years old at the time, his IQ was
25 77, and he was influenced and tagged along with a

1 24-year-old and a 22-year-old individual.

2 Those were the facts in the particular case.
3 The background is in the sentencing memorandum and
4 testified to about his upbringing, the fact his parents
5 didn't raise him. He was raised by his grandfather,
6 who died when he was 10 years old. Basically, he was
7 left on his own to do -- you know, to run around.

8 But what is not there? My client has no
9 prior juvenile record whatsoever. And that is -- the
10 Court -- or I'm going to be addressing under the latest
11 Michigan Court of Appeals case.

12 *Miller*, it looks -- you know, the address in
13 *Miller* indicates to look forward to what my client or
14 what the individual could be. Two thousand pages of
15 documentation from MDOC was went through by Dr. Wendt
16 and was testified to, you know, before this Court.

17 He's turned his life around. He hasn't had
18 any involvements with, you know -- you know, any
19 trouble with the prison system, nothing major in the
20 last 20 years, outside of maybe out of place or
21 possession of some garlic from the kitchen that he had
22 in his -- in his cell.

23 Even taking a look at the presentence update
24 by the Michigan Department of Corrections highlights
25 the positiveness of my client. In there, they referred

1 to that Dr. Cappone's 1980 evaluation, but my client
2 was also examined in 2009 by the MDOC of Elgie,
3 E-L-G-I-E, Dow. And she indicated there was no
4 pathological findings and found him genuine and sincere
5 in his remorse.

6 Dr. Wendt indicated the same thing, and
7 indicated my client has exhibited his amenability to
8 rehabilitation. The Court has 40 years of records to
9 show that.

10 Also, too, in an effort -- you know, reading
11 from the Michigan Department of Corrections, an effort
12 to get insight into day-to-day incarceration in prison,
13 Counselor Wilson was contacted. She worked with him
14 from 2014 to 2019, and she indicated Mr. Musselman was
15 never a problem in the unit, he was one of the PAWS
16 handlers and really enjoyed training and having the
17 dogs. His attitude always seemed to be pretty positive
18 in our interactions.

19 My client has, you know, obtained his GED.
20 The Court -- he got in counseling. He even became a
21 member, and he's going to address this in a few minutes
22 himself, became a member of the Muskegon branch of the
23 NAACP and in good standing at the time.

24 Lastly, the report itself, for purposes of
25 this report, a review of MDOC records did not reveal

1 any negative references or biases regarding race, and
2 the objective of this report was to provide the Court
3 with the post-offense conduct and behavior. I'm asking
4 the Court to look at that because that's one of the
5 main elements in *Miller*.

6 The MDOC report indicates he has expressed
7 remorse, made positive adjustments within his
8 personality. He has done everything possible for
9 rehabilitation. And if I may approach, I just have a
10 couple more certificates for the Court to take a look
11 at.

12 THE COURT: All right.

13 MR. PIAZZA: I have submitted numerous
14 certificates in the past which was attached to my
15 sentencing memorandum.

16 And lastly, Your Honor, take a look at a
17 recent case that just came down from the Michigan Court
18 of Appeals, it's unpublished. *People versus Hickerson*,
19 H-I-C-K-E-R-S-O-N, published October -- or unpublished,
20 but October 8, 2019, Case No. 322891.

21 In that particular case, the Court of Appeals
22 found -- affirmed the trial court in sentencing that
23 individual to life without parole. However, the Court
24 indicated that that was a close call in that case. And
25 I'm quoting:

1 "Were this Court to engage in a de novo
2 review of the record, perhaps it would reach a
3 different result than the trial court did in this
4 case..."

5 In that particular case, they looked at the
6 background of Mr. Hickerson, the fact of his
7 upbringing. And the Court has multiple reports on the
8 background of my client. But in that particular case,
9 which was upheld, the defendant in Hickerson planned
10 the robbery. He directed two other people how to
11 commit the robbery.

12 This occurred in 2014, so there's not really
13 a long history of rehabilitation through the records of
14 the MDOC. The defendant in that case was just three
15 weeks shy of being 18 years old at the time. And he's
16 only been in -- in and out and has had prior juvenile
17 records [sic]; whereas Mr. Musselman here, he was 15
18 years old, he was led by two adults, no prior juvenile
19 record at all. And the report in 2009 by MDOC as well
20 as Dr. Wendt in 2018 indicates that he has been
21 rehabilitated and that he's amenable to rehabilitation.

22 If *Hickerson* was a close call, it's not even
23 a close call here. Mr. Musselman is not that rare
24 individual that should be sentenced to life without
25 parole.

1 We also have the testimony from Larry Gudith
2 G-U-D-I-T-H, relating to his work with my client, and
3 indicated that he would continue working with him if he
4 is released. Larry Gudith is here in the courtroom
5 following up on this as well as a member of the
6 organization that he is with.

7 And lastly, Your Honor, by sentencing my
8 client to a term of years, it's not going to open up
9 the door to let him out. If the Court sentences him to
10 40 to 60, which is what we're asking for, he still has
11 to go before the parole board and have a parole
12 hearing. Let the parole board make a decision on that,
13 whether he is amenable to be released or not.

14 But as far as this sentence is concerned,
15 Mr. Musselman is not that rare individual. Asking for
16 a term of years.

17 THE COURT: All right. Mr. Musselman, you
18 wish to address the Court?

19 THE DEFENDANT: Yes. I'd like to thank you,
20 Honorable Jackson, and Ms. Hoover for giving me this
21 opportunity.

22 I'd like to say how sorry I am for doing what
23 I did to the Swiney family, the Miner family, the
24 Davis family, and the Miller family for all the pain
25 that I put them through and grief. I'm sorry for them

1 and for their generation. I mean, yes, Your Honor,
2 that night, when we went out, we went out to shoot at
3 African-American people. And I was led to believe that
4 they were bad people. And I had no other way to know
5 any difference, because in my school, there was no
6 African-American people, and in my neighborhood, there
7 was none, so I had no way of knowing any difference
8 until I got locked up.

9 And then, when I got locked up, I was having
10 a lot of problems in here. People was jumping on me
11 and assaulting me because of what I was in there for.
12 And some church people that was in the day room after
13 doing Bible study pulled me over there, and they looked
14 after me. And them guys didn't bother me no more. And
15 they had me doing Bible studies and self-help program
16 and the Jaycees, and they were all African-American
17 people.

18 And I thought about it, and then I realized
19 that was a lie I was told all my life, that there's
20 good people in every race, white, black, it don't
21 matter. And back then, I was led -- looking back on
22 it, I didn't care about public safety or humanity or
23 nothing. All I cared about was getting high and
24 impressing Duby and Varney. I didn't care about
25 nothing else.

1 But that ain't me no more, Your Honor. All I
2 care about now is helping people all I can. If it's
3 training service dogs, donating money to Breast Cancer
4 Awareness, backpacks for kids, helping people, that's
5 all I want to do now.

6 And if I may, I'd like to directly speak to
7 the Swiney -- toward the Swiney family.

8 THE COURT: All right.

9 THE DEFENDANT: I'd like to say how sorry I
10 am for what I did. And I know the pain that I put you
11 through, which I can't imagine the pain really, to tell
12 you the truth. I've had a lot of family members die,
13 and I know how I felt. I don't want to put nobody
14 through that. In the spirit of Mr. Swiney, I'd like to
15 tell you from the bottom of my heart, I'm sorry, and I
16 always will be. I'm sorry.

17 THE COURT: Anything else?

18 THE DEFENDANT: That's it, Your Honor.

19 THE COURT: All right. Ms. Hoover, I
20 received two letters from Mr. Swiney's relatives, one
21 being a Genia Hall, I've read that letter; and another
22 one being from Alvin Swiney, Junior. I've read that
23 letter also for the record.

24 So any other witnesses or any other testimony
25 or statements on behalf the victim in this case?

1 MS. HOOVER: Yes, Your Honor. Ms. Genia Hall
2 and Ms. Vera Conerly are both here and wish to address
3 the Court.

4 THE COURT: All right. Have them come
5 forward. State your full name for the record, please.

6 MS. CONERLY: My name is Vera Conerly.

7 THE COURT: All right.

8 MS. CONERLY: Good morning, Your Honor.

9 THE COURT: Morning.

10 MS. CONERLY: I sat in this court on May 29,
11 2019, and heard testimony of how Prisoner Musselman
12 never knew his father. Well, I didn't know mine,
13 either. I was three years, one month, and 10 days old
14 when this man had shot my father in the head. My
15 mother and father never got to see me graduate from
16 high school nor college. He was not there to walk me
17 down the aisle when I got married.

18 I have spent most of my life relying on
19 friends and family to tell me about the kind of person
20 my father was. I still find it somewhat disturbing
21 when someone tells me that I act just like him because
22 I don't know who he is.

23 I also heard testimony that Prisoner
24 Musselman's crime was not racially motivated. I could
25 not believe my ears.

1 I have read the resentencing memorandum
2 prepared by Ms. Hoover. In this memorandum, Ms. Hoover
3 refers to testimony from a Dr. Cappone, who stated:
4 Prisoner Musselman had negative feelings towards women
5 and African-Americans, and at one point, told her that
6 he hated blacks. Furthermore, it was reported
7 Musselman had also referred to African-Americans as
8 niggers and frequently used violent language, such as
9 blow them away, waste them, and kill them, when
10 speaking with a middle school teacher.

11 I understand -- I just heard the defense
12 attorney says that what I'm referring to was from 1980,
13 40 years ago. Yeah, it's convenient for him to refer
14 to 1980 when it benefits his client. And I get the
15 purpose of a defense attorney, don't get me wrong. But
16 if you can state that he was being influenced by older
17 men, and if he was -- had a low IQ, if it's relevant 40
18 years later, then what he said is also relevant 40
19 years from -- later now.

20 If these comments don't prove motive, I don't
21 know what else could. It is truly unfortunate and
22 disturbing to me to think that after 39-1/2 years, this
23 man cannot admit his crimes were racially motivated.

24 Your Honor, no child should have to
25 experience the amount of racism I did at such a tender

1 age. However, I made a conscious decision not to take
2 my anger out on the white community because of what
3 three men did.

4 From what I understand, my father had friends
5 from all different races and nationalities, and he was
6 loved by many. I chose to be like my father. I can't
7 imagine hating anyone based solely on their race.

8 Having read this resentencing memorandum and
9 hearing the testimony from May 29, I stand here this
10 morning prepared to do the hardest thing I've had to do
11 since I was 27 years old. I am prepared to forgive
12 this man for murdering my daddy 39 years ago. Not
13 because he deserves forgiveness, but because I want to
14 be free from this. After -- hating him has cost me too
15 much mentally. After today, I will not give him
16 another thought. I am ready to put this chapter behind
17 me.

18 Had this resentencing occurred 10 years ago,
19 I would not have been prepared to forgive him. I'll
20 admit, I do find comfort in knowing he can't go for a
21 Sunday drive or out for dinner. However, my faith in
22 God and my spiritual growth has gotten me to where I am
23 now.

24 Your Honor, I leave sentencing at your
25 discretion. However, you should know that

1 Mr. Musselman has already said he's getting out, he's
2 done 40 years, he's got this in the bag.

3 I pray that you -- that God will lead you to
4 provide an appropriate sentence for Prisoner Musselman.

5 THE COURT: Thank you, Ms. Conerly. And your
6 name for the record.

7 MS. HALL: Genia Hall. I'm reading this
8 letter for my brother, Alvin Swiney, who couldn't be
9 here today.

10 THE COURT: All right.

11 MS. HALL: It says: Dear Judge Darnell
12 Jackson: First, I want to thank you for allowing my
13 sister to read my statement for me. Circumstances
14 beyond my control prevented me from being at the
15 resentencing hearing for Inmate No. 162008. He doesn't
16 even deserve for me to mention his name.

17 The law is asking us to accept the release of
18 a murderer who went on a killing spree. He brutally
19 murdered my father, Alvin Swiney, and Ralph Miner, and
20 attempted to kill a Ms. Davis. Over the years, I have
21 come to truly realize that this person does not deserve
22 or should enjoy a life in the same fashion as other
23 lives he ruined. We have had to cope with what he
24 accomplished by taking our loved ones away from us. He
25 was fully aware then and now of what he did.

1 No apology was ever given from him, and one
2 is not needed now. I hope that your review of our
3 original case shows that the consequences of his
4 actions were given the right punishment. Upholding his
5 original sentence would be apology enough for my pain.

6 Thanks for listening to me, Your Honor.
7 Alvin Swiney, the deceased's namesake and only son.

8 THE COURT: Thank you.

9 MS. HALL: And may I just say something on my
10 behalf?

11 THE COURT: Sure.

12 MS. HALL: Richard, I wasn't prepared for you
13 to apologize. I do accept your apology.

14 THE DEFENDANT: Thank you.

15 MS. HALL: It's just -- it seems like it just
16 came too late, but I, too, I accept your apology,
17 because this has been eating me up for years and
18 destroying me. And so I, too, am going to have to let
19 it go. God bless you.

20 THE DEFENDANT: You, too.

21 MS. HALL: Thank you.

22 THE COURT: Anyone else, Ms. Hoover?

23 MS. HOOVER: No, Your Honor. And I -- I had
24 filed a sentencing memorandum with the Court, so I'm
25 not going to belabor any of the points that I set forth

1 in there. I do disagree with Mr. Piazza in the sense
2 that the burden rests with the prosecution. The
3 *Masalmani* case, deciding that very issue, remains in
4 the Supreme Court today and remains pending.

5 Beyond that, Your Honor, this simply did not
6 have to happen. Two lives were sacrificed as a result
7 of Mr. Musselman's pure stupidity, carelessness, and
8 total lack of regard for human life.

9 I didn't give a lot of credence to
10 Dr. Wendt's testimony, because sociopathy is not
11 something that you grow out of, and that was exactly
12 what he was diagnosed as having, sociopathy, and being
13 a sociopath at a young age.

14 Beyond that, Your Honor, I don't think I can
15 say it any better than these two ladies back here did.
16 And on that basis, Your Honor, I would simply ask the
17 Court to affirm the original life without parole
18 sentence. Thank you.

19 THE COURT: All right. Mr. Piazza, I'm going
20 to hand you back the materials you gave the Court.
21 I'll give a little bit of background of this case
22 before I announce my sentencing.

23 In the early morning hours of January 3,
24 1980, when defendant was 15 years old, he participated
25 in a shooting rampage that resulted in the killings of

1 Alvin Swiney and Ralph Minerd, and the near death of
2 Meredith Davis.

3 The defendant committed these offenses with
4 co-defendants Vance Duby, then 23, and Harry Varney,
5 then 19. Varney was defendant's cousin. Duby drove
6 the green Nova that was used during the shooting while
7 defendant fired all of the bullets using a 12-gauge
8 shotgun.

9 On June 25, 1980, the defendant was
10 jury-convicted on two Counts of first-degree
11 premeditated murder, two Counts of assault with intent
12 to murder, and one Count of possession of a firearm
13 during the commission of a felony. On September 3,
14 1980, he was sentenced to life without the possibility
15 of parole for the murder convictions, life with the
16 possibility of parole on the assault with intent to
17 murder convictions, and two years' imprisonment for
18 felony firearm to be served preceding and consecutive
19 to his other sentences.

20 The defendant now comes before the Court for
21 resentencing consideration on his murder convictions
22 pursuant to the United States Supreme Court decision in
23 *Miller versus Alabama*, prohibiting the mandatory
24 imposition of life without parole sentences for
25 juvenile offenders, and *Montgomery versus Louisiana*,

1 where the Court held that *Miller* applies retroactively.

2 In this case, the prosecution filed a motion
3 asking the Court to resentence the defendant to life
4 without the possibility of parole. On May 29, 2019,
5 the Court conducted an evidentiary hearing as part of
6 the resentencing process as required by
7 MCL 769.25a(4) (b), and MCL 769.25(6).

8 Pursuant to MCL 769.25(6) and (7), the Court
9 is required to consider the factors listed in *Miller*
10 and shall specify on the record the aggravating and
11 mitigating circumstances considered and the reasons for
12 the sentence imposed. The Court may consider evidence
13 presented at the trial together with the evidence
14 presented at the sentencing hearing.

15 Before analyzing the *Miller* factors, I want
16 to discuss some of the evidence that was presented
17 during the trial.

18 At trial, Matthew Rembish testified that he
19 was with the defendant and his codefendants during the
20 evening hours of January 2, 1980. Together, the group
21 consumed alcohol and marijuana and eventually drove to
22 the Shiawassee Game Reserve to hunt deer. Rembish
23 testified there was a 12-gauge shot shotgun in the
24 vehicle, see trial transcript V at page 672. At the
25 reserve, the defendant used the shotgun to shoot at two

1 deer and a gate, trial testimony Volume V, page 675.
2 After spending a few hours at the reserve, Duby took
3 Rembish home.

4 Evidence presented at trial showed that after
5 dropping Rembish off at home, the defendant, Duby, and
6 Varney used the gun and spotlight they had previously
7 used to illegally hunt deer to terrorize and kill other
8 motorists at various locations in Saginaw.

9 Meredith Davis testified he was driving home
10 after work at around 2:05 a.m. when he slowed down in
11 front of Claude's Bar on Potter Street to see if anyone
12 he knew was there. As he looked back, Davis saw a
13 green vehicle passing him. Then Davis said that
14 someone shot at him from the green vehicle. The bullet
15 penetrated his seat near his shoulder and he suffered
16 glass shards in his eye and to his face.

17 Alvin Swiney was gunned down by the defendant
18 at approximately 2:30 a.m. Joseph McDole testified he
19 was driving on Hoyt Street toward Genesee when he saw
20 two cars coming towards him with the second car
21 trailing closely behind the first car. McDole
22 described the second vehicle as a small car that was
23 either green or blue.

24 After the two cars passed him, McDole heard a
25 gunshot. McDole then stopped his car and went over to

1 the first car where he found the driver, later
2 identified as Alvin Swiney, laying over the steering
3 wheel covered in blood. At trial, the medical examiner
4 testified that Alvin Swiney died of a severe brain
5 concussion which was caused by a shotgun blast.

6 Ralph Minard suffered a gunshot wound to the
7 head as he drove a garbage truck on Dixie Highway near
8 Tatham at around 3 a.m. Carl Hasse was delivering
9 newspapers in the area when he noticed a garbage truck
10 being driven erratically. Hasse testified that the
11 garbage truck crossed the roadway in front of his van,
12 and then drove along the edge of the roadway where it
13 struck several items before coming to a rest at the
14 corner of Dixie and Tatham.

15 At that time, Hasse stopped his vehicle and
16 went over to the garbage truck because he feared the
17 driver was drunk. Instead, when he got to the truck,
18 he discovered the driver lying over the seat covered in
19 blood. Hasse testified that the driver passed away at
20 the scene 10 to 15 minutes later. The medical examiner
21 testified that Mr. Minernd's cause of death was a severe
22 concussion caused by a shotgun blast.

23 Another motorist, Steven Miller, was also
24 pursued and terrorized by these assailants. Steven
25 Miller testified that he was driving his cream-colored

1 Mustang on Holland near the intersection of Genesee
2 when a Nova began chasing his vehicle. Miller
3 testified that as the Nova pulled up beside his
4 vehicle, he observed a gun sticking out of the car. As
5 Miller ducked down inside of his car, he saw a light
6 flash from the Nova, which appeared to be from a
7 flashlight. Miller then smashed on his accelerator to
8 get away from the Nova, but it followed him all the way
9 home.

10 Miller testified that during the pursuit, the
11 Nova ran into the left side of his vehicle. After
12 these crimes, the police discovered light-colored paint
13 on Duby's Nova that appeared to be similar to paint
14 samples taken from Miller's Mustang.

15 Other testimony presented during trial
16 revealed that these offenders also tried to run Alan
17 Lich off the road while he was driving home from his
18 job. Another witness, Michael Krenz, observed these
19 offenders shining a spotlight into another vehicle that
20 was occupied by two African-Americans.

21 Howard Strickland testified that he witnessed
22 an occupant of the green Nova making obscene gestures
23 and shouting at an African-American man who was pumping
24 his gas. The prosecution's theory at trial was that
25 these crimes were racially motivated and geared towards

1 African-Americans. This theory was based on the
2 evidence that the individuals targeted apart from Ralph
3 Minerd were African-American and statements made by the
4 defendant after the killings.

5 When housed at the juvenile center after his
6 arrest, the defendant told another detainee, Glen
7 Turner, that he and his codefendant were getting high
8 at his house when they made a plan to go out and shoot
9 some African-Americans, though the defendant used other
10 language to describe his intended victims. Defendant
11 further told Turner that they went riding around to see
12 if they could find so some African-Americans, once
13 again, using a different term.

14 Under *Miller*, the Court should first consider
15 the character and record of the individual offender, as
16 well as the offender's chronological age at the time of
17 the offense.

18 The defendant was 15 years, 3 months old he
19 committed these killings and did not have a significant
20 juvenile justice record. However, evidence presented
21 during the waiver hearings reflects that defendant had
22 a history of extremely troubling and increasingly
23 disruptive behavior in school.

24 At the Phase II hearing, Nancy Conn, a
25 substitute teacher, testified regarding interactions

1 she had with the defendant when he was in the
2 sixth grade. Conn recalled that the defendant once
3 told her that he did not know how to read and would not
4 need to learn because "I'm going to kill a man and the
5 police are going to catch me, and I'm going to spend
6 the rest of my life in Jackson prison."

7 Conn also described a graphic picture that
8 the defendant drew in school depicting a double
9 booby-trapped door rigged with a shotgun and
10 guillotine. Conn stated that there was blood all over
11 the picture, and it was rather different, so I remember
12 it vividly.

13 Gloria Novak, a school social worker at
14 Bridgeport-Spaulling Schools, also testified during the
15 Phase II hearing. Novak became involved with the
16 defendant when he attended the alternative Fort School
17 for students with motivational, attendance, and
18 behavioral problems during the 1977-78 school year, and
19 the 1978-79 school year. During the 1978-79 school
20 year, Novak was part of a team that ultimately
21 certified the defendant as emotionally impaired. The
22 reason for certifying defendant as emotionally impaired
23 was that his behavior had become increasingly
24 disruptive to the point that his teachers felt that he
25 could no longer -- they could no longer provide

1 appropriate programming for him at the Fort School.

2 Specifically, defendant refused to do his
3 work, had not formed any productive relationships at
4 school, came to school under the influence of
5 substances, and had poor attendance. Novak described
6 defendant as "a severely disturbed young man who needed
7 psychiatric help, who could possibly be a danger to
8 himself or to others."

9 Steven Stegmeier, a teacher at the Fort
10 School, also testified. Stegmeier was involved in the
11 decision to remove the defendant from the Fort School
12 due to his refusal to do work, abuse of drugs, and
13 hostile behavior. Stegmeier recalled that the
14 defendant frequently spoke of his dislike of
15 African-Americans, used racist and violent language,
16 and made references to blowing away, killing, and
17 wasting African-Americans.

18 Stegmeier had also testified that the
19 defendant frequently exhibited unsportsmanlike behavior
20 during gym class, and at times, deliberately tried to
21 injure his peers. Like Novak, Stegmeier testified that
22 he and other staff at the Fort School felt that the
23 defendant was a kid who was destined to hurt somebody
24 badly, possibly kill him, and probably sooner than
25 later.

1 After the defendant was certified as
2 emotionally impaired, he began attending the
3 Opportunity School special education program for
4 emotionally disturbed adolescents in the Saginaw Public
5 School District. There, the defendant became
6 acquainted with social worker Tom West.

7 West testified that he occasionally drove
8 defendant home from school. On one such occasion in
9 November of 1979, defendant made the comment to West
10 that he would blow them away if they kept messing with
11 him. West did not know who the defendant was referring
12 to, but he found the incident concerning, because when
13 he asked the defendant if that would bother him, the
14 defendant indicated that it would not.

15 Julie Erickson was defendant's teacher at the
16 Opportunity School from approximately September 1979
17 until January 1980, when he committed these crimes.
18 Erickson testified that defendant often attended school
19 under the influence of drugs. She further testified
20 that his behavior began worsening in the weeks
21 preceding these offenses.

22 In December 1979, the defendant attempted to
23 lock an autistic student in a bathroom. Erickson
24 testified that while the autistic child was terrified
25 by the incident, defendant was laughing and appeared to

1 enjoy it. In addition, Erickson testified that the
2 defendant would pick on other students, often focusing
3 on the particular weaknesses and problem areas of his
4 target.

5 Psychologist Margaret Cappone evaluated the
6 defendant at the request of the juvenile court.
7 Cappone testified that the defendant's intellectual
8 capacity was in the low normal range, but she felt he
9 knew the difference between right and wrong and had the
10 ability to conform his conduct and control his
11 impulses.

12 Cappone also testified that the defendant had
13 the potential for sadism in the sense that he did
14 things that were uncalled for, did things in an
15 unsportsmanlike way, derived pleasure from inflicting
16 pain, which was demonstrated by his penchant for
17 killing animals and watching them die and locking up
18 another student as a form of enjoyment. Cappone also
19 noted that the defendant particularly negative feelings
20 towards women and African Americans, and that he told
21 her that he found women and girls to be ugly and hated
22 blacks.

23 Cappone summarized her opinions by stating
24 that: The psychometric evaluation indicates that
25 Mr. Musselman is in contact with reality, exhibits no

1 thought or cognitive disorder, and does know right from
2 wrong. Further, he is asocial and a narcissistic
3 personality who possesses strong hostile and high
4 acting out potential, and a grandiose power-seeking
5 structure that would and could predispose him to
6 violent and antisocial reactions rather than
7 alternative means of gaining need satisfaction;
8 nevertheless, there's no indication that he would be in
9 any way impelled or forced to act at all, or to act in
10 a specific way in a given circumstance.

11 When asked if she could catalog defendant
12 according to the diagnostic and statistical manual,
13 Cappone testified that she could, and she indicated
14 that she would classify the defendant as a sociopath.

15 As part of its analysis in this case, the
16 Court has considered Dr. Keating's testimony regarding
17 the nature of adolescent brain development which is
18 admitted during the *Miller* hearing as Defendant's
19 Exhibit No. 4. Dr. Keating explains that adolescents
20 are generally more susceptible to unthoughtful and
21 unjudged behavior due to the immature development of
22 the prefrontal cortex, which is responsible for
23 decision-making, and the accelerated development of the
24 limbic system, which is responsible for emotional
25 arousal, incentives, and rewards.

1 However, the evidence before the Court
2 indicates the defendant's conduct at the time of these
3 offenses was not simply the result of immaturity,
4 impetuosity, or a failure to appreciate risks due to
5 his youth. Instead, the evidence shows that the
6 defendant was an extremely disturbed young man, was
7 preoccupied with violence, vocalized racist and
8 misogynistic views, and derived pleasure from
9 inflicting pain on others.

10 Defendant eerily foreshadowed his criminal
11 actions in the sixth grade when he told Ms. Conn that
12 he would spend his life in Jackson prison for killing a
13 man. Later, while attending the Fort School, he talked
14 of violently killing African-Americans. He again spoke
15 of killing or blowing away people to Mr. West less than
16 two months before he committed these crimes.

17 Defendant's pattern of disturbing behaviors as a teen
18 caused those that interacted with him to fear that he
19 would ultimately cause harm to others. Those fears
20 were proven to be well-founded and correct.

21 The facts before the Court indicate that the
22 defendant was obsessed with violence from a young age,
23 enjoyed inflicting pain on others, and envisioned
24 himself killing someone and spending his life in
25 prison. Defendant fulfilled that prophecy by

1 committing these heinous crimes.

2 Despite his young age, the defendant knew
3 what he was doing, had the ability to appreciate the
4 wrongfulness of his crimes, but he did them anyway for
5 his own gratification. On this record, the Court does
6 not find the defendant's chronological age, his
7 character and record at the time of the offenses to be
8 mitigating factors.

9 *Miller* also instructs the Court to consider
10 the family and home environment surrounding the
11 juvenile offender. In his report and during his
12 testimony at the *Miller* hearing, Dr. Wendt attributed
13 defendant's criminal behavior, in part, to a lack of
14 supervision in his home environment, which he deemed to
15 be neglect. However, the Court's review of the record
16 does not support a finding that the defendant was
17 neglected as a child.

18 Defendant's mother was a teenager when he was
19 born. As a result, he was raised by his maternal
20 grandparents from the age of three years -- three days
21 old. By all accounts, Defendant was particularly close
22 with his maternal grandfather who passed away
23 approximately four years before these offenses.
24 Defendant also had a good relationship with his
25 maternal grandmother, but she reportedly had difficulty

1 controlling defendant's behavior as he entered his
2 teenage years. She also recognized that defendant
3 lacked a strong male role model after his grandfather's
4 death, so she sought the help of a Big Brother to
5 mentor the defendant. However, defendant continued to
6 rebel and misbehave.

7 Dr. Wendt testified that defendant did not
8 suffer from any physical or sexual abuse as a child,
9 nor was he deprived of food, water, or shelter.
10 There's also no evidence to suggest that the defendant
11 was exposed to criminal or violent activity in his home
12 as a child.

13 While defendant may have had more freedom
14 than most teenagers, he was loved and his needs were
15 appropriately met. There is no indication that
16 defendant was predisposed to commit violent crimes due
17 to negative influences in his home environment.
18 Therefore, the Court finds this factor does not weigh
19 in favor of mitigation.

20 *Miller* also instructs the Court to consider
21 how familial or peer pressures may have affected
22 defendant. In his report, Dr. Wendt concluded that
23 peer pressure from his two adult codefendants played a
24 significant role in defendant's commission of these
25 offenses. Dr. Wendt noted that in a police interview

1 following the crime, Varney indicated that Duby had
2 told defendant to shoot people. However, Varney also
3 told the police that it was defendant who discussed
4 shooting people before the crimes, claiming that
5 defendant had said: Let's go shoot somebody.

6 The record belies Dr. Wendt's opinion that
7 the older codefendants pressured defendant to commit
8 these offenses. Defendant acknowledges that he fired
9 all of the bullets during this fatal shooting spree.
10 At the time, the defendant was not under duress nor was
11 he coerced; quite the opposite. It was the defendant
12 who suggested, let's go shoot somebody.

13 Before he committed these crimes, defendant
14 also expressed a desire to commit murder during
15 interaction with Ms. Conn, Dr. Stegmeier, and Mr. West.
16 The codefendants were not present on any of these prior
17 occasions when the defendant vocalized his intent to
18 kill. Therefore, although the defendant happened to
19 commit these crimes with two older individuals, the
20 record does not support a finding that familial or peer
21 pressure compelled him to do so. This factor,
22 therefore, does not weigh in favor of mitigation.

23 *Miller* also instructs the Court to consider
24 whether the defendant might have been charged or
25 convicted of a lesser offense if not for the

1 incompetencies associated with youth. Here, there is
2 no evidence that defendant's youth rendered him unable
3 to effectively participate in his defense or to
4 implicate himself in the crimes. Also, given that the
5 defendant was the only shooter, it is extremely
6 unlikely that he may have been charged with and
7 convicted of a lesser offense. This factor also does
8 not weigh in favor of mitigation.

9 The Court must also consider defendant's
10 rehabilitation potential under *Miller*. Defendant is
11 now 54 years old, and as of today's date, has been
12 continuously incarcerated for these offenses for over
13 39-1/2 years.

14 Dr. Wendt opined that the defendant has
15 demonstrated his rehabilitation by successfully
16 improving his behavior in prison over the years.
17 Dr. Wendt's report notes that the defendant had
18 difficulty adjusting during the early portion of his
19 prison term and outlines a number of misconduct tickets
20 that the defendant received between 1981 and 2013.
21 These tickets primarily involved substance abuse, but
22 also included infractions for sexual misconduct,
23 disobeying orders, theft, possession of contraband, and
24 unauthorized occupation of a cell or room.

25 Defendant has been the victim of prison

1 violence on numerous occasions over the years, but to
2 his credit, he has received no misconducts for
3 perpetrating violence, and he has been consistently
4 classified at a Level II, the lowest security level
5 possible, for over 20 years. In 1988, he received a
6 commendation for assisting a prison guard in
7 restraining another inmate.

8 Defendant has also received consistently
9 positive work evaluations for the past 20 years.
10 Defendant also obtained his GED in 1987 and received
11 numerous certificates of completion for vocational and
12 behavioral modification programs. On balance, the
13 defendant has demonstrated any [sic] ability to conform
14 his behavior within the confines of prison. However,
15 defendant's institution behavior is not the sole factor
16 that the Court is considering in determining his
17 rehabilitation potential.

18 Negatively speaking, when evaluated by
19 Dr. Wendt, defendant appeared to minimize his role in
20 these heinous acts. Defendant admitted that he was the
21 shooter, but attempted to rationalize his actions by
22 claiming that he was merely was trying to fit in and
23 impress his older codefendants. Additionally,
24 defendant denied any racial motivation for these
25 crimes, despite his prior statements expressing a

1 desire to kill African-Americans. Although defendant
2 would not acknowledge his own racial animus, the
3 defendant told Dr. Wendt that his codefendants
4 frequently made derogatory remarks about
5 African-Americans.

6 The Court is also concerned that the
7 defendant has not availed himself of psychological
8 treatment in prison, although he was diagnosed as a
9 sociopath by Dr. Cappone following these offenses. At
10 the *Miller* hearing, Dr. Wendt testified that he
11 disagreed with Dr. Cappone's diagnosis of the defendant
12 as a sociopath because this diagnosis was inconsistent
13 with the defendant's history before the evaluation and
14 after.

15 Dr. Wendt testified that he was unaware of
16 any violent behaviors by defendant other than these
17 shootings. However, from Dr. Wendt's testimony, it is
18 clear that he did not consider many of defendant's
19 troubling behaviors before these offenses that factored
20 into Dr. Cappone's analysis.

21 At the *Miller* hearing, Dr. Wendt conceded
22 that in trying to determine whether a juvenile had
23 antisocial personality traits, it would be significant
24 to him if the individual frequently talked about
25 killing other people, appeared to enjoy inflicting pain

1 on others, frequently broke the rules, and engaged in
2 cruel behaviors during sports. But Dr. Wendt
3 apparently failed to consider that the defendant
4 exhibited all of these behaviors before he committed
5 these offenses. Accordingly, the Court finds
6 Dr. Cappone's opinion that the defendant was a
7 sociopath and exhibited antisocial traits to be more
8 persuasive than Dr. Wendt's opinion on this issue.
9 Based on these diagnoses and defendant's lack of
10 psychological treatment, the Court has extreme concerns
11 about his potential for recidivism.

12 Defendant also appears to lack a strong
13 support network outside of prison. Defendant told Dr.
14 Wendt that he planned to live with mother and sister if
15 he's released, but there is no indication that
16 Dr. Wendt confirmed this information. At the *Miller*
17 hearing, investigator John Moton testified about his
18 contact with defendant's Aunt Helen, who is now
19 deceased, but, apparently, did not interview
20 defendant's mother and sister. These women also did
21 not testify at the *Miller* hearing and they have not
22 provided any letters to the Court in support of the
23 defendant.

24 At the *Miller* hearing, the Court heard
25 testimony from Certified Recovery Coach Larry Gudith

1 concerning the support services that would be available
2 through his prison ministry program if defendant was
3 granted the opportunity for release. According to
4 Mr. Gudith, his ministry provides food, clothing,
5 shelter, and vocational training of inmates that have
6 been recently released from prison.

7 Although Mr. Gudith testified that his
8 program is highly successful in reducing recidivism, he
9 did not have specific statistics concerning his
10 program's success at rehabilitating offenders that have
11 been convicted of murder or other violent crimes.

12 Mr. Gudith further testified that he has
13 become acquainted with defendant through a religious
14 recovery program that he operates within the prison
15 system. Mr. Gudith stated that he has observed
16 positive personal growth in defendant over the past
17 five years, and that he believes the defendant could be
18 successfully reintegrated into society with the
19 assistance from his prison ministry.

20 Although Mr. Gudith discussed conversations
21 he has had with the defendant through his recovery
22 program in general terms, there's no indication from
23 his testimony that he has knowledge of the details of
24 the defendant's crimes or his background. Therefore,
25 the Court assigns little weight to Mr. Gudith's

1 assessment of defendant's rehabilitation potential.

2 In sum, the evidence presented to the Court
3 regarding the defendant's rehabilitation potential
4 indicates he has acclimated to life in prison over the
5 years. Yet, in the Court's opinion, he has not
6 accepted full responsibility for his primary role in
7 these offenses, nor as he acknowledged the motivation
8 behind his violent actions.

9 Additionally, the defendant has not received
10 psychological treatment while incarcerated and has no
11 plans to seek such treatment if released. It's
12 alarming given his sociopathic diagnosis and the
13 antisocial personality traits that he exhibited before
14 committing these offenses. Therefore, while
15 defendant's positive institutional behavior is
16 acknowledged, the record does not support a finding the
17 defendant has been or has a potential to be
18 rehabilitated such that he would no longer be a danger
19 to society if released.

20 Finally, under *Miller*, the Court should also
21 consider the circumstances of the offense, including
22 the extent of the defendant's involvement. Regarding
23 this factor, the Court notes that the defendant was the
24 sole shooter and that prior to the shootings, it was
25 his plan to go out and shoot someone. In addition to

1 executing Alvin Swiney and Ralph Miner and attempting
2 to kill Meredith Davis, defendant and his codefendants
3 rode around harassing and frightening other innocent
4 people that were simply on their way home.

5 As characterized by the prosecution,
6 defendant's conduct in this case can only be described
7 as terrorism, seeking to cause fear and pain to members
8 of the community with no justification or excuse.
9 Further, the defendant was not an aider and abettor in
10 these crimes; instead, he instigated them by suggesting
11 to his codefendants: Let's go shoot somebody. This
12 factor does not weigh in favor of mitigation.

13 As recently noted by the Michigan Supreme
14 Court in *People versus Skinner*, located at 502 Mich 89,
15 a 2018 case, after *Miller* and *Montgomery*, the juvenile
16 offenders who were deserving of life without parole are
17 rare. To begin with, only those juvenile offenders who
18 have been convicted of first-degree murder can be
19 subject to life without parole, which is a small
20 percentage of juvenile offenders. Further, since
21 *Miller*, the only juvenile offenders who can be
22 sentenced to life without parole are those who have
23 been convicted of first-degree murder whose mitigating
24 circumstances do not require a lesser sentence.

25 In other words, *Miller* and *Montgomery* simply

1 noted that these juvenile offenders who are deserving
2 of life-without-parole sentences are rare; they did not
3 impose any requirement on sentencing courts to
4 specifically find that a juvenile offender is or is not
5 rare before imposing life without parole.

6 The instant defendant is extremely rare in
7 the sense that at the age of 15, he killed two men, and
8 attempted to kill another. Although defendant
9 committed these crimes with the assistance of two older
10 individuals, he was the only shooter and is directly
11 responsible for the death of both victims. Prior to
12 these offenses, the defendant was fascinated with
13 violence and openly discussed a desire to kill,
14 particularly African-Americans.

15 The Court finds that the defendant's conduct
16 during these offenses and his behavior before these
17 crimes reflect irreparable corruption, not merely the
18 transient immaturity associated with youth. Moreover,
19 after weighing all of the factors outlined in *Miller*,
20 the Court finds there to be no mitigating circumstances
21 that would support the imposition of a term of years
22 sentences for the defendant's crimes.

23 Instead, the Court finds the circumstances of
24 these heinous offenses, defendant's primary role as the
25 shooter, his history of antisocial behaviors,

1 preoccupation with violence prior to these killings,
2 and his sociopathic diagnosis to be extreme aggravating
3 factors.

4 A balancing of the *Snow* factors, namely, the
5 protection of society, punishment, and deterrence also
6 weighs against the imposition of a term of years
7 sentence for the defendant. The Court finds that the
8 sentence to be imposed is proportional to the defendant
9 and to the egregious offenses that he committed.

10 Therefore, after considering the *Miller*
11 factors and balancing the factors outlined in *Snow*, it
12 is now the sentence of the Court that, on Count I and
13 Count II, the defendant shall be incarcerated in a
14 designated state penal institution for life without the
15 possibility of parole with credit for 13,807 days
16 previously served.

17 The defendant's sentences on Count I and
18 Count II are concurrent with his original sentences on
19 Count III and Count IV, but consecutive to his original
20 sentence on Count V.

21 Anything else for the record? Ms. Hoover?

22 MS. HOOVER: Nothing further, Your Honor.

23 Thank you.

24 THE COURT: Mr. Piazza?

25 MR. PIAZZA: No, Your Honor.

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MS. LEWIS: All rise, please.

(At 10:23 a.m., proceedings concluded.)

* * *

1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF SAGINAW)
4
5
6
7

8 I certify that this transcript is a complete, true
9 and correct transcript of the proceedings and testimony
10 taken in this case before the Honorable Darnell Jackson,
11 Circuit Judge, in Saginaw, Michigan.

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Estelle B. Przybylski
ESTELLE B. PRZYBYLSKI, FCRR, CSR-3789
Official Court Reporter
111 South Michigan Avenue
Saginaw, MI 48602

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN

vs. File No. 80-000118-FY-5

RICHARD MUSSELMAN,
Defendant.

_____ /

HEARING

BEFORE THE HONORABLE DARNELL JACKSON, CIRCUIT JUDGE

Saginaw, Michigan - May 29, 2019

APPEARANCES:

For the People: MELISSA J. HOOVER (P75921)
ASSISTANT PROSECUTING ATTORNEY
111 S. Michigan Avenue
Saginaw, MI 48602-2019
(989) 790-5330

For Defendant: JAMES F. PIAZZA (P30172)
SAGINAW DEFENDERS' OFFICE
803 Court Street
Saginaw, MI 48602
(989) 577-5008

Reported by: ESTELLE B. PRZYBYLSKI, FCRR, CSR-3789
Official Court Reporter

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Saginaw, Michigan

May 29, 2019

(Defendant's Proposed Exhibits 1 through 5 marked.)

MS. LEWIS: All rise, please.

(Proceedings commenced at 1:11 p.m.)

MS. LEWIS: The Tenth Circuit Court for the County of Saginaw is now in session, the Honorable Darnell Jackson presiding. You may be seated.

THE COURT: Court will take up Case No. 80-118-FY, People versus Richard Musselman.

This is the date and time set for a hearing as a result of the rulings of the United States Supreme Court in *People vs. Miller* and *Montgomery vs. Alabama*, also pursuant to MCL 769.25a.

Is the prosecution prepared to proceed?

MS. HOOVER: I am, Your Honor.

THE COURT: Defense prepared to proceed?

MR. PIAZZA: Yes, Your Honor. James Piazza on behalf of Mr. Musselman, who's present.

THE COURT: Ms. Hoover, anything you wish to place on the record at this time?

MS. HOOVER: No, Your Honor. I do not intend to present any witnesses today, and I would waive any opening remarks. Thank you.

1 THE COURT: All right. Mr. Piazza?

2 MR. PIAZZA: Yes, thank you, Your Honor.

3 First of all, a housekeeping matter. My client would
4 like to take notes during the proceedings; however, he
5 is chained with a belly chain. I ask that the Court
6 authorize the corrections officers to at least release
7 the right hand so he could take notes. At this
8 particular time, he can't take notes with the belly
9 chain around his wrist.

10 THE COURT: If they feel that's security,
11 I'll allow them to so, but I never get in the way of
12 what they think is appropriate.

13 CORRECTIONS OFFICER: We'd have to call back
14 to our facility and get -- get clearance.

15 THE COURT: Okay.

16 MR. PIAZZA: We can get started while one of
17 them gets clearance; would that be fine?

18 CORRECTIONS OFFICER: Step out in the
19 hallway, or just do it right here?

20 THE COURT: If you'll step right outside.

21 CORRECTIONS OFFICER: Okay.

22 THE COURT: Proceed.

23 MR. PIAZZA: Thank you, Your Honor. I'll
24 waive any opening remarks with the exception that it's
25 my understanding and in my sentencing memorandum, I

1 indicated that I believe the burden of proof in this
2 particular matter would be on the prosecution. Since
3 they have no witnesses, I am not going to rest on that.
4 I do have some witnesses to call on behalf of
5 Mr. Musselman.

6 And before calling Mr. Musselman, I believe I
7 am moving to admit at this particular time Defense
8 Proposed Exhibit No. 4, which is the testimony of
9 Dr. Keating, excerpts from that from the case of *People*
10 *v. Gary Peters*. Prosecution will stipulate to the
11 admission of this into -- into evidence, and I believe
12 the Court has a copy, but I'd move at this time to
13 admit Exhibit No. 4.

14 THE COURT: Ms. Hoover?

15 MS. HOOVER: No objection, Your Honor.

16 THE COURT: Exhibit 4 will be admitted.

17 MR. PIAZZA: With that, Your Honor, I'll call
18 Dr. Jeffrey Wendt to the stand.

19 THE COURT: All right.

20 MS. LEWIS: Please raise your right hand,
21 sir. Do you solemnly swear that the testimony you
22 shall give in this cause here pending shall be the
23 truth, the whole truth, and nothing but the truth, so
24 help you God?

25 DR. WENDT: Yes, I do.

1 MS. LEWIS: You can take the witness stand.

2 THE WITNESS: Good afternoon, Your Honor.

3 THE COURT: Afternoon.

4 So clearance has been provided and the
5 defendant's able to take notes at this point in time.

6 MR. PIAZZA: Thank you, Your Honor.

7 JEFFREY WENDT, Ph.D.,
8 being first duly sworn at 9:05 a.m., testified under
9 oath as follows:

10 D I R E C T E X A M I N A T I O N

11 BY MR. PIAZZA:

12 Q Please state your name for the record.

13 A My name is Jeffrey Wendt, W-E-N-D-T.

14 Q What is your current profession or occupation?

15 A I'm a private practice forensic psychologist.

16 Q And in relationship to your current profession, what is
17 your past current -- or your past education in
18 relationship to your profession today?

19 A I have a bachelor's degree in psychology from Hillsdale
20 College, a master's degree in experimental psychology
21 from East Carolina University, and a Ph.D. in clinical
22 psychology from Wayne State University.

23 Q Okay. And are you licensed in various areas or states?

24 A Yes, I'm fully licensed in Michigan and Indiana.

25 Q Okay. And could you give a brief background of your

1 professional background?

2 A I was employed as a forensic examiner at the State of
3 Michigan Center for Forensic Psychiatry from 2002 until
4 2006. Since then, I've engaged in full-time private
5 practice, primarily conducting evaluations of criminal
6 defendants.

7 I've evaluated over -- well over 2,000
8 criminal defendants, primarily for competency to stand
9 trial and criminal responsibility.

10 Q Okay. And have you had advanced training in the field
11 of forensic psychology?

12 A I've participated in continuing education in a number
13 of relevant areas, including psychological testing,
14 psychopathy, and similarly related issues.

15 Q Okay. Have you had some advanced training dealing with
16 issues of handling -- evaluating juveniles?

17 A Yes, I have.

18 MR. PIAZZA: Okay. If I may approach, Your
19 Honor.

20 THE COURT: You may.

21 BY MR. PIAZZA:

22 Q Showing you what's been marked as Defense Proposed
23 Exhibit No. 1, is that a copy of your curriculum vitae?

24 A Yes, it is.

25 Q And do you have a list of your advanced training in

1 there?

2 A Yes, I do.

3 Q And there are various advanced trainings dealing with
4 juveniles in there?

5 A Yes.

6 Q And how long have you been practicing, in total?

7 A It would be 17 years.

8 Q And have you been qualified as an expert in the field
9 of forensic psychology in the past?

10 A Yes. I've testified in the State of Michigan Federal
11 Courts and the State of Indiana as a forensic
12 psychologist well over hundreds, probably approaching
13 200 times.

14 MR. PIAZZA: Move to have the witness
15 qualified as an expert in the field of forensic
16 psychology.

17 THE COURT: Ms. Hoover?

18 MS. HOOVER: No objection, Your Honor.

19 THE COURT: He will be so recognized.

20 MR. PIAZZA: And I move to introduce Defense
21 Exhibit -- Proposed Exhibit No. 1, copy of the
22 curriculum vitae. Copy has been provided to the
23 prosecution.

24 THE COURT: Ms. Hoover?

25 MS. HOOVER: That's accurate, Your Honor. I

1 stipulate to its admission. Thank you.

2 THE COURT: Exhibit 1 will also be admitted.

3 MR. PIAZZA: Thank you.

4 BY MR. PIAZZA:

5 Q Part of the reason you're here today is based on the
6 case of United States Supreme Court in *Miller* and also
7 *Montgomery vs. Alabama*. Are you familiar with those
8 cases dealing with juvenile lifer laws?

9 A Yes, I am.

10 Q And have you, in the past, evaluated individuals or --
11 under the guidance of the juvenile lifer laws and what
12 the United States Supreme Court has written?

13 A Yes, I've conducted six evaluations addressing this
14 issue.

15 Q Okay. And you are familiar with the differences of
16 somebody who's a juvenile, how their brain is or how
17 they act as compared to an adult; is that correct?

18 A Yes.

19 Q And can you briefly describe to the Court, you know,
20 the difference that you see.

21 A There's several differences between a child, a juvenile
22 adolescent, and an adult. These involve impulsivity,
23 capacity to recognize and consider long-term
24 consequences of their behavior, an increased reliance
25 on peer influence on their behavior, and a different

1 method for evaluating risk of different situations.

2 Those are some of the primary differences.

3 Q Okay. You also look at -- and when doing an evaluation
4 in reference to what's been referred to as the juvenile
5 lifer laws, you know, whether or not an individual can
6 be rehabilitated or is irreparably corrupt or incapable
7 of reform? You also look at those issues as well?

8 A Yes.

9 Q Have you been retained to do an evaluation of an
10 individual by the name of Richard Musselman relating to
11 the juvenile lifer laws and an evaluation thereto?

12 A Yes.

13 Q And is Mr. Musselman here in court today, the person
14 that you evaluated?

15 A Yes, sir.

16 Q Please point to him and describe what he's wearing.

17 A He's the man in the blue shirt, glasses, and a
18 mustache.

19 MR. PIAZZA: May the record reflect that
20 Dr. Wendt has identified Mr. Musselman?

21 THE COURT: It shall reflect.

22 MR. PIAZZA: Okay.

23 BY MR. PIAZZA:

24 Q And did you have an opportunity to interview
25 Mr. Musselman as well as do any type of testing and

1 background investigation relating to what we're here
2 for today?

3 A I did. I reviewed extensive materials about the
4 original charges, about his developmental history,
5 about his adjustment in the Michigan Department of
6 Corrections.

7 Then I met with him in the Muskegon
8 Correctional facility in September of 2018 for a
9 session lasting five hours, which included a clinical
10 interview and administration of psychological testing.

11 Q Okay. And did you write a report relating to your
12 findings?

13 A I did.

14 Q Okay. And do you have that before you?

15 A I do.

16 Q And when you're looking down, are you referring to your
17 report? And if you need to refresh your memory of any
18 of the topics we're going to talk about, just please do
19 so; all right?

20 A (Nodding head.)

21 Q When Mr. Musselman was charged with the crime of
22 homicide back in 1990 [sic], how old was Mr. Musselman
23 at the time of the events?

24 A He was 15 years old.

25 Q Okay. If, you know, was he just turned 15, about to

1 turn 16, do you know whereabouts that was?

2 A He would have been nine months shy of during 16. He
3 would have turned 16 in September -- September of that
4 year.

5 Q So he was just three months into being 15?

6 A That's right.

7 Q When you first met Mr. Musselman, you know, you met him
8 and you evaluated what he looked like, and you had
9 discussions with him about himself and his physical
10 condition at that time?

11 A Yes.

12 Q Okay. And what was your impression at that time when
13 you first met Mr. Musselman?

14 A His grooming was adequate. He was cooperative with the
15 evaluation procedure. He didn't express hostility or
16 resistance. He was somewhat reserved in terms of his
17 emotional expression, but he was -- he was willing to
18 discuss every -- the topics that I brought up.

19 Q Okay.

20 A I would say he was cooperative with the evaluation
21 procedures.

22 Q Did you, yourself, do a -- testing in regard to
23 obtaining Mr. Musselman's IQ scale, or did you obtain
24 that from records from the prison system, or both?

25 A I had both. There were historical references to his IQ

1 score. He was tested in 1979 by the school system, and
2 they found that he functioned in the -- what they used
3 to call the dull normal range, which is in the range of
4 high 70s to low 80s. Anything below 70 would've been
5 considered then as mentally retarded. He was above
6 that level, but he was -- he was somewhat limited.

7 I conducted testing during this evaluation
8 and obtained similar results. He had a full scale IQ
9 of 77, which falls in what we now call the borderline
10 range. The benefit of standardized testing is you're
11 able to compare one individual to the general
12 population, so the testing provides a percentile rank.
13 Mr. Musselman's percentile rank was -- for his full
14 scale IQ was six, meaning that he functions at a level
15 lower than 94 percent of the general population. And
16 IQ or an intellect is understood to be a relatively
17 constant construct. And so, the results were supported
18 by the consistency between his testing when he was 14
19 and his testing now at age 54.

20 Q So his full IQ was 77; is that correct?

21 A Yes.

22 Q And that's consistent with what he was tested to in
23 1979, the year before the incident occurred here?

24 A Yes.

25 Q Did you discuss with him his developmental history?

1 A I did.

2 Q And did you also review records regarding his
3 developmental history?

4 A I did. I'm having a dry mouth, so I'm going to open
5 the water if that's all right.

6 THE COURT: You've got your own?

7 THE WITNESS: Yes, I do.

8 THE COURT: That's fine.

9 THE WITNESS: Yes, sir.

10 I did. I reviewed a great deal of records, a
11 lot that was contained in the Presentence Investigation
12 report from 1980. And I asked him specifically about
13 his developmental history in terms of his family and
14 education and socialization.

15 BY MR. PIAZZA:

16 Q Okay. Is family environment and that history, that's
17 one of the aspects that U.S. Supreme Court has asked
18 the individual to look into regarding the juvenile
19 lifer laws to make a determination; is that fair?

20 A Yes. An adolescent's home environment can have a
21 significant impact on their development and personality
22 during that -- during that age range.

23 Q Okay. Could you give a brief description to the Court
24 of what you learned regarding the developmental history
25 of Mr. Musselman?

1 A Yes. I learned that Mr. Musselman's mother delivered
2 him at age 17, and that he was subsequently raised
3 primarily by his grandparents. His father was not in
4 the picture, and he had -- he told me that he had never
5 met his father.

6 He had a close relationship with his
7 grandfather, who eventually passed when he was, I
8 think, approximately 10 years old. Therefore, he had
9 no steady male role models in his life.

10 His grandmother, he described as loving, but
11 she did not provide him with much structure or
12 supervision in the home. And this was a consistent
13 theme in the records that I reviewed. In fact, he
14 was -- participated with Big Brothers and with a
15 caseworker during the year or so leading up to the
16 instant offenses.

17 And the Big Brothers made a recommendation
18 that he would be better off in a foster home because
19 there was so little supervision in his -- in his home
20 life, and the social worker recommended that he
21 participate in counseling as well, which never -- never
22 happened. But it was to the point where professionals
23 involved in his life recommended that it may not be an
24 appropriate environment for a young boy.

25 He was left to -- his grandmother told the

1 Big Brother that he was left to raise himself. And the
2 description of his development was consistent with
3 that, where he had no curfew, he was able to socialize
4 with relatives and friends who were much older than he
5 that he spent a majority of his time with using alcohol
6 and marijuana and other drugs.

7 So his -- his home life and lack of
8 supervision had an influence in terms of his activities
9 outside of the house because of their permissiveness
10 and lack of structure.

11 Q Did you find, in looking at the developmental history
12 and reviewing the records, that Mr. Musselman would've
13 been more of a leader or a follower at that time?

14 A He was consistently described as shy and withdrawn, as
15 a loner. And, in combination with his intellect being
16 lower than 96 percent of the general population -- or
17 94 percent, he was relatively slow. He was immature.
18 I think that not having the male role models in his
19 life or a consistent female role model led to him being
20 delayed in his emotional, social development.

21 Q Had he participated or was supposed to participate in
22 any type of special education in school, if you know?

23 A Yeah, he had -- yes. He had a -- an evaluation
24 conducted by the school in February of 1979, so just
25 under a year prior to the alleged -- the instant

1 offenses.

2 At that time, they identified his relatively
3 low IQ. They determined that even though he was in
4 the -- it was either the 8th or 9th grade, that his
5 academic abilities in terms of spelling, mathematics,
6 and reading fell at the second to third grade level,
7 and they made a recommendation that he participate in
8 counseling at the Child Guidance Clinic because of
9 their concerns about his emotional well-being.

10 And to -- to my understanding, he never did
11 participate in that treatment, likely because of the
12 lack of structure or adult involvement in his -- in his
13 development.

14 Q Prior to 1980, did you find any record that he actually
15 received any type of counseling or -- in that nature,
16 or seeing a psychologist for any type of, you know,
17 working with him?

18 A It's my understanding that the only intervention --
19 although the need for intervention was identified, the
20 only intervention that was implemented was that they
21 identified him as an emotionally-impaired individual,
22 which qualified him for special education services at
23 the school.

24 Q So he had received no counseling at that time, to your
25 knowledge?

1 A I'm not aware of any if there was.

2 Q During this period of time when we're looking at his
3 developmental history, you indicated that he, at times,
4 was hanging around with older individuals and older
5 family members. Did that appear to have an influence
6 over him?

7 A That had -- in my opinion, that had the primary
8 influence in terms of his development as of 14 years
9 old moving into being 15 years old, because he spent
10 the prime -- the majority of his time outside of the
11 home with -- with the two men who were his
12 co-defendants, eventually, who were considerably older.

13 Q Do you recall how old, the difference, if you know?

14 A Well, it's my understanding that Harry Varney was five
15 years older, so he would have been 20 at the time of
16 the incident; and Vance Duby was 10 or 11 years older,
17 so he would have been in his mid-20s at the time this
18 happened.

19 And I thought it was striking that an
20 individual who's 15 years old, first of all, being
21 permitted to hang out with men who were 20 and 25 years
22 old, that they provided him with drugs, alcohol,
23 transportation, and he was able to participate in
24 activities that were -- were inappropriate for a
25 15-year-old in terms of lack of supervision.

1 Q All right. Did you make a determination whether or not
2 there was any juvenile adjudications for Mr. Musselman,
3 if you recall?

4 A I don't think that there was an adjudication, but he
5 described an incident where he had bought a stereo from
6 someone in the neighborhood and then eventually had to
7 go to court when it was determined that the stereo was
8 stolen. And that he was warned by the judge, and I
9 don't think that he had probation or any -- anything
10 that came -- I don't think anything came of that.

11 Q So prior to the incident that occurred, the homicide in
12 1980, you are not aware of any prior adjudications or
13 convictions of Mr. Musselman?

14 A Correct.

15 Q All right. Did you continue to talk and -- with
16 Mr. Musselman and look into records and reports dealing
17 with Mr. Musselman's development when he arrived in
18 prison?

19 A Yes.

20 Q And could you give a brief description of his
21 development, his, you know, intellectual or emotional
22 development, you know, once he was in prison?

23 A He had a psychological evaluation upon his arrival in
24 the Michigan Department of Corrections in 1980. And,
25 at that time, the evaluator identified him as somewhat

1 slow and confused, had difficulty understanding the
2 questions. He was identified by the prison staff as
3 being vulnerable to exploitation by other -- other
4 prisoners, potentially older prisoners. And it was
5 recommended that he remain in protective custody, which
6 he did.

7 But he -- Mr. Musselman explained to me that
8 there were also predators within that population, in
9 protective custody, and he said that he was sexually
10 assaulted soon after his arrival to prison when he was
11 15, or maybe he had turned 16 at that point, but early
12 on.

13 Q Okay. Have you talked with Mr. Musselman as well as
14 reviewed records to see how he progressed within the
15 prison system?

16 A Yes. A primary portion of my evaluation involved an
17 analysis of the Michigan Department of Corrections'
18 records in terms of medical, behavioral, and employment
19 histories.

20 And I touched on this earlier, is that
21 Mr. Musselman had developed a pattern of substance
22 abuse prior to his arrest for this case, and that
23 maintained during the earlier portion of his -- of his
24 incarceration. He had, I believe, 11 substance use
25 misconduct tickets up until -- between 1980 and 1995,

1 but has had no substance abuse tickets in the 23 or 24
2 years since then.

3 Q Okay.

4 A And he attributes that to his focus on his spiritual
5 life and his realization that being intoxicated wasn't
6 helping him in any way, so he said he'd maintained
7 sobriety over the last couple decades.

8 Q Did you look at prior misconduct tickets that he had
9 received throughout his prison stay?

10 A Yes. Most notably, the thing that stuck out to me was
11 the absence of any violent misconducts. He had -- he
12 had repeatedly been the victim of violent behavior and
13 had been badly injured several times requiring
14 hospitalization, but I didn't identify any instances
15 where he was the aggressor or he was written up for
16 violent behavior.

17 And that's particularly relevant in this type
18 of evaluation in looking at his risk for future violent
19 behavior or whether this was -- his violence is an
20 inherent, important part of his personality structure,
21 or whether it was a manifestation of environmental
22 factors and immaturity associated with youth. So that
23 stuck out to me that there wasn't a pattern of violent
24 tickets, or a complete absence, in nearly 40 years.

25 There was a pattern that I witnessed in both

1 his misconduct tickets an his employment, where during
2 the early portion of his time, he had more frequent
3 misconduct tickets, and his work reports were -- were
4 positive and negative, where he would both be described
5 as a good, dependable worker, and at other times, he
6 was described as being resistant to doing the work and
7 not having a good attitude in terms of the work
8 assignment.

9 Q Did that change over a period of time?

10 A And that -- that is -- that was another thing that
11 stuck out to me as very important is that he showed a
12 lot of growth during his incarceration in that during
13 the last 20 to 25 years, his work reports have been
14 glowing. He's been described as reliable, dependable,
15 hard working, works well with staff, all of the
16 positive remarks that I've seen in Department of
17 Corrections' work reports were used as descriptions of
18 his work performance and his reliability as an
19 employee.

20 Q Do you know whether or not he has, you know, taken
21 substance abuse classes within the prison system?

22 A It's my understanding that he is -- he's done a lot of
23 classes in self-improvement. He earned a GED in 1987.
24 He's taken substance abuse classes.

25 I recall that -- I think it was the parole

1 board said that he had completed all of the necessary
2 or all of the available treatment programs or
3 self-improvement programs that were available to him.
4 So he's taken every opportunity to improve himself.

5 Q And, you know, in the -- after 1985, were there some
6 instances where he was either, you know, had a letter
7 of commendation or some type of assistance with prison
8 guards themselves?

9 A Yes. In 1988, he was, apparently, a witness to a
10 female prison guard being physically assaulted by other
11 prisoners, and he stepped in and helped restrain the
12 prisoner to assist the -- a guard or the officer. And
13 the officer subsequently wrote a letter of commendation
14 because he obviously could've done nothing or he could
15 have assisted, instead, the prisoner, but he helped the
16 prison guard get things back under control.

17 Q Did he receive any other type of letters or
18 commendations, you know, that you're aware of later
19 than that, if you remember?

20 A It's not coming to mind.

21 Q Do you have your report with you?

22 A Yes, I do.

23 Q To refresh your memory, page 7, in the first full
24 paragraph, two-thirds of the way down, relating to
25 something that occurred in 1998. Or was that what

1 you're referring to?

2 A I mistakenly said '88. That is the incident that I was
3 referring to.

4 Q All right.

5 A It was '98 instead of '88.

6 Q During the evaluations of Mr. Musselman, did you have
7 him take some tests, for example, the personality
8 assessment inventory test?

9 A Yes, I did.

10 Q What is that?

11 A This is a self-report personality inventory that's
12 frequently used in forensic evaluations. There are two
13 primary benefits to this type of testing. One, it
14 provides validity scales that determine whether a
15 person is motivated to exaggerate their problems or
16 minimize their problems. And in a forensic setting,
17 those can be very relevant factors to address because
18 his motivation in testing can be inferred to also
19 influence his motivation in the interview in terms of a
20 description of his psychological status.

21 Mr. Musselman presented in a way that didn't
22 reflect exaggeration or minimization of problems,
23 leading me to believe that he was responding in an open
24 and honest manner.

25 The second part of testing identifies

1 clinical problems, whether they are present or absent,
2 and the degree or severity of these conditions.
3 Testing with Mr. Musselman did not identify the
4 presence of major mental illness. It didn't identify
5 personality disorders.

6 One of the important factors that it does
7 address is personality disorders, primarily anti-social
8 personality traits, or anti-social personality
9 disorder, because that addresses a lack of empathy for
10 others, egocentricity, impulsivity, and sensation
11 seeking. In Mr. Musselman's case, this was one of the
12 lowest scores in his clinical profile.

13 Q Which means?

14 A Well, it supports the other information, it's
15 consistent with the other information from the
16 evaluation that identifies him as not being a person
17 with anti-social personality disorder or with
18 psychopathy, which is another test that I also
19 administer.

20 But also, on the PAI, one relevant finding
21 was it has a dominance scale that addresses how strong
22 a person is in terms of standing up for themselves or
23 whether they are passive and vulnerable to influence by
24 others. He had a very low score on the dominance
25 scale, indicating that he's a passive individual who

1 looks to others for direction. He's a follower rather
2 than a leader.

3 Q Okay. How did that compare to what -- during the
4 records evaluation you did in regard to how
5 Mr. Musselman was back in 1980?

6 A In my opinion, it's entirely consistent with those
7 findings, that he was an intellectually limited
8 individual, much younger than the others, and immature,
9 following their lead rather than being the leader of
10 the group.

11 Q Okay. You know, back -- you indicated a psychological
12 evaluation back in 1979. Was there tests given, a
13 Bender-Gestalt test, G-E-S-T-A-L-T?

14 A There was.

15 Q And what was the result of that back in 1979?

16 A If I can refer to the report, I think I made note of
17 that.

18 Q Page 9, last paragraph, halfway through.

19 A That testing, back when he was 15 years old -- no, 14
20 years old, revealed impulsivity, inadequate emotional
21 control, acting out tendencies, low self-esteem, and
22 perhaps most importantly, the poor ability to foresee
23 the consequences of his actions.

24 Q And throughout, you know, a review of the records and
25 your interview and testing of Mr. Musselman, has he

1 matured since the testing back in 1979?

2 A It's my impression that he's made very important
3 changes in terms of his ability to regulate his
4 behavior and emotions. He's matured.

5 Q Now, you indicated you reviewed Michigan Department of
6 Corrections' records, you know, I think you said
7 about -- you said about 2,000 pages worth of records?

8 A Yes.

9 Q And what did you glean from the records in review of
10 them?

11 A Well, the records revealed several things. One was the
12 absence of major mental illness or treatment for major
13 mental illness throughout the 40 -- 39 years of his
14 imprisonment.

15 The second very important finding was the
16 absence of violent behavior precipitated by
17 Mr. Musselman.

18 The third was his role -- repeated role as a
19 victim, being assaulted during his incarceration. He
20 had several serious injuries, having his jaw wired shut
21 and being life-lined in a different episode due to a
22 head injury to a hospital.

23 But also, I saw a pattern of increasing
24 capacity for self-regulation over time. And that is
25 evidenced by some of the things I've already talked

1 about in terms of the pattern of his misconduct
2 tickets, and the decreasing pattern of -- the lack of
3 substance abuse in the last 20 years, the improvement
4 in his work record over the past many years.

5 Q In reviewing the records, did you review a
6 psychological evaluation that was completed by the
7 Michigan Department of Corrections back in 2009?

8 A I did.

9 Q And what was significant about those records? And if
10 you refer to page 11 of your report, the middle --

11 A Thank you.

12 Q -- middle of the first paragraph.

13 A Yeah. He participated in an MDOC psychological
14 evaluation 10 years ago. And the evaluator at that
15 time noted the offender verbalized his remorse for
16 having killed two people. He knows the names of his
17 victims and expressed a desire to apologize to the dead
18 men's families. The offender appeared to be sincere
19 and genuine in his remorse and feelings towards the
20 victims' families. And they also identified the lack
21 of major mental illness at that time.

22 Q And that was 10 years ago?

23 A Yes.

24 MR. PIAZZA: If I may approach the witness,
25 Your Honor?

1 THE COURT: You may.

2 BY MR. PIAZZA:

3 Q I'm going to show you what's been marked as Defense
4 Proposed Exhibit No. 5, it is a collection of letters,
5 certificates, and includes the 2009 psychological
6 report from the Michigan Department of Corrections.
7 These are all records that was [sic] obtained through
8 the Michigan Department of Corrections that you
9 reviewed; is that correct?

10 A Yes. It's the letter of commendation, certificates for
11 self-improvement courses. This was part of the record
12 that I -- that I was able to review.

13 Q And it also included the psychological record as well
14 that we referred to?

15 A That's true.

16 MR. PIAZZA: Move for the introduction of
17 Defense Proposed Exhibit No. 5.

18 THE COURT: Ms. Hoover?

19 MS. HOOVER: No objection.

20 THE COURT: Exhibit 5 will be admitted.

21 BY MR. PIAZZA:

22 Q In your report, you have a section relating to, and I'm
23 quoting, this is page 11: Developmental influences on
24 juvenile decision-making and understanding the criminal
25 justice system and decision-making abilities.

1 What is that?

2 A It comes back to what we discussed about the
3 differences between adolescent defendants and adult
4 defendants. Because it's well known that adolescents
5 have greater propensity for sensation seeking, risk
6 taking, and poor judgment while making decisions
7 because of their developmental immaturity. And, in
8 this section, I describe how his immaturity influenced
9 his decision-making abilities in terms of leading up to
10 the offenses and his interactions with the authorities
11 and Court personnel leading up to his conviction.

12 Q Afterwards, at the bottom of page 12, you refer to
13 dependency and environmental influence, and that one of
14 the *Miller* factors involved the adolescent dependency
15 and consequent lesser ability to avoid negative
16 influences on their lives. Can you discuss that
17 briefly?

18 A Yes. A child or adolescent is engulfed in the -- their
19 home environment, their neighborhood environment, with
20 little capacity for making changes. The way an adult
21 could leave that type of environment, a child or
22 adolescent is unable to do so.

23 As I discussed earlier, the problems with his
24 environment were well documented, and there were even
25 recommendations that he be removed from that

1 environment, which he was not, due to the lack of
2 structure and supervision.

3 Q Also, on page 13, you cite some articles by various
4 individuals relating to child and development; is that
5 correct?

6 A Yes.

7 Q And you used that -- you know, those treatises in
8 helping you to evaluate Mr. Musselman?

9 A Yes.

10 Q Okay. And how so -- how did that interplay with your
11 decisions here?

12 A There's a large body of research that indicates that
13 children who have been traumatized as a youth or have
14 experienced physical abuse, sexual abuse, or even
15 neglect have far worse outcomes as they move into
16 adulthood in terms of criminal behavior and violent
17 behavior.

18 In Mr. Musselman's case, there's no
19 indication that he was physically or sexually abused
20 prior to arriving in prison, but he had a textbook case
21 of neglect, part of which I've described in terms of
22 his lack of supervision and structure.

23 I cited research review in recent years that
24 described how neglect can be as influential or even
25 more influential than abuse in terms of the

1 individual's later expression of criminal behavior or
2 violent behavior. And that comes back to him being --
3 certain elements of his personality being a product of
4 his environment rather than from his internal
5 personality traits.

6 Q All right. You did discuss the offense, itself, with
7 Mr. Musselman; is that correct?

8 A Yes.

9 Q And you also reviewed records relating to the offense
10 itself, too?

11 A Yes.

12 Q Okay. Can you briefly describe how Mr. Musselman
13 reviewed -- viewed the events?

14 A He talked about an escalation in terms of his substance
15 use with Mr. Varney and Mr. DUBY. It started at
16 Christmas of '79, and he described a prolonged binge
17 that went over a week, all the days leading up to the
18 shootings.

19 He said that they used a great deal of
20 alcohol, they smoked marijuana, they used some other
21 drug, some of which he knew what they were and some
22 that he did not. He said that he had not been home
23 consistently, and they would often sleep, if they did
24 sleep, it might be at someone's house for a nap during
25 daytime. But they said their goal was to party through

1 to the new year, and he said that they were successful
2 in that goal.

3 During the course of that binge, or episode,
4 one of the adult co-defendants obtained or retrieved
5 his shotgun from -- from home and brought it with --
6 brought it with them, which was eventually used in the
7 shootings. He said that leading up to the shootings,
8 they had -- I don't recall which one said it. He said
9 one of the other men described it as: We should shoot
10 up the town. So they used the gun to shoot
11 streetlights, street signs, mailboxes, and eventually,
12 the cars containing the victims.

13 Q Did he indicate to you at the interview you had with
14 him the remorse he has for his actions?

15 A He expressed great remorse, and again, identified the
16 victims by name. He addressed the impact that his
17 behavior had on -- had on the families of the victims.
18 And this has been a consistent message in terms of --
19 it was consistent with what he said in his earlier
20 psychological evaluation, and he appeared sincere.

21 Q In your report, one of the things you look at is for
22 potential for rehabilitation; is that correct?

23 A Yes.

24 Q And you have a section in your report relating to that;
25 is that correct?

1 A Yes.

2 Q And can you describe your opinion based on everything
3 you've looked at, read, and you know, did with
4 Mr. Musselman, and reviewing his records, looked at for
5 potential for rehabilitation of Mr. Musselman?

6 A Yes. In addressing the potential for rehabilitation,
7 there are several different explanations for a person's
8 behavior -- criminal behavior.

9 If his juvenile behavior was the expression
10 of a pattern of diagnoses, which would involve conduct
11 disorder as a child, where the person's breaking laws,
12 assaulting people, stealing things, that can progress
13 into anti-social personality disorder as an adult, and
14 eventually, be described as psychopathy, a person has
15 psychopathic personality traits. In that case, you
16 would say that that person would have more of an
17 internal motivation for their behavior rather than the
18 external factors.

19 My evaluation, in terms of reviewing all of
20 the available records, and there were -- there were
21 many, I feel that I got a very good picture of his
22 development and history as he developed into a -- into
23 an adult was entirely inconsistent with a finding of
24 the anti-social personality disorder or psychopathy,
25 which was relevant in the analysis of his

1 rehabilitation potential. Because we have the benefit
2 of these records for the past 39 years, I don't have to
3 predict the future as much as you would doing if doing
4 the evaluation right after the events. We have a -- he
5 has a track record.

6 And so, I think that, in my opinion, he has
7 demonstrated the capacity for rehabilitation in terms
8 of his work history, his involvement in spiritual
9 activities, his lack of substance use, his ability to
10 put his addiction -- substance addiction behind him.

11 So, in a lot of ways, that was one of the
12 most striking features in my evaluation is the way that
13 he has -- the turns that his life has taken as an adult
14 because of the absence of a lot of problems that you
15 would expect to see in a person who is not amenable to
16 rehabilitation. I think that he is amenable to
17 rehabilitation and has demonstrated that.

18 Q Would it be fair to say that when he first went to
19 prison, that he had difficulty adjusting to prison, but
20 that as he went further on in the prison system, he's
21 changed?

22 A I think that during the early portion of his
23 incarceration, it -- he was still influenced by a lot
24 of the factors that influenced his conduct prior to the
25 shootings in terms of his emotional immaturity, still

1 15, 16 years old as a prisoner in the Department of
2 Corrections. And he maintained his substance addiction
3 for over 10 years, maybe 15 years in prison. I think
4 that had an effect, those two things, in terms of
5 immaturity and his substance use, that maintained
6 during those first 15 years of his incarceration.

7 And then, as he moved past those things and
8 matured into a man, put the substance use behind him,
9 he was able to express himself in a much more peaceful
10 and reliable way in what's been described in the record
11 over the past two decades.

12 Q In your report, you put a section under "Summary and
13 Conclusions." Did you put summaries together in the
14 report itself?

15 A Yes.

16 Q And you come to some conclusions based on what -- your
17 review of the records, your interviews of
18 Mr. Musselman, the testing back in '79, 2009, and
19 presently, did you come up with some conclusions
20 relating to Mr. Musselman?

21 A Yes.

22 Q What is your bottom line conclusion regarding
23 Mr. Musselman as he is today?

24 A Well, based on the factors that I've described here, I
25 think that it's my -- it is my opinion that his

1 behavior in 1980 leading to the shootings, that
2 environmental factors and developmental immaturity
3 played a great role in determining his behavior, and
4 that this wasn't an expression of long-term and
5 permanent personality characteristics; that -- that
6 this was -- had a strong influence from the environment
7 and his immaturity in the context of association with
8 the adult co-defendants and association with the
9 substance use.

10 Q Okay. Did he -- has he taken full responsibility for
11 his actions?

12 A In his statements, he has consistently said those
13 things, that he's -- he is remorseful.

14 Q I'm sorry?

15 A That he's consistently expressed remorse, and I don't
16 have a reason to question that.

17 Q In looking at the factors under *Miller* and *Montgomery*
18 regarding the juvenile lifer laws, you know, one of the
19 issues to take into consideration is the defendant's
20 age, immaturity, and that. In this particular case,
21 the defendant's age, he was young and immature, would
22 you say, at the time of the events?

23 A He was young and immature, but even more so than the
24 average 15-year-old, because remember, compared to
25 other 15-year-olds at the time, his intellect was lower

1 than 94 percent of 15-year-olds. He was functioning
2 academically in the second and third grade level. He
3 didn't have the role models to guide him in terms of
4 emotional and social development that most individuals
5 have. So, his immaturity and developmental level was
6 even much lower than would be expected given his
7 chronological age.

8 Q Other factors, family environment, you've discussed the
9 family environment here this afternoon?

10 A Yes.

11 Q And you've annotated that within your report itself; is
12 that correct?

13 A Yes.

14 Q Also, too, under the juvenile lifer laws, you know,
15 under *Miller*, take a look at circumstances of the
16 events. And do you think you've adequately described
17 the circumstances of the events this afternoon to the
18 Court?

19 A Yes.

20 Q Okay. One of the issues under *Miller* and *Montgomery* is
21 potential for rehabilitation. Is it your opinion that
22 not only has Mr. Musselman the potential for
23 rehabilitation, but that he is striving to that point
24 after 39 years in prison?

25 A That's my opinion, yes.

1 Q You notice a lack of prior record, and that's also in
2 consideration under the *Miller, Montgomery* issues?

3 A Yes.

4 Q And one of the issues under *Miller, Montgomery* is
5 whether or not the individual has accepted
6 responsibility and shows remorse, and you indicated
7 that that, he has done in this particular matter; is
8 that correct?

9 A Yes, he has.

10 Q If I may approach again, Your Honor, I'm showing you
11 what's been marked as Defendant's Proposed Exhibit
12 No. 2. Is that a copy of the report that we've been
13 referring to during your testimony?

14 A Yes, it is.

15 MR. PIAZZA: And I've provided a copy to the
16 prosecutor earlier. I'd move for the introduction of
17 Defense Exhibit No. 2.

18 THE COURT: Ms. Hoover?

19 MS. HOOVER: No objection, Your Honor. Thank
20 you.

21 THE COURT: Exhibit 2 will be admitted.

22 MR. PIAZZA: If I might have a moment here,
23 Your Honor.

24 THE COURT: All right.

25 (Off-the-record discussion.)

1 MR. PIAZZA: No further questions at this
2 time.

3 THE COURT: Questions, Ms. Hoover?

4 MS. HOOVER: Thank you, Your Honor.

5 C R O S S - E X A M I N A T I O N

6 BY MS. HOOVER:

7 Q Good afternoon.

8 A Good afternoon.

9 Q I just have a few questions for you regarding your
10 report and some of the opinions that you have in this
11 case.

12 First off, I believe you said on direct
13 examination that you've done six evaluations of
14 juvenile lifers --

15 A Yes.

16 Q -- so far in your career?

17 A That's right.

18 Q And of those six, how many of those have you deemed to
19 be irreparably corrupt or incapable of rehabilitation?

20 A Two are not yet completed. In some, I defined or
21 described the pros and cons on both sides. And in
22 Musselman and one other, I said that they were --
23 offered a strong opinion that they were not irreparably
24 corrupt.

25 Q Okay. Was there any of those that you did offer an

1 opinion that they were irreparably corrupt, though, was
2 what my question was.

3 A Not in -- not exactly in those words.

4 Q Okay.

5 THE COURT: What words did you use?

6 THE WITNESS: Well, in one case, the first
7 evaluation that I did in this issue, in this realm of
8 evaluations, it was an individual who was -- it was
9 much closer to the offense, he'd just been convicted.
10 And, in that case, there were signs of conduct disorder
11 as an adolescent, anti-social personality traits as he
12 moved toward adulthood.

13 So the focus of that evaluation was,
14 primarily, identifying his low intellectual functioning
15 based on the testing and school records. So I
16 described those issues and said that he was less mature
17 for those reasons, but didn't -- didn't address the
18 *Miller* factors as I might not have been quite as
19 familiar with them at that point. This was a couple
20 years ago, soon after the ruling.

21 BY MS. HOOVER:

22 Q Okay. But you've never definitively identified someone
23 as irreparably corrupt --

24 A Correct?

25 Q -- correct? Okay. Thank you.

1 And it looks like, based on your report, sir,
2 that you did review quite a bit of materials in this
3 case. And just looking to those materials that you did
4 review in preparation for your evaluation, looks like
5 one of the things listed here is the review of the
6 transcripts of the waiver hearing; is that correct?

7 A Yes.

8 Q Okay. And did you read every volume of the transcripts
9 from the waiver hearing, Phase 1 and 2?

10 A I don't recall. I had two large boxes of records, and
11 I reviewed all that were available. I don't recall if
12 it was Volume I and/or Volume II, but a lot of what I
13 referred to in the report was from the waiver hearing
14 in terms of the testimony of the Big Brother and the
15 social worker and the school psychologist.

16 Q Okay.

17 A That comes from the waiver hearing transcript.

18 Q Okay. Did you have the opportunity to review the
19 testimony of Dr. Margaret Cappone from the waiver
20 hearing transcript?

21 A Yes.

22 Q Okay. So, some of the things that Dr. Cappone had
23 mentioned -- one in particular that stuck out to me at
24 least and I'd like to know what your opinion is on it.
25 The fact that Mr. Musselman at that time was diagnosed

1 as a sociopath, did you read that portion of the
2 transcript, sir?

3 A I describe her testimony on page 10, and I'm trying to
4 re-review that. I do not recall that -- that language
5 being used.

6 Q Okay. And I believe it was actually within the
7 transcript as social path, but I think that was perhaps
8 a typo, and that would be located at pages 103 and 104
9 of Volume II of the waiver hearing. Would it surprise
10 you that that diagnosis was made?

11 A Well, what I have here is a description of -- of her
12 findings where she describes him as asocial, grandiose,
13 power-seeking structure that would predispose him to
14 violent, pain-inflicting, anti-social behaviors. And
15 I'm aware that that was her opinion.

16 It's my opinion that that is inconsistent
17 with his history and subsequent behavior before her
18 evaluation and after. He didn't demonstrate those with
19 the exception of this -- with this -- the shootings.

20 Q Okay. So the fact that Dr. Cappone noted that
21 Mr. Musselman appeared to be fascinated by inflicting
22 pain and violence, talking about blowing people away,
23 specifically African-Americans, did that contribute at
24 all to the opinion that you just gave us now?

25 A Well, I considered her testimony. And I -- again, I

1 say that that's inconsistent with -- with his behavior
2 before and after the shootings. If her conclusions
3 were correct, you would expect more violent behavior in
4 his record, and I was unaware of any violent behavior
5 before the shootings or after the shootings unless he
6 was the victim. So, if those findings were accurate,
7 we'd be having a very different discussion.

8 That leads me to believe that her evaluation,
9 based on the information that was available at that
10 time, was not as thorough as this evaluation, given
11 that this has much more information about his history
12 before that point and after that point. And so, I
13 would say that I disagree with those findings.

14 Q Okay. And I guess when you say it wasn't as thorough,
15 I'm not really sure how you're drawing that conclusion.
16 Could you elaborate on that?

17 A Yeah. She didn't have the benefit of the thousands of
18 pages of MDOC records. She didn't have the benefit of
19 looking at his behavior after age 15 up to age 54. So,
20 I have the benefit of reviewing those records and
21 knowledge of that.

22 And I'm not sure what materials were reviewed
23 in advance of the evaluation. Quite often, a pretrial
24 evaluation of a juvenile is -- primarily involves a
25 review of the police report, interview, and testing

1 with the individual. Sometimes, the school records or
2 the medical records, if they're available, are
3 available. But in my experience, sometimes, those
4 evaluations don't have the benefit of having as many
5 records as -- as this kind of evaluation.

6 Q And in terms of when you are looking at someone, trying
7 to determine whether they have anti-social personality
8 traits and the like, would it be significant to you,
9 sir, if the person frequently talked about killing
10 other people?

11 A Yes.

12 Q Okay. Would it also be significant to you, sir, if the
13 person appeared to enjoy inflicting pain on others?

14 A It would.

15 Q Okay. Would it also be significant to you, sir, if the
16 person continuously broke rules and also frequently
17 didn't pay attention to directions, and frequently
18 engaged in cruel behavior during sports? Would that
19 also be something that would be significant to you in
20 terms of viewing a juvenile and whether they had
21 anti-social personality traits?

22 A Yes.

23 Q Okay. And, sir, I also see on here that you did review
24 the trial transcripts as well --

25 A Yes.

1 Q -- is that accurate? Okay. And so, knowing, after
2 reviewing the testimony, that it was -- there was
3 testimony at trial that Mr. Musselman was the person
4 who pulled the trigger each and every time, killing
5 both individuals in this case -- injuring one and
6 nearly killing another, did that factor into your
7 evaluation at all in terms of whether he was a leader
8 or a follower?

9 A Yes.

10 Q Okay. And can you elaborate on that for me, please.

11 A Yes. In the statements of the co-defendants, there was
12 a consensus that he did pull the trigger, but he -- and
13 I believe it was Mr. Varney said that Duby, who was the
14 driver, said, "Shoot now, shoot him." And given the
15 information that's available in terms of his
16 developmental level, his age, the age and developmental
17 level of the others, his level of intoxication, I don't
18 have reason to believe that he was the leader of this
19 group. It's my impression that he was a follower in
20 this group of three.

21 Q And does it change your opinion, sir, that prior to
22 Mr. Duby saying, "Yeah, shoot him," that Mr. Musselman
23 said, "You want me to shoot him?" Does that change
24 your opinion at all?

25 A It informs my opinion, but it doesn't make me think

1 that he was the leader of the group.

2 Q Sure. And if you reviewed the trial testimony, sir,
3 then, presumably, you also reviewed the testimony of
4 Glen Turner, who was an inmate with Mr. Musselman at
5 the juvenile facility?

6 A Yes.

7 Q Okay. And the fact that while they were in the
8 facility together, Mr. Musselman frequently made
9 comments about going and killing some
10 African-Americans, that's what he intended to do that
11 night, only he used different language?

12 A He used the pejorative term. That -- I read that
13 testimony.

14 Q Okay.

15 A I'm aware of that testimony.

16 Q And what -- what significance did that have in terms of
17 your evaluation, sir?

18 A I explored that issue with Mr. Musselman. He
19 explicitly denied an intention to target
20 African-Americans. He said based on the conditions of
21 the night, he said it was January and dark, he had
22 difficulty -- they could see the figure but not --
23 because of the speed that they came up, had difficulty
24 looking at the features of each person. So it's his
25 account that he was not aware of the demographics of

1 each of the individuals.

2 And he -- I said it's been -- I confronted
3 him with that, saying it's been alleged by others that
4 you said that it was. And he says that that's --
5 that's -- it's inaccurate. He denied it.

6 So I weighed both sides of that, and I can't
7 rule out that that was -- that it was racially
8 motivated, but it's his account that it -- that it was
9 not.

10 Q Okay. And because I'm surely not an expert in your
11 field, sir, is there a difference between anti-social
12 personality and being a sociopath?

13 A Yes.

14 Q What is the difference, sir?

15 A Anti-social personality disorder focuses -- I mean,
16 there's a great degree of overlap between the two
17 concepts, but anti-social personality disorder
18 diagnosis focuses a lot more on the behavioral aspect
19 or behavioral elements of anti-social behavior in terms
20 of violent behavior, of irresponsible behavior,
21 reckless and impulsive behavior.

22 And a diagnosis of psychopathy, whether he
23 has psychopathic traits, addresses a lot of those
24 issues, too. But it also looks at whether he has, for
25 example, a glib, superficial charm, where he's a smooth

1 talker and a manipulative person, whether he has a lack
2 of empathy for others and expresses taking advantage of
3 others in a lot of situations. So they are not the
4 same, but there's a high degree of overlap in these two
5 concepts.

6 Q And based on what you know to be true, having read the
7 trial record, and your interview with Mr. Musselman,
8 did you have the impression during that interview at
9 all that he was minimizing his involvement at all based
10 on what you know about the crime from your own research
11 and your own review?

12 A Well, and those are the things that I asked him about
13 in terms of -- he readily expressed that he was the
14 shooter. He said that he enjoyed the positive feedback
15 from the other two men, where they would say -- this is
16 in the context of him wanting their approval and
17 wanting to fit in with the older people because he
18 didn't generally fit in with people, where they said
19 "good shot," you know, they were -- so he said a lot of
20 things that reflected very poorly on him and he
21 expressed great remorse for those issues.

22 The one potential area of minimization that
23 we discussed is whether he was able to identify the
24 demographics of the victims. So, as I said, there's
25 information on both sides on that element.

1 Q Okay. Mr. Piazza asked you some questions about
2 Mr. Musselman's home and family life. And you had
3 mentioned that there was a lack of supervision and a
4 lot of instances where Mr. Musselman was kind of left
5 to his own devices.

6 Did you have any information in terms of
7 neglect, I believe is the term that you used? Did you
8 have any information that Mr. Musselman was ever
9 without adequate food, clothing, shelter, or anything
10 of that nature?

11 A Well, that's -- that's the -- that's the conflict in
12 this. Because while he said he was babied by his
13 grandmother, that she treated him as a favorite, and
14 they would get him -- you know, he said his cat was run
15 over by a car, he was very distressed, so his
16 grandmother immediately got him another cat. They
17 provided him with those things.

18 But the neglect that I'm describing is in
19 terms of structure and supervision, allowing him to
20 stay out all night and use -- not putting an end to his
21 substance use, along those lines, is the primary area
22 of neglect.

23 Q Okay.

24 A Rather than he didn't have food to eat or clothes to
25 wear.

1 Q Okay. So you did not have any information to that
2 effect?

3 A I don't recall a lack of food or clothing, those
4 issues.

5 Q Okay. And just so we're clear as well, there was no
6 physical or sexual abuse in the household at all that
7 he reported?

8 A He denied that he was the victim of those issues. He
9 didn't report them.

10 Q Okay. And in terms of IQ, I know that that was briefly
11 discussed as well, and you having worked at the
12 forensic center and everything else detailed in your
13 CV. You've interviewed quite a few individuals who are
14 accused of crimes; is that accurate?

15 A Yes.

16 Q Okay. So is it something that is uncommon for you in
17 your profession, that people with IQs of 77, or around
18 that range, commit crimes?

19 A It wouldn't -- I wouldn't say that there -- a person
20 with that IQ is more likely or less likely to commit
21 crimes. I've met many people at that level who are
22 accused of crimes, but I wouldn't say that their
23 intellect is a determining factor in whether they're
24 going to be engaged in criminal behavior.

25 Q Okay. And based on your evaluation and everything that

1 you reviewed, sir, did Mr. Musselman have any sort of
2 mental health treatment during his incarceration that
3 you're aware of?

4 A He had -- the evaluations that I'm aware of,
5 psychological evaluations in 1980 and then in -- I
6 believe it was 2009. In 2014 or '15, I describe in the
7 report how he presented for treatment due to depressed
8 mood and anxiety about some of his physical health
9 concerns and life circumstances in general. And he
10 participated in some counseling sessions in -- I
11 believe it was between 2014 and 2016. But in terms of
12 his overall period of incarceration, this was -- this
13 was minimal and recent. He was never prescribed
14 psychotropic medications that I -- to my knowledge.

15 Q And other than the evaluations that we talked about
16 before, this was the only type of mental health
17 treatment or counseling of any type that you had seen
18 throughout the duration of his incarceration?

19 A Well --

20 Q Nothing prior to 2014, I guess I should say.

21 A There's a fine line between mental health counseling,
22 and he did participate in substance abuse treatment
23 programs --

24 Q Sure.

25 A -- and Thinking For a Change, those kind of programs.

1 There was a stack of certificates for those kind of
2 issues, but those aren't specifically mental health
3 treatment. The substance abuse, I guess, could fall
4 into that category.

5 Q Sir, you also mentioned that Mr. Musselman scored low
6 on the dominance scale, and that he -- his personality
7 is more indicative of being a follower. You also
8 described an incident where Mr. Musselman interjected
9 himself into a confrontation involving a corrections
10 guard. Those two things appear to conflict in terms of
11 dominant versus permissive, I guess would be how I'd
12 classify it. How do you explain that?

13 A Sure. A person with a low dominance score, in general,
14 is going to behave in a passive or a vulnerable manner
15 in social interactions. But it's not an absolute rule.
16 A person who is passive can act out when they -- the
17 when need for it is very strong, which, apparently, in
18 this situation, he believed it was.

19 If he was overall dominant and controlling,
20 you would expect him to have -- and this stepping in to
21 help the guard was an expression of that. You would
22 expect to see more violent behavior on his part over
23 the course of 39 years. And because that was absent, I
24 say that this one time that he stepped up to assist is
25 not necessarily inconsistent with the low scoring

1 dominance in terms of the psychological testing.

2 Q Sure. Okay. Just a couple more questions for you.

3 In terms of the potential for rehabilitation,
4 when you're evaluating an individual, sir, how do you
5 differentiate between someone demonstrating the
6 capacity to be rehabilitated versus thriving and
7 surviving in a controlled environment such as a prison?
8 How do you differentiate between those two things?

9 A Good question. In my experience, there are very many
10 individuals in a prison setting who have the same
11 number of misconduct tickets that Mr. Musselman has in
12 39 years, they might have the same number of
13 misconducts in one year.

14 A person who is not amenable to
15 rehabilitation would continue their violent,
16 manipulative, criminal behavior throughout their
17 lifespan. And I think that the absence of those things
18 speaks volumes about whether he is amenable to
19 rehabilitation. And saying that he's just adapting to
20 the situation, I think it's very important to look at
21 the fact that many people in that situation do not
22 adapt the way that he has. So I think it's something
23 from his internal personality structure rather than
24 merely environmental changes.

25 Q So, if somebody acts out in prison, there are obviously

1 certain consequences. And after a few of those
2 consequences, somebody might adapt to, perhaps, avoid
3 those consequences?

4 A Sure.

5 Q So, in terms of -- kind of throwing that hypothetical
6 in, does that change anything that you've just said?

7 A Yeah, that's a good example because a person's ability
8 to adapt their behavior based on their experience is,
9 by definition, rehabilitation, or ability to be
10 rehabilitated, that they're able to control and change
11 their behavior because the consequences are aversive.
12 So I think that that -- that is an important factor,
13 that if he changed his behavior just because of the
14 situation, it demonstrates his ability to change his
15 behavior and control his behavior because many
16 prisoners are not able to do that.

17 MS. HOOVER: Thank you very much. I don't
18 have any other questions right now.

19 THE COURT: Anything else, Mr. Piazza?

20 MR. PIAZZA: Just a couple questions if the
21 Court please.

22 R E D I R E C T E X A M I N A T I O N

23 BY MR. PIAZZA:

24 Q Doctor, you were asked about Dr. Cappone's testimony at
25 waiver hearing. She did not evaluate, to your

1 knowledge, Mr. Musselman within the last year or two;
2 has she?

3 A It was in 1980.

4 Q 1980. That's the only time that, according to -- the
5 records indicate she testified about Mr. Musselman; is
6 that correct?

7 A Yes.

8 Q And you indicated briefly that many of these type of
9 interviews in juvenile court waiver hearings is not
10 complete?

11 A I don't want to say that because they're complete given
12 the circumstances, but I think that with the
13 information that we have available in 2019, that view
14 of Mr. Musselman is incomplete.

15 Q Okay.

16 A And I don't know every method and procedure that she
17 engaged in to come to these conclusions, so I can't
18 speak to the thoroughness at the time.

19 Q All right. You also indicated, I believe, that a
20 sociopath has lack of empathy for others; is that
21 correct?

22 A That's one of the hallmark traits of -- well, a
23 psychopathic personality or anti-social personality.

24 Q You don't find Mr. Musselman psychopathic; do you?

25 A Well, I think a good example is that he did step in to

1 help the -- help the prison guard in 1998. A person
2 with a lack of empathy, sociopathic, psychopathic
3 personality traits would've maybe taken advantage of
4 the situation rather than helped to resolve the
5 situation.

6 Q You also indicated someone who's, you know, nondominant
7 but a passive individual, the prosecutor asked, you
8 know, would they come out -- come forward in a
9 situation like Mr. Musselman did in that particular
10 matter? Someone who's passive or nondominant sees a
11 child drowning could assist in that particular case; is
12 that correct?

13 A Yes, it's situationally specific, because a passive
14 person is not always passive.

15 Q Right.

16 A A dominant person is sometimes passive.

17 Q Okay. And you indicated in the last part of your
18 report, it's your opinion that Mr. Musselman is not the
19 rare individual that would be considered irreparably
20 corrupt; is that correct?

21 A Yes.

22 MR. PIAZZA: Nothing further, Your Honor.

23 THE COURT: Dr. Wendt, I'm confused on a few
24 points so maybe you can help clarify them for me.

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: You testified in relation to
2 questioning by Ms. Hoover and Mr. Piazza about an
3 incident that occurred in 1998 --

4 THE WITNESS: Yes.

5 THE COURT: -- concerning a security guard.

6 THE WITNESS: When I first testified, I think
7 I said '88, and I was corrected that it was '98.

8 THE COURT: Okay. And what was the nature of
9 that offense in 1998 again -- I mean, that situation?

10 THE WITNESS: The way I understand it, there
11 was a female corrections officer in his unit who he
12 described as someone who had perceived him as a passive
13 individual, so she was kind to him and looked out for
14 him. He saw that she was being physically assaulted by
15 another male prisoner, and was apparently in danger of
16 losing the fight, so he stepped in to help restrain the
17 other prisoner. And that corrections officer wrote the
18 commendation letter explaining that he had helped her.

19 THE COURT: Is that in this packet?

20 THE WITNESS: I think it's that first page
21 that you're looking at.

22 THE COURT: Okay. Because this says 1988,
23 and it refers to him helping restrain another prisoner,
24 not restrain someone from attacking the guard, so
25 that's why I'm confused.

1 THE WITNESS: Well, that's -- that's the
2 episode that I'm describing. If I have the year wrong,
3 I think I said '88 first.

4 THE COURT: But it has a different set of
5 circumstances as well from what you just told me.

6 THE WITNESS: Well, it's -- it's my
7 understanding that when the -- when the guard was
8 helping -- helping with the situation, that's when it
9 became physically dangerous for her.

10 THE COURT: Okay.

11 THE WITNESS: That's my impression of it. I
12 could be incorrect.

13 THE COURT: But that's not what it says in
14 that exhibit. That's what I'm just trying to figure
15 out. That's a different situation.

16 THE WITNESS: This is the only -- that's the
17 only situation that I know that he stepped in.

18 THE COURT: And that's the person who wrote
19 the letter.

20 THE WITNESS: Right.

21 THE COURT: Doesn't seem to indicate what you
22 indicated to the Court. I'm just trying to clarify
23 that.

24 THE WITNESS: Correct. I would go with what
25 she wrote rather than what I'm recalling because I

1 could be incorrect.

2 THE COURT: Well, that's what I'm doing.

3 THE WITNESS: Yes.

4 THE COURT: That's the exhibit and what she
5 said?

6 THE WITNESS: That's right.

7 THE COURT: Okay. Also, you testified that
8 you thought Dr. Cappone's evaluation was incomplete.
9 Did you also say it was, in your opinion, inaccurate?

10 THE WITNESS: I have no reason to say that
11 it's inaccurate in terms of what she had to work with
12 at that time. I would say that the -- for someone to
13 call a 15-year-old sociopathic who had no history of
14 juvenile adjudications, no history of violent behavior
15 up until this incident, I would say that those findings
16 are inconsistent with that conclusion; and therefore, I
17 questioned what information she had to base it on,
18 because I -- it's my opinion that that conclusion is
19 inconsistent with his history up until then.

20 THE COURT: Mm-hmm.

21 THE WITNESS: But also now, I have the
22 benefit of his history between then and now.

23 THE COURT: Whatever she had up until then,
24 you're not aware of what she based it on; is that what
25 you're telling me?

1 THE WITNESS: Well, I'm -- I guess I'm making
2 assumptions on what it was based upon, but I would --

3 THE COURT: I don't want you to make
4 assumptions.

5 THE WITNESS: -- say, well, I don't know
6 exactly what she based it on.

7 THE COURT: Okay.

8 THE WITNESS: But I would say that that
9 conclusion is inconsistent with the available
10 information. If she had his juvenile adjudication
11 record, she would have seen that this is inconsistent
12 with these conclusions.

13 THE COURT: Okay. You also indicated to
14 Ms. Hoover that when he said, "Do you want me to shoot
15 him," you said that didn't change your opinion, but it
16 informed your opinion.

17 THE WITNESS: Certainly.

18 THE COURT: How did it inform your opinion?

19 THE WITNESS: That he was -- he took
20 responsibility for what he did. He didn't say, they
21 made me do these things. He said I do -- I did these
22 things and I feel terrible.

23 He was an active participant. He described
24 to me that -- that while he was encouraged to do these
25 things by others, he was -- he was someone who -- he

1 didn't resist and he'd went along, and he was an active
2 participant just like the others.

3 THE COURT: Her question was in relation to
4 whether you viewed him as a leader or a follower.

5 THE WITNESS: Yes.

6 THE COURT: And that's what I was trying to
7 figure out, if that informed you that he was a follower
8 as opposed to a leader, I was wondering how that
9 informed you.

10 THE WITNESS: Okay. Well, it goes into my
11 analysis of whether this is a person who is a leader or
12 a follower. And based on the factors that I described
13 in terms of his age and development, his personality
14 structure, and his behavior since then and before then,
15 it's my impression from a psychological standpoint that
16 he's an intellectually limited, passive individual
17 overall.

18 And given the context of how he described the
19 relationship with his two adult co-defendants, it's --
20 I don't -- I don't come to the conclusion that he was
21 the leader of this group.

22 THE COURT: Okay. And that's based upon
23 things that occurred after that you're aware of or --

24 THE WITNESS: Things that -- my
25 understanding -- my psychological understanding of the

1 context of what was going on there. The influence
2 these two adult men would have in terms of providing
3 him with drugs, they provided him with alcohol, they
4 provided him with transportation, they eventually
5 provided him with the gun. He did not go locate these.
6 He wasn't able to locate these; he was a 15-year-old
7 boy.

8 My understanding is that the Big Brother
9 testified that the grandmother had told him that she
10 had gone and told -- she had a neighbor go tell Duby
11 and Varney, leave him alone, he's too young, and yet,
12 she didn't stop him from going there. So it was her
13 perception that this was a bad influence on a young
14 individual.

15 So, based on the information then, that's
16 also informed by the more recent information, which I
17 think is all consistent, it is very difficult for me to
18 come to the conclusion that he was the leader of that
19 group.

20 THE COURT: Okay. So the statement doesn't
21 have any bearing on your opinion?

22 THE WITNESS: Oh, it does.

23 THE COURT: That's what I'm trying to figure
24 out. In terms of his leadership or non-leadership
25 role, if someone says, "Do you want me to shoot them,"

1 how does that play out in terms of your evaluation
2 whether he's a leader or not?

3 I understand you're saying they influenced
4 him overall in a bad way, but in the specific incident
5 that occurred --

6 THE WITNESS: Right.

7 THE COURT: -- at the time it occurred, how,
8 then, are you saying he's not leader in that situation?
9 I'm just trying to figure that out.

10 THE WITNESS: Okay. Well, he describes
11 himself as an equal participant. I don't think -- it's
12 not my position or his that he was coerced or forced to
13 do these things --

14 THE COURT: Okay.

15 THE WITNESS: -- that he was a participant in
16 this group. But, given the characteristics of being
17 much younger, and the other factors that I described in
18 terms of his overall psychological profile, I don't --
19 I don't agree that he would have been the leader of
20 this group.

21 THE COURT: Okay. So how would classify him?
22 Tell me that.

23 THE WITNESS: Well --

24 THE COURT: I'm still trying to get that
25 definitively from you. If he's not a leader, what is

1 he?

2 THE WITNESS: He is a -- an immature,
3 intellectually limited, neglected, substance-abusing
4 15-year-old, who's hanging out on a daily basis using
5 drugs and alcohol with two grown men. He was trying to
6 fit in. He said it was his motivation to fit in with
7 these men and be accepted, and it meant a big deal that
8 he would be accepted by these two, which I described in
9 the report in the "Peer Pressure" section.

10 That said, I don't think that he was forced
11 to do these things, and he doesn't say that, either.
12 But he was a -- he was a -- he was a participant, but I
13 think that the other two, likely because of their age
14 and experience, played at least an equal role.

15 THE COURT: Okay. You also testified that
16 the -- one of the other men indicated, "Let's go shoot
17 up the town." Do you remember you testified to that
18 effect?

19 THE WITNESS: That's what Mr. Musselman told
20 me.

21 THE COURT: Okay. Is there anything in the
22 records that you reviewed or that Mr. Musselman told
23 you that one of them said, "Let's shoot people," as
24 opposed to shooting up the town?

25 THE WITNESS: There was some testimony that

1 said that he said, "Let's go shoot people," that
2 Mr. Musselman said those things.

3 THE COURT: I'm just trying to figure out if
4 anyone else said that, that you reviewed.

5 THE WITNESS: Well, what I recall is that
6 there were other -- other people that they had spent
7 time with before the shooting who were not in the car
8 at the time that had heard -- that testified or told
9 the police that they heard Musselman say, "We're going
10 to go shoot people."

11 THE COURT: Okay. Once again, my question to
12 you is, though, of the other two individuals who were
13 with him who had influence over him, is there evidence
14 in the records you reviewed that said one of them or
15 both of them said, "Let's go shoot people"?

16 THE WITNESS: I don't recall them saying,
17 "Let's go shoot people." I recall them -- the
18 testimony that they said, "Shoot now" or "Shoot him
19 now," in the moment, once they were already in the
20 process.

21 THE COURT: Okay. I mean, you testified that
22 one of them said, "Let's go shoot up the town,"
23 according to what Mr. Musselman told you.

24 THE WITNESS: Right.

25 THE COURT: Did he or anyone else tell you

1 one of the people said, "Let's go shoot people"?
2 That's my question to you.

3 THE WITNESS: Yes.

4 THE COURT: Which one of them told him that?
5 Not when it was happening, before that, because --

6 THE WITNESS: Well, the only one I know that
7 said, "Let's go shoot people," is Musselman.

8 THE COURT: That's what I'm asking you.

9 THE WITNESS: I'm sorry. I misunderstood.

10 THE COURT: No, I want to make sure we're
11 clear here, what I'm asking you.

12 THE WITNESS: The testimony that I heard or
13 the statements to the police that I heard, that
14 Musselman said these things.

15 THE COURT: Okay. All right. I'm clear now.

16 THE WITNESS: Okay.

17 THE COURT: Anything else, Mr. Piazza?

18 MR. PIAZZA: Just one followup question with
19 that.

20 BY MR. PIAZZA:

21 Q During your research into this area, did one of the
22 other individuals say, "Shoot him now," I believe I
23 thought you said?

24 A That -- and that's the way I understand is that the --
25 I think it was Harry Varney said that prior to the

1 shooting, that Duby, who was the driver, said, "Shoot
2 him now," and Musselman --

3 Q Shot.

4 A -- shot.

5 MR. PIAZZA: Thank you. Nothing further,
6 Your Honor.

7 THE COURT: Anything else, Ms. Hoover?

8 MS. HOOVER: No, Your Honor. Thank you.

9 THE COURT: Let's take a short break.

10 MS. LEWIS: All rise, please.

11 (At 2:44 p.m., recess taken.)

12 * * *

13 MS. LEWIS: All rise, please.

14 (Proceedings reconvened at 2:55 p.m.)

15 MS. LEWIS: Court is again in session, the
16 Honorable Darnell Jackson presiding. You may be
17 seated.

18 THE COURT: We are back on the record in the
19 case of People versus Richard Musselman.

20 Mr. Piazza, are you prepared to proceed?

21 MR. PIAZZA: Yes, Your Honor. At this time,
22 we'd call Larry Gudith to the stand, please.

23 MS. LEWIS: Raise your right hand, sir. Do
24 you solemnly swear that the testimony you shall give in
25 this cause here pending shall be the truth, the whole

1 truth, and nothing but the truth, so help you God?

2 MR. GUDITH: I do.

3 MS. LEWIS: Take the witness stand.

4 LARRY GUDITH,

5 being first duly sworn at 2:55 p.m., testified under
6 oath as follows:

7 D I R E C T E X A M I N A T I O N

8 BY MR. PIAZZA:

9 Q Could you please state your name for the record and
10 spell your last name for the court reporter.

11 A Larry Gudith, G-U-D-I-T-H.

12 Q What is your current profession or occupation?

13 A I'm a Certified Recovery Coach.

14 Q And what type of positions do you hold at this present
15 time?

16 A I'm sorry?

17 Q What do you do for a living?

18 A I help people with addictions, and I'm also a court
19 liaison for the Mariners Inn in Detroit. That's my
20 employer.

21 Q And I notice you're wearing a shirt saying "Chaplain"?

22 A Yes. I'm a Certified Chaplain from the International
23 Fellowship of Chaplains.

24 Q And where do you perform?

25 A In the prisons and jails in the state of Michigan.

1 Q Okay. And you presently, you know, work out of the
2 Oakland County Sheriff's Department at times?

3 A Yes, I'm an Oakland County Sheriff's Chaplain, also --
4 police department chaplain.

5 Q And you said you're a recovery coach. What is a
6 recovery coach?

7 A A recovery coach helps an individual plan their life
8 skills. We help them with their addictions to get
9 through the hurts, habits, and hangups, and the basis
10 that keeps triggering their addiction. We also help
11 them with a game plan for their life to help them with
12 things such as food, clothing, shelter, what are your
13 plans. And we basically come up with a game plan for
14 them for their lives. What's going to happen in the
15 next 30 days, 60 days, 90 days? What's going to happen
16 in a year, five years? Help them keep in line with
17 their addictions, but also help them acquire life
18 skills and the things that there are necessities
19 they're going to need in life, such as driver's
20 license, food, clothing, shelter, and vocational needs.

21 Q Are you involved with what's referred to as Lifeline
22 Prison Ministry?

23 A I am the Founder and Director of Lifeline Prison
24 Ministry.

25 Q And what is that?

1 A Founded in 2003, it's the largest prison ministry for
2 any state in the country. We have over 4,000
3 volunteers and 22 different programs for inmates and
4 their families. We cover all 29 state correctional
5 facilities and all 83 county jails.

6 Q Do you know somebody by the name of Richard Musselman?

7 A I do.

8 Q And is he present here in court today?

9 A Yes.

10 Q And please point to him, describe what he's wearing.

11 A He's wearing blue and orange.

12 MR. PIAZZA: May the record reflect that the
13 witness has identified my client?

14 THE COURT: It shall reflect.

15 MR. PIAZZA: Thank you.

16 BY MR. PIAZZA:

17 Q Have you been involved with Mr. Musselman?

18 A Yes, I have.

19 Q When was the first time you were involved with
20 Mr. Musselman?

21 A Five years ago. We have our team, goes up at Muskegon
22 Correctional Facility, and from 6:30 to 8:30 on Tuesday
23 nights, initially, it's now Wednesday nights, we teach
24 a Christ-centered recovery program called, "Celebrate
25 Recovery."

1 Q And has Mr. Musselman attended some of or -- you know,
2 some of these sessions?

3 A Yes, he's attended for five years straight.

4 Q Has he obtained any type of certifications by attending
5 these?

6 A He received a six-month completion. It's a 26-week
7 program. He also has received a year, two-year,
8 three-year, and four-year certificates.

9 Q During these sessions, what has Mr. Musselman or what
10 is, you know, taught in these sessions?

11 A What we teach in those sessions, everything from
12 forgiveness, denial. There's 26 different lessons
13 where -- that help people through their recovery and
14 understanding of how to deal with the recovery and work
15 through those triggers that they've had in the past.

16 It also helps people get through forgiveness,
17 get through grief and loss. It helps individuals gain
18 a lot of insight into the issues and some of the things
19 that, as human beings, the hurts, habits, and hangups
20 that we carry around that help us -- that prevent us
21 from moving forward.

22 Q And have you seen Mr. Musselman make any progress or
23 growth in this area over the past five years?

24 A I have.

25 Q And just briefly describe that to the Court.

1 A I think he's very willing to help individuals. He's an
2 individual that comes in every week with the dog that
3 he's training to help someone on the outside with a
4 physical issue that they may have.

5 Q Let's -- if I might interrupt. The dog he's
6 training -- does he train dogs with the prison system?

7 A Yes, he does.

8 Q How long has he been doing that?

9 A I believe a year-and-a-half, but I'm not certain, but
10 it's been -- I think it's been a year. I might be
11 wrong.

12 Q Is this service-type dogs?

13 A Yes.

14 Q And that's for people outside the prison system?

15 A Correct, correct.

16 Q So anyways, you were -- I'm sorry for interrupting you.

17 A And then he's become -- I believe he has definitely
18 become much more spiritual and realizes that he needs
19 God in his life.

20 Q If Mr. Musselman is released and available for parole
21 and is paroled, is there some type of transference or
22 transitional period that you would be involved with
23 Mr. Musselman?

24 A Yes. I'm also on the Oakland County -- Michigan
25 Department of Corrections Oakland County Prison

1 Re-entry Program. Our prison ministry, we would
2 provide food, clothing, shelter. We work closely with
3 the Vocational Village Program that the State has where
4 he'd be in a building trades program with guaranteed
5 employment. We would -- I think the most important
6 thing is that we would have two personal mentors
7 working with him to help him transition into life back
8 into the community.

9 My belief very strongly is that he definitely
10 can make it out there, but I definitely believe he
11 needs the structure to get him back into society.

12 Q Okay. So it would be a transition period over a period
13 of months or more?

14 A More.

15 Q More. How long of a transition period?

16 A We would have personal mentors for at least a year, and
17 then we'd help him also to go to various meetings,
18 12-step meetings, to make sure that the addiction issue
19 is finally gone. Now, it's been well over 25 years,
20 it's been stated, and we want to make sure he keeps on
21 the path in that area, too.

22 Q And do you have an opinion whether or not you believe
23 Mr. Musselman could be successful in this type of
24 transition period?

25 A I do. I think our ministry's had an incredible record.

1 We've been honored by the United States Department of
2 Justice for the results we've achieved in keeping
3 people from recidivism, going back to prison, and I
4 think it's because of the mentoring program that we
5 have.

6 There's a lot of great programs when people
7 go into the prisons, but the one component that I felt
8 was always missing was the followup. And that's why we
9 make sure that we, when somebody gets out, that we try
10 to help them.

11 We're also working where there's -- is a
12 solid family, to work with the family unit, also. But
13 the mentoring is extremely important.

14 Q Have you seen a change over the five years with
15 Mr. Musselman?

16 A I have. I have. Now, I'm basing that also on the fact
17 that I see him once a week for the last five years for
18 a two-hour period. But I have seen the growth. I've
19 seen him come -- how do I want to say this? He's
20 always been very mild, and I've seen him be able to
21 come out and express his emotions and feelings in a
22 very positive way. And that tells me that he's
23 learning a lot from our program.

24 MR. PIAZZA: Okay. If I might approach the
25 witness, Your Honor.

1 BY MR. PIAZZA:

2 Q I'm going to show you what's been marked as Defense
3 Proposed Exhibit No. 3. Is this a document that you
4 prepared?

5 A Yes, it is.

6 Q And what is that, please?

7 A That is a letter concerning Mr. Musselman and the
8 things that we will provide for him should he be
9 paroled.

10 Q Okay. And attached to this is a Certificate of
11 Completion. What is that, please?

12 A Yes. I want to explain the certificate. This is one
13 of his certificates that he's gained. This is the
14 first certificate he received for completion of
15 "Celebrate Recovery."

16 Now, it states "void" on here. I want to
17 explain that. At the women's prison at Huron Valley,
18 the first certificates we gave out, one of the inmates
19 learned that she could make money by selling the
20 certificates. So we had a special certificate made up
21 that if you try to copy it, it says "void" all over it.
22 But he has completed this program.

23 Q So this is a copy, and that's why it says "void"?

24 A Exactly.

25 Q This is not the original?

1 A Correct.

2 Q Okay. But he did complete this?

3 A He did, yes.

4 MR. PIAZZA: Move for the admission of
5 Defense Proposed Exhibit No. 3, a copy's previously
6 been provided to prosecution.

7 THE COURT: Ms. Hoover?

8 MS. HOOVER: No objection, Your Honor.

9 THE COURT: Exhibit 3 will be admitted.

10 BY MR. PIAZZA:

11 Q Now, some people might say that, you know, you come
12 forward for anybody that, you know, is in a situation
13 and you testify on their behalf. Would you do that for
14 any individual that's in prison?

15 A No. And I've been before the parole board where I've
16 been asked to -- by an inmate and have made my
17 recommendation that somebody should not be paroled at
18 this time.

19 Q Okay. And do you think Mr. Musselman can make it on
20 the outside if he's given the opportunity to have a
21 parole?

22 A I believe he can, but I think he needs the structure
23 just to -- and what I believe in my heart is that when
24 a verdict comes down, that justice be on all sides.
25 But I also believe that we don't have prisons anymore;

1 we have correctional facilities. And for the
2 correctional facilities, I'm sure that the judge is
3 hoping that the decision that was made, that correction
4 does take place, and that there is restoration. And I
5 believe that Mr. Musselman definitely has made those
6 changes.

7 Q Do you believe he has accepted responsibility for his
8 actions?

9 A I do. We've talked about that many times.

10 Q And how about whether or not he feels remorse for his
11 actions?

12 A He definitely has.

13 MR. PIAZZA: Thank you. I have nothing
14 further at this time.

15 THE COURT: Questions, Ms. Hoover?

16 MS. HOOVER: No, Your Honor. Thank you.

17 THE COURT: Mr. Gudith, you've said a couple
18 times he definitely needs structure. Can you elaborate
19 on that for me?

20 THE WITNESS: Yes. Your Honor, I believe
21 when someone is -- comes out of prison, especially
22 somebody with the length of time he's been in, 39
23 years, society and things have changed. And so, we
24 want to help with that transition. We want to help the
25 individual get identification, to seek, hopefully, a

1 good church, feel the support of the community. And we
2 have to walk -- I feel, many times, walk those
3 individuals through that process to get them to know
4 that they're not just out there, that we're there to
5 support them.

6 So I think it's just really important that
7 the structure be there so that we can help him have the
8 best chance of not having recidivism.

9 THE COURT: And you've been involved with
10 this ministry how long now?

11 THE DEFENDANT: Sixteen years.

12 THE COURT: Sixteen years? How many
13 individuals would you say you've worked with through
14 the 16 years that have been transitioned back into
15 society?

16 THE WITNESS: Oh, my gosh.

17 THE COURT: Just a guess.

18 THE WITNESS: Great question. I'm going to
19 say well over 500.

20 THE COURT: Okay. Of the 500 that you
21 thought were rehabilitatable, if you will, how many of
22 those have succeeded; in other words, what's your
23 batting average?

24 THE WITNESS: Well, I can give you
25 documentation, I should have brought it, from the

1 United States Department of Justice. We were awarded
2 the outstanding volunteer organization in the nation,
3 and they recorded a 3.8 percent recidivism rate, so
4 that's normally 7 percent.

5 So, I think our program works because we
6 walk -- we're not just in the prison, we're on the
7 outside working with the individual and their families
8 as well.

9 THE COURT: And is your program based upon
10 anything with regard to the nature of the offense, or
11 just when someone's paroled, you just deal with all
12 types of offenders?

13 THE WITNESS: We deal with everybody, try to
14 give them another chance.

15 THE COURT: All right. Anything else,
16 Mr. Piazza?

17 MR. PIAZZA: No, Your Honor.

18 THE COURT: Ms. Hoover?

19 MS. HOOVER: No, Your Honor. Thank you.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 (Witness excused at 3:09 p.m.)

23 * * *

24 THE COURT: Call your next witness,
25 Mr. Musselman.

1 MR. PIAZZA: Defense calls John Moton to the
2 stand.

3 MS. LEWIS: Please raise your right hand,
4 sir. Do you solemnly swear that the testimony you
5 shall give in this cause here pending shall be the
6 truth, the whole truth, and nothing but the truth, so
7 help you God?

8 MR. MOTON: I do.

9 MS. LEWIS: You can take the witness stand.

10 THE WITNESS: Thank you.

11 JOHN MOTON,
12 being first duly sworn at 3:09 p.m., testified under
13 oath as follows:

14 D I R E C T E X A M I N A T I O N

15 BY MR. PIAZZA:

16 Q Please state your full name for the record.

17 A John Moton, Junior, M-O-T-O-N.

18 Q What's your current profession or occupation?

19 A I'm co-owner of MWN Investigations, security and
20 detective agency.

21 Q Are you a licensed private investigator?

22 A That is correct.

23 Q Are you also a retired police officer for the City of
24 Saginaw?

25 A That is correct.

1 Q And were you employed by myself through the Courts to
2 do some investigation and views in this particular case
3 of *People vs. Musselman*?

4 A That is correct.

5 Q And during your interviews of individuals, did you
6 interview one Helen Marie Musselman Bryce?

7 A Yes, I did.

8 Q And you interviewed her before December of 2018; is
9 that correct?

10 A I believe it was September of 2018.

11 Q And did she pass away in December of 2018?

12 A Correct.

13 Q During the interview of Ms. Helen Bryce, did you talk
14 about Mr. Musselman himself?

15 A Yes.

16 Q And what is the relationship between Ms. Bryce and
17 Mr. Musselman?

18 A Mr. Musselman is her nephew.

19 Q All right. And did you inquire about her and her
20 opinion about what Mr. Musselman has -- his demeanor or
21 attitude changes over the years up to the present time?

22 A Yes, I did.

23 Q What did Ms. Bryce tell you about that?

24 A Ms. Bryce indicated that she has seen him once or twice
25 while he was incarcerated, but he sends her Christmas

1 cards and birthday cards that he makes by hand every
2 year.

3 She said that she has phone conversations
4 with him while he's in prison, and that he was spoiled
5 by the grandmother, that he -- that prior to
6 incarceration, he had a drug and alcohol problem.

7 She also stated that during the contact and
8 the communication with him, that he has accepted
9 responsibility for his actions and believes that he
10 would be a productive citizen if given the opportunity.

11 Q And did she say that he was no longer the same
12 individual that he was when he went into prison?

13 A Correct. She said that over the years and
14 communicating with him, he wasn't the same individual
15 that he used to be, and that she could see the change
16 in him.

17 MR. PIAZZA: Okay. Thank you very much. I
18 have no further questions.

19 THE COURT: Questions, Ms. Hoover?

20 MS. HOOVER: None, Your Honor. Thank you.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 (At 3:12 p.m., witness excused.)

24 * * *

25 THE COURT: Call your next witness,

1 Mr. Piazza.

2 MR. PIAZZA: No further witnesses for this
3 hearing at this time, Your Honor.

4 THE COURT: All right. Any witnesses on your
5 behalf, Ms. Hoover?

6 MS. HOOVER: Not on behalf of the People,
7 Your Honor.

8 THE COURT: All right. At this time, the
9 Court's going to take this matter under advisement.
10 I'm also going to refer it to the Department of
11 Corrections for an updated presentence report.

12 I will also allow the prosecution to file a
13 sentencing memorandum within 30 days of today's date,
14 and allow the defense to file a response to that if he
15 so chooses 14 days after that.

16 And anything else for the record at this
17 time, Ms. Hoover?

18 MS. HOOVER: Nothing further, Your Honor.
19 Thank you.

20 THE COURT: Mr. Musselman?

21 MR. PIAZZA: Your Honor, may -- I am Court
22 appointed in this particular matter. May we order a
23 transcript of today's hearing so that I may refer to it
24 in my sentencing memorandum if need be or for the
25 Court's own memory?

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THE COURT: That's fine.

MR. PIAZZA: Does the Court wish me to prepare an order for that or -- and you're shaking your head no.

THE COURT: If she doesn't want one, I don't need one. How's that?

MR. PIAZZA: Thank you, your Honor.

THE COURT: All right.

MS. HOOVER: Thank you.

MS. LEWIS: All rise, please.

(At 3:13 p.m., proceedings concluded.)

* * *

1 STATE OF MICHIGAN)
2) SS
3 COUNTY OF SAGINAW)
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8 I certify that this transcript is a complete, true
9 and correct transcript of the proceedings and testimony
10 taken in this case before the Honorable Darnell Jackson,
11 Circuit Judge, in Saginaw, Michigan.
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Estelle B. Przybylski

17 ESTELLE B. PRZYBYLSKI, FCRR, CSR-3789
18 Official Court Reporter
19 111 South Michigan Avenue
20 Saginaw, MI 48602
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23
24
25

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

Court
No. 80-000118-FY

v

RICHARD GERALD MUSSELMAN,
Defendant.

Hon. Darnell Jackson

JOHN A. MCCOLGAN, JR. (P37168)
PROSECUTING ATTORNEY

RANDY L. PRICE (P53404)
Assistant Prosecuting Attorney
111 South Michigan Avenue
Saginaw, MI 48602
(989) 790-5330

RICHARD GERALD MUSSELMAN (162008)
In Pro Per
Muskegon Correctional Facility
2400 South Sheridan Drive
Muskegon, MI 49442

FILED
SAGINAW COUNTY CLERK
2018 JUN 13 PM 3 29
CLERK
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**THE PEOPLE'S MOTION TO SENTENCE DEFENDANT TO LIFE
WITHOUT PAROLE**

NOW COME the People of the State of Michigan, by RANDY L. PRICE, an Assistant Prosecuting Attorney in the Saginaw County Prosecutor's Office, and move this Court to sentence Defendant to life imprisonment without parole.

1. Defendant was convicted at trial of two counts of first-degree

premeditated murder, MCL 750.316, on June 25, 1980.¹ At the time he committed that offense, he was 15 years old. His convictions and sentences were affirmed by the Court of Appeals on January 5, 1983, and our Supreme Court denied leave to appeal on October 28, 1991.

2. In *Miller v Alabama*, ___ US ___; 132 S Ct 2455; 183 L Ed 2d 407 (2012), the United States Supreme Court held that a mandatory sentence of life without parole for a juvenile, without considerations of factors unique to the offender and his crime(s), constituted cruel and unusual punishment. *Miller* applies to this case pursuant to *Montgomery v Louisiana*, ___ US ___; 136 S Ct 718; 193 L Ed 2d 599 (2016) (holding that *Miller* applies retroactively to cases on collateral review). The holding in *Montgomery* triggered the requirement in MCL 769.25a(2) and (3) that the sentencing judge or his or her successor determine whether Defendant shall be imprisoned for life without parole eligibility or a term of years.

3. *Miller* provides this Court with a non-exhaustive list of factors to consider:

- The character and record of the individual offender and the circumstances of the offense;
- The chronological age of the minor;
- The background and mental and emotional development of a youthful defendant;

¹ Defendant was convicted of two counts of assault with intent to murder and of felony firearm at the same trial, but this Motion addresses only his first-degree murder conviction as required by *Miller v Alabama*, ___ US ___; 132 S Ct 2455; 183 L Ed 2d 407 (2012), and *Montgomery v Louisiana*, ___ US ___; 136 S Ct 718; 193 L Ed 2d 599 (2016).

- The family and home environment;
- The circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected the juvenile;
- Whether the juvenile might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys; See, e.g., *Graham v Florida*, 560 US 48, 78; 130 S Ct 2011; 176 L Ed 2d 825 (2010) (“[T]he features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings”); *J.D.B. v North Carolina*, 564 US 261, 268-269; 131 S Ct 2394; 180 L Ed 2d 310 (2011) (discussing children’s responses to interrogation); and
- The potential for rehabilitation.

Miller, 132 S Ct at 2467.

4. The Court must also consider any other criteria relevant to its decision, including the individual’s record while incarcerated. MCL 769.25(6). And the Court may consider evidence presented at trial along with any evidence presented at the sentencing hearing. MCL 769.25(7).

5. Following the procedure provided in MCL 769.25a(4)(a), on February 23, 2016, the Saginaw County Prosecutor provided to the 10th Circuit Court a list that included Defendant as an individual who must be resentenced under MCL 769.25a(2) or (3). Consistent with MCL 769.25a(4)(b), this Motion requests that this Court impose a sentence of imprisonment for life without the possibility of parole. Also pursuant to MCL 769.25a(4)(b), a hearing must be conducted as provided in MCL 769.25(6).

6. Considering the *Miller* factors during the resentencing process, this Court must impose a sentence of life without parole based on all relevant and lawful factors for the following reasons.

- Defendant's murders involved repetitive assaults and shootings of total strangers on the streets of Saginaw County as the victims drove along the street. Defendant and his codefendants shot at three vehicles, killing two of the drivers. One of the codefendants said Defendant was the shooter. The crimes were of a totally random and senseless nature. The only exhibited pattern was an apparent concentration of the attacks on blacks as all the victims save one were black.
- Defendant had a juvenile adjudication for illegally shooting deer at a game refuge.
- In 6th grade, Defendant told his substitute teacher he did not need to know how to read because he was going to Jackson State Prison. Defendant said he was going to kill a man, and he was going to spend the rest of his life in prison.
- Defendant was in an alternate education program during the 1977-1978 school year. His reputation included his lack of work progress, sporadic attendance, withdrawing/passive behavior, and withdrawing himself from other students. His success in school was marginal to the point the school did not return him to regular school.
- During the 1978-1979 school year, Defendant's behavior became increasingly disruptive. He refused to do work, he came to school under the influence of some kind of substance on more than one occasion, and he had poor attendance. He was labeled emotionally impaired, yet he knew right from wrong. Defendant was described as a severely disturbed young man who needed psychiatric help and who could possibly be a danger to himself or to others. In December of 1978, Defendant began to tease other students and became more aggressive with them.
- While incarcerated at the juvenile detention center pending this case, Defendant participated in a psychological evaluation. It revealed Defendant was in contact with reality, knew right from

wrong, and committed the offenses for gratification.

- While incarcerated in prison, Defendant has incurred a number of misconducts: disobeying a direct order, unauthorized occupation of a cell/room, possession of stolen property, possession of dangerous contraband, use of marijuana, sexual misconduct, being out of place,

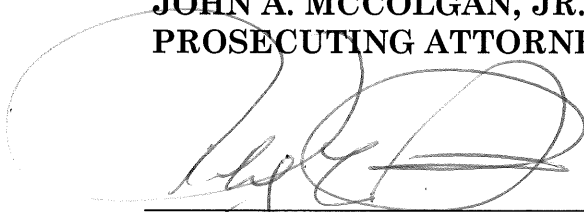
7. Because the imposition of sentence requires this Court to consider all relevant and lawful factors, and because every aspect of a case is before a judge on resentencing, see *People v Williams*, 208 Mich App 60, 65; 526 NW2d 614 (1994), the People reserve the right to argue a sentence for life without parole based on any additional ground not stated in this Motion.

8. The People will file supplemental briefs in support of its Motion for a sentence of life without parole after completion of the *Miller* Hearing to provide an accurate and complete analysis of the record and factors relevant to sentencing.

WHEREFORE, the People respectfully request that this Honorable Court (1) hold a resentencing hearing; (2) consider all relevant information and lawful sentencing factors, including those listed in *Miller*; and (3) sentence Defendant to life without parole.

Respectfully submitted,

JOHN A. MCCOLGAN, JR. (P37168)
PROSECUTING ATTORNEY



Dated: July 13, 2016

RANDY L. PRICE (P53404)
Assistant Prosecuting Attorney
Saginaw County Prosecutor's Office
Courthouse
Saginaw, MI 48602

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

CIRCUIT COURT
No. 80-000118-FY

v

HONORABLE
Darnell Jackson

RICHARD GERALD MUSSELMAN,
Defendant.

_____ /

FILED
SAGINAW COUNTY, MICH
2016 JUL 13 PM 3 29
STATE OF MICHIGAN
CLERK OF CIRCUIT COURT
SAGINAW COUNTY, MICH
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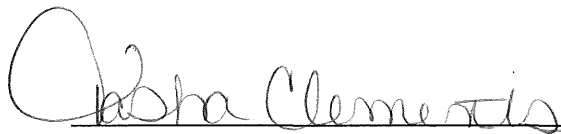
STATE OF MICHIGAN

COUNTY OF SAGINAW

I, TASHA CLEMENTS, state that on July 13, 2016, I delivered the original to the Saginaw County Circuit Court Clerk of The People's Motion to Sentence Defendant to Life Without Parole together with Proof of Service, and mailed a copy to Defendant in Pro Per, Richard Gerald Musselman (162008), c/o Muskegon Correctional Facility, 2400 South Sheridan Drive, Muskegon, MI 49442 by placing the documents in the United States mail, properly addressed, with first-class postage fully prepaid.

I declare that the statements above are true to the best of my information, knowledge and belief.

Dated: July 13, 2016



TASHA CLEMENTS

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COPY

Honorable: Darnell Jackson County: Saginaw County Sentence Date: 09/26/2019
 MDOC Nbr.: 162008 Attorney: James Piazza Appointed/Retained: Appointed
 Defendant: MUSSELMAN, RICHARD Age: 54 D.O.B.: 09/09/1964
 GERALD

CURRENT CONVICTION(S)

Final Charge(s)			Max			Jail Credit Days	Bond	Convicted By	Conviction Date
			Yrs	Mo.	Days				
Charge(6): 8000118-FY-12	750.316	Murder, First Degree	LIFE			13,779		Jury	06/25/1980
Charge(7): 8000118-FY-12	750.316	Murder, First Degree	LIFE			13,779		Jury	06/25/1980
Charge(8): 8000118-FY-12	750.227BA	Weapons - Felony Firearms	2			730		Jury	06/25/1980
Charge(9): 8000118-FY-12	750.83	Asslt w/Int to Commit Murder	LIFE			13,779		Jury	06/25/1980
Charge(10): 8000118-FY-12	750.83	Asslt w/Int to Commit Murder	LIFE			13,779		Jury	06/25/1980

SOR Required: No Date SOR Completed:

Plea Agreement: None HYTA: No

Pending Charges: No Where:

Status at Time of Offense: None

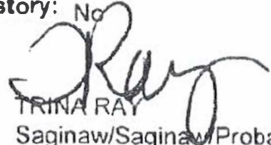
PRIOR RECORD

Conviction: Felonies: 0 Misdemeanors: 0 Juvenile Record: No
 Probation: Active: No Former: No Pending Violation: No
 Parole: Active: No Former: No Pending Violation: No
 Current Michigan Prisoner: Yes Currently Under Sentence: Yes

Sentence Date	Offense	County/State	Sentence	Min.	Max.
08/26/1980	Murder, First Degree	Saginaw County	Prison		
08/26/1980	Murder, First Degree	Saginaw County	Prison		
08/26/1980	Asslt w/Int to Commit Murder	Saginaw County	Prison		
08/26/1980	Asslt w/Int to Commit Murder	Saginaw County	Prison		
08/26/1980	Weapons - Felony Firearms	Saginaw County	Prison	2y	2y

PERSONAL HISTORY

Where Employed: Unemployed Education: GED
 Psychiatric History: No Physical Handicaps: No Marital Status: Married
 Substance Abuse History: No

Investigating Agent: 
 Worksite: TRINA RAY
 Saginaw/Saginaw/Probation

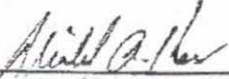
Caseload No.: 3256 Date: 08/12/2019
 Phone No.: (989)758-2470

DEPARTMENT OF CORRECTIONS RECOMMENDATION

Jail Credit:

DOCKET NO. 80-000118-FY			
Date(s)	Action	Sentence Details	Days
1/5/1980-9/26/2019		arrest to resentence date	14509
Total Days Jail Credit			

PRISON



Supervisor: MICHAEL A. KARAS

Date: 08/12/2019

TDR:Imm

Michigan Department of Corrections
Presentence Investigation
New Conviction Update Report

CFJ-284A

Rev. 10/03

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Evaluation and Plan

Richard Musselman, age 54, is before the Court for resentencing on a 1980 conviction for Count I and II: Murder First Degree; Counts III and IV: Assault with Intent to Murder, and Count V: Possession of a Firearm while Committing a Felony.

This report serves as an update to the original presentence investigation report completed by Saginaw Probation Agent Heffner for Honorable Hazen R. Armstrong in July 1980 (attached). Please refer to it for information on this offender up to the date of the offense. On 08/26/1980 the defendant was sentenced to mandatory life in prison for Murder First Degree. A motion for resentencing was received, which indicated, due to the defendant being 15-years-old at the time of the offenses, life in prison without parole violates the defendant's Eighth Amendment prohibition against cruel and unusual punishment.

Mr. Musselman was interviewed via telephone at the Macomb Correctional Facility. He has been continuously incarcerated since age 15. He has earned his GED and participated a variety of classes as opportunity arose. He married in 1991, but has not had contact with Donna Musselman in over 10 years. He expressed nervousness about the possibility of prison release, but has formulated possible plans of living with his mother, to living with relatives in Kentucky, to making contact with a Veterinarian office whose owner shares his name, to see if he can work with the animals. His focus, regardless where he ends up, was consistently the animals. He would like to train animals and stated it has been the only way he can find to give back to society what he has taken. He will be prepared to make a statement to the Court regarding remorse and rehabilitation at the time of sentencing.

In regard to jail credit, the defendant was initially arrested for these offenses on 01/05/1980 and did not post a bond. He has accumulated 14,509 days jail credit as of 09/26/2019. The people have filed a Motion requesting the defendant be sentenced to life without parole as this offender represents the "rarest of Juvenile offenders" whose crimes reflect irreparable corruption. Should the Court decide to sentence to a number of years, the term shall be not less than 25 years or more than 40 years and the maximum 60 years.

Mr. Musselman received a psychological evaluation prior to the original sentence date in 1980 by Dr. Capone. She found him to be asocial and narcissistic, but nothing inhibiting him from the freedom of choice, and he committed these crimes for gratification and because he thought he could get away with it. She classified him as sociopath. A "Big Brother" and schoolteachers, as noted in the original presentence report, expressed concern over his behavior and attitude. Another psychological exam was done by the MDOC, Elgie E. Dow ACSW in 2009. She reported no pathological findings and found him genuine and sincere in his remorse. She deemed him mentally stable, but would need a great deal of support should he be released, due to being incarcerated for so long. Most recently, he was evaluated by Dr. Wendt, Forensic Psychologist. His extensive and thorough report has been provided to the Court. It indicates psychological testing did not identify the presence of Antisocial Personality Traits or Psychopathy and he is amendable to rehabilitation. He concluded

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Mr. Musselman is not the rare individual considered "irreparably corrupt." In an effort to get insight into day to day interaction, prison Counselor Wilson was contacted. She had contact with the defendant from 2014 until 2019, when he was incarcerated at Muskegon Correctional Facility. She wrote "Musselman was never a problem in the unit. He was one of the PAWS handlers and really enjoyed training and having the dog. His attitude always seemed to be pretty positive in our interactions. I do think that it would be beneficial for him to have some additional resources and guidance once he is released. He was so young when he came to prison and sometimes, I felt as though he still had the mentality of a 15-year-old. As far as institutional conduct, considering his age when he entered the system and how long he has been here, has been relatively good."

PAWS with a Cause is an organization enhancing the independence and quality of life for people with disabilities through custom-trained assistance dogs. They have brought their program into the Michigan Department of Corrections, as they have found prisoners to be dedicated and constant trainers. The Muskegon chapter of the program was contacted and has not replied to inquiries about Mr. Musselman specifically. The Saginaw chapter was contacted. The program administrator, though never having had contact with Mr. Musselman, stated she could tell me she is certain someone would be removed from the program "if they even looked cross-eyed at a dog." Mr. Musselman participated in the program for several years and trained multiple animals.

Mr. Musselman completed his GED in 1988. Other certificates include, Group Counseling complete in 1987, 1990 and 1991. A certificate for outstanding achievement in the area of Work Crew in 1989. He received a certificate of membership to the Muskegon Branch NAACP in good standing in 1991. A Certificate for the Floor Maintenance Program in 1994. Biohazard/Bloodborne, Airborne Pathogens in 2001. Custodial Maintenance Technology in 2002. Alcohol and Substance Abuse Education in 2004. A certificate of participation in Breast Cancer Awareness Month in 2015. The Way to Happiness Course, The Learning Skills for Life Course and successful completion of the Financial Management, Leadership, and Re-Entry Domestic Program Training in 2014. The Understanding and Overcoming Addiction Course and The Successful Parenting Skills Course in 2015, The Handling Suppression Course and The Personal Integrity Course and Celebrate Recovery in 2016. A Certificate of Recognition for completing the PAWS Prison Training program in 2019.

Prison misconducts include the following: Substance Abuse, all involving marijuana, in 1982, 1986, 1987, 1988, 1990, 1992 and 1995. Sexual misconduct involving another prisoner in 1981, and Sexual misconduct involving visitor Donna Mopson (defendant's wife) in 1990. In 1986, Theft/Possession of Stolen Property (yeast and hot chocolate) and in 2000 (pieces of carpet), again in 2000 (extra mattress pad and pillowcase) and again in 2000 (coat). Disobey a Direct Order in 1986, 1993, and 2009. Unauthorized Occupation of a Cell or Room in 1989, 1990, 1993, 1994, and 2006. He was in Possession of Dangerous Contraband (permanent markers) in 1993. Excessive Store Goods (stamps) in 1997. Insolence in 1994. He possessed garlic from the prison garden in 2010 and was Out of Place in 2013 for watching a basketball game. The details of these misconducts are taken from the psychological report, as the MDOC did not provide them when an inquiry was made for the PSI.

Not severe
of 10 ym
222a

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Work reports were both good and poor early in his prison years, but since around 1995 they have been positive. The defendant, should he be released, intends to find a job in janitorial or construction.

For purposes of this report, a review of MDOC records did not reveal any negative references or biases regarding race. No tattoos with racial overtones were noted. Notes do indicate he has been threatened and/or assaulted multiple times for his crime, some resulting in hospitalization, and no indications he retaliated.

A needs assessment was not administered due to the defendant's prisoner status. Should he be eligible for parole in the future, the MDOC will provide transitioning and assessments.

The objective of this report was to provide the Court with post-offense conduct and behavior. He has expressed remorse and made positive adjustments within his personality. And though favorable in recent years, the offense conduct must be considered in sentencing, as well as, the assessments regarding his psychological issues leading up to the crime. The recommendation of the Department of Corrections is prison.

Agent's Description of the Offense

Please refer to attached PSI dated 07/29/1980.

Consecutive Sentences

The Probation Department has not received a statement from the Prosecuting Attorney on the applicability of any consecutive sentencing provisions as required by MCL 771.14(2)(d).

Victim's Impact Statement

Please refer to attached PSI date 07/29/1980.

Vera Conerly provided the following statement for the current proceedings:

Be advised Prisoner Musselman murdered my father when I was 3-years-old. As expected, my father's death greatly impacted my life. However I don't believe prisoner Musselman is interested in hearing how his actions has impacted me. Therefore I'm going to take this opportunity to focus on how I cope with my father's lost as it pertains to his murderer. I find comfort in knowing that he can't go out for a Sunday drive; he can't catch a movie or go out to dinner. I find comfort in knowing that he is accounted for several times a day; in fact, his every move is accounted for. Prisoner Musselman will never have the pleasure of watching a movie on a 50-inch flat screen TV in his cell. He's not free to go shopping at Macy's; he can only purchase a restricted list of clothing from two or three vendors.

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It is my opinion, prisoner Musselman is not remorseful for the crimes he has committed. All I am asking is that I am able to keep this level of comfort and peace. This is my coping mechanism for dealing with loss of my father.

Genia Hall was contacted during the writing of this report and would like the Court to know she does not believe the defendant is sorry for what he did. She does not believe he should have a change to be released from prison when the co-defendant will remain in prison for the rest of his life. Potential release will take away any justice she believed she had. Ms. Hall has also been in therapy her entire life due to this crime.

Alvin Sweeney was contacted and states he just cannot make a statement at this time.

Donna Miner did not return a call to the probation office.

Defendant's Description of the Offense

An inquiry was not made of this offender for his version of the offense. He stated he currently is hopeful he may be released from prison. He stated he would really like to work in the community training dogs for the disabled, as he did in prison. He believes this may be his only way to give back to society what he took. He stated he had written out a statement to read during the Court proceedings, but ripped it up, wrote it again and threw it away. He has ultimately decided to speak "the truth" as he feels it and not something written.

Criminal Justice

Juvenile History:

NO. 1 OF 1

Offense Date:	10/12/1979
Petition Date:	10/12/1979
Petitioning Agency:	Saginaw County Police
Charge(s) at Petition:	Receiving and Concealing Stolen Property o/\$100
Court of Jurisdiction:	Saginaw County Probate Court, Juvenile Division
Final Charges:	Dismissed 11/28/1979
Adjudication Date/Method:	Unknown
Sentence/Disposition:	
Sentence/Disposition Date:	Unknown
Attorney Present:	
Discharge Date:	Unknown
Notes:	

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Adult History:

NO. 1 OF 1

Offense Date:	01/03/1980
Status at Time of Offense:	Not Applicable
Arrest Date:	01/05/1980
Arresting Agency:	Saginaw City Police Department
Charge(s) at Arrest:	Count I: First Degree Murder; Count II: First Degree Murder; Count III: Assault with Intent to Murder; Count IV: Assault with Intent to Murder; County V: Possession of a Firearm While Committing a Felony.
Court of Jurisdiction:	10th Circuit Court D#8000118FY
Final Charges:	Count I: First Degree Murder; Count II: First Degree Murder; Count III: Assault with Intent to Murder; Count IV: Assault with Intent to Murder; County V: Possession of a Firearm While Committing a Felony.
Conviction Date/Method:	6/25/1980/Jury
Sentence/Disposition:	
Sentence Date:	08/26/1980 resentence 09/26/2019
Attorney Present:	Yes
Discharge Date:	Unknown
Notes:	02/11/1980 waived to the Adult court to face these charges.

Personal Protection Order(s):

There are no Personal Protection Orders.

Gang Involvement:

There has been no known prior gang involvement for the defendant.

Updated Family

Contact was attempted with Lois Priest (989) 539-1056, without success.

Updated Marriage

The defendant married Donna Mopson Musselman, while in prison, in 1991. He attempted to divorce her in 1997, as he had decided he needed to let her go to live her life, but the order was denied. Court records indicate the default judgement of divorce was denied pending correction of procedural defects in 1997.

Mr. Musselman has not had contact with Donna in at least 10 years, but would like to see her should he be released.

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Updated Education

A GED was earned, as well as, certificates in vocational training for janitorial work.

Updated Health

Physical Health

The defendant has medical issues typical of his age, but nothing serious. He has been assaulted several times in prison resulting in hospitalization. He had his jaw broken and at least two head injuries.

Mental Health

Mr. Musselman presented himself as anxious and nervous about the possibility of getting out of prison. He also seemed prepared to continue on in prison, should it turn out as such. He stated he will keep doing what he is doing, trying to help people as much as he can, whether he is in prison or out. Psychological assessments have been reviewed by the MDOC in preparation for this report, and they have been provided to the Court.

TDR:Imm

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Court Name (Last, First, Middle) MUSSELMAN, RICHARD GERALD				MDOC Nbr. 162008	Given Name (Last, First, Middle) Same			
Name Type N/A		Other Names (Last, First, Middle) None						
Place of Birth Unknown			Citizenship USA		Last Known Address & Telephone No. Prison			
State & DLN None			DOB 09/09/1964					
SID No. 1123228E		FBI No. 776710V6						
Race White	Sex Male	Hair Brown	Eyes Blue					
Height 5' 7"	Weight 170	Highest Grade Completed GED	Occupation None		Health Ins. No	Assets-\$1,500 & Up No	Monthly Income of \$75 & Up No	
Marital Status Married	Dependents 0	Religion Seventh Day Adv		Military Branch None	Military Dates None		Discharge Type None	
Marks, Scars, Amputations, Tattoos						Drug Abuse No	Alcohol Abuse No	Mental Health Treatment No

CRIMINAL HISTORY

Juvenile			Adult				Status at Time of Offense		
Comm. 0	Prob. 0	Esc. 0	Jail 0	Pris. 0	Prob. 0	Esc. 0	X	None	Delayed Sentence
Age of First Arrest 15			Sex Offense Convictions 0		SAI Eligible No			HYTA	Parole
Pending Charges in Court No		No. of Prior Felony Convictions 0						Probation	Jail
								District Probation	State Prison
								Federal Probation	On Bond
								Federal Parole	Juvenile Court Supervision
Type of Report Presentence Update	County Saginaw County			Agent & Caseload No. TRINA RAY - 3256					
	DOC Recommended Disposition 4			Probation Violation New Sentence No		Probation Violation Technical No			

CURRENT OFFENSE

NO. **1** OF **5** Docket No.: Charge (6): 8000118-FY-12 Last Name: MUSSELMAN

PACC Code 750.316	Offense Murder, First Degree	Max LIFE	Consecutive Sentence No
Victim / Relationship Minerd, Ralph - none Swiney, Alvin - none		Codefendant(s) Duby, Vance Varney, Harry	
Circuit 10th Circuit Court - Saginaw County	Judge Darnell Jackson	Attorney James Piazza	Retained / Appointed Appointed
Method of Conviction Jury	Date of Offense 01/03/1980	Date of Arrest 01/05/1980	Date of Bond N/A
	Date of Conviction 06/25/1980	Jail Credit 13,779	Guilty But Mentally Ill No

DISPOSITION

Sentence Type			Sentence Date			CTN			Fine			Cost			Restitution		
MINIMUM			MAXIMUM			LIFE			JAIL			Supervision Fees			Crime Victims Assessment		
Years	Months	Days	Years	Months	Days		Months	Days									
Attorney Fees				Forensic Fees				Restitution Fund Fees				Other Fees					
Sentencing Guidelines																	
RANGE						LIFE			NA			Prior Record Total			Offense Variable Total		
Low:			High:			X											
Comments:																	

CURRENT OFFENSE

NO. 2	OF 5	Docket No.: Charge (7): 8000118-FY-12	Last Name: MUSSELMAN			
PACC Code 750.316	Offense Murder, First Degree		Max LIFE		Consecutive Sentence No	
Victim / Relationship None			Codefendant(s) None			
Circuit 10th Circuit Court - Saginaw County		Judge Darnell Jackson	Attorney James Piazza		Retained / Appointed Appointed	
Method of Conviction Jury	Date of Offense 01/03/1980	Date of Arrest 01/05/1980	Date of Bond N/A	Date of Conviction 06/25/1980	Jail Credit 13,779	Guilty But Mentally Ill No

DISPOSITION

Sentence Type			Sentence Date			CTN			Fine			Cost			Restitution				
MINIMUM			MAXIMUM			LIFE			JAIL			Supervision Fees			Crime Victims Assessment				
Years	Months	Days	Years	Months	Days				Months	Days									
Attorney Fees			Forensic Fees			Restitution Fund Fees			Other Fees										
Sentencing Guidelines																			
RANGE						LIFE			NA			Prior Record Total			Offense Variable Total				
Low:			High:			X													
Comments:																			

CURRENT OFFENSE

NO. 3	OF 5	Docket No.: Charge (8): 8000118-FY-12	Last Name: MUSSELMAN			
PACC Code 750.227BA	Offense Weapons - Felony Firearms		Max 2 yrs.		Consecutive Sentence No	
Victim / Relationship None			Codefendant(s) None			
Circuit 10th Circuit Court - Saginaw County		Judge Darnell Jackson	Attorney James Piazza		Retained / Appointed Appointed	
Method of Conviction Jury	Date of Offense 01/03/1980	Date of Arrest 01/05/1980	Date of Bond N/A	Date of Conviction 06/25/1980	Jail Credit 730	Guilty But Mentally Ill No

DISPOSITION

Sentence Type			Sentence Date			CTN			Fine			Cost			Restitution				
MINIMUM			MAXIMUM			LIFE			JAIL			Supervision Fees			Crime Victims Assessment				
Years	Months	Days	Years	Months	Days				Months	Days									
Attorney Fees			Forensic Fees			Restitution Fund Fees			Other Fees										
Sentencing Guidelines																			
RANGE						LIFE			NA			Prior Record Total			Offense Variable Total				
Low:			High:			X													
Comments:																			

CURRENT OFFENSE

NO. 4 OF 5 Docket No.: Charge (9): 8000118-FY-12 Last Name: MUSSELMAN

PACC Code 750.83	Offense Asslt w/Int to Commit Murder	Max LIFE	Consecutive Sentence No
Victim / Relationship None		Codefendant(s) None	
Circuit 10th Circuit Court - Saginaw County	Judge Darnell Jackson	Attorney James Piazza	Retained / Appointed Appointed
Method of Conviction Jury	Date of Offense 01/03/1980	Date of Arrest 01/05/1980	Date of Bond N/A
Date of Conviction 06/25/1980	Jail Credit 13,779	Guilty But Mentally Ill No	

DISPOSITION

Sentence Type			Sentence Date			CTN			Fine			Cost			Restitution		
MINIMUM			MAXIMUM			LIFE			JAIL			Supervision Fees			Crime Victims Assessment		
Years	Months	Days	Years	Months	Days		Months	Days									
Attorney Fees			Forensic Fees			Restitution Fund Fees			Other Fees								
Sentencing Guidelines																	
RANGE						LIFE			NA			Prior Record Total			Offense Variable Total		
Low:			High:			X											
Comments:																	

CURRENT OFFENSE

NO. 5 OF 5 Docket No.: Charge (10): 8000118-FY-12 Last Name: MUSSELMAN

PACC Code 750.83	Offense Asslt w/Int to Commit Murder	Max LIFE	Consecutive Sentence No
Victim / Relationship None		Codefendant(s) None	
Circuit 10th Circuit Court - Saginaw County	Judge Darnell Jackson	Attorney James Piazza	Retained / Appointed Appointed
Method of Conviction Jury	Date of Offense 01/03/1980	Date of Arrest 01/05/1980	Date of Bond
Date of Conviction 06/25/1980	Jail Credit 13,779	Guilty But Mentally Ill No	

DISPOSITION

Sentence Type			Sentence Date			CTN			Fine			Cost			Restitution		
MINIMUM			MAXIMUM			LIFE			JAIL			Supervision Fees			Crime Victims Assessment		
Years	Months	Days	Years	Months	Days		Months	Days									
Attorney Fees			Forensic Fees			Restitution Fund Fees			Other Fees								
Sentencing Guidelines																	
RANGE						LIFE			NA			Prior Record Total			Offense Variable Total		
Low:			High:			X											
Comments:																	

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MICHIGAN DEPARTMENT OF CORRECTIONS
BUREAU OF PROBATION

PRE-SENTENCE INVESTIGATION REPORT

Date July 29, 1980,

To The Hon. Hazen R. Armstrong

Docket No. 80-00118 FY 1-2

Circuit Court Of:

State #8971

SAGINAW County

By Michael C. Heffner
PROBATION AGENT

NAME <u>MUSSELMAN, Richard Gerald</u>	OFFENSE <u>Counts I & II: Murder - First Deg.</u>
Your Honor:	<u>MCLA: 750.316 MAX: Life</u>
	<u>Counts III & IV: Assault With Intent to Murder</u>
	<u>MCLA: 750.83 MAX: Life</u>
	<u>Count V: Possession of Firearm While Committing a Felony</u>
	<u>MCLA: 750.227b MAX: 2 years</u>

SUMMARY

On 6-25-80, Richard Gerald Musselman was found guilty by jury verdict on charges of Counts I & II: Murder - First Degree, Counts III & IV: Assault With Intent to Murder, and Count V: Possession of a Firearm While Committing Felony. The jury's verdict was accepted by the Honorable Hazen R. Armstrong, 10th Circuit Court, Saginaw County. The Respondent is represented by Court Appointed Attorney, Diane St. Clair. The Respondent has remained incarcerated since his arrest on the instant offense on 1-5-80.

The instant offense occurred on 1-3-80. On that date, between the hours of 2:00 a.m. and shortly after 3:00 a.m., the Respondent and Codefendants, Vance DUBY and Harry Varney drove about the City of Saginaw and Bridgeport Township in Vance DUBY's 1970 Chevrolet Nova. A 12 gauge shotgun was fired from the Nova on three occasions at other motorists. Two of the victims, Ralph Miner and Alvin Swiney, were killed as a result of shotgun blasts to the head. The third victim, Meredith Davis, was not seriously injured. In all three cases, the shot was fired through the driver's side window of the vehicles. The three codefendants chased a fourth motorist from the intersection of E. Genesee and Holland Avenues to his residence at 325 S. 17th Street. During the chase, the shotgun was pointed at the fourth victim, Steve Miller, and DUBY's Nova struck the victim's vehicle on one occasion. Codefendant, Harry Varney, was arrested on the instant offense on 1-4-80. He made a statement to police in which he admitted being with DUBY and Musselman in DUBY's Nova during the shootings. According to Varney, Richard Musselman did all of the shooting at the other motorists. Richard Musselman and Vance DUBY were arrested on the instant offense on 1-5-80.

To this agent's knowledge, the Respondent has no other pending charges.

EVALUATION AND PLAN

The Respondent was born in Saginaw, Michigan, on 9-9-64. He was the first child born to his mother, Lois A. Priest (nee Musselman). The Respondent was brought up by his maternal grandmother and grandfather. The Respondent's CPO-145 Rev. 4/67

PRE-SENTENCE INVESTIGATION REPORT

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grandfather died approximately four years ago. The Respondent indicated that he had always resided in the Bridgeport Township area and that his grandparents had provided adequately for his needs. The Respondent stated that he had frequent contact with his natural mother as he was growing up. The Respondent was residing in his grandmother's home at the time of his arrest on the instant offense. He has never been married and indicates that he has no plans to marry in the near future.

The Respondent attended public schools in the Bridgeport and Saginaw School Systems. He reportedly completed the ninth grade in Bridgeport. The Respondent appears to have been a below average student throughout most of his school career. He was said to have had serious attendance problems in the later grades. He was also said to be withdrawn academically and socially at school. He was involved in a special program at the Opportunities School in the Saginaw at the time of his arrest on the instant offense. From 12-7-79 to 12-21-79, the Respondent was employed as a custodial aid at Brucker School in Bridgeport. That job was terminated due to a conflict involving the custodial worker's union and the school board. During his brief employment, the Respondent had reportedly done a satisfactory job.

The instant offense resulted in the Respondent's first convictions as an adult. He had no convictions as a juvenile. The Respondent admits to having used a variety of drugs including marijuana, cocaine, LSD, and alcohol. He indicated that he sold marijuana in order to obtain marijuana for his own use. The Respondent stated that his usual drink was whiskey. The Respondent indicated that he smoked marijuana and drank practically every day.

The Respondent described his present physical health as "pretty good" and indicated that he had suffered from no serious illnesses or injuries in the past. He has not been involved in psychological counseling and indicated that he was uncertain if such counseling was needed by him. The Respondent has undergone psychological evaluations on two occasions in the past.

The Respondent listed no income and no debts. He stated that his only assets were a stereo and a dirt bike.

The Respondent appears to be a person of low average intelligence. He apparently has serious emotional and psychological problems. In addition, his involvement with alcohol and drugs appears to have been extensive. Many of the Respondent's problems appear to have developed from a very permissive and inadequate home situation. It seems clear that the school system did not begin to deal with the Respondent's many problems until after they were fully developed.

While in prison, some effort should be made to involve the Respondent in some form of psychological counseling. He would also benefit from additional education or vocational training.

RECOMMENDATION

Prison. The Respondent has 203 jail credit days as of 7-25-80. It is further recommended that some effort be made to isolate the Respondent

from black inmates in the prison as there are indications that the instant offense may have been racially motivated (three of the four victims were black and the codefendants did most of their driving in predominately black areas of the city). The Respondent did indicate to this agent that race was not a factor in the instant offense and added that he had had no difficulty with the black inmates in the Saginaw County Jail).

Respectfully submitted,

BUREAU OF FIELD SERVICES

Michael C. Heffner
Probation Agent
Saginaw County

Carl R. Schultz
Supervisor

MCH/rep

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INVESTIGATOR'S DESCRIPTION OF THE OFFENSE

The following description is based on information contained in Saginaw Police Department Case Reports regarding incidents numbered 80-362, 80-366, and 80-367, Michigan State Police Case Reports regarding incident #37-36-80, and other information gained during the course of this investigation.

On 1-3-80 at approximately 2:20 a.m., Officers of the Saginaw Police Department were dispatched to 518 Potter Street in the City of Saginaw, regarding a reported shooting. Upon officers' arrival at that location, they were met by the victim, Meredith Davis. Mr. Davis advised officers that he had turned onto Potter Street from Warren Street, and as he was pulling up in front of 518 Potter, he observed a dark green car turn off Washington from the north onto Potter Street. He indicated that the vehicle was being driven fast and as it passed his vehicle, he looked towards the car. Mr. Davis stated that as the car passed, his front driver's side window and passenger side window were shattered by a shotgun blast. Mr. Davis advised officers that the suspect vehicle then proceeded east on Potter to Third and then south. He advised officers that the vehicle looked like a Pinto but was larger. He added that he did not see the occupants of the vehicle. Mr. Davis received cuts from the glass and shell fragments and was treated at St. Mary's Hospital and released. Officers found a 12 gauge Remington Peters shotgun shell in front of 528 Potter Street.

On 1-3-80 at approximately 2:58 a.m., Officers of the Saginaw Police Department were dispatched to the intersection of Hoyt and Warren Streets in the City of Saginaw regarding a reported shooting. Upon officers' arrival at that location, they discovered the victim, Alvin Swiney, seated behind the wheel of a dark green over light green 1972 Cadillac automobile. Mr. Swiney had a large wound in the left side of his head. Betty Stinger advised officers that she was the victim's fiancée and had been riding with him in his vehicle. She stated that as they approached Warren Street, she heard glass shatter and observed blood coming from the victim's mouth. She stated that the car stopped, she got out, and flagged down a driver, asking him to call police. She indicated that she could provide no other information concerning the shooting. Officers then questioned Joseph McDole. Mr. McDole stated that he had been driving eastbound on Hoyt Street when he observed a small green car passing the victim's car with both traveling westbound. He stated that as the green car passed the victim's car, he heard a shot. Mr. McDole stated that he then stopped his car and spoke with Betty Stinger. He indicated that he did not see the green car after he stopped and could provide no further description on the car or its occupants. Alvin Swiney was transported to St. Mary's Hospital where he was pronounced dead on arrival. Police officers found a 12 gauge Remington Peters #4-shot shotgun shell on the ground just ahead of the victim's car.

On 1-3-80 at approximately 3:08 a.m., Officers of the Saginaw Police Department were dispatched to 325 S. 17th Street in the City of Saginaw, regarding a report of threats. Upon their arrival at that location, they were met by the victim, Steve Miller. Mr. Miller advised officers that as he was driving on Holland Avenue near the intersection of Genesee and Holland, four to five white males in a light green Nova pulled up along side his vehicle and pointed

a rifle at him. He stated that the subjects in the Nova pursued him down Holland Avenue and in the 2500 block ran their vehicle into the left side of his vehicle. Mr. Miller stated that the subjects in the Nova then chased him all the way to his home at 325 S. 17th Street. Mr. Miller stated that during the chase, he drove as fast as his car could travel. Mr. Miller stated that he had been driving a 1977 yellow Mustang and the suspect vehicle should have traces of yellow paint on it from the collision.

On 1-3-80 at approximately 3:12 a.m., Troopers from the Michigan State Police Post in Bridgeport were dispatched to the intersection of Tatham and Dixie Highway in Bridgeport Township regarding a reported traffic accident. Upon their arrival at that location, troopers found a Richfield Disposal Company truck (79/MI 9053 AJ) stopped in the left turn lane at the intersection of Tatham and Dixie headed in a southerly direction. Troopers discovered the victim, Ralph L. Miner, slumped over in the driver's seat of the truck. It was noted that Mr. Miner appeared to have a gunshot wound to the left side of his head. The victim was checked for a pulse with none found. Officers noted that the driver's side window was shattered and that the truck was in third gear with the ignition on. Officers theorized that the victim had been shot as he was driving south on the Dixie Highway between Pine's Market and Damore's Market. A witness, Carl R. Hesse, advised officers that he observed the Refuse Truck cross over the northbound lanes and drive up over the curb on the east side of Dixie Highway. He stated that the truck proceeded along the side of the road, knocking over mailboxes and posts, re-crossed the northbound lanes and finally came to rest in the left turn lane at the intersection of Tatham and Dixie. Mr. Hesse advised officers that after he saw the truck, he observed a vehicle, possibly a Nova, headed toward the city. The victim was transported to St. Mary's Hospital where he was pronounced dead on arrival.

Autopsies were performed on Alvin Swiney and Ralph Miner on 1-3-80. The immediate cause of death in each case was determined to have been gunshot wounds to the head.

In the hours following the shootings, Saginaw City Police and Michigan State Police developed a number of tips and leads which indicated that Vance Doby, Richard Musselman, and Harry Varney may have been involved in the shootings. A number of persons had indicated that they had observed the trio riding in Doby's green Nova on the evening of 1-2-80.

Addresses for Vance Doby and Richard Musselman were obtained. On 1-4-80, shortly after 4:00 p.m., City and MSP Detectives located Richard Musselman and Harry Varney at the residence of Musselman and his grandmother, Ruby Musselman, at 6730 Fort Road in Bridgeport Township. Musselman was advised of his rights and questioned by detectives in the presence of his grandmother. He admitted being with Doby, Varney, and two girls early in the evening of January 2, 1980, but denied any knowledge of any shootings. Harry Varney was transported to the Michigan State Police Post for questioning. Initially, he denied any knowledge of the shootings. Later, he advised detectives that he was with Vance Doby and Richard Musselman during the early morning hours of

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1-3-80. He advised detectives that DUBY had driven his Nova through the City and on Dixie Highway and that Richard Musselman had shot at drivers of cars and a truck driver. Varney advised detectives that at the time, he had not known that anyone had been shot or killed.

City and MSP detectives went to the home of Vance DUBY at 3875 Curtis Road in Bridgeport Township. Vance DUBY was not at home. Detectives spoke with Vance DUBY's father, Morse DUBY. Mr. DUBY advised detectives that he did not know where Vance had gone but he did make a telephone call instructing his son, Dale, to return home. Mr. DUBY also gave detectives the location of Vance DUBY's Nova and gave them permission to view it. Dale DUBY then arrived home and gave detectives permission to take and examine his 12 gauge Westernfield pump shotgun. Officers noted that it appeared parts had been exchanged between Vance DUBY's 1972 Chevrolet Nova and a Chevrolet Chevelle. Search warrants for both vehicles were obtained, and the vehicles were confiscated by police.

On 1-5-80, Richard Musselman and Vance DUBY were arrested at their residence by police.

Examination of light colored paint samples removed from Vance DUBY's 1972 Chevrolet Nova revealed them to be similar in known samples taken from the 1977 Mustang belonging to Steve Miller. Shotgun shells recovered at the scene of the Meredith Davis and Alvin Swiney shootings were examined at the crime laboratory and were identified as having been fired in the shotgun received from Dale DUBY. A plastic shotgun shell was removed from the head of Ralph Miner and was found to be characteristic of a 12 gauge plastic was manufactured by Remington Peters.

Codefendant, Vance DUBY, was found guilty by jury verdict of two counts of First Degree Murder, two counts of Assault With Intent to Murder, and a single count of Possession of Firearm While Committing Felony on 6-25-80, and is currently awaiting sentencing. Charges against Codefendant, Harry Varney, stemming from the instant offense remain pending.

OFFENDER'S DESCRIPTION OF THE OFFENSE

The Respondent chose not to provide a description of the instant offense.

PREVIOUS CRIMINAL RECORD

JUVENILE: On 10-12-79, a petition was filed in Saginaw County Probate Court, Juvenile Division, charging the Respondent with Receiving and Concealing Stolen Property Over \$100. That petition was dismissed on 11-28-79 at a formal hearing.

On 1-5-80, a petition was filed in Saginaw County Juvenile Court charging the Respondent with two counts of First Degree Murder, two counts of Assault With Intent to Murder, and a single count of Possession of a Firearm While Committing a Felony. This is the instant offense. On 2-11-80, the Respondent was waived to the Adult Court to face these charges.

OFFENDER'S PERSONAL HISTORY

FATHER: Unknown.

MOTHER: LOIS PRIEST, 33 years old, resides at 6730 Fort Road in Bridgeport Township. She is divorced and is not employed.

GRAND-

MOTHER: RUBY MUSSELMAN, resides at 6730 Fort Road in Bridgeport Township. She is not employed.

The Respondent has three half-brothers and two half-sisters. They are: Jimmy Priest, age 12, Bobby Priest, age 10, Donnie Priest, age 9, Tammy Priest, age 8, and Carmen Priest, age 6. All of the children reside with their mother and grandmother on Fort Road.

The Respondent was born in Saginaw, Michigan on 9-9-64. He was his mother's first child. He had reportedly resided with his maternal grandmother since the age of three days. The Respondent's maternal grandfather died approximately four years ago. The Respondent indicated that his father had been employed and had provided adequately for his needs. The Respondent advised that he was residing in his grandmother's home at the time of his arrest on the instant offense. The Respondent stated that he had a "real good" relationship with his grandmother. He stated that she was not strict but easy. He added that he had never run away from home or had any problems at home. The Respondent stated that he saw his mother often as he was growing up. He stated that his grandmother cared for him because his mother had him when she was "too young".

This agent interviewed the Respondent's grandmother, and mother, Ruby Musselman and Lois Priest. Mrs. Priest stated that she had regular contact with the Respondent. She described him as quiet and added that he would never say if anything was bothering him. She indicated that he got along with his half-siblings. She stated that he had problems at school because he did not like school. She stated that she was not aware of the Respondent having any type of alcohol or drug abuse problem. Ruby Musselman advised this agent that she was not aware of the Respondent having any such problem either. She described the Respondent as quiet and stated that he kept to himself. She indicated that he would frequently stay in his room listening to his stereo. Mrs. Musselman stated that when the Respondent became older, he started associating with persons older than himself. She stated that he went out with Vance Doby quite often and also with his cousin, Harry Varney. Mrs. Priest and Mrs. Musselman indicated that they felt the Respondent's association with older persons led to his involvement in the instant offense and other problems. Mrs. Musselman stated that the Respondent was non-violent. She stated that on one occasion in the past, the Respondent's big brother had told him to shoot a cat while they were hunting and the Respondent had refused. Mrs. Musselman stated that hunting fishing and trapping were the Respondent's main interests. Mrs. Musselman and Mrs. Priest indicated that they did not believe the Respondent should go to prison. However, recognizing that the Respondent would go to prison, they stated that they felt he should receive training as a plumber. They were not certain if psychological counseling was needed. Both stated that they did not believe the instant offense was racially motivated.

This agent interviewed Hal Smith, the director of the Big Brother Program in Saginaw, and Richard Mieskowski, a former case worker with the Big Brother Program. Mr. Smith advised that he had no contact with the Respondent but did review the Respondent's case notes with this agent. It was noted that in the opinion of the Big Brother Case Workers, much of the Respondent's problems stemmed from the home situation. The grandmother reportedly had little understanding of the Respondent and little control over him. He was often left to his own devices. The grandmother reportedly remarked to the Big Brothers Case Worker that the Respondent would "raise himself". It was noted that a case worker felt the Respondent would be better off in a foster home due to the lack of control in his grandmother's home. The Respondent was described as being very quiet and observant. He was said to be distant from people and not to show a lot of feelings. He reportedly felt that school was boring and unnecessary. He had no complaints concerning his grandmother as she placed few restrictions on him. At the age of 12, he was reportedly already associating with an 18 year old male, on a regular basis. The Respondent reportedly liked his big brother but the relationship was described as being guarded. When the big brother was about to leave town, the Respondent reportedly avoided final contacts with him. The Respondent reportedly was uncertain if he wanted a second big brother and his grandmother was described as being indifferent. The Respondent was involved with a big brother from December, 1977 to January, 1979.

Richard Mieskowski described the Respondent as a "very different" person. He stated that he was shy, withdrawn, and non-trusting. He added that the Respondent showed very little affect or emotion. Mr. Mieskowski stated that he saw an emotional reaction from the Respondent on only one occasion. He indicated that while in route to a hearing at the juvenile center on a deer poaching incident, the Respondent was in tears. Mr. Mieskowski added that at that time, he could not tell if the tears were a result of anger, fear, or sadness. Mr. Mieskowski added that it was usually very difficult to tell where the Respondent was coming from. He stated that the Respondent's former big brother had told him that he felt that he did not know the Respondent after a year of being with him. The former big brother reportedly felt that their activities together were their only link. Mr. Mieskowski stated that in his experience, the Respondent's grandmother seemed very indifferent and uninvolved with the Respondent. He added that he felt she exercised no control over the Respondent. Mr. Mieskowski stated that he would recommend that the Respondent receive counseling in prison so that he can develop basic inneraction skills and emotional releases which he now lacks. He stated that he felt it was important that the Respondent become involved in activities that will bring him into meaningful contact with other persons. He recommended that the Respondent also receive vocational training.

MARITAL HISTORY

The Respondent has never been married and indicated that he had no plans to marry in the near future.

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MILITARY SERVICE

None.

JOB READINESS

From 12-7-79 until 12-21-79, the Respondent was employed as a custodial aid at Brucker School in the Bridgeport School System. That job was terminated due to a conflict with the custodial worker's union. During his employment, the Respondent reportedly showed a "good response to adult direction" and did "a complete job once task was learned".

EDUCATION

The Respondent attended public schools in the Bridgeport and Saginaw School Systems. In grades K-5, the Respondent's performance was rated "slow". He received below average grades in grades 6 and 7. He received below average grades in the 9th grade. In September, 1977, he began attending classes at the Fort School in Bridgeport because of attendance problems and a lack of motivation. It appears that the Respondent's academic performance improved somewhat at the Fort School, but he continued to have attendance problems and remained withdrawn socially. He began attending the Opportunities School in Saginaw in October, 1979. His attendance improved but he refused to do "almost all assignments". His usual excuse for not working was "don't feel like working". He remained withdrawn socially. He reportedly was infrequently verbal or aggressive at the Opportunities School. He reportedly did tease weaker students, make anonymous phone calls, and hide other student's belongings. It was noted that the Respondent seemed to have few emotional releases and had difficulty verbalizing his concerns. The Respondent was enrolled in the Opportunities School at the time of his arrest on the instant offense.

The Respondent underwent a psychological evaluation in February, 1979. The results of IQ testing on the Wechsler Intelligence Scale for Children indicated that the Respondent's verbal functioning was at the very upper end of the borderline range, his manipulative functioning was at the middle of the low normal range, and his overall functioning was at the low end of the low normal range. The results of a wide range achievement test placed his reading skills at the 3.9 grade level, his spelling skills at the 3.7 grade level, and his math skills at the 2.3 grade level. The results of Bender Gestalt Testing revealed impulsivity, inadequate emotional control, acting out tendencies, low self esteem, and poor ability to foresee consequences of actions. It was also noted that "a very turbulent interior appears to be present under that placid exterior". The Cooper Smith Self Esteem Inventory revealed that the Respondent sees himself as a "relatively average typical student". It was noted that this was far different from his teacher's evaluations. He was said to maintain his favorable self-image by interacting with peers holding similar views (peers were also at odds with society's views and values). He showed little interest in school and reportedly saw himself as a victim of rather than a controller of situations. It was recommended that the Respondent be placed in an emotionally impaired program at Handley School and receive counseling at the Child Guidance Clinic.

A school social work summary report was also prepared in February, 1979. The Respondent's withdrawal from social and academic activities in school were noted, along with his attendance problems. It was also reported that he came to school on a number of occasions under the influence of marijuana. The Respondent was said to show "very little enthusiasm for anything". He had expressed no career or job preferences. He was said to have few friends of his own age and to associate with older persons and others in trouble. He was said to perceive differently from others and to exhibit "complete lack of concern for other's rights, safety, feelings, or property". This lack of concern was said to be "coupled with occasional remarks threatening destructive acts to people or property". In the social worker's opinion, the Respondent's passivity is masking severe emotional conflicts". She went on to state that "hints of the anger, frustration, and hostility only occasionally are allowed to slip out".

SUBSTANCE ABUSE

When asked if he used any drugs, the Respondent advised that he had used "most everything". He specifically indicated that he had used weed, coke, acid, tea, and hash. He indicated that he used marijuana the most frequently of the drugs mentioned. He stated that he used marijuana "about every day". When asked how he could afford to use marijuana daily, the Respondent stated that he sold marijuana and got it "free". He denied having sold any other drugs. The Respondent stated that he drank "every day". He indicated that whiskey was his usual drink.

MENTAL AND PHYSICAL HEALTH

The Respondent described his present physical health as "pretty good". He stated that he had suffered from no serious illnesses or injuries in the past.

The Respondent indicated that he had never been referred to a psychiatrist or psychologist prior to his involvement in the instant offense. He advised this agent that he did not know if he was in need of psychological counseling at present.

A psychological evaluation was completed prior to the Respondent's waiver hearing in Saginaw County Juvenile Court. Psychologist Margaret K. Cappone concluded that the Respondent was in contact with reality, exhibited no thought or cognitive disorder, and did know right from wrong. She further concluded that the Respondent was "asocial, and a narcissistic personality who possesses strong hostile and a high acting out potential and a grandiose, power-seeking structure that would and could predispose him to violent, pain-inflicting, anti-social behaviors. She added that although the Respondent's personality structure contained dynamics that might predispose him to violent and anti-social reactions, there is no indication that the Respondent would be forced or impelled to act in any specific way or to act at all. He reportedly exhibited "the ability to inhibit impulses and does exhibit the ability to exhibit freedom of choice in his action". Dr. Cappone concluded that the Respondent probably "acted fully aware of what he was doing and chose to act this way because of the gratification it would afford him, and also because he felt that he could control the situation sufficiently to get away with it".

SOCIALIZATION

The Respondent stated that he enjoyed hunting, fishing, shining deer, and riding his dirt bike. He also stated that he enjoyed walking in the woods every day. He indicated that he saw his cousin, Harry Varney, often and Vance Duby less often. He stated that Duby was a "guy in the neighborhood". He stated that when he was with Varney or Duby, he would usually drink beer and pick up girls. When asked to describe himself as to the type of person he was, the Respondent stated that he did not know. When asked if he considered himself an introvert or an extrovert, the Respondent stated that he felt he was in the middle. He added that he usually got along with people and enjoyed being around people.

During this agent's interview with him, the Respondent was able to express himself adequately. His responses were generally flat and he did not elaborate or volunteer any information.

ECONOMIC SITUATION

The Respondent listed no income and no debts. He stated that his grandmother received a check for his care and she provided him with an allowance. The Respondent stated that his only assets were a stereo and a dirt bike.

RELIGION

The Respondent indicated that he believed in God but did not attend church following the death of his grandfather. He indicated that he was a Seventh Day Adventist.

MCH/rcp

BASIC INFORMATION REPORT

IDENTIFICATION DATA

MICH. PRISON NO.		COURT NAME (Last, First, Middle) MUSSELMAN, Richard Gerald						
MICH. PROBATION NO.		REAL NAME Same	LAST KNOWN ADDRESS, TELEPHONE Saginaw County Jail 208 S. Harrison Saginaw, MI 48602					
PLACE OF BIRTH Saginaw, MI		COUNTRY OF CITIZENSHIP U.S.A.						
DATE OF BIRTH 9-9-64	MICH DRIVER'S LICENSE NO. None	SOC. SECURITY NO. 362-70-4907	MSB NO. unknown	FBI NO. unknown				
LOCAL POLICE AGENCY & NO. SCSD 66731		PHYSICAL PROBLEMS <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	MARITAL STATUS Single	DEPENDENTS 0	HIGHEST GRADE 9			
RACE W	SEX M	HAIR Brn	EYES Blu	HEIGHT 5-7	WEIGHT 130	BUILD Slim	COMPLEX. Med	OCCUPATION None
SCARS, MARKS, TATTOOS None			HEALTH INSURANCE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	PUBLIC ASSISTANCE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	ASSETS OVER \$1500 <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
KNOWN DRUG USE <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		KNOWN ALCOHOL ABUSE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		KNOWN HOMOSEXUAL <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		MENTAL HEALTH TREATMENT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
MILITARY SER. NO., BRANCH None		FROM	TO	DISCHARGE TYPE		RELIGION 7th Day Adventist		

CRIMINAL HISTORY

JUVENILE			ADULT				CURRENT STATUS		
Comm.	Prob.	Escape	Jail	Prison	Prob.	Escape	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Delayed Sentence	
0	0	0	0	0	0	0	<input type="checkbox"/> HYTA	<input type="checkbox"/> Parole	
SEX OFFENSE CONVICTIONS 0			PENDING CHARGES <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				<input type="checkbox"/> Probation, circuit		<input type="checkbox"/> County Inmate
							<input type="checkbox"/> Probation, district		<input type="checkbox"/> State Inmate

CURRENT OFFENSE DATA

NO. 1		NO. 2			
Docket No. 80-00118FY1-	Offense Count V: Possession of Firearm While Committing Felony	Docket No.	Offense		
Comp. Law No. 750.227b	Max. Penalty 2 years	Cir. Ct. No. 10	Comp. Law No.	Max. Penalty	Cir. Ct. No.
Codefendants Vance Duby and Harry Varney			Codefendants		
Offense Date 1-3-80	Victim (name) (Relationship) Davis, Swiney, Miller None	Offense Date	Victim (name) (Relationship)		
Arrest Date 1-5-80	Attorney D. St. Claire	Appointed XXXXXXXX	Arrest Date	Attorney	Appointed Retained
Date of Bond	CONVICTED BY: <input type="checkbox"/> Plea <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Bench <input type="checkbox"/> No/le Contenders <input type="checkbox"/> HYTA <input type="checkbox"/> Sec. 7411		Date of Bond	CONVICTED BY: <input type="checkbox"/> Plea <input type="checkbox"/> Jury <input type="checkbox"/> Bench <input type="checkbox"/> No/le Contenders <input type="checkbox"/> HYTA <input type="checkbox"/> Sec. 7411	
Conviction Date 6-25-80	City/Mental Ill. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Conviction Date	City/Mental Ill. <input type="checkbox"/> Yes <input type="checkbox"/> No	
Jail Credit Days * 203 days	Sentencing Judge Hazen R. Armstrong		Jail Credit Days	Sentencing Judge	
Date Report Completed 7-25-80	County Saginaw	Report Completed By Michael C. Heffner	Case/Log No. 551	Rec. Disp. 4	

DISPOSITION

	TYPE OF SENTENCE (Prob., prison HYTA delay, Sec. 7411, F & C.)	SENTENCE DATE	TERMS OF SENTENCE					COUNTY JAIL			
			MINIMUM			MAXIMUM		FINE	COSTS	RESTIT.	
			Yrs	Mos	Days	Yrs	Mos				
NO. 1	Prison	8-26-80				2					
NO. 2						consecutive					

* as of 7-25-80

BASIC INFORMATION REPORT

IDENTIFICATION DATA

MICH. PRISON NO.		COURT NAME (Last, First, Middle) MUSSELMAN, Richard Gerald							
MICH. PROBATION NO.		REAL NAME Same			LAST KNOWN ADDRESS, TELEPHONE Saginaw County Jail 208 S. Harrison Street Saginaw, MI 48602				
PLACE OF BIRTH Saginaw, MI			COUNTRY OF CITIZENSHIP U.S.A.						
DATE OF BIRTH 9-9-64		MICH DRIVER'S LICENSE NO. None		SOC. SECURITY NO. 362-70-4907		MSB NO. unknown	FBI NO. unknown		
LOCAL POLICE AGENCY & NO. SCSD 66731			PHYSICAL PROBLEMS <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		MARITAL STATUS Single		DEPENDENTS 0	HIGHEST GRADE 9	
RACE W	SEX M	HAIR Brn	EYES Blu	HEIGHT 5-7	WEIGHT 130	BUILD Slim	COMPLEX. Med	OCCUPATION None	
SCARS, MARKS, TATTOOS None				HEALTH INSURANCE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PUBLIC ASSISTANCE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		ASSETS OVER \$1500 <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
KNOWN DRUG USE <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		KNOWN ALCOHOL ABUSE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			KNOWN HOMOSEXUAL <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		MENTAL HEALTH TREATMENT <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
MILITARY SER. NO., BRANCH None			FROM		TO		DISCHARGE TYPE		RELIGION 7th Day Adventist

CRIMINAL HISTORY

JUVENILE			ADULT				CURRENT STATUS		
Comm.	Prob.	Escape	Jail	Prison	Prob.	Escape	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Delayed Sentence	
0	0	0	0	0	0	0	<input type="checkbox"/> HYTA	<input type="checkbox"/> Parole	
SEX OFFENSE CONVICTIONS 0			PENDING CHARGES <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				<input type="checkbox"/> Probation, circuit		<input type="checkbox"/> County Inmate
							<input type="checkbox"/> Probation, district		<input type="checkbox"/> State Inmate

NO. 1

CURRENT OFFENSE DATA

NO. 2

Docket No. 80-00118FY1-2		Offense Counts I & II: 2 First Degree Murder		Docket No. 80-00118FY1-2		Offense Counts III & IV: Assault W/I to Murder					
Comp. Law No. 750.316		Max. Penalty Life		Cir. Ct. No. 10		Comp. Law No. 750.83		Max. Penalty Life		Cir. Ct. No. 10	
Codefendants Vance Duby and Harry Varney						Codefendants Vance Duby and Harry Varney					
Offense Date 1-3-80		Victim (name) Alvin Swiney Ralph Miner		(Relationship)		Offense Date 1-3-80		Victim (name) Meredith Davis Steve Miller		(Relationship)	
Arrest Date 1-5-80		Attorney Diane St. Claire		Appointed XXXXXX		Arrest Date 1-5-80		Attorney D. St. Claire		Appointed XXXXXX	
Date of Bond		CONVICTED BY: <input type="checkbox"/> Plea <input checked="" type="checkbox"/> Jury				Date of Bond		CONVICTED BY: <input type="checkbox"/> Plea <input checked="" type="checkbox"/> Jury			
		<input type="checkbox"/> Bench <input type="checkbox"/> Nolle Contenders <input type="checkbox"/> HYTA						<input type="checkbox"/> Bench <input type="checkbox"/> Nolle Contenders <input type="checkbox"/> HYTA			
Conviction Date 6-25-80		City/Mental Ill. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				Conviction Date 6-25-80		City/Mental Ill. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Jail Credit Days * 203 days		Sentencing Judge Hazen R. Armstrong				Jail Credit Days * 203 days		Sentencing Judge Hazen R. Armstrong			
Date Report Completed 7-25-80		County Saginaw		Report Completed By Michael C. Heffner		Caseload No. 551		Rec. Disp. 4			

DISPOSITION

	TYPE OF SENTENCE (Prob., prison, HYTA delay, Sec. 7411, F & C.)	SENTENCE DATE	TERMS OF SENTENCE					COUNTY JAIL				
			MINIMUM			MAXIMUM		FINE	COSTS	RESTIT.	Mos	Days
			Yrs	Mos	Days	Yrs	Mos					
NO. 1	Prison	8-26-80				Life						Credit 334
NO. 2	Prison	8-26-80				Life						

Concurrent

* as of 7-25-80

- 1 A Inside the unit.
- 2 Q And what -- this unit, what do you do in there?
- 3 A It's a place where you watch TV, play games.
- 4 Q Now, did Mr. Musselman tell you what he was doing before the
5 shooting went down?
- 6 A Yes, sir.
- 7 Q What did he tell you?
- 8 A They was getting high.
- 9 Q What specifically did he say about what he was doing?
- 10 A They were -- he was getting high.
- 11 Q And did he tell you where this was taking place?
- 12 A At his house.
- 13 Q Did he tell you what he -- else took place at his house, if
14 anything?
- 15 A That they had planned to go out and shoot some niggers.
- 16 Q What were his exact words that he used?
- 17 A That him and others had planned to go out and shoot some
18 niggers.
- 19 Q Are those the words he used?
- 20 A Yes, sir.
- 21 Q What else did he tell you about what happened after they left
22 the house?
- 23 A They went out ridin' around.
- 24 Q Did he tell you why they were riding around?
- 25 A To see if they could find some niggers.

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"Who?

"It would have been Richard or Harry, I don't know. It was one of them. I was sitting there."

Does that refresh your memory, at all?

A Yeah, I remember saying that.

Q Okay. Was that true then, that you don't remember really which one did it?

A Well, then it was, but I remember.

Q Did you actually see the person do it, or were you sitting in the back seat, just moving around?

A I was sitting in the back seat, just watching.

Q All right. Now, you were able to see the deer; is that correct?

A Yes.

Q Could you see their eyes?

A Yes.

Q And you could see that the deer were missed?

A Yes.

Q So no one got any deer that night?

A No.

Q Now, what was the reason you went to Richard's house that night? You just had nothing to do?

A Yeah.

Q And did you further testify that there wasn't anyone that night that testified that they wanted to go and kill anybody?

A Nobody said that.

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1 Q Or shoot anything, and Richard never did?

2 A No.

3 Q And Vance didn't?

4 A No.

5 Q And Harry didn't?

6 A No.

7 Q Could there have been a case of beer purchased that night?

8 A Could have been.

9 Q But you just don't remember?

10 A I don't remember.

11 Q Do you remember that you had quite a lot of beer that night,
12 amongst the four of you?

13 A Yes.

14 Q Now was there any talk that Vance would get a shotgun?

15 A No.

16 Q It was just in the car?

17 A Yes.

18 Q Was there any talk of what you were going to do until you
19 reached the Shiawassee Flats?

20 A No.

21 Q You just drove out there?

22 A Yeah.

23 Q And that's when it happened, that you started shining the
24 deer and getting lost?

25 A Yes.

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Your Honor.

MEREDITH DAVIS,

produced as a witness on behalf of the People, being first duly sworn, testified on his oath as follows:

DIRECT EXAMINATION
(11:13 a.m.)

BY MR. METER:

Q Would you state your full name, please?

A Meredith Wendell Davis.

Q Where do you work, Mr. Davis?

A Dow Corning.

THE COURT: Mr. Davis, would you like to get a little closer to the mike, please?

BY MR. METER:

Q How long have you worked at Dow Corning?

A About twenty-one months.

Q Now, Mr. Davis, I'd like to direct your attention to some time on January 3rd, 1980, in the early morning hours. Did you have occasion to be driving in the vicinity of Potter Street?

A Yes, sir.

Q And where were you coming from?

A I was coming from home. I was --

Q All right. What particular shift did -- were you working during

1 that period of time?
2 A Afternoon.
3 Q And what time did you get off of work that evening?
4 A Twenty minutes to 12:00.
5 Q Now, what type of car were you driving then?
6 A A green '72 Buick LeSabre.
7 Q About what time was it when you were driving down Potter
8 Street?
9 A About five after 2:00.
10 Q Is that in the City, County of Saginaw, State of Michigan?
11 A Yes, sir.
12 Q Was anyone with you in your car?
13 A No, sir.
14 Q And anything unusual occur as you were driving down Potter
15 Street?
16 A Yes, sir, it did.
17 Q Approximately where on Potter Street did this incident occur?
18 A Right in front of Claude's Bar.
19 Q Were there any other cars on the street that were moving
20 besides your own, just before this incident happened?
21 A One.
22 Q And where did you first see this car?
23 A Well, when I was approaching Potter Street, I come up Franklin
24 Street, and at the corner of Franklin and Potter, I saw a
25 car that was on Washington, coming up, up Washington.

1 Q I'd like you to step down from the witness stand, Mr. Davis.
2 We have a map or diagram here. It's a map, and if you could
3 stand to the side, please. It's marked proposed Exhibit
4 Number 1, and it shows Potter Street up here. Do you see that?

5 A Uh-huh.

6 Q And Hess, the river is over here to the left, and north is
7 up there. You see where Potter Street is at?

8 A Yes, sir.

9 Q See where Franklin Street, Jefferson, Warren --

10 A Yes, sir.

11 Q Second. Does that appear pretty understandable to you?

12 A Yes, uh-huh.

13 Q I'd like you to take this pen, then. Let's use a red marker.
14 I'd like you to put an "X" approximately where Claude's Bar
15 is on Potter Street, if you know.

16 A Okay. It's between --

17 Q You will have to speak up.

18 A It's better Jefferson and Franklin, on Potter, so it's
19 approximately in the middle of the block.

20 Q Make a big "X" there, please.

21 Now, you don't have to mark this in, but I'd
22 like you to point to where you first saw this car, this other
23 car that was moving.

24 A Okay. Let's see, that's -- it's upside down. Okay, it was
25 about -- near on Washington, right on the corner, pretty close

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to the corner.

Q Which direction are you coming from, before you got on Potter?

A I was coming up Franklin, this way, and the car was coming that way on Washington.

Q Which way did you turn up when you got up on Potter from Franklin?

A Turned on -- right.

Q How was this car coming down Washington?

A It was coming, just cruising along, and then it just turned right there on Potter, right behind me, about a half a block.

Q You can resume the stand. Thank you.

Did you watch this car constantly after it turned behind you on Potter Street?

A No, sir.

Q And as you got to the area of Claude's Bar, what were you doing?

A I was going -- I looked in the bar; I think it was pretty close to closing time. I -- home, it was pretty early and I wanted to see if I could see somebody I know, and I looked into the bar and I looked. When -- after I looked in Claude's Bar, I looked back to see -- to see this car that's passing me, and when I -- all hell broke loose.

Q What color was this car?

A Green.

Q Can you describe its shape or size?

A To me it looked like a Pinto, only bigger, about the same --

1 all them little cars has the same basic shape to them.
2 Q It wasn't a Pinto?
3 A No, it was too big to be a Pinto.
4 Q Do you know for sure, in your own mind, what make it was?
5 A No, I'm not good with cars.
6 Q And the color was what?
7 A Green.
8 Q What exactly did you see as you looked to your left, after
9 looking in Claude's Bar?
10 A Well, it was -- I saw two -- two guys in the car; one of them
11 was -- in the process of turning back toward the driver.
12 Q Where were they in the car?
13 A In the front seat.
14 Q Did you get a good look in the back seat of the car?
15 A I -- I got -- I looked at it.
16 Q Were you aware that there was a third person in the car at
17 this time?
18 A No. Weren't nobody in the back seat sittin' up.
19 Q What occurred when you said all hell broke loose?
20 A Somebody shot at me.
21 Q I'd like you to step down from the witness stand and come
22 down here, please. And I think we'll use -- I don't think
23 we'll use this. I want you to be you, and face the jury;
24 and I'm going to be the other car.
25 A Okay.

1 Q And I'm going to be the guys in the front seat. I want you
2 to tell me where in relationship to you they were.

3 A Directly even.

4 Q Directly even?

5 A Directly even.

6 Q When the shot rang out?

7 A Yes.

8 Q How did the shot come?

9 A Back here; came from -- came at an angle this way.

10 Q Did you specifically see a gun in the front seat?

11 A No.

12 Q You say the shot came from behind you?

13 A Yes, sir.

14 Q You can resume the stand. Thank you.

15 Did you have a present sense impression as to
16 whether or not there was a third person in the car, although
17 you didn't see one?

18 A Yes, sir; that's what made me -- when I -- after the shot
19 rang out, you know, and I sprawled out in the seat, and picked
20 back up to see what this car was doing, when I sit up and
21 look at that hole that was sitting right there by my shoulder,
22 I -- my first reaction was to -- and I was just froze like
23 this, you know -- checking my body out, 'cause I expected I
24 was in pretty bad shape, because that hole was there.

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After I checked myself out and, you know, all I had was glass in the eye and the face, and banged my head on that, but I wasn't -- I didn't -- take all that lead and one -- it was -- bugged me as to why, how did he miss, see.

Q Now, how many shots did you hear?

A One.

Q What happened after you heard the shot? What occurred next?

A I dove out on the seat; laid down and stopped the car, and then I kind of peeked over the dash, to see where this other car was going; what it was doing, and --

Q Where did it go?

A It kept cruising down Potter Street.

Q Come back down from the witness stand, Mr. Davis, and taking then from the point of the shooting, and then this red "X", describe what direction this car headed. Use this as a pointer.

A Went down Potter Street, and got to Third Street and went back to Carroll Street and back down this way.

Q This way being what direction?

A South.

Q All right. Which way did you go?

A I went north on Third Street; I went the other direction.

Q Where eventually did you end up?

A I went back up Third Street, back to Washington and came back down Washington to Genesee, up to Genesee to the police station.

1 Q Okay. You can resume the stand.

2 And what did you do at the police station?

3 A I went and told them somebody shot at me, and --

4 Q Mr. Davis, was there any doubt in your mind that they were
5 shooting at you, as opposed to the car?

6 A No doubt.

7 MR. MARTIN: Objection.

8 A No doubt at all.

9 MR. MARTIN: Wait a minute.

10 A No doubt.

11 MR. MARTIN: Wait a minute.

12 A No doubt.

13 MR. MARTIN: May I have an objection on the
14 record?

15 THE COURT: Wait a minute. He wants to object.

16 MR. MARTIN: What's in the mind of anyone who
17 shot at him is way beyond conjecture or speculation. He
18 cannot know what's in the people's mind --

19 THE WITNESS: In my mind, I know what's in mine --

20 THE COURT: You can't all talk at one time.
21 You finish.

22 MR. MARTIN: I think I'm finished.

23 THE COURT: Now yours.

24 MISS ST. CLAIRE: I would agree, Your Honor. I
25 would ask that the witness be instructed that when there is an

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objection made, it is a proper procedure for him not to answer until the Court has ruled on the objection.

THE WITNESS: Could I say something, Your Honor?

MR. METER: Wait, Mr. Davis.

THE COURT: Now, you.

THE WITNESS: People can't --

THE COURT: Have you ever been here before?

There are certain rules you've got to follow and that's when an objection is made, and this is true of everybody that is going to sit on that stand -- and you -- you don't say anything at that point.

THE WITNESS: Could I --

THE COURT: You just don't say anything, period.

MR. METER: The Judge has to rule first, Mr. Davis. You wait.

Okay, this is the present sense impression that this witness had as to an impression he had made as to that there must have been a third person in the car. He can testify what he felt in his own mind.

Of course, the jury could draw the conclusion as to what the defendants' intent was. We recognize that.

THE COURT: All right.

MR. METER: He ought to be able -- be allowed to say what he was -- his impression was.

MR. MARTIN: No, that's not true, Judge. This

1 witness cannot tell the jury what he thought at a particular
2 time, because that is speculation and conjecture on his part.

3 MR. METER: We'll abide by the Court's ruling.

4 THE COURT: I think he can testify.

5 BY MR. METER:

6 Q Your answer was what?

7 MR. MARTIN: What's the question?

8 A In my own mind --

9 MR. MARTIN: Wait a minute.

10 A -- they were shootin' at me.

11 MR. METER: Mr. Davis --

12 MR. MARTIN: I'll ask that the question be read
13 back, Court reporter.

14 (Whereupon, the Court reporter read the last
15 question back.)

16 MR. MARTIN: See, Your Honor, that is not only
17 a leading question, but it's assuming a fact not in evidence,
18 and the whole theory is that he is asking for speculation
19 on what is in a person's mind, who shot -- shot the gun.

20 THE COURT: No, he's asking about his mind.
21 Right? Is that what you're asking?

22 MR. METER: Yes, that was the question.

23 MR. MARTIN: He's asking about his mind, what's
24 in the people's who's shot.

25 THE COURT: He says what's in his mind. He can

1 testify to that.

2 MISS ST. CLAIRE: Your Honor, I would just like
3 to make a statement for the record. I think it is definitely
4 speculation for him to even answer that. It's one thing to
5 say what's in your mind, but if your mind is a conclusion
6 and speculation, then I don't think that's proper, and I
7 don't feel that's a present sense impression.

8 THE COURT: I have ruled.

9 BY MR. METER:

10 Q Without any further ado, you can answer.

11 A There was no doubt in my mind that those people were shootin'
12 at me. That car was fifteen, sixteen feet long. If some-
13 body was going to be shootin' at the car, they could have
14 hit the back headlight or hit the car. They shot right
15 behind me. I'm only six inches wide at the neck, you know.

16 Q Thank you, Mr. Davis.

17 Did you have a chance to look at the damage to
18 your car window after the shooting?

19 A Yes, sir. That was -- that was part of my reasoning as to
20 why I felt I was being shot at.

21 Q I'd like you to step down to the blackboard here, and I want
22 you to draw in -- well, draw in a rectangle or square to
23 show the shape or approximate shape of your driver's door
24 window.

25 That's your driver's door window?

1 A Yes, sir.

2 Q Okay. Now, did you see any damage to your driver's door
3 window right after the shooting?

4 A Yes, sir.

5 Q Where was it? Draw an area to indicate that.

6 Wait. You better get the front and back --
7 which is toward the front?

8 A That's the front part.

9 Q Draw in a "F" there to indicate front.

10 So this is from the inside, looking out?

11 A This is how I'm sittin', just like this.

12 Q Draw a mark in there, to indicate where the damage was.

13 A Right in this area right here.

14 Q And what kind of damage was it there, Mr. Davis?

15 A That's a hole.

16 Q Was there any other damage around the hole in the window,
17 itself?

18 A The window was fragmented into little quarter-inch cubes
19 or squares.

20 Q You can resume the stand. Thank you.

21 Now, did anything happen to your window after you
22 got out of the car, after you got to the police station and
23 got back in?

24 A First when I got out to the police station and slammed the
25 door, the glass split into bits of glass. The bottom of the

1 hole fell out, so it left only a semicircle, instead of a
2 full circle.

3 Q Okay. And anything else further happen to it, after that?

4 A When -- well, when I got back in and closed it, the rest
5 of it fell out. Every time I closed it, it would fall.

6 Q Was this before or after the police took a photograph of your
7 car, do you remember?

8 A Well, that was before, but it was at night; they didn't take
9 a picture until the next day.

10 Q Was there any damage on the inside of your car, on the other
11 side, passenger's side?

12 A Yes, sir. The window on the other side exploded immediately
13 and my door has pellet holes in it, you know -- one there,
14 one there, and one there -- three or four of them.

15 Q Towards what part of the door, which direction?

16 A Towards the front part of it.

17 Q Towards the dashboard?

18 A Yes.

19 Q Now, what -- what hit your face, if anything, after the
20 shooting? Do you recall?

21 A Well, I got glass all in the face and eyeball, and I got
22 metal pieces of the buckshot broke out, and I still got some
23 in my lip, and all in here. It ain't worked out.

24 Q Now, did there come a point in time when you gave a piece of
25 the metal that came out of your lip to the police?

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A Yes, sir.

Q How long after the shooting?

A Couple of weeks, I thought that was. I was wondering why my face wouldn't heal, because the glass had constantly -- working its way out. All of a sudden, I laying watching TV, and I'm picking at it, and looked at it, saw that metal. I thought it was all glass in my face.

Q What did you do with the piece of metal?

A Next morning I took it down to the station.

Q Do you remember when the police came and looked at your car and removed any metal from your door?

A Yes, sir.

Q How long after that --

A I imagine a month or so.

Q Was that a different time than when you got the piece from your lip?

A Yes, sir.

Q Did you see this car at any time after you lost sight of it on Potter Street?

A Yes, sir.

Q Where?

A When I turned on Third Street, it was turning off Third Street on Carroll.

Q Heading in what direction, again?

A East. It turned off Third Street east on Carroll.

1 Q How close did this car get to you at the time of the shooting
2 when you say you looked over?

3 A Well, couple of feet.

4 Q Were you actually moving down the street when the shot rang
5 out?

6 A Yes, sir.

7 Q About what speed?

8 A I was cruising, I imagine, about ten, fifteen miles an hour.

9 Q What speed was this green car driving, do you recall?

10 A Twenty-five, thirty.

11 Q How long did it stay even up with you?

12 A Not long. It was -- they were -- the difference of speed
13 took them right past me.

14 Q How close to the curb were you at the time of the shooting?

15 A Couple of feet.

16 Q Do you know whether or not this green car went over the
17 centerline as it was up next to you, or was it in the same
18 lane of travel as you, if you know?

19 A They probably was a little bit, maybe, cross the centerline;
20 'cause the street ain't that wide. There ain't no line, anyway,
21 down there.

22 Q What direction did this passenger in the front seat look just
23 before the shooting?

24 A He turned back toward the driver.

25 Q Was your driver's window completely up?

1 A Yes.

2 Q Your other passenger window?

3 A Yes, sir. It was a little cold that night.

4 MR. METER: That's all I have, Your Honor.

5 Oh, one question.

6 BY MR. METER:

7 Q Did you get a good-enough look at the people in the car to be
8 able to identify them at a later date?

9 A No, sir.

10 MR. METER: That's all.

11

12 CROSS EXAMINATION

13 BY MR. MARTIN:

14 Q Mr. Davis, did you have any idea that your car was going to be
15 fired at, before it was fired at?

16 A No, sir.

17 Q So it would be your testimony that you were having your mind
18 on the steering wheel, going down the street, and the next
19 thing you knew, there was a bullet hole in your left driver's
20 side?

21 A Yes, that's it.

22 Q What?

23 A Yeah.

24 Q So I assume you didn't have time enough to duck?

25 A I ducked after the shot.

- 1 A 7-11 on the corner there.
- 2 Q And were you on foot or in a vehicle?
- 3 A No, I was in the van.
- 4 Q A van?
- 5 A A van.
- 6 Q Who was driving?
- 7 A I was.
- 8 Q And you and your brother are the only two in the van?
- 9 A Yes.
- 10 Q What direction were the two of you headed when you saw this
11 unusual incident?
- 12 A North.
- 13 Q And you're on the Dixie?
- 14 A Yeah.
- 15 Q What exactly did you observe?
- 16 A Well, there was a garbage truck coming at us in the other lane,
17 and I noticed him swerve in the road, and then he came across
18 the road in front of me --
- 19 Q Now, which way was he coming?
- 20 A He would have been driving south.
- 21 Q On what road?
- 22 A On Dixie.
- 23 Q So he would have been coming against you, is that correct?
- 24 A Yeah.
- 25 Q About how far away was he from you when you first observed,

1 you know, him?

2 A Hundred, fifty yards, maybe.

3 Q Now, describe his progress as he was coming down the Dixie,
4 heading towards you.

5 A He's in the closest lane to the middle, and he came all the
6 way across in front of me, and then up onto the median on
7 the other drive, and drove along the edge of -- drove along
8 the edge of the road.

9 Q Did you observe his truck striking or coming near anything?

10 A There were curbs along the edge of the road; there were
11 driveways going into a bunch of businesses, and there were
12 telephone -- or mailboxes, telephone pole, and some fences.

13 Q Did the truck hit those items?

14 A Yeah.

15 Q What type of truck was it, again?

16 A Garbage truck.

17 Q How big? There's different sizes.

18 A It was a big one, pretty big.

19 Q Was it a regular garbage truck or one with the dumpster-type
20 lift? Do you remember?

21 A Really don't remember.

22 Q Now, describe the progress of this truck then after you say
23 it struck several objects coming down the east side of Dixie.

24 A Well, it came to rest at the corner of Dixie and Tatham, after
25 driving along the edge; it just sort of pulled back on the

1 street.

2 Q Oh its own?

3 A Well, obviously, yeah. I guess so. The guy might have
4 stopped it, but --

5 Q It didn't hit any cars or anything in the area?

6 A No.

7 Q Did you see any other cars or parts of cars in the area of
8 that truck after you first observed it?

9 A Well, there -- before it happened, there was a car ahead of us.
10 We didn't, you know -- there was no reason to look at it at
11 the time.

12 Q What direction was it going?

13 A North.

14 Q How close to the truck was it when you observed it?

15 A Could have been right beside it. It could have been any place,
16 no way to tell.

17 Q What direction did this car continue to travel after you first
18 observed it?

19 A North.

20 Q On what road, again?

21 A Dixie.

22 Q Is that the last you saw it?

23 A Yeah.

24 Q Can you describe any part of it?

25 A I saw the taillights as it went away. I believe -- I remember

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what it looked like.

Q And what was that?

A There's two oblong lights, about -- they were shaped like that, just -- they didn't go all the way across the back of the car, but they filled most of the back of the car.

Q They weren't round?

A No, they were oblong.

Q Oblong?

A Yeah.

Q Now, could you describe the size of the car, at least, if you can't describe what kind of car it was?

A Mid-size car. That was about all I could claim.

Q A what?

A A mid-size car; not a big car or anything.

Q As to anything else, can you offer the description of the car?

A No, I don't think so.

Q What did you do after this truck came to rest in the middle of Tatham and Dixie?

A I had stopped when it went by us, because I thought he was drunk or something, and I was going to go back and get him out of the truck, and not let him drive.

When I got to the rig, into it, you know, wake up or something, he was laying over on the other side, and he was all bloody, so I just left him alone.

Q Anyone else in that truck besides this person?

1 A No.

2 Q Did he speak in any way?

3 A Nope.

4 Q Did he appear alive to you?

5 A Alive, but not -- not conscious or anything.

6 Q How so did he appear live to you at that time?

7 A He was just breathing real struggle like, just breathe for
8 about ten, fifteen minutes, and then he died.

9 Q No words?

10 A Nope.

11 Q What did you do then, after you observed it, the man was
12 injured?

13 A My brother was in the truck, and I had him run to the 7-11,
14 and there was a policeman in there, but he didn't seem too
15 interested in what was going on. So another guy from the
16 7-11 came down and got up inside the truck and tried to help
17 the guy, whatever could be done, and finally the cop showed up.

18 Q Was it the one that was down at the 7-11?

19 A Yeah.

20 Q Do you know his name?

21 A No, I don't.

22 Q Was he a state policeman?

23 A No, it was Buena Vista, I think.

24 Q Did officers come to the scene, I guess -- you already indicated
25 that?

1 here.

2 Q Draw a big "X", and then on up Outer Drive, a big "X". Don't
3 worry about marking the diagram up.

4 A It would be somewhere right in that area, and probably where
5 Fort Saginaw Mall, the outer edge of it, from there up until
6 the stoplight.

7 Q All right. Now, any other cars in the area of your car,
8 besides that car in that hour of the morning?

9 A No, those were the only two.

10 Q Did you happen to see this car the second time?

11 A Yes. As -- well, I didn't know for sure if the car was going
12 to stop. They got to the intersection just before I did. So
13 I proceeded on down Holland and watched in my rearview mirror
14 this car follow after me, and at this point, I was doing
15 probably the speed limit, which is forty-five, and the car
16 caught up to me right around here.

17 There is a gas station, and Wickes right in here.

18 Q Draw a "W" for Wickes, to indicate where the car caught up
19 to you.

20 A Right about in here.

21 Q Circle it, please.

22 All right. Now, you can resume the stand for the
23 next few questions. Thank you.

24 Any other cars on the road at this point?

25 A No.

1009-

1 Q What occurred then as this car drew up to you by the Wickes
2 or the gas station there?

3 A Well, as the car pulled up there, I glanced over to see who
4 was coming up alongside. At this point I happened to look
5 eye-to-eye with the passenger on the right-hand side of the
6 car.

7 Q So the car is on what side of your car?

8 A It would be on the left of me.

9 Q Mr. Taylor, how many people did you see in the other car?

10 A Three.

11 Q Where were they seated in the car?

12 A I assume they -- they looked like they were all in the front
13 seat.

14 Q Did you see any more than three people, to -- to your knowledge?

15 A No, I didn't.

16 Q What kind of a car was it?

17 A It was a dark green Nova.

18 Q How long did this car parallel your car, as you're driving
19 down Holland there?

20 A As the car was pulling up alongside of me, I had glanced back
21 a little way to see it, and then I did a real quick look, but
22 what I did see was the guy -- he was standing or sitting there,
23 looking right at me, and as they pulled up alongside, they
24 were -- we were eye-to-eye, pretty much.

25 Q Describe the look this passenger was giving to you?

1 A Well, it's a hard one to describe, because I never seen
2 another look like it. It was like the nastiest look I ever
3 have seen on anybody's eyes. It made me turn away right away.
4 Q How long did this car then continue to run alongside of your-
5 self after it had broken even?
6 A It was probably a matter of only a second, but it seemed like
7 a little bit longer at the time.
8 Q Where did this car proceed to, the Nova?
9 A Well, we moved -- proceeded down Holland, lost sight; it was
10 still headed down Holland when I turned off on Cumberland.
11 Q Towards Genesee?
12 A Right.
13 Q And you turned south then on Cumberland?
14 A Right.
15 Q Is that the last you saw of that car?
16 A It is.
17 Q I mean that morning?
18 A Uh-huh.
19 Q Did you -- did you get a good-enough look at the driver of
20 the car or person in the middle, passenger, where you would
21 be able to identify them again?
22 A I couldn't identify any of them, really. The passenger in
23 the middle and the driver I never really even seen.
24 Q Can you at least give a general physical description of the
25 right front passenger that gave you the look that you have

1 described?

2 A Well, all I can say, he had dark hair and relatively long,
3 down below his ears anyway.

4 Q How about his facial features or his age, if you know?

5 A He was white, young. By young, I'd say less than twenty-one,
6 anyhow.

7 Q When did you give the information you had to the police, do
8 you recall?

9 A Right shortly after I got out of work, when I got home.

10 Q Without getting into the real specifics, what caused you to
11 want to turn the information over to the police?

12 A Well, when I got home, my wife was -- had my dinner and
13 everything laid out, and she had the paper there, and she
14 said, "Take a look at this. There's a couple of guys out
15 there shootin' the hang out of everybody; driving around town."
16 Said -- she talked to me after I read the article.

17 When I know -- I looked at the article and told
18 her, I said, "That's the same damn guys that scared the hell
19 out of me this morning."

20 Q Did you call the police?

21 A Yes, I did.

22 Q Would you -- what time would you describe this as where you --
23 where the car pulled up even with you on -- on Holland?

24 A It was between five and ten after 3:00 in the morning.

25 Q Anything about the appearance of the car, as far as its height?

1 speak, between myself and him. I follow him. So of course
2 anything I say, any questions I ask, have to do with Richard,
3 my client.

4 And of course, as you can see from what has
5 already been said, this case involves a similar set of
6 circumstances and incidents in which both Vance and Richard
7 were present. Therefore, many of the questions I ask will
8 have -- likely be repetitive of what Mr. Martin asks. Many
9 of the comments I make in my opening statement will be repe-
10 titive and I would ask you to please bear with me. I must do
11 this on behalf of Richard and also to make it clear in your
12 minds as to how the evidence or the questions apply to Richard.

13 So I know this will be a long trial, but I hope
14 you realize if it seems repetitive that is the reason I'm
15 doing it. He is asking questions and making statements on behalf
16 of his client only, and I'm making on behalf of Richard only.

17 Now, as you can see, Mr. Vance's defense is
18 that he did not intend that anyone would be injured. Richard's
19 defense is the exact same defense. When you are thinking about
20 Richard, his name could be in place or next to Vance's.
21 Richard Musselman did not intend that anyone should be in-
22 jured. The same as Vance Duby.

23 The details of this particular incident have been
24 described to you by Mr. Martin, and again I'll go over them.
25 I'll try to make them brief, since this is the third time

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that you have been hearing details with respect to this particular night.

But, as you can see, at one time during the early evening of that night, Richard, Vance and Harry Varney were together at Richard's house. They were drinking and they were smoking marijuana. They were listening to their stereo; generally talking and having a good time.

It was a night -- they didn't know what to do; they wanted to have some fun. There was whiskey that someone was drinking; there was a lot of marijuana that people were smoking, and there was a lot of beer. There were drives to the beer store; there were girls involved, girls that these boys know.

They were drinking with the girls. There was also an argument with one of the -- argument with one of the girls, as mentioned previously, and Vance left. But Vance and Richard and Harry were pretty good friends and they called Vance up again, and they decided, "Well, we'll get together and have some fun the rest of the night." Matt Rembish was also present that evening. He's a friend of the boys.

Again, as I stated before, throughout the drinking, the smoking of marijuana, and the general talk and banter and other things that boys talk about when they get together, it was decided that maybe they would go out to what they call as the Prairie Farm and what's been described to you as the

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Shiawasse Flats and shine some deer.

What they mean by shining deer is someone holds a light and they try to see if they see a deer, and somebody shoots at the deer. They thought this might be fun, because they didn't have anything to do.

They went out to the Prairie Farm, as they were talking about it. The lights were shining at some deer, shots were fired at the deer, and the deer was missed. They had been lost in the Prairie Farm; they were drinking, smoking marijuana -- generally fooling around.

It was dark. They couldn't find their way out. They drove around for a couple of hours and they found a gate that was locked, and the lock was shot off the gate so they could get out.

Some time afterwards, Matt wanted to go home. He was tired from everything that had happened. He was tired from the drinking, the marijuana, and he fell asleep at one point. So they dropped Matt off and then Harry Varney, Vance and Richard went back near Richard's house and they again decided maybe they would shine some deer, and they did shine for some deer, near Richard's house. Well, they didn't see any deer there.

So they decided: "Let's go drive around. Let's go, as stated before, scare some people."

And how are they going to scare the people?

1 Well, unfortunately, they decided that they would shoot at
2 some cars; it might scare them. Shooting at a car and wanting
3 to scare people, after you have been drinking, smoke mari-
4 juana, and being up late, does not mean that they intended
5 that anyone would be injured.

6 And again, that is the defense not only of
7 Richard but also of Vance. And they did drive around and they
8 were present, as Vance, and I will say, as I speak for Richard.
9 Richard was present at the time that the incidents described
10 have occurred. He was present when someone from the car
11 shot at Meredith Davis. He was in the car.

12 He was also in the car when a shot was fired at
13 Mr. Swiney; and further, when Steve Miller had a shot fired
14 at him, Richard was present. And he was also present at Ralph
15 Miner -- at the time he was shot.

16 We are not denying that; but what we are denying
17 was at the time the shots were fired, that there was any
18 intent or any idea that the man would -- the man would be
19 injured; that there was any knowledge that anyone was ever
20 shot until some time later -- day or two later.

21 So there is no denial that a shotgun belonging
22 to Dale Duby was used in this particular incident. There is no
23 denial that Richard was not present in the car when these inci-
24 dents occurred; but what is denied is that no one intended to
25 -- that anyone would be injured.

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Richard is fifteen years old, the testimony will show that. The testimony of witnesses will show that at the time of this particular incident, he had been fifteen, turned fifteen by only three months. The testimony will further show that at the time the incident occurred, that he was attending school for the severely emotionally impaired, and that he did not in any way intend or think: "I am going to go out and kill people." That was not in his mind and I do not believe -- and the testimony will not show that it was in his mind.

I would like to say that most of the testimony that I'm talking about has not only to do with witnesses that may be called on behalf of Richard, but also witnesses that may be called on behalf of the Prosecutor.

Again, I would remind you under the law the Prosecutor is required to call everyone that is present or connected with an incident. He must do that; and so many of the witnesses that he may call would be witnesses that I want to call on behalf of Richard. So simply because they are called by the Prosecutor does not mean they are not witnesses that will show you what I have said the evidence will show; that there was no intent.

The way that will be shown is not only through the direct examination of Mr. Meter, but also my chance -- my chance of cross examining the witnesses to find out what happened.

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I do not intend to belabor the point any longer, again.

I would ask that you bear with me in that. I will have to ask a lot of questions and present evidence that is repetitious of what Mr. Martin may present for Vance, but Richard, again -- Richard is my client and he must have all of the evidence and testimony that is for him only.

And so in order to make sure that he does, to make sure that you get a fair impression of what happened, that you get all of the facts in front of you, I will be having to repeat many of the questions and testimony that has already been asked, and I will state once again what I'm saying now is not evidence, and any objections made is not evidence. The Court will tell you that later.

What I would ask from all of you jurors, and I think you will be fulfilling your oath as jurors in doing so, is simply to listen to the testimony that is on the stand, what the people have to say; what the witnesses have to say -- not necessarily any answers that are suggested to them, but as the testimony from the stand that is -- on which you would base your answers.

A Prosecutor's suspicions or hunches or guesses as to what happened is not evidence. The only evidence will be what comes from the stand, what comes out of the mouths of the people that take it; and I would say that if you listen

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closely to what the people have to say, you'll find that there was no intent that anyone be injured.

As I'm sure you will be instructed later on, and in a criminal case it is the Prosecutor that must prove that this particular incident occurred. He must prove that beyond a reasonable doubt. That means more than just any doubt. It means that when you make your decision, there must not be doubt, so that you are uncomfortable with your decision; that it leaves a feeling in your mind that you don't have a certainty as to your decision.

So remember that when you are listening to the witnesses; see if the witnesses say everything that the Prosecutor has promised. See if everything he has said that he can prove, and that's including the intent that someone be injured.

I would say this, again, with Vance DUBY's name up there, you can also inject that Richard Musselman's name is up there; that Richard Musselman then did not intend that anyone would be injured. He didn't.

That is our defense, and that will be our defense throughout the trial; and I would ask that when you are listening to the witnesses, you keep that in mind. And I think if you will do -- if you do, you will see that there was no intent.

Thank you.

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1 and which murders were thought about beforehand, and for
2 which murders sufficient time elapsed to allow the defendants
3 to weigh the pros and cons and reflect on what they were to
4 do, so that they could, if they chose, change their minds and
5 not do what they were about to do.

6 Therefore, both defendants are guilty of Counts
7 1 and 2, murder in the first degree.

8 It is the People's theory of the case that on
9 January 3rd, 1980, co-defendants Vance Duby and Richard
10 Musselman carried or had in their possession and control a
11 firearm, while they perpetrated the felonies in Counts 1
12 through 4, and therefore both defendants are guilty of Count
13 5, felony firearm possession.

14 It is the defendant, Vance Duby's theory in
15 defense: the defendant, Vance Duby, claims that he is not
16 guilty of the crimes charged by the People.

17 He admits that he was driving the car in which
18 Richard Musselman and Harry Varney were passengers which
19 Richard Musselman shot at one car, and pointed a gun at
20 another, and when Harry Varney shot at a car and a truck.
21 Vance Duby claims that Richard Musselman and Harry Varney had
22 shot at cars before to scare people, and that is what he
23 believed was going to happen that night.

24 Vance Duby claims that he only intended to help
25 Richard Musselman and Harry Varney to scare the unknown drivers

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of the vehicles and that was never his intent that anyone would be injured or killed.

This is the defendant, Richard Musselman's theory of the defense: Richard Musselman is not guilty of murder in the first degree. There was no premeditation, deliberation or willfulness of Richard Musselman, nor did he intend to injure anyone.

Richard Musselman and the other two boys began the night on the spur of the moment, gathering of each other at Richard's house. Girls were called to join them, and drives to various stores to purchase beer were made. With nothing better to do, it was decided to shine deer at Shiawasse Flats.

All of these actions were made on the spur of the moment because there was nothing better to do.

After shining deer, again with nothing better to do, Richard Musselman, Vance DUBY and Harry Varney decided to shine more deer and to travel to Carrollton to do it. An automobile was seen and on the spur of the moment, it was decided by all to scare him by shooting at the automobile. Richard shot at that automobile and did not kill anyone. Another automobile was spied and on the spur of the moment to scare him, Harry Varney shot.

Steve Miller's automobile was seen and Richard held the gun out of the window and did not shoot. A fourth

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automobile was noticed and again, to scare that automobile, Harry Varney shot.

Richard Musselman fired one shot and did not kill anyone. At no time were the night's actions planned ahead of time. They were spontaneous, occurring at the spur of the moment, with no intention by Richard Musselman or others to harm or injure anyone.

When you go to the jury room, your deliberations should be conducted in a businesslike manner. You should first select a foreperson. He or she should see that the discussions go forward in a sensible and orderly fashion, that each juror has an opportunity to discuss the issues fully and fairly.

A verdict in a criminal case must be unanimous. In order to return a verdict, it's necessary that each of you agree upon that verdict. In the jury room, you will discuss this case among yourselves, but ultimately each of you will have to make up your own mind.

Any verdict must represent the individual, considered judgment of each juror.

It is your duty to consult with your fellow jurors and to deliberate with a view of reaching agreement, if you can do so without violating your own judgment.

Before deciding the case, give impartial consideration to the views of your fellow jurors. This means that you

1 1:30 p.m.)

2 (Whereupon, the jury comes in with a verdict
3 at 3:52 p.m.)

4 THE CLERK: Ladies and gentlemen of the jury,
5 if you have reached a verdict, will your foreperson, Juror
6 Number 5, Patience Fritz, please rise and read the verdict?

7 JUROR FRITZ: Vance Duby, Count 1: open murder -
8 Alvin Swiney: guilty of murder in the first degree.

9 Vance Duby, Count 2: open murder - Ralph Minerd:
10 guilty of murder in the first degree.

11 Vance Duby, Count 3: assault with intent to
12 murder - Steve Miller: guilty of assault with intent to
13 murder.

14 Vance Duby, Count 4: assault with intent to mur-
15 der - Meredith Davis: guilty of assault with intent to murder.

16 Vance Duby, Count 5: possession of firearm while
17 committing felony: guilty of possession of a firearm while
18 committing felony.

19 Richard Musselman, Count 1: open murder - Alvin
20 Swiney: guilty of murder in the first degree.

21 Richard Musselman, Count 2: open murder - Ralph
22 Minerd: guilty of murder in the first degree.

23 Richard Musselman, Count 3: assault with intent
24 to murder - Steve Miller: guilty of assault with intent to
25 murder.

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Richard Musselman, Count 4: assault with intent to murder - Meredith Davis: guilty of assault with intent to murder.

Richard Musselman, Count 5: possession of firearm while committing felony: guilty of possession of firearm while committing felony.

THE CLERK: Will the members of the jury please rise?

You do find that the said defendant, Vance Duby, guilty of murder in the first degree, as to Count 1; guilty of murder in the first degree as to Count 2; guilty of assault with intent to murder, as to Count 3; guilty of assault with intent to murder, as to Count 4; guilty of possession of firearm while committing a felony, as to Count 5;

You do find said defendant, Richard Musselman, guilty of murder in the first degree, as to Count 1; guilty of murder in the first degree as to Count 2; guilty of assault with intent to murder as to Count 3; guilty of assault with intent to murder, as to Count 4; guilty of possession of a firearm while committing a felony, as to Count 5;

In manner and form as said People hath in their Information in this cause charged; so says your foreman, so say you all?

THE JURORS: Yes.

MR. MARTIN: Your Honor, on behalf of Vance Duby,
1671-

1 Q Now, you knew Richard in the second grade?

2 A Yes.

3 Q Can you tell me how you would describe Richard as a
4 student of yours?

5 A Yes, Richard was a nice little boy. He was a quiet
6 little boy. His misdeeds were no greater than the
7 other seven year olds. I thought that he always had
8 a poverty of spirit. He was quiet. He had the wrong
9 kind of friends, his cousins. He played happily on
10 the playground, flying around just like the other boys
11 and girls, and then suddenly he would be in the depths
12 of despair, and then he never would tell me why, and
13 he would never tell what his cousins had done to him,
14 but the other kids did.

15 Q The other kids would tell you why Richard was so upset?

16 A Uh-huh. Yes.

17 Q And, why was that?

18 A The ones that he paled with most were his cousins. He
19 liked them. He wanted to be part of their group. And
20 they would use him. When it suited them to tease
21 somebody, they always got Richard. And they called him
22 names.

23 Q And what did they call him?

24 A The other kids told me they called him a bastard all
25 the time.

1 Q To take care of their children?

2 A That's right. That's right.

3 Q And did the Aunts tell you this was said in front of
4 Richard?

5 A I don't recall if Richard heard it. He must have heard
6 it, if it went on all the time. And this wasn't just
7 in second grade, apparently it was all throughout his
8 grade school years.

9 Q And what, as far as you know, Richard was brought up
10 by his grandmother from three days?

11 A Yes, he loved his grandmother and his grandfather.
12 He would follow me around on the playground, he'd often
13 go out when the days were real warm in the Spring, and
14 he talked to me about how he wanted to be a carpenter
15 when he grew up. I said Richard that's a good thing to
16 be, carpenters have work a lot, they do creative things
17 and you can take courses in highschool, and you can learn
18 to use the tools properly and he spoke of this more than
19 once, wanting to be a carpenter. I think this came about
20 the time that his mother got married. I think he perhaps
21 wanted to be a carpenter because the man she married was
22 a builder.

23 Q Do you know, did you have occasion to learn through his
24 Aunt much about the relationship of his mother and his
25 step-father?

1 A I understand that the new step-father did not accept
2 him at all. Wouldn't have a thing to do with him,
3 and would not allow him in the house.
4 Q And that was in Richard's mother's house?
5 A Yes.
6 Q And where was Richard's mother's house in location to
7 the grandmother's house?
8 A I believe it was nearby. It may have been next door or
9 nearby, this is what I hear.
10 Q And did his mother and her new husband have any children?
11 A Yes, they did.
12 Q And how many that you knew of?
13 A Two or three, I believe.
14 Q And, were any of those boys?
15 A Yes, they were.
16 Q And was Richard allowed to play with any of those boys?
17 A No. No.
18 Q And was he allowed to -- and this was because Mr. Priest
19 would not allow it?
20 A That's right.
21 Q And Mr. Priest would not allow Richard to come into --
22 A Right.
23 Q -- their house --
24 A Yes.
25 Q Is that correct?

APPENDIX U

CRIMINAL

HAZEN R. ARMSTRONG (5-2)

(2010 104)

THE PEOPLE OF THE STATE OF MICHIGAN

PROSECUTING ATTORNEY

Robert Kaczmarek

VARNEY, Harry Earl Jr.

DEFENDANT ATTORNEY

Vincent Scorsone, Ct. App.

Rod O'Farrell, Ct. App.

CHARGE(S) Ct. I First Degree Murder
 Ct. II First Degree Murder
 Ct. III Assault w/i to Murder (Con. Sec. 750.83 CL 1970 MSA 28.278)
 Ct. IV Assault w/i to Murder Con. Sec. 750.83 CL 1970 MSA 28.278)
 Ct. V Poss of Firearm while Com Felony (Con. Sec. 750.227b CL 1970 MSA 28.424 (2))

AMT. OF BOND NO BOND

DISPOSITION

SENTENCE

DATE

PROCEEDINGS

DATE	PROCEEDINGS
1 24 80	DIST. COURT ARRAIGN. PREL. <input checked="" type="checkbox"/> HELD <input type="checkbox"/> WAIVED
1 24 80	BOUND OVER TO CIRCUIT COURT
1 24 80	CIRCUIT COURT FILED
1 23 80	CIRCUIT COURT ARRAIGN. DATE PREL. TRANSCRIPT FILED

SAGINAW COUNTY CIRCUIT COURT CRIMINAL DOCKET

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80 00074 FY 5-2

YEAR	NUMBER	CODE	DATE	PROCEEDINGS
			1	Order Appointing
			1 9 80	District Court Judge's Return to Circuit Court on Examination
			28 80	No Bond
			2 19 80	Defendant) in Court with counsel, waived reading of Information and Stood Mute; Court entered a Pleas of Not Guilty in his behalf, and Defendant was remanded to custody of the Sheriff pending further proceedings.
			3 24 80	Transcript of Preliminary Examination taken on Jan. 23, 1980 received and filed.
			3 27 80	Notice of Hearing - Motion for Order Authorizing Administration of Polygraph Examination of Defendant - Motion for Production of Partial Transcript in Re the Matter of Richard Gerald Musselman Affidavit in Support of Motion - Affidavit of Service
			4 17 80	Notice of Hearing- Petition for Leave to Endorse Additional Witnesses of Polygraph Examination
			4 3 80	Order Authorizing Administration of Defendant of Partial Transcript in re Matter of
			4 3 80	Order for Production
			28 80	Richard Gerald Musselman
			4 13 80	Order Endorsing Witnesses to defendant's motion or
			5	People's memorandum in opposition separate trials. Endorse Witnesses
			6 2 80	Order Denying Defendants' Motion to
			6 2 80	Notice of Hearing; Proof of Service
			6 3 80	Order Denying Motion for Change of Venue

YEAR	NUMBER	CODE	PROCEEDINGS
6	5	80	Order Separating the Trial of Harry E. Varney from the Trial of Vance DUBY and Richard Musselman.
6	5	80	Order Endorsing Ernie Bucks, Darlene Wilson, Tom Heritier, and Terrance LaVoy on the Information as Witnesses.
7	8	80	Notice of Hearing - Motion for Discovery
7	14	80	Hearing on Motion for Discovery, Motion taken under advisement
10	1	80	Motion for Writ of Habeas Corpus to Bring up a Prisoner for a Trial
10	15	80	Verdict of the Jury: Ct. I Guilty of Involuntary Manslaughter Ct. II Guilty of Involuntary Manslaughter Ct. III Guilty of Assault With a Dangerous WEapon Ct. IV Not Guilty Ct. V Guilty of Possession of Firearm While Committing a Felony. Jury released from further deliberations. This matter referred to Department of Corrections pending Pre-Sentence Investigation.
10	22	80	Notice of Hearing - Proof of Service
10	27	80	Hearing on Motion to Set Aside Jury Verdict and Direct a Verdict of Acquittal or in the Alternative, for a New Trial. Arguments of counsel. Motion Denied.
			Hearing on Motion for Bail. Arguments of counsel. Motion denied.
10	28	80	Order Denying Motion
10	28	80	Order Denying Motion
1	19	80	Motion and Order
1	21	81	Respondent present in Court with counsel. Sentenced by the Court to Riverside Correctional Institute for a period of 10 to 15 years on Count I; 10 to 15 years on Count II; 2 to 4 years on

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YEAR	NUMBER	CODE	PROCEEDINGS
			Count II: these are to run concurrently, and an additional 2 years on Count V, with credit for 383 days already served. Defendant advised of his right to appeal.
1	26	81	Indeterminate Sentence Record - Record of Sentence
10	7	81	Order for Payment of Expert Witness Fees.
2	2	81	Warrant for Removal Returned
1	27	81	Notice by Court to Defendant as to Right of Appeal
2	10	81	Order Appointing Appeal Counsel & Providing for Trial Transcript or Portion Thereof
2	23	81	Appearance of Rod O'Farrell for Defendant - Affidavit of Service
*	7	81	Notice of Hearing for 7-21-81 -Motion for Extension of Time to File Transcript - -Proof of Service
*	4	81	Claim of Appeal -Notice of Claim of Appeal - Affidavit
*	4	81	Stenographer's Certificate
10	15	81	Notice of Hearing for 10-19-81 - Application for Bail
10	19	81	Motion for Bond pending Appeal, Arguments of counsel, Motion denied
10	20	81	Order denying Motion
10	8	81	Reporters Notice of Filing - Affidavit
10	8	81	Transcript of Arraignment held on February 19, 1980 received and filed - 6 Motions and Sentence Proceedings
10	8	81	Transcripts of Proceedings held on September 30, October 1, 2, 3, 7, 8, 9 and 10 received and filed (7 volumes)

DATE:11/15/2019

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT
PEOPLE VS RICHARD MUSSELMAN

PAGE

CASE:80-000118-FY

OFFENSE: 0/00/0000

ACTIVE: 5/29/2019
CLOSED:10/24/2019

JUDGE:DARNELL JACKSON
AGENCY: (UNKNOWN)

DEFENDANT
MUSSELMAN, RICHARD GERALD
2400 S. SHERIDAN
MUSKEGON, MI 49442
DOB: 0/00/0000
PHONE: () -

DEFENSE ATTORNEY
PIAZZA, JAMES F.
803 COURT ST
SAGINAW, MI 48602 4223

CTN:

SID:

DSP	CT	SEQ	MCLA/ORDINANCE	CHARGES	DATE	TYP
JG	1		750.316	HOMICIDE 1ST-MULTP	2/14/1980	F
JG	2		750.316	HOMICIDE 1ST-MULTP	2/14/1980	F
JG	3		750.83	ASST W/I TO MURDER	2/14/1980	F
JG	4		750.83	ASST W/I TO MURDER	2/14/1980	F
JG	5		750.227B-A	WEAP-FELONY FIREARM	2/14/1980	F
			***	END OF CHARGES	***	

BONDS

#/PD	JUDGE/BONDSMAN	TYP	AMOUNT	CHECK	SET/POST	FORF/REV
		***	END OF BONDS	***		

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
2/14/1980	C	CASE FILED WITH CIRCUIT COURT		DAC
2/14/1980	-	CHARGES: ASST W/I MURDER; FIRST DEGREE MURDER; FEL. FIRE-		DAC
2/14/1980	-	ARM POSSESSION		DAC
2/14/1980	*	DISTRICT COURT ACTIVITY AS FOLLOWS:		DAC
2/14/1980	-	(2/8/80) PRELIMINARY EXAM		DAC
2/14/1980	-	(2/8/80) BOUND OVER TO CIRCUIT COURT		DAC
2/14/1980	*	COPY OF ORDER WAIVING JURISDICTION FROM JUVENILE DIVISION		DAC
2/14/1980	-	OF PROBATE COURT TO CIRCUIT COURT.		DAC
2/14/1980	*	ADD COUNT 01-00 HOMICIDE 1ST-MULTP	C5	SMB
2/14/1980	*	ADD COUNT 02-00 HOMICIDE 1ST-MULTP	C5	SMB
2/14/1980	*	ADD COUNT 03-00 ASST W/I TO MURDER	C5	SMB
2/14/1980	*	ADD COUNT 04-00 ASST W/I TO MURDER	C5	SMB
2/14/1980	*	ADD COUNT 05-00 WEAP-FELONY FIREARM	C5	SMB
2/15/1980	*	ORDER APPOINTING COUNSEL (DIANE ST. CLAIRE)		DAC
2/19/1980	ARR	ARRAIGNMENT		DAC
2/19/1980	-	DEFENDANT IN COURT WITH COUNSEL, WAIVED READING OF INFORM		DAC
2/19/1980	-	ATION AND STOOD MUTE; COURT ENTERED A PLEA OF NOT GUILTY		DAC
2/19/1980	-	IN HIS BEHALF AND DEFENDANT WAS REMANDED TO CUSTODY OF		DAC
2/19/1980	-	SHERIFF, PENDING FURTHER PROCEEDINGS.		DAC
3/19/1980	*	NOTICE OF HEARING--PETITION FOR LEAVE TO ENDORSE		DAC
3/19/1980	-	ADDITIONAL WITNESSES		DAC
3/24/1980	*	RENOTICE OF HEARING		DAC
4/02/1980	*	RECORDERS NOTICE OF FILING OF TRANSCRIPT--TRANSCRIPT OF		DAC
4/02/1980	-	PROCEEDINGS HELD ON JANUARY 30, 1980 IN PROBATE COURT,		DAC
4/02/1980	-	JUVENILE DIVISION, RECEIVED AND FILED.		DAC

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DATE:11/15/2019

STATE OF MICHIGAN 10TH JUDICIAL CIRCUIT
PEOPLE VS RICHARD MUSSELMAN

PAGE

CASE:80-000118-FY

OFFENSE: 0/00/0000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
4/02/1980	*	ORDER		DAC
4/03/1980	*	STIPULATION AND ORDER		DAC
4/17/1980	*	NOTICE OF HEARING--PETITION FOR LEAVE TO ENDORSE		DAC
4/17/1980	-	ADDITIONAL WITNESSES		DAC
4/28/1980	*	ORDER ENDORSING ADDITIONAL WITNESSES		DAC
5/09/1980	*	NOTICE OF HEARING--MOTION FOR SEVERANCE--MOTION FOR		DAC
5/09/1980	-	CHANGE OF VENUE.		DAC
5/12/1980	H	HEARING HELD		DAC
5/12/1980	-	DEFENDANT IN COURT WITH COUNSEL ON DEFENSE MOTION FOR		DAC
5/12/1980	-	SEVERANCE: ARGUMENT OF COUNSEL. COURT TOOK UNDER		DAC
5/12/1980	-	ADVISEMENT. DEFENSE MOTION FOR CHANGE OF VENUE--		DAC
5/12/1980	-	ARGUMENT OF COUNSEL--COURT DENEIED SAID MOTION		DAC
5/12/1980	*	ORDER DENYING MOTION FOR CHANGE OF VENUE SIGNED BY THE		DAC
5/12/1980	-	COURT.		DAC
5/13/1980	*	PEOPLE;S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION		DAC
5/13/1980	-	FOR SEPARATE TRIALS.		DAC
6/03/1980	*	ORDER DENYING MOTION FOR SEPARATE TRIALS		DAC
6/03/1980	*	ORDER DENYING MOTION FOR CHANGE OF VENUE		DAC
6/05/1980	*	ORDER SEPARATING THE TRIAL OF HARRY E. VARNEY FROM THE		DAC
6/05/1980	-	TRIAL OF VANCE DUBY AND RICHARD MUSSELMAN.		DAC
6/05/1980	*	ORDER ENDORSING THE NAMES OF ERNIE BUCK, DARLENE WILSON,		DAC
6/05/1980	-	TOM HERITIER, AND TERENCE LA VOY ON THE INFORMATION AS		DAC
6/05/1980	-	WITNESSES		DAC
6/05/1980	*	AFFIDAVIT		DAC
6/24/1980	*	PEOPLE'S THEORY OF CASE--DEFENDANT RICHARD MUSSELMAN'S		DAC
6/24/1980	-	OF DEFENSE		DAC
6/25/1980	*	VERDICT OF THE JURY: CT 1: GUILTY OF MURDER IN THE		DAC
6/25/1980	-	FIRST DEGREE. CT. 2: GUILTY OF MURDER IN THE FIRST		DAC
6/25/1980	-	DEGREE. CT 3: GUILTY OF ASSAULT WITH INTENT TO MURDER		DAC
6/25/1980	-	CT 4.: GUILTY OF ASSAULT WITH INTENT TO MURDER		DAC
6/25/1980	-	CT 5. GUILTY OF POSSESSION OF FIREARM WHILE COMMITTING		DAC
6/25/1980	-	A FELONY. THE JURY WAS EXCUSED FROM FURTHER DELIBER-		DAC
6/25/1980	-	ATION IN THIS CAUSE. REFERRED TO DEPARTMENT OF		DAC
6/25/1980	-	CORRECTIONS FOR PRE-SENTENCE INVESTIGATION. DEFENDANT		DAC
6/25/1980	-	WAS REMANDED TO THE CUSTODY OF THE SHERIFF PENDING		DAC
6/25/1980	-	SENTENCING		DAC
6/25/1980	JG	JURY-GUILTY 01-00 HOMICIDE 1ST-MULTP	C5	SMB
6/25/1980	JG	JURY-GUILTY 02-00 HOMICIDE 1ST-MULTP	C5	SMB
6/25/1980	JG	JURY-GUILTY 03-00 ASST W/I TO MURDER	C5	SMB
6/25/1980	JG	JURY-GUILTY 04-00 ASST W/I TO MURDER	C5	SMB
6/25/1980	JG	JURY-GUILTY 05-00 WEAP-FELONY FIREARM	C5	SMB
8/26/1980	S	SENTENCED		DAC
8/26/1980	-	DFDT PRESENT IN COURT WITH COUNSEL. SENTENCED BY THE		DAC
8/26/1980	-	COURT TO THE RIVERSIDE CORRECTIONAL INSTITUTION FOR A		DAC
8/26/1980	-	PERIOD OF TWO (2) YEARS ON CT 5, WITH 234 DAYS CREDIT.		DAC
8/26/1980	-	ON COUNTS 1 AND 2, HE SHALL BE CONFINED FOR NATURAL LIFE		DAC

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DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
8/26/1980	-	IMPRISONMENT COMMENCING AT THE EXPIRATION OF CT 5. ON CT		DAC
8/26/1980	-	S 3 AND 4, HE SHALL BE CONFINED FOR LIFE COMMENCING AT		DAC
8/26/1980	-	THE EXPIRATION OF SENTENCE ON CT 5. SENTENCE ON CTS 1,2,		DAC
8/26/1980	-	3 AND 4 TO BE SERVED CONCURRENTLY. DEFENDANT ADVISED OF		DAC
8/26/1980	-	HIS RIGHT TO APPEAL		DAC
8/26/1980	FDJ	FINAL DISPOSITION-JURY TRIAL		DAC
8/26/1980	SN	COUNT 03-00 SENTENCED	C5	SMB
8/26/1980	SN	COUNT 04-00 SENTENCED	C5	SMB
8/26/1980	SN	COUNT 05-00 SENTENCED	C5	SMB
9/02/1980	*	AFFIDAVIT AND PETITION FOR APPELLATE COUNSEL. (NO		DAC
9/02/1980	-	ATTORNEY APPOINTED SO INFORMED BY JUDGE'S SECRETARY AS MR		DAC
9/02/1980	-	. MUSSELMAN HAS HIRED AN ATTORNEY.		DAC
9/04/1980	*	NOTICE OF HEARING--MOTION FOR A NEW TRIAL		DAC
9/10/1980	*	RENOTICE OF HEARING		DAC
9/16/1980	*	RENOTICE OF HEARING		DAC
9/24/1980	*	RENOTICE OF HEARING		DAC
9/29/1980	H	HEARING HELD		DAC
9/29/1980	-	ON MOTION FOR NEW TRIAL. ARGUMENTS OF COUNSEL. MOTION		DAC
9/29/1980	-	DENIED		DAC
9/29/1980	*	ORDER DENYING MOTION FOR NEW TRIAL.		DAC
3/20/1981	*	APPEARANCE OF E. BRADY DENTON FOR DEFENDANT	C2	DAC
4/27/1981	*	MOTION FOR NEW TRIAL. ARGUMENTS OF COUNSEL. MOTION		DAC
4/27/1981	-	DENIED		DAC
4/29/1981	*	ORDER DENYING MOTION FOR NEW TRIAL.		DAC
5/15/1981	*	CLAIM OF APPEAL--CERTIFICATE OF COURT REPORTER--NOTICE OF		DAC
5/15/1981	-	CLAIM OF APPEAL--PROOF OF SERVICE		DAC
5/27/1981	*	REPORTERS NOTICE OF FILING TRANSCRIPT--AFFIDAVIT OF MAIL-		DAC
5/27/1981	-	ING. TRANSCRIPT OF PROCEEDINGS HELD ON APRIL 27, 1981		DAC
5/27/1981	-	RECEIVED AND FILED.		DAC
1/20/1982	*	NOTICE OF HEARING--MOTION FOR EXTENSION OF TIME FOR		DAC
1/20/1982	-	FILING PLAINTIFF-APPELLEES BRIEF ON APPEAL--AFFIDAVIT IN		DAC
1/20/1982	-	SUPPORT OF MOTION--PROOF OF SERVICE (COPIES OF DOCUMENTS		DAC
1/20/1982	-	FILED IN THE COURT OF APPEALS)		DAC
3/17/1982	*	NOTICE OF HEARING FOR 3/23/82--DELAYED MOTION FOR		DAC
3/17/1982	-	RECONSIDERATION OF MOTION FOR EXTENSION OF TIME--AFFIDA-		DAC
3/17/1982	-	VIT IN SUPOPORT OF MOTION--APPELLEES BRIEF ON APPEAL--		DAC
3/17/1982	-	PROOF OF SERVICE.		DAC
1/07/1983	*	ORDER OF MICHIGAN COURT OF APPEALS		DAC
1/07/1983	-	PER CURIAM OPINION OF THE COURT OF APPEALS, IN PERTINENT	C2	DAC
1/07/1983	-	PART: ". . . .IN THE WITHIN MATTER, DEFENDANT STOOD MUTE	C2	DAC
1/07/1983	-	AT THE CIRCUIT COURT ARRAIGNMENT AND DID NOT MOVE AT	C2	DAC
1/07/1983	-	ANY TIME BEFORE OR DURING TRIAL TO QUASH THE INFORMATION	C2	DAC
1/07/1983	-	BASED ON THE LACK OF A PRELIMINARY EXAMINATION. HE FIRST	C2	DAC
1/07/1983	-	RAISED THIS ISSUE IN A MOTION FOR A NEW TRIAL ON APRIL	C2	DAC
1/07/1983	-	27, 1981, WHICH WAS 10 MONTHS AFTER COMPLETION OF THE	C2	DAC
1/07/1983	-	TRIAL AND EIGHT MONTHS SUBSEQUENT TO THE IMPOSITION OF	C2	DAC

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OFFENSE: 0/00/0000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLERK
1/07/1983	-	SENTENCING.	C2	DAC
1/07/1983	- TAKING TOGETHER THE CITED STATUTE AND THE FOREGOIN	C2	DAC
1/07/1983	-	CIRCUMSTANCES, WE HOLD THAT DEFENDANT WAIVED HIS STATU-	C2	DAC
1/07/1983	-	TORY RIGHT TO A PRELIMINARY EXAMINATION. THE WITHIN	C2	DAC
1/07/1983	-	CASE IS DISTINGUISHABLE FROM DUNNIGAN, SUPRA, BECAUSE	C2	DAC
1/07/1983	-	HERE THERE WAS NEITHER A REQUEST FOR A PRELIMINARY	C2	DAC
1/07/1983	-	EXAMINATION NOR A MOTION TO QUASH IN ADVANCE OF JURY	C2	DAC
1/07/1983	-	TRIAL.	C2	DAC
1/07/1983	-	AFFIRMED."	C2	DAC
6/21/1989	*	MOTION FOR TRIAL TRANSCRIPTS AND OTHER FILED PROCEEDINGS		DAC
6/21/1989	-	FILED BY THE DEFENDANT (IN PRO PER). PROOF OF SERVICE		DAC
6/21/1989	-	(THAT HE HAS SENT A COPY TO THE PROSECUTING ATTORNEY		DAC
6/21/1989	-	AND THE CLERK OF THE COURT) BY REGULAR MAIL. NOTICE OF		DAC
6/21/1989	-	HEARING AS FOLLOWS:		DAC
6/21/1989	-	".....THE ABOVE TITLED MATTER WILL COME ON FOR HEARING		DAC
6/21/1989	-	BEFORE A SESSION FO THE CIRCUIT COURT OF SAGINAW COUNTY		DAC
6/21/1989	-	WITHIN FOURTEEN (14) BUSINESS DAYS UPON ACKNOWLEDGEMENT		DAC
6/21/1989	-	OF THIS COURT, OR AS SOON THEREAFTER AS THE COURT		DAC
6/21/1989	-	BUSINESS WILL ALLOW."		DAC
8/03/1989	*	COPY OF COMPLETE FILE, FIVE (5) VOLUMES OF TRANSCRIPTS,	C2	GMH
8/03/1989	-	ONE (1) TRANSCRIPT OF MOTION, CERTIFIED COPY OF CALENDAR	C2	GMH
8/03/1989	-	ENTRIES MAILED TO RICHARD MUSSELMAN MUSKEGON CORRECTIONAL	C2	GMH
8/03/1989	-	FACILITY 2400 S. SHERIDAN MUSKEGON, MICHIGAN 49442	C2	GMH
8/08/1989	*	TRANSCRIPTS ARE IN BOX 16 (SIXTEEN)	C2	MAM
2/09/1990	*	COPIES OF TRIAL TRANSCRIPTS VOL I THRU 12 MAILED TO DFNT	C2	MAM
2/09/1990	-	RICHARD GERALD MUSSELMAN #162008, MUSKEGON CORRECTIONAL	C2	MAM
2/09/1990	-	FACILITY, 2400 S. SHERIDAN ROAD MUSKEGON, MI 49441; NO	C2	MAM
2/09/1990	-	OTHER TRANSCRIPTS AVAILABLE	C2	MAM
10/09/1990	*	NTC OF HEARIN G	C2	MAM
10/09/1990	DM	DEFENSE MOTION	C2	MAM
10/09/1990	-	FOR RELIEF OF JUDGMENT	C2	MAM
10/09/1990	DM	DEFENSE MOTION	C2	MAM
10/09/1990	-	FOR WAIVER OF FEES AND COSTS	C2	MAM
10/09/1990	-	AFFDIAVIT OF INDIGENCY; PRF OF SERV	C2	MAM
10/09/1990	APR	MOTION SCHEDULED FOR 10/23/90 AT 9:00 AM	C2	MAM
10/09/1990	-	DM RELIEF OF JUDGMENT; WAIVER OF FEES AND COSTS	C2	MAM
10/11/1990	*	NTC OF DISQUALIFICATION, REQ FOR RE-ASSIGNMENT BY HON.	C2	JHP
10/11/1990	-	R.L. KACZMAREK	C2	JHP
10/11/1990	*	ORDER OF RE-ASSIGNMENT	C2	EH
10/11/1990	*	LEOPOLD P. BORRELLO REPLACES ROBERT L. KACZMAREK AS JUDGE	C5	EH
10/24/1990	*	COURT'S OPINION & ORDER DENYING DEFT'S MTN FOR RELIEF	C5	JCW
10/24/1990	-	FROM JUDGMENT	C5	JCW
3/26/1991	*	ORDER OF THE MICHIGAN COURT OF APPEALS:	C5	DAC
3/26/1991	-	"THE COURT ORDERS THAT THE DELAYED APPLICATION FOR LEAVE	C5	DAC
3/26/1991	-	TO APPEAL IS DENIED FOR LACK OF MERIT IN THE GROUNDS	C5	DAC
3/26/1991	-	PRESENTED."	C5	DAC

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OFFENSE: 0/00/0000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CHK
5/03/1991	*	COMPLETE FILE, CERTIFIED COPY OF CALENDAR ENTRIES AND	C5	GU
5/03/1991	-	TWENTY-FIVE (25) TRANSCRIPTS - PRELIMINARY EXAMINATION	C5	GU
5/03/1991	-	DATED 1/24/80; WAIVER HEARING-VOLUMES I, II, III, IV AND	C5	GU
5/03/1991	-	V DATED 1/30/80-2/1-4-8-11/80; ARRAIGNMENT DATED 2/18/80;	C5	GU
5/03/1991	-	MOTION 3/3/80; MOTION 5/12/80; MOTION 6/5/80; TRIAL-	C5	GU
5/03/1991	-	VOLUMES I THROUGH XII, DATED 6/5-6-9-10-11-12-13-17-18-	C5	GU
5/03/1991	-	19-20-24-25/80; SENTENCE DATED 8/26/80; MOTION 9/15/80	C5	GU
5/03/1991	-	AND MOTION DATED 4/27/81 MAILED TO THE SUPREME COURT,	C5	GU
5/03/1991	-	RECORDS DEPARTMENT, 2ND FLOOR LAW BLDG., LANSING, MI.	C5	GU
10/28/1991	*	ORDER OF THE MICHIGAN SUPREME COURT: "ON ORDER OF THE	C5	DAC
10/28/1991	-	COURT, THE APPLICATION FOR LEAVE TO APPEAL IS CONSIDERED,	C5	DAC
10/28/1991	-	AND IT IS DENIED, BECAUSE WE ARE NOT PERSUADED THAT THE	C5	DAC
10/28/1991	-	QUESTIONS PRESENTED SHOULD BE REVIEWED BY THIS COURT."	C5	DAC
11/15/1991	*	FILE AND TRANSCRIPTS RETURNED FOR THE MICHIGAN SUPREME	C5	MAM
11/15/1991	-	COURT; TRANSCRIPTS ARE IN SEPARATE BOX AND MARKED	C5	MAM
6/20/1996	*	DEFT'S REQUEST FOR SPECIFIC DOCUMENTS & TRANSCRIPTS;	C5	JCW
6/20/1996	-	AFFIDAVIT OF RICHARD MUSSELMAN; AFFIDAVIT OF INDIGENCY	C5	JCW
9/20/1996	*	COURT'S ORDER DENYING PROVISION OF COPIES TO DEFT	C5	JCW
12/06/1996	*	ORDER OF THE MICHIGAN COURT OF APPEALS: "THE COURT...	C5	DAC
12/06/1996	-	ORDERS THAT THE CLAIM OF APPEAL FILED ON OCTOBER 3, 1996,	C5	DAC
12/06/1996	-	IS DISMISSED BECAUSE THERE IS NO APPEAL OF RIGHT FROM AN	C5	DAC
12/06/1996	-	ORDER DENYING A MOTION FOR COPIES OF DOCUMENTS. PURSUANT	C5	DAC
12/06/1996	-	TO MCR 7.202(8) SUCH AN ORDER IS NOT A FINAL ORDER."	C5	DAC
1/28/1998	*	ORDER OF THE MICHIGAN COURT OF APPEALS, DENYING MOTION	C5	DAC
1/28/1998	-	TO WAIVE FEES: "A REVIEW OF THE PRISONER ACCOUNT STATE-	C5	DAC
1/28/1998	-	MENT SHOW ABILITY TO PAY."	C5	DAC
4/16/1998	*	ORDER OF THE MICHIGAN COURT OF APPEALS: "...THAT THE	C5	DAC
4/16/1998	-	DELAYED APPLICATION FOR LEAVE TO APPEAL IS DENIED FOR	C5	DAC
4/16/1998	-	FAILURE TO ESTABLISH PREREQUISITE GOOD CAUSE PURSUANT TO	C5	DAC
4/16/1998	-	MCR 6.433(B)(2)."	C5	DAC
7/14/2004	*	+++++++TRANSCRIPTS LOCATED IN A BOX WITH 80-73-FY IN+++++	C5	NRS
7/14/2004	-	+++++++IN THE ANNEX+++++++	C5	NRS
1/19/2005	*	PER REQUEST MAILED COPY OF DOCKET ENTRIES TO RICHARD	C5	FKL
1/19/2005	-	MUSSELMAN #162008 MOUND CORR. FAC. 17601 MOUND RD.	C5	FKL
1/19/2005	-	DETROIT, MI 48212	C5	FKL
8/02/2005	*	WRITTEN REQUEST FOR SPECIFIC DOCUMENTS PURSUANT TO	C5	CMR
8/02/2005	-	MCR 6.433(B)(2); (C) (1), (2), (3) AND (4) W/CERTIFICATE	C5	CMR
8/02/2005	-	OF MAILING FILED BY RICHARD GERALD MUSSELMAN ++ FWD CTR	C5	CMR
8/17/2005	*	ORDER DENYING DEFENDANT'S MOTION FOR PRODUCTION OF	C5	DMM
8/17/2005	-	DOCUMENTS	C5	DMM
3/08/2006	*	PETITION FOR A CONDITIONAL PARDON OR COMMUTATION OF SEN-	C5	PRW
3/08/2006	-	TENCE FILED BY DEFENDANT	C5	PRW
5/27/2009	*	PETITION FOR A CONDITIONAL PARDON OR COMMUTATION OF	C5	LDP
5/27/2009	-	SENTENCE	C5	LDP
6/24/2013	MRJ	MOTION FOR RELIEF FROM JUDGMENT	C5	BRE
6/24/2013	-	MEMORANDUM OF LAW IN SUPPORT; MTN FOR WAIVER OF FEES AND	C5	BRE

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OFFENSE: 0/00/0000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLERK
6/24/2013	-	COSTS, AFFIDAVIT OF INDIGENCY; PRAECIPE; NTC OF HRG; PRF	C5	BRE
6/24/2013	-	OF SVC BY RICHARD MUSSELMAN ++ FWD TO CTRM ++	C5	BRE
6/24/2013	-	+++ FILE TO FOLLOW ONCE RETRIVED FROM MORLEY +++	C5	BRE
7/02/2013	PFC	PULLED FILE FOR COURTROOM	C5	BRE
7/02/2013	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	CM
7/09/2013	OPO	OPINION AND ORDER OF THE COURT	C5	AAL
7/09/2013	-	(DENYING DEF'S MRJ FILED 06/24/13 W/O PREJUDICE)	C5	AAL
7/09/2013	NUA	NO LONGER UNDER ADVISEMENT	C5	AAL
3/31/2014	*	MICHIGAN COURT OF APPEALS ORDER GRANTING THE MOTION TO	C5	SAB
3/31/2014	-	WAIVE FEES FOR THIS CASE ONLY AND DISMISSING THE DELAYED	C5	SAB
3/31/2014	-	APPLICATION FOR LEAVE TO APPEAL FROM THE JULY 9, 2013	C5	SAB
3/31/2014	-	ORDER BECAUSE APPELLANT FAILED TO FILE THE APPLICATION	C5	SAB
3/31/2014	-	WITHIN THE TIME PERIOD REQUIRED BY MCR 7.205(G) (3).	C5	SAB
5/20/2014	*	MICHIGAN COURT OF APPEALS ORDER DENYING THE MOTION FOR	C5	SAB
5/20/2014	-	RECONSIDERATION.	C5	SAB
7/13/2016	PM	PROSECUTION MOTION	C5	AV
7/13/2016	-	TO STAY THEIR MOTION TO SENTENCE DFNT TO LIFE WITHOUT	C5	AV
7/13/2016	-	PAROLE, PRF OF SVC BY ATTY RANDY L PRICE	C5	AV
7/13/2016	PM	PROSECUTION MOTION	C5	AV
7/13/2016	-	TO SENTENCE DFNT TO LIFE WITHOUT PAROLE, PRF OF SVC BY	C5	AV
7/13/2016	-	ATTY RANDY L PRICE	C5	AV
8/15/2016	*	DFNT'S ANSWER TO PEOPLE'S MTN & MTN TO DISMISS PEOPLES	C5	BRE
8/15/2016	-	MTN FOR LIFE SENTENCE BY RICHARD MUSSELMAN	C5	BRE
9/16/2016	*	APPEARANCE BY ATTY JAMES PIAZZA	C5	BRE
9/16/2016	*AT	PIAZZA, JAMES F. REPLACES PRO PER AS ATTORNEY	C5	BRE
10/04/2016	*	ORDER APPOINTING COUNSEL - J. PIAZZA FOR DEFENDANT	C5	LMM
10/14/2016	*	STIPULATION/ORDER FOR DISCOVERY MATERIALS FROM THE	C5	LMM
10/14/2016	-	MICHIGAN DEPARTMENT OF CORRECTIONS	C5	LMM
10/25/2016	DM	DEFENSE MOTION	C5	AV
10/25/2016	-	TO DISCOVER, NTC OF HRG, PRF OF SVC BY ATTY JAMES F	C5	AV
10/25/2016	-	PIAZZA	C5	AV
10/25/2016	APR	MOTION SCHD FOR 11/21/2016 AT 2:30 PM	C5	AV
10/25/2016	-	DFNT MOT DISCOVER	C5	AV
11/09/2016	DM	DEFENSE MOTION	C5	NRS
11/09/2016	-	NTC OF HRG; MOT FOR EXTRA ORDINARY FEES; MOT FOR	C5	NRS
11/09/2016	-	INVESTIGATOR; MOT FOR EXPERT WITNESS; MOT TO DISQUALIFY	C5	NRS
11/09/2016	-	PROSECUTOR OFFICE; PRF OF SVC, FILED BY ATTY JAMES PIAZZA	C5	NRS
11/09/2016	APR	MOTION SCHD FOR 11/21/2016 AT 2:30 PM	C5	NRS
11/09/2016	-	MOT FOR EXTRA ORDINARY FEES/FORINVESTIGATOR/ETC...	C5	NRS
11/16/2016	*	T/C TO ATTY PIAZZA'S OFFICE TO ADVISE THAT MTNS SET FOR	C5	AAL
11/16/2016	-	11/21 WILL BE ADJOURNED AND CAN BE RESET AFTER EN BANC	C5	AAL
11/16/2016	-	STATUS CONFERENCE RE JUVENILE LIFERS SET FOR 12/7; CT	C5	AAL
11/16/2016	-	WILL COORDINATE W/ATTY'S OFFICE TO FIND A NEW DATE IN	C5	AAL
11/16/2016	-	JAN 2017.	C5	AAL
11/16/2016	ADJ	ADJOURNED MOTION ORIG SCHED 11/21/2016 AT :	C5	SMB
11/16/2016	ADJ	ADJOURNED MOTION ORIG SCHED 11/21/2016 AT :	C5	SMB

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DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLERK
11/16/2016	-	TO BE RESET	C5	SMB
12/08/2016	PFC	PULLED FILE FOR COURTROOM	C5	CH
12/08/2016	-	FILE 1 & 2	C5	CH
12/13/2016	*	RE NTC OF HRG RE: MTN TO DISCOVER, MTN FOR EXTRA ORDINARY	C5	BRE
12/13/2016	-	FEES, MTN FOR INVESTIGATOR, MTN FOR EXPERT WITNESS & MTN	C5	BRE
12/13/2016	-	TO DISQUALIFY PROSECUTOR OFFICE (1/23/17); PRF OF SVC BY	C5	BRE
12/13/2016	-	ATTY JAMES PIAZZA	C5	BRE
12/15/2016	*	PER REQUEST, ATTORNEY PIAZZA RECEIVED COPIES OF	C5	HL
12/15/2016	-	THE FILE/TRANSCRIPTS	C5	HL
12/15/2016	APR	MOTION SCHD FOR 1/23/2017 AT 2:30 PM	C5	BRE
12/15/2016	-	MTN TO DISCOVER, EXTRA ORDINARY FEES....ETC	C5	BRE
1/17/2017	DM	DEFENSE MOTION	C5	KMS
1/17/2017	-	DFNTS RICHARD G MUSSELMAN MOTION FOR JURY TRIAL, NTC OF	C5	KMS
1/17/2017	-	HRG, PRF OF SVC FILED BY ATTY JAMES F PIAZZA	C5	KMS
1/17/2017	APR	MOTION SCHD FOR 1/23/2017 AT 2:30 PM	C5	KMS
1/17/2017	-	DFNTS MTN FOR JURY TRIAL	C5	KMS
1/17/2017	*	PEOPLE'S ANSWER TO DFNT'S MTN TO DISCOVER; PEOPLE'S	C5	BRE
1/17/2017	-	ANSWER TO DFNT'S MTN TO DISQUALIFY PROSECUTOR'S OFFICE;	C5	BRE
1/17/2017	-	PRF OF SVC BY ATTY RANDY PRICE	C5	BRE
1/23/2017	NH	NOT HEARD	C5	PGD
1/23/2017	-	PARTIES MET IN CHAMBERS MATTER IS GOING TO BE RENOICED BY	C5	PGD
1/23/2017	-	ATTY PIAZZA.	C5	PGD
1/27/2017	*	RE NTC OF HRG (2/6/17); PRF OF SVC BY ATTY JAMES PIAZZA	C5	BRE
1/30/2017	APR	MOTION SCHD FOR 2/06/2017 AT 2:30 PM	C5	BRE
1/30/2017	-	MTN TO DISCOVERY, EXTRA ORDINARY FEES, INVESTIGATOR..ETC	C5	BRE
2/01/2017	*	PEOPLE'S ANSWER TO DFNT'S MTN FOR JURY TRIAL; PRF OF SVC	C5	BRE
2/01/2017	-	BY ATTY RANDY PRICE	C5	BRE
2/06/2017	OJS	CT. REPORTER: J. STUPAK, CSR-8314	C5	SMB
2/06/2017	H	HEARING HELD	C5	SMB
2/06/2017	-	DEFNS' ATTY PIAZZA PRESENT AND WAIVED HIS CLIENTS	C5	SMB
2/06/2017	-	PRESENCE; PROSEC. R. PRICE PRESENT AT DATE SET FOR	C5	SMB
2/06/2017	-	SEVERAL DEFNT'S MOTIONS; STATMENTS PLACED ON THE RECORD	C5	SMB
2/06/2017	-	JUDGE GRANTED IN PART AND DENIED IN PART	C5	SMB
2/06/2017	-	ATTY PIAZZA TO SUBMIT ORDER	C5	SMB
2/15/2017	RET	FILE RETURNED TO CLERK'S OFFICE	C5	SMB
2/15/2017	-	FILES 1 & 2	C5	SMB
2/16/2017	*	ORDER ON MOTIONS HEARD FEBRUARY 6, 2017	C5	PGD
2/16/2017	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	TSB
2/16/2017	-	FILE 1,2	C5	TSB
5/18/2018	DM	DEFENSE MOTION	C5	CH
5/18/2018	-	FOR DETERMINATION OF INDEPENDENT EXPERT & INVESTIGATION;	C5	CH
5/18/2018	-	NTC OF HRG; PRF OF SVC FILED BY ATTY JAMES F PIAZZA	C5	CH
5/18/2018	APR	MOTION SCHD FOR 6/11/2018 AT 2:30 PM	C5	CH
5/18/2018	-	MOT FOR DETERMINATION OF INDEPENDENT EXPERT & INVESTIGAT	C5	CH
5/31/2018	*	PEOPLES ANS TO DFNTS MTN FOR DETERMINATION OF INDEPENDENT	C5	KMS
5/31/2018	-	EXPERT & INVESTIGATION PRF OF SVC FILED BY ATTY MELISSA J	C5	KMS

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OFFENSE: 0/00/0000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLERK
5/31/2018	-	HOOVER (JUDGES COPIES+++++FWD TO CRTRM+++++==)	C5	KMS
6/07/2018	PFC	PULLED FILE FOR COURTROOM	C5	CMJ
6/07/2018	-	FILES 1, 2	C5	CMJ
6/11/2018	05R	CT. REPORTER: E. PRZYBYLSKI, CSR-3789	C5	SMB
6/11/2018	H	HEARING HELD	C5	SMB
6/11/2018	-	DEFNS ATTY J. PIAZZA PRESENT & WAIVED PRESENCE OF	C5	SMB
6/11/2018	-	DEFENDANT; PROSEC. HOOVER PRESENT AT DATE SET FOR MOTION	C5	SMB
6/11/2018	-	FOR DETERMINATION OF INDEPENDENT EXPERT & INVESTIGATION	C5	SMB
6/11/2018	-	FEEES; STATMENTS PLACED ON THE RECORD; COURT GRANTED	C5	SMB
6/11/2018	-	WITH MOTION WITH A CAP ON INDEPENDENT EXPERT & INVEST.	C5	SMB
6/11/2018	-	ATTY PIAZZA TO SUBMIT ORDER	C5	SMB
6/11/2018	RET	FILE RETURNED TO CLERK'S OFFICE	C5	SMB
6/11/2018	-	FILES 1 & 2	C5	SMB
6/12/2018	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	CMJ
6/12/2018	-	FILES 1, 2	C5	CMJ
6/19/2018	*	ORDER ON MOTION FOR INVESTIGATION AT COUNTY EXPENSE	C5	PGD
6/19/2018	*	ORDER ON MOTION FOR INDEPENDENT EXPERT AT COUNTY EXPENSE	C5	PGD
8/08/2018	APR	HEARING SCHD FOR 8/30/2018 AT 3:00 PM	C5	SMB
8/08/2018	-	***STATUS CONFERENCE***	C5	SMB
8/23/2018	PFC	PULLED FILE FOR COURTROOM	C5	CMJ
8/23/2018	-	FILES 1, 2	C5	CMJ
8/30/2018	NH	NOT HEARD	C5	SMB
8/30/2018	-	ATTYS' MET IN CHAMBERS; DATE FOR MILLER HEARING; 2-26-19	C5	SMB
9/07/2018	APR	HEARING SCHD FOR 2/26/2019 AT 9:00 AM	C5	SMB
9/07/2018	-	MILLER HEARING	C5	SMB
9/07/2018	RET	FILE RETURNED TO CLERK'S OFFICE	C5	SMB
9/07/2018	-	FILES 1 & 2	C5	SMB
9/10/2018	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	GEW
9/10/2018	-	FILES 1, 2	C5	GEW
9/19/2018	AFI	***INTERIM ATTY FEES REQUESTED***	C5	JMS
9/24/2018	PAY	DISBURSEMENT VOUCHER/PAYMENT ORDER	C5	SMB
9/24/2018	-	ATTY PIAZZA \$1,767.50	C5	SMB
2/06/2019	WRT	WRIT OF HABEAS CORPUS ISSUED	C5	SMB
2/06/2019	-	FOR 2-26-19	C5	SMB
2/14/2019	*	DFNT RICHARD G MUSSELMANS SENTENCE MEMORANDUM, FILED BY	C5	KMS
2/14/2019	-	ATTY JAMES F PIAZZA (JUDGES COPIES++++FWD CRTRM++++)	C5	KMS
2/14/2019	-	++++FWD TO CRTRM+++++	C5	KMS
2/14/2019	*	DEFENDANT'S ORIGINAL SENTENCE MEMORANDUM FORWARDED TO	C5	AAL
2/14/2019	-	CLERK'S OFFICE FOR FILING +++ CT HAS RETAINED JUDGE'S	C5	AAL
2/14/2019	-	COPY ONLY +++	C5	AAL
2/21/2019	ADJ	ADJOURNED HEARING ORIG SCHED 2/26/2019 AT : C5	C5	SMB
2/21/2019	APR	HEARING SCHD FOR 5/29/2019 AT 9:00 AM	C5	SMB
2/21/2019	-	PLEASE WRIT** MILLER HEARING *** NOTE NEW DATE & TIME	C5	SMB
2/22/2019	WRT	WRIT OF HABEAS CORPUS ISSUED	C5	AMW
2/22/2019	-	A MILLER HEARING	C5	AMW
2/22/2019	*	J.WENDT,JEFFREY PH.D \$3500.00 EXPERT WITNESS FEES	C5	VW

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PEOPLE VS RICHARD MUSSELMAN

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CASE:80-000118-FY

OFFENSE: 0/00/0000

DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLK
2/22/2019	*	PAID BY MAC	C5	VW
5/22/2019	PAY	DISBURSEMENT VOUCHER/PAYMENT ORDER	C5	VW
5/22/2019	-	J.PIAZZA \$375.00 SIGNED BY MAC	C5	VW
5/23/2019	PFC	PULLED FILE FOR COURTROOM	C5	CM
5/23/2019	-	FILES 1, 2	C5	CM
5/29/2019	05R	CT. REPORTER: E. PRZYBYLSKI, CSR-3789	C5	SMB
5/29/2019	H	HEARING HELD	C5	SMB
5/29/2019	-	DEFNT PRESENT W/ATTY PIAZZA; PROSEC. M. HOOVER PRESENT	C5	SMB
5/29/2019	-	AT DATE SET FOR MILLER HEARING; DEFNS PROOFS BEGUN	C5	SMB
5/29/2019	-	AND CONCLUDED; NO WITNESSES CALLED BY PROSEC.;	C5	SMB
5/29/2019	-	PROSEC. HAS 30 DAYS TO FILE BRIEFS/06-29-19 & DEFNS ATTY	C5	SMB
5/29/2019	-	GIVEN 14 DAYS TO RESPOND; REFER TO DOC/SET SENTENCING	C5	SMB
5/29/2019	DOC	REFERRED TO DEPARTMENT OF CORRECTIONS	C5	SMB
5/29/2019	-	REFERRED ON 6-6-19 FOR UPDATED REPORT	C5	SMB
5/29/2019	FDE	CASE REOPENED	C5	SMB
6/04/2019	*	REQUEST FOR PAYMENT FROM FORENSIC PSYCHOLOGIST FORWARDED	C5	SMB
6/04/2019	-	TO VICKY/OAC	C5	SMB
6/06/2019	APR	SENTENCE SCHD FOR 8/01/2019 AT 10:00 AM	C5	SMB
6/06/2019	-	*****PLEASE WRIT*****	C5	SMB
6/20/2019	WRT	WRIT OF HABEAS CORPUS ISSUED	C5	SMB
6/20/2019	-	FOR 8-1-19	C5	SMB
6/21/2019	*	TRANSCRIPT OF HEARING DTD 5/29/19 BY E PRZYBYLSKI	C5	BRE
7/01/2019	*	PEOPLES RESENTENCING MEMORANDUM; PRF OF SVC FILED BY ATTY	C5	KMS
7/01/2019	-	MELISSA J HOOVER (JUDGES COPIES+++FWD C5++++)+++++FWD TO	C5	KMS
7/01/2019	-	+++++BOTH C5+++++7/2/19+++++	C5	KMS
7/16/2019	*	22 TRANSCRIPTS SENT TO COURTROOM	C5	CMJ
7/30/2019	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		AW1
7/30/2019	*	NOTIFIED PROSECUTOR'S OFFICE TO CANCEL WRIT FOR 08/01/19	C5	AAL
7/30/2019	-	HEARING DATE; UPDATED PSIR HAS NOT BEEN COMPLETED; CT TO	C5	AAL
7/30/2019	-	RESET FOR A LATER DATE.	C5	AAL
7/30/2019	ADJ	ADJOURNED SENTENCE ORIG SCHED 8/01/2019 AT 10:00	C5	AMW
7/30/2019	-	COURT TO RESET	C5	AMW
9/05/2019	APR	SENTENCE SCHD FOR 9/26/2019 AT 9:00 AM	C5	SMB
9/05/2019	-	*****PLEASE WRIT*****	C5	SMB
9/11/2019	WRT	WRIT OF HABEAS CORPUS ISSUED	C5	HH
9/11/2019	-	FOR DEFT FROM MACOMB CORRECTIONAL FACILITY ON 9/26/19 @	C5	HH
9/11/2019	-	9:00 AM	C5	HH
9/20/2019	ADJ	ADJOURNED SENTENCE ORIG SCHED 9/26/2019 AT : C5	SMB	
9/20/2019	APR	SENTENCE SCHD FOR 10/24/2019 AT 9:00 AM	C5	SMB
9/20/2019	-	*****PLEASE WRIT*****	C5	SMB
10/03/2019	WRT	WRIT OF HABEAS CORPUS ISSUED	C5	AMW
10/03/2019	-	FOR DFNT FROM MACOMB CORRECTIONAL FACILITY ON 10/24/19	C5	AMW
10/03/2019	-	@ 9:00AM FOR RE-SENTENCING	C5	AMW
10/24/2019	05R	CT. REPORTER: E. PRZYBYLSKI, CSR-3789	C5	SMB
10/24/2019	S	SENTENCED *****RESENTENCING*****	C5	SMB
10/24/2019	-	DEFNT PRESENT W/ATTY PIAZZA; PROSEC. M. HOOVER & MDOC	C5	SMB

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PEOPLE VS RICHARD MUSSELMAN

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DATE	CODE	ACTIONS, JUDGMENTS, CASE NOTES	JD	CLERK
10/24/2019	-	AGENT T. RAY PRESENT; STATEMENTS PLACED ON THE RECORD BY	C5	SMB
10/24/2019	-	DEFNS ATTY PIAZZA; DEFENDANT'S STATEMENTS TO THE COURT;	C5	SMB
10/24/2019	-	VICTIM'S FAMILY STATEMENTS PLACED ON THE RECORD; PROSEC.	C5	SMB
10/24/2019	-	STATEMENTS & STAND BY PEOPLE'S RESENTENCING MEMORANDUM	C5	SMB
10/24/2019	-	SENTENCE OF THE COURT: COUNTS 1 & 2: LIFE WITHOUT THE	C5	SMB
10/24/2019	-	POSSIBILITY OF PAROLE WITH CREDIT FOR 13,807 DAYS	C5	SMB
10/24/2019	-	PREVIOUSLY SERVED; COUNTS 1 & 2 ARE CONCURRENT WITH	C5	SMB
10/24/2019	-	HIS ORIGINAL SENTENCES ON COUNTS 3 & 4, BUT CONSECUTIVE	C5	SMB
10/24/2019	-	TO HIS ORIGINAL SENTENCE ON COUNT 5	C5	SMB
10/24/2019	SN	COUNT 01-00 SENTENCED *****RESENTENCING*****	C5	SMB
10/24/2019	SN	COUNT 02-00 SENTENCED *****RESENTENCING*****	C5	SMB
10/24/2019	JOS	JUDGMENT OF SENTENCE	C5	SMB
10/24/2019	-	RESENTENCED	C5	SMB
10/24/2019	NAR	NOTICE OF APPEAL RIGHTS PROVIDED TO DEFENDANT	C5	SMB
10/24/2019	FDC	FINAL DISPOSITION-GUILTY PLEA	C5	SMB
10/24/2019	RET	FILE RETURNED TO CLERK'S OFFICE	C5	SMB
10/24/2019	-	FILES 1 & 2 AND COMPLETE BOX OF TRANSCRIPTS	C5	SMB
10/25/2019	RCO	FILE RETURNED FROM COURT TO CLERK'S OFFICE	C5	JC
10/25/2019	-	FILES 1 AND 2 AND COMPLETE BOX OF TRANSCRIPTS	C5	JC
11/06/2019	*	DEFN INFO CHANGED BY CIRCUIT COURT PROBATION		MJR
11/15/2019	7CA	FILE PULLED FOR COURT ADMINISTRATOR'S OFFICE	C5	JC
11/15/2019	-	FILES 1 AND 2 FILE INSPECTED BY CLERK	C5	JC
		*** END OF CASE ***		