

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 76-005890-01-FC  
Hon. QIANA D LILLARD

vs.

CHARLES LEWIS,

Defendant.

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**DEFENDANT, CHARLES LEWIS's RE-SENTENCING**  
**MEMORANDUM IN SUPPORT OF A SENTENCE OF**  
**40 YEARS IN PRISON**

NOW COMES the Defendant, CHARLES LEWIS, by and through his attorney, SANFORD A. SCHULMAN, and states in support of his Sentencing Memorandum in Support of a Re-Sentence of 40 Years in Prison as follows:

## **I. OVERVIEW**

The US Supreme Court has made it abundantly clear that a sentence of life without the possibility of parole sentence is legally valid for only those who are irreparably corrupt and permanently incorrigible. Life without the possibility of parole “is a disproportionate sentence for all but the rarest of children, those whose crimes reflect “irreparable corruption.” Montgomery v Louisiana, \_\_\_ US \_\_\_, 726 (2016), citing Miller, 567 US at 479-480, quoting Roper v Simmons, 543 US 551, 573 (2005). Life without the possibility of parole is barred “for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” Montgomery, \_\_ US at 734. “[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” Miller, 567 US at 472 citing Roper, supra and Graham v Florida, 560 US 48 (2010).

Charles Lewis is to be resentenced by this Court. This Court should consider how it would have sentenced Charles more than forty years ago knowing now what the Court should have know then about his troubled history, his challenges and, most importantly his potential. Would this Court have imposed a sentence of forty years instead of a mandatory life sentence? Few if any cases warrant a sentence for a juvenile beyond four decades. Charles no longer resembles the boy who appeared in that 1977 courtroom. Not a single molecular in his body is present from that era. He is physically and mentally a completely different person. So what is a sufficient but not greater than necessary sentence under the circumstances? The defense submits that forty years is sufficient.

The Court should consider first that nature of a juvenile. Section I of this Sentencing Memorandum presents Dr. Daniel Keating, a qualified expert in the field of adolescent developmental science in regards to Juvenile Life without Parole cases. He provides this court insight into the adolescent brain development, the impulsivity and lack of forethought that is inherent in a juvenile. This is an important starting point in considering an appropriate sentence. The US Supreme Court thought it significant enough to mandate that no life sentence be imposed without considering this first.

Section II provides a history of Charles from infancy when he suffered severe and life altering medical challenges, through his young life when he experienced violence, abuse, neglect and lack of stability all leading to a path without direction. Dr. Colin King concludes that Mr. Lewis has been rehabilitated and therefore does not meet the legal standard for irreparable corruption and that much about Charles' background and upbringing does not define Charles as an adult. Dr. King would conclude that anyone subject to the atrocities that Charles encountered coupled with poor social circumstances, a lack of paternal model, and little to no structure would likely pursue the same path that Charles did. Testing results showed him to be someone of average intelligence, a talented musician, someone who is passionate about education but because of poor mentoring and austere economic circumstances chose a lifestyle of deviant behaviors ending up a victim of the legal system. This is not to say that Charles is not responsible for his actions. Neither is it to say that he is not culpable. Rather it should be stated that given the proper guidance, Charles probably would have been a responsible citizen.

We then must address the facts of the case. The death of off duty police officer Sypitkowski shot after leaving a bar with no indication there was any connection between him and the shooter and no indication he was

shot because he was a police officer. The questionable identification testimony and the three juveniles who were arrested in connection with the murder of Gerald Sypitkowski: Jeffrey Mulligan (15), Mark Kennedy (16) and Ronald Pettway (16) who were released from custody never to serve any time.

Accompanying the statement of fact is the polygraph of Charles Lewis which after this amount of time was deemed inconclusive by the polygraph examiner who nevertheless opined that “from a review of the reports, I have no doubt that he is innocent, his polygraph charts continue to show diminished thoracic pneumograph amplitude, and a minimally responsive cardiovascular affect.”

From here we look into the institutional record of Charles over the past forty years. Richard Stapleton an expert who provides insight and analysis to decades of prison records concludes that “Mr. Lewis poses little risk of recidivism or violent behavior.”

The defense offers this court the assurance that after forty years Charles still has significant family support as is evidenced by their letters, willingness to assist with re-entry and continued support. Charles has a concrete plan for readjustment and success. It will be a challenge for him after more than forty years, but his family has offered housing, employment

opportunities, transportation and, most importantly, a safety-net for him as he moves towards his goal of becoming independent and a contributing member of society.

The child has long disappeared. Charles is approaching his Twilight years and he has felt the pains of time. But he does not think for a moment that the adolescent child that was inside of him, who felt so much pain and caused so much pain, does not have anything to give back. That process has started long ago with his contributions in prison and his ever changing outlook. That there is still hope. That he can still make a difference. That he is ready for the chance and the opportunity to redefine who the world believes has been for the first sixty years of his life.

## **II. PROCEDURAL HISTORY AND MILLER FACTORS**

On June 24, 2012 the United States Supreme Court issued an Opinion requiring that state courts no longer impose an automatic sentence of mandatory life on persons convicted before their 18th birthday without first considering a sentence of a term of years.

In, Miller v Alabama, 567 US 460; 132 S Ct 2455; 183 L Ed 2d 407 (2012) the United States Supreme Court has held that the punishment of life in prison absent the possibility of parole for a defendant who was under the

age of 18 at the time of the sentencing offense violates the Eighth Amendment's prohibition against cruel and unusual punishments.

In light of Miller, the Michigan Legislature has enacted MCL 769.25, which provides a procedural framework for sentencing juvenile offenders who have committed offenses punishable by life imprisonment without the possibility of parole; this provision applied to pending and future cases. Anticipating the possibility of Miller's retroactive application for closed cases, the Legislature has also enacted MCL 769.25a, which would be triggered if the Michigan Supreme Court or the United States Supreme Court were to hold that Miller applied retroactively. And subsequently, the United States Supreme Court has held that the rule announced in Miller, which was a new substantive constitutional rule, is retroactive on state collateral review. Accordingly, MCL 769.25a took effect.

In August, 2012, the defendant, CHARLES LEWIS, filed a Motion for Resentencing in compliance with Miller that was granted by Judge Edward Ewell Jr. who was then sitting as a judge in the Wayne County Circuit Court Criminal Division, On October 17, 2012 the Honorable Edward Ewell, granted the Defendant's motion for resentencing even before it Miller was deemed to apply retroactively.. On February 7, 2016 the US Supreme Court granted the Writ of Certiorari and reversed the decision of the

Michigan Supreme Court who had reversed Judge Ewell and remanded the case to the state court for resentencing

In accordance with the US Supreme Court decision, the Michigan Supreme Court on March 24, 2016 issued an order reversing the August 2013 decision of the Michigan Court of Appeals and vacated the defendant's sentence and ordered a re-sentencing hearing.

### **III ADOLESCENT BRAIN DEVELOPMENT**

Dr. Daniel Keating has been qualified as an expert in the field of adolescent developmental science in regards to Juvenile Life without Parole cases. He has testified numerous time in hearing as an expert in adolescent brain development. (See **Attachment 1**: Curriculum Vitae, Dr. Daniel P. Keating). He is prepared to testified that the 18-year-old age cut off established by the US Supreme Court in Miller is not consistent with the scientific consensus about adolescent brain development. (See Summary of Adolescent Development Science in re: Juvenile Life Without Parole attached as Attachment 2).

Dr. Keating notes “[F]rom the perspective of developmental neuroscience, we would probably extend that period of time” because “brain science is suggesting that major brain developments do not end until the mid-20’s.” As such, Dr. Keating uses the term “adolescent” or

“adolescence” to refer to the period of time from around age 11 through the mid-20’s. Dr. Keating is prepared to testified that someone approximately 17 years old like Charles Lewis at the time of this offense, would suffer from the same adolescent “development immaturity” that plagues younger adolescents.

Dr. Keating opined that the typical adolescent brain is characterized by poor decision-making and impulse control that is only exacerbated by other factors such as stress, trauma, and other poor decisions. Adolescent brain functioning can be explained by the interplay of two systems: (1) the immature development of the prefrontal cortex, which is responsible for decision-making, and (2) the accelerated development of the limbic system, which is responsible for emotional arousal and incentives and rewards.

The prefrontal cortex is responsible for executive functions, which includes memory, the ability to focus or switch focus, the ability to inhibit impulsive behavior, and the ability to make appropriate judgments about what to do in particular situations. The prefrontal cortex is responsible for marshalling the resources of the rest of the brain and for controlling how the rest of the brain functions as a system. In an adolescent, the prefrontal cortex is slow and immature and does not reach full maturity until the mid-20’s.

The limbic system affects automatic and gut instinct decision-making and emotional arousal. In stressful circumstances, or when the brain is in “hot cognition” mode, the limbic system in the adolescent brain becomes highly activated. This “park[s] the prefrontal cortex off to the side,” which means that adolescents are unlikely to engage in “effortful decision-making” and are very likely to engage in things that just feel right at the time, or things that will help them maintain status among peers.

Because the prefrontal cortex of an adolescent is not fully mature, an adolescent lacks the ability “to step in and say wait, stop, take a step back, you need to actually think this thing through. You need to engage in some effortful decision making here. Is this what you should be doing?” A typical adolescent has a higher drive toward levels of sensation seeking, exploration, and risk behavior in general.

The ability of an adolescent to stop and think in order to make a good decision is extremely weak, while the incentive to engage in risky behavior is extremely strong. This is called the “developmental maturity mismatch.” The immaturity of the prefrontal cortex and executive functioning combined with the acceleration of the limbic system and incentive system creates “the greatest opportunity for unthoughtful, unjudged behavior to occur.”

A 17-year-old knows right from wrong. But Dr. Keating explained that even knowing right from wrong might not prevent an adolescent from committing a serious crime like murder because of the characteristics of the adolescent brain that have been described above. He went on to explain that “internal drives as well as external contexts” of the individual can affect an adolescent’s “ability to control that impulse.”

Dr. Keating would testify that when an adolescent makes one bad decision, it is more difficult for him to divert or to stop engaging in that bad behavior than it would be for an adult. He explained that once a bad decision has been made and the behavior is under way, there “is much less resource available from the prefrontal cortex to be able to bring it under control.” Dr. Keating compares this to the idea of getting on a train: “once that train is going along it’s even harder for the prefrontal cortex to come in and stop that runaway train.”

When an adolescent experiences trauma during childhood—as Mr. Charles Lewis appears to have as an infant--the trauma amplifies the developmental mismatch associated with normative adolescent brain development. Normal adolescent developmental maturity mismatch (sans trauma) is best described as “a lot of ability to accelerate behavior in risky directions and few breaks on that acceleration.” When an adolescent

experiences early trauma, however, the developmental maturity mismatch is amplified “almost to the point where you’d say what you have is all accelerator and no brakes.”

Science and statistics support the idea that adolescents who experience trauma can recover or bounce back and lead positive lives as adults. That is due to the age crime curve and concepts of resilience and neuroplasticity.

Literature surrounding the age crime curve shows that criminal behavior desists and drops off with age. This “matches pretty much identically that developmental maturity mismatch curve that we see in the brain.” “[O]n a statistical basis alone we would certainly expect that most individuals will be adolescent limited in their criminal behavior.”

Neuroplasticity is the phenomenon of the rewiring of the brain that occurs in adolescence—a period when the brain is receptive to positive change and intervention. Along with normative patterns of adolescent development, neuroplasticity supports desistence in criminal activity with age.

Taking all of this into account, Dr. Keating explained that adolescent “culpability is diminished or mitigated” once we understand the nature of ... adolescent brain development.” This understanding forms the backbone of

the US Supreme Court decisions in Roper, Graham, Miller, and Montgomery. These cases rely on the scientific consensus, according to Dr. Keating, that adolescents are less culpable than adults, have a higher potential for rehabilitation, and are generally less deserving of the harshest penalty possible. Miller, 567 US 472; Montgomery, \_\_ US at 726.

#### **IV. CHARLES LEWIS, BACKGROUND AND PSYCHOLOGICAL EVALUATION**

**A. An analysis of the *Miller* factors establishes that the crime that Charles Lewis was convicted of was one of transient immaturity from which he has been rehabilitated.**

This court has the arduous task of resentencing Charles Lewis. To do so this Court must consider the distinctive attributes of youth and how these attributes “counsel against irrevocably sentencing [a juvenile offender] to a lifetime in prison.” *Miller*, 567 US at 480. In particular, this Court must take into account a number of mitigating factors, including: (1) the “hallmark features” of youth such as Mr. Lewis’s “immaturity, impetuosity, and failure to appreciate risks and consequences,” (2) the “family and home environment,” and Mr. Lewis’ inability to “extricate himself” from his circumstances, (3) “the circumstances of the homicide offense, including the extent of his alleged participation in the conduct and the way familial and peer pressures may have affected him,” (4) whether Mr. Lewis “might have

been charged and convicted of a lesser offense if not for incompetencies associated with youth,” and, (5) evidence of Mr. Lewis’ rehabilitation. *Id.* at 477-478; MCL 76.25(6).

These factors must be considered for their mitigating nature and are not to be considered aggravators. *People v Skinner*, 502 Mich 89, 115 (2018) citing *Miller*, 567 US at 489.

Dr. King is a forensic psychologist (See **Attachment 3**: Curriculum Vitae of Dr. Colin King, Clinical Director, Psychologist and Counsel) who evaluated Mr. Lewis and analyzed each of the *Miller* factors and concluded from a forensic psychologist’s perspective that a sentence . . . of life without parole would not be appropriate for Mr. Lewis because he did not demonstrate that he was irreparably corrupt. Rather, a term of years seemed appropriate.

“Irreparably corrupt” is not a clinical term or diagnosis. It is a legal term that has been interpreted by the courts to mean that “somebody cannot be redeemed, cannot be changed” and is “incapable of rehabilitation for the rest of his or her life.”

Dr. King concluded that Mr. Lewis has been rehabilitated and therefore does not meet the legal standard for irreparable corruption. In

reaching his conclusion, Dr. King based in findings on in-person interviews with Charles as well as reports from the mitigation expert supplied to Dr. King from his family members including Charles' mother, Rosie Lewis, adoptive father, Herbert Lewis, maternal half-siblings, Marc Lewis, Wendy Lewis, Stephanie Lewis and David Lewis, his paternal aunt Betty Littsey and her children Keith, Jenny and Lisa Littsey; and others from the neighborhood including Ruby Kennedy, Mark Kennedy, Craig Goldman, Diane Colston, Darryl McCorvey, Theverend Johnson, Robert Lathan, Charlie McCoy, Percy Huckabee, Ann Cameron and Michael Hollis. In addition to Charles' case file, Dr. King reviewed the following records: prison records provided by Mr. Richard Stapleton, psychological reports from Dr. Colin King and Dr. Daniel Keating, educational records from parochial schools and Detroit Public Schools, and the certificates and accomplishments Charles' earned during his more than 43 years of incarceration.

Dr. King with the assistance of Jessica Carrier, the mitigation expert, provided the following history of Charles Lewis:

**B. Any evidence or other information in the Record regarding “the family and home Environment that surrounds him—and from which he cannot usually extricate himself.”**  
*Miller, 567 US at 477.*

Rosie Hilyard, Charles’ mother, grew up the oldest of 18 children. She felt loved by her mother, Celia and father, Charles Hilyard. Rosie really enjoyed school. Rosie graduated from high school and earned a scholarship to attend Washington State University; however, Rosie’s mother died leaving Rosie to help her father care for her 17 younger siblings. Rosie’s father married Erma Sella, who regularly hit her step-children. Rosie tried hard to protect her younger siblings. Grieving and lonely, Rosie sought relationships with men. Rosie had sexual relations with Curtis Alexander and became pregnant her first time. Rosie was relieved that her mother was dead because her mother would have been disappointed that Rosie was pregnant and not in school.

Curtis abandoned Rosie shortly after Charles was born May 13, 1959. Curtis told Rosie years later, when visiting Charles in prison, that he felt like he had ruined her life and prevented her from getting an education. The shame drove him away. Charles had no relationship with his biological father growing up. In 1995, Charles reconnected with his father when his

father flew to Michigan to visit Charles in prison. The two corresponded through letters and phone calls for 17 years up until Curtis's death in 2011.

Rosie was raising Charles in her father and step-mother's home and was pregnant with a second child when she found a way out. Rosie met Herbert Lewis at a military dance. Herbert had big plans and told Rosie he could help her realize her dreams. Rosie and Herbert married on June 9, 1962, when Charles was three years old. Rosie stated that her aunt Solana was so concerned about her marrying Herbert Lewis that she pulled out her tobacco sack and gave Rosie money to hide from Herbert, in case Rosie ever needed to come back to Tacoma. Marc was born six months after Rosie and Herbert married. They had three more children: Wendy, Stephanie and David. During their first years of marriage, Herbert's job as a radar installer for the Federal Aviation Administration and educational opportunities took them all over the country. The family lived in Detroit, Michigan, New Jersey, Alabama, and then back to Detroit.

Charles suffered many illnesses as a child, some very serious. There is developing research on the impact of chronic toxic stress on children and physical illnesses. Charles had hepatitis as an infant, he and his brother had spinal meningitis, he had a baseball size tumor removed from his chest and

he was diagnosed with a heart condition as a teenager. He almost lost an eye and had broken his leg. He currently has heart issues and diabetes both linked to chronic toxic childhood stress.

Charles always thought Herbert was his biological father. It wasn't until he was in jail that he learned the truth, and it helped him understand why he was rejected by Herbert and his family and why he always felt unloved by the man he considered to be his father. Charles' cousin Keith Littsey said it was clear that Charles was treated as a step-son by Herbert. Charles never could please "the man." Charles wondered why his father was so angry at him all the time.

### **Early Years in Detroit**

Charles lived in three different homes and attended 6 different schools between kindergarten and 8<sup>th</sup> grade. Charles experienced violence inside the home and outside the home. Charles stated that his father was often verbally abusive to him but he recalls being approximately 7 years old when his father first beat him. After that, Charles would regularly be beaten with switches, belts, extension cords or sometime just his father's hands. Charles and his siblings often witnessed Herbert hitting Rosie. When Charles was 7 or 8, he witnessed, the neighborhood storekeeper, Mr. Moe, shoot two kids

in the progress of a robbery. As a small child, Charles was exposed to violence and personally experienced violence.

When Charles was little, Herbert went to Germany for work, leaving the family for the first time. He was struggling with his own demons. Charles remembers Herbert talking about the segregated military and how black soldiers got robbed of what they should have had. Wendy remembers him talking about the race riots of the 1930s and how he was traumatized by the violence he witnessed. He also knew that he had specialized skills with the FAA and was still treated as a lesser employee.

Charles liked school and he considered it a respite from home. Rosie enrolled Charles in a parochial school because she worried about the quality of the public schools. His parents both valued education and expected the children to do well. After living in a two flat on Rohns St, Rosie told Herbert to get her a house in a better neighborhood or she was moving back to Tacoma.

Charles and his family moved to a house on Pennsylvania Street. Rosie did not believe that the neighborhood was any better, but the children had a great group of friends. Charles went to St. Edward's parochial school for 3<sup>rd</sup> grade. Rosie felt Charles had potential and capabilities as long as

Charles didn't get caught up with those that "didn't have a chance". Charles says that Catholic school gave him a serious foundation in phonics and learning. Charles was expected to excel, be intelligent and succeed. Charles attended Chandler Elementary school for 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> grades. Charles had scored high on a test and was told he should go to a school for gifted kids. His parents said no. Charles thought maybe it was because of the money.

Charles home environment was an unstable and unpredictable home environment because of Herbert Lewis. The secret that no one in the family knew at the time was that Herbert was a drug addict. He had told his daughter, the last time he was sober was when he was 19 years old. No one in the family knew or acknowledged the addiction until the 1980s. Rosie claimed she was just a country girl and didn't even know to suspect drugs. Wendy described him in one of his moods, "his eyes would be all blood shot, red, as if the devil was in him. I would immediately have butterflies in my stomach waiting to see what would happen." She further explained, "it was hard to understand why his upsets were so huge, he would be very mad and upset at losing in scrabble--Like he had a split personality." Stephanie stated that eating meals with her father was not enjoyable. Charles recalls

looking back “when he was high, he was the greatest guy, everybody loved him” but when addiction overtook him it was terrible.

Charles, his mom and siblings had to stay at other people’s homes to be safe. Wendy remembered fleeing in the middle of the night, with no explanation, but they always came back. Charles and the family’s life with their father seemed inescapable at the time, explains Wendy. Herbert had a violent streak. Rosie worked midnights and she would sleep during the day. In a mood, Herbert came into their bedroom where she was sleeping, tore the covers off of her, grabbed her feet and dragged her down the stairs. Her neck hit each and every stair on the way down. There was nothing for her to grab until she hit the bottom. She managed to get away at the bottom of the stairs. She then got the kids, loaded them in the car and went to the hospital. She was afraid he had damaged her neck. After Rosie and Herbert’s separation, Herbert had an altercation with a man, beating the man so badly he was put in the hospital. Herbert was also the Interservice welter-weight boxing champion, meaning he was the best boxer in all branches of military services combined. Herbert knew how to hit. Another time, Rosie was baking pies. Herbert walked into the kitchen and was about to smack Rosie, but Rosie’s father happened to see it and grabbed Herbert’s arm to stop the

hit. Rosie's dad said he was getting her out of there. Rosie said she had to stay; she had a family.

Charles and his family did not talk about the violence outside of the house. Although many times Rosie thought of leaving, the money was never there. She once used the money from her aunt Solana to buy a car to leave but the car needed repairs and it delayed her leaving yet again. Around this time Charles starts to realize this was "not normal", to have physical abuse in one's home but is unable to leave or change it.

In 1969, while Charles was in 5<sup>th</sup> grade, Herbert went to St. Louis for work. Rosie says she kicked him out. Herbert was absent during Rosie's pregnancy with David and absent for his birth. Rosie took a job working at The Top Hat restaurant to support her family. She later worked as a press operator at Mack Stamping. At Mack Stamping, she was often sick with the chemicals at work. Rosie put Charles in charge of his siblings. Herbert laments "I was gone and Lamont (Charles) became responsible sooner than he should have." Charles missed 34 days of school the second semester of fifth grade. Wendy says Charles was our leader, my parents set it up that way. If Charles went anywhere, he had to take the rest of us with him, Wendy recalls. Stephanie remembers that Charles would cook for her when

his mother worked. To this day Charles' siblings view him as the leader in their family.

When Charles was 10 and Herbert was in St. Louis, money was tight. Rosie asked the kids what kind of group gift they wanted, thinking one big gift would be cheaper than multiple. They asked for a piano. Rosie found a part time job at a local dry cleaner in order to be able to purchase a piano. Rosie was to hem and replace buttons and zippers on suits for the Temptations. This earned her \$500. Once she had the \$500, she knew she was on her way to the \$1,500 price tag piano. Rosie gave the kids that piano. Musical talent was valued by many family members. Charles was first given a guitar from his maternal grandfather at age 6 or 7. Charles paternal grandfather, was a musician who played what he called the "git-fiddle". Family folklore says that Grandpa taught BB King guitar in Yazoo, Mississippi. Charles' siblings and some of their children are musical, mostly from Charles' encouragement.

When Charles was around 12, his father returned from St. Louis, MO. Herbert continued to beat Charles in angry outbursts and deride Charles for things that were important to him. The parent's relationship was increasingly strained. Around this time, Charles discovered marijuana in his parent's

home. He assumed it was his father's. Our interviews confirmed that both mom and dad smoked marijuana. Neither of his parents regularly consumed alcohol. Charles said he might steal the marijuana once in a while. He only tried other drugs once and rarely drank alcohol.

Charles attended Joy Junior High School for 7<sup>th</sup> and 8<sup>th</sup> grade while still living on Pennsylvania. He enjoyed school and especially appreciated Mr. Beager and the music room. Charles worked cleaning police cars on Belle Island in order to buy his brother, David a bugle. Charles used every opportunity to stay away from home and focus on music. Charles even walked all the way to Copeland (several miles away) to play with Carlos Collins, a fellow musician. Charles met Carlos and was motivated to form a band with him. The two of them did played several gigs together, with Carlos' mom acting as manager. Charles spent hours at Grinell's and Wonderland music stores. He stated music stores were heaven on earth. Charles was often found walking through the neighborhood with his red guitar avoiding his abusive home life.

At age 12, Charles was taken to the hospital with a blackened bulging eye as a result of one of Herbert's beatings with a water hose. He had to follow up with a specialist who was concerned he would lose the eye. The

doctor was fairly certain that it was child abuse and had mentioned that out loud in front of Charles. Herbert then took a polaroid picture of Charles with his black eye. He wrote on the polaroid, "Next time duck". Herbert often took unflattering polaroid photos of Charles and writing disparaging comments on them. Charles told Herbert, if you ever hit me again, I will kill you. Charles was challenged, as a child, to find a way to protect himself from a situation where he saw no way out. After that, Herbert did not physically abuse Charles any longer but he continued to beat Rosie and to taunt Charles with polaroid pictures and cruel remarks.

When Charles was attending Joy Junior High School, he found a lump on his chest. Rosie sent him to a doctor, and they removed a golf ball sized cyst. There is an approximately two inch long scar in the upper right quadrant of his chest area from the procedure. The same year, both Charles and his brother David were hospitalized weeks with spinal Meningitis. Charles believed that his brother's life was in danger. Charles missed 17 days of 8<sup>th</sup> grade because of the illness.

To illustrate how daily influences were shaping Charles behavior, two experiences Charles had in 7<sup>th</sup> grade are instructive. One was the need for Charles to be taught to defend himself on the streets and the other was that

there was a different life outside his neighborhood. One day Charles left for school with a new jacket and hat and came home from school with neither. Rosie asked Charles about the missing articles, but Charles was embarrassed to admit they were stolen from him. Charles learned he had to defend himself, if he did not want to be a victim.

The second occurred when Charles brother, Marc had a radio stolen. Marc called into a radio show called “Buzz the Fuzz” to report it. It was hosted by Martha Jean the Queen and the show tried to build relationships between the police and African American families. The show ran from 1971-1973 on WJLB. The radio station set up a visit to the police station with all the kids; Charles, Marc, Wendy, Stephanie and baby David. They toured the station and saw the police horses. The children went to the Police Commissioners office and sat in his chair. They met all the top brass at the station. Charles was so impressed that day, he contemplated becoming a police officer. His sister Stephanie did eventually become a Wayne County Sheriff’s Deputy. They all remember this as a fun day.

Charles was exposed drug houses, open drug deals, guns and violence in the neighborhood. Charles witnessed Reverend Stinson beating his wife, ripping her clothes off and raping her in the backyard, in plain sight of the

neighbors. Charles saw Mr. Woods beat his wife and chased her down the block naked. On the Pennsylvania Street, where Charles lived five people committed suicide—all on one block. Death and violence were constant. In 1972, Charles was with his friend, Derrick Robinson, when Derrick's older brothers and friends stomped to death a neighborhood kid named Pinky. Charles was bullied by other kids and at that moment he was terrified of them turning on him. Charles was paralyzed in the moment and unable to leave the situation. Charles remembers the horror of realizing that death was real, and a life could be taken that easily. Survival in his environment would only come if he defended himself. Charles realized he wasn't able to be free of violence outside of the home or in the home.

### **Kilbourne Neighborhood and the Schools**

In 1973, Charles and his family moved to Kilbourne Street. Each of the family members expressed that this was where things started to go wrong for the family. Herbert says I thought I moved my family to a nice neighborhood but I moved my family “into a powder keg”, a volatile situation. On March 22, 1973, Herbert was arrested as a suspect in an armed robbery that took place on October 6, 1972 of a Farmer Jacks. The charges were dropped on March 30, 1973, when Herbert was able to prove that he

was in Oberlin, OH working for the FAA.<sup>1</sup> This was a humiliating experience for Herbert, a black man in a predominately white neighborhood. There were about 30 black families total in the area, most were two parent families with regular employment. It was a nicer neighborhood with schools that had a better reputation for quality. Rosie saw this as an upward move for the family. Charles close friend, Diane (Colston) Maddock said she moved in with her aunt to get a better education and to “get to a better area”.

In Charles neighborhood, white families protested the integration of their neighborhood and schools. As reported by the Detroit Free Press, “many Northeast Detroit neighborhoods still have no black families and the start of busing was the first time many parents had come face-to-face with the fact they lived in majority-black city with a majority-black school system.<sup>2</sup> The black parents worried about their children’s safety. It was known amongst the black families you were not safe after 4pm and could not be alone ever. Neighbors describe gangs of white children chasing black children through the neighborhood often times in the cars while the black children were on foot. Police would regularly stop black children, especially boys, and tell them that they shouldn’t be there. The children had to explain

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<sup>1</sup> Lewis v Farmer Jack Div., Inc., 415 Mich. 212 (1982)

that it was their neighborhood. Michael Hollis, a friend of Charles, said his experience was different between his house on St. Jean and Charles's home on Kilbourn Street. He was riding his bike on Kilbourne one day and the police stopped and asked him "where'd you steal that from"? He did not experience that level of scrutiny on St. Jean. Another neighbor said that there had been a cross burnt on the Johnson's lawn and a mob burned their garage down.

When Charles moved to Kilbourne Street, he felt out of sorts. He had many friends on Pennsylvania and felt close to many families. On Kilbourne, he was an outsider. Charles was lonely for his friends and yet it was too far to walk to see them. He was coming off a serious illness and thought his little brother was going to die. Herbert was back in the house and abusive toward Charles and his mother. His new neighborhood and school were as hostile as his home. Charles was desperate to find acceptance and a sense of belonging. Charles observed Fatso Johnson, a leader among his peers, a one of the leaders in the KK Kaponés and wanted to be part of that group. He said he and Fatso never really got along but admits it's mostly because he was jealous of Fatso's popularity with the

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<sup>2</sup> Detroit Free Press 4/18/1976, Busing Hasn't Raised School Quality

other boys. Charles didn't have a sense of the loyalties in the neighborhood and felt like an outsider. He felt the peer pressure to join the KK Kapones. As Mike Hollis explains, being part of the KK Kapones gave him (Charles) that sense of belonging. "It was just a group of friends", I didn't take it that seriously like that it had some kind of gang status. "The takeaway for me, my interpretation was, that was Charles identity, his way of belonging to something, maybe getting safety, but it was a youth thing".

Charles' neighborhood school was Denby High School. Denby had gone from predominately white to one-third black under the court-ordered busing on Jan. 26, 1976. This was right when the Supreme Court ordered bussing as a solution to desegregation. It was a very racially charged time in Detroit and across the country. There was a clash between white and black students at Denby in March of 1976.<sup>3</sup> The Denby clash resulted in 23 black students and 5 white students being arrested. It is well documented that white families were unhappy about these black children coming to their children's schools and black families feared the unknown but committed to it

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<sup>3</sup> Detroit Free Press, 11/6/1975 School Chief Blocks Busing Talks, 3/9/1976 150 Clash in Racial Flare-Up at Denby

working.<sup>4</sup> “I’m prejudiced against blacks,” admits Bob Poplawski, a 17-year old Denby High School student. The Detroit Free Press reported, “The ones I’m really prejudiced against are the ones that get bused here”. A sweet shop across the street from Denby has “nigger go home” scrawled on a wall and a white girl standing with seven other girls admits to a reporter she yelled “niggers go home” at black students during a fight at Denby last month.<sup>5</sup> White children would chase black students with cars, jump out of cars with canes, sticks, bottles, throw bricks and chase black students with dogs. Theverend Johnson, a childhood neighborhood, told a story of her brother being chased by white kids, he got a gun and fired it for his own protection, he was arrested but released the same day with shotgun returned to the home. Theverend claims that protests of unfairness from other black families for his arrest, caused the police to release him. She says, “it was rough for blacks.”

Charles’ sister, Stephanie recalled that even as a third grader, she saw this hostility towards the black children. She had a white friend who was great friends in school but had to ignore her in the neighborhood because

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<sup>4</sup> Detroit Free Press, 1/28/1976 Whites on West Side: Reluctant Acceptance Some Talk of Moving, Blacks in Northeast: Fear of the Unknown, Commitment to Work, 4/9/1970 Police Block Student Clash

their parents would be angry with them hanging out. Charles, who was often carrying his guitar around, was attacked and they tried to take his guitar, but he fought back and kept the guitar. After that incident, his mom told him not to leave with the guitar unless she gave him a ride. Herbert told all the kids to stick together.

Because of the potential threat of racial tension in Charles neighborhood, both parents and children were looking for a solution. Ruby Kennedy, the mother of Mark Kennedy and Kilbourne Street resident, said that she went as far as trying to recruit some Vietnam Veterans to act as protection for the children from the white neighbors. A group of black children got together to try to come up with a solution for their own safety. In 1974-75, Milton (Fatso) Johnson came up with the name the Kilbourne Killers. There was also a group called the Kapones from the other side of Outer Drive. The two groups became the Kilbourne Killer Kapones and Darryl McCorvey accepted responsibility for the combined name. The black children felt that this name would stop the white children from chasing them down after school and throughout the neighborhood. The white kids had a gang called the White Knights. Robert Lathan, a childhood neighbor,

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<sup>5</sup> [Detroit Free Press, 4/18/1976 Busing Hasn't Raised School Quality](#)

explains “it was an alliance against racism. I joined so I wouldn’t have to take the bullcrap.” The parents in the neighborhood accepted the KK Kapones for what it really was, a group children looking for sense of community and protection in a hostile environment. The neighbors confirm that it was a loose group of children and most black children were members by default. Charlie McCroy said, “he belonged to the KKs” but “didn’t hang out with the other children in the KKs”.

The Detroit Free Press dated July of 1976, supports the conclusion that the neighborhoods parents made about the KK Kapones not being a gang. The paper reported that the top gangs, on Detroit’s East Side include the Murphys (Bishops), Sheridan Strips, Mack Hoods, Crusaders, Black Guns, Coney Oneys (Chains), East Hoods, Erroll Flynns, Black Killers and Detroit Youth Association. Again, multiple Detroit Free Press articles in Summer of 1976 list the top gang threats at the time on the Eastside of Detroit, it list 20 gangs and the KK Kapones are not even listed.<sup>6</sup> The Kilbourne Killer Kapones were not a gang. The KK Kapones are no longer.

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<sup>6</sup> Detroit Free Press 7/12/1976 Teen Gang War Escalating, 8/19/1976 Crime’s Hard Core: 150 Youths Detroit Free Press, 6/6/1976 East Side Youth, 15, Is 2d Victim of Teen Gang War, 7/4/1976 5 Wounded in East Side Gang War, 7/29/1976 Street Shut in E. Side Gang Rally, 8/31/1976 Gunmen Shoot Up School; 2 released, 7/12/1976 Youth Gunned Down by East Side Gang, Detroit Free Press 9/14/1976 He Won’t Talk—Now 2 Are Dead

Percy Huckabee came to live with the Johnson family (PeeWee and Fatso) around 1979. He says he had heard talk of the Kilbourne Killer Kapones but he is sure the group was disbanded before he moved in with the family—that stuff was over. Mark Kennedy testified at trial that he was no longer a member and that ended the night of the shootings.

Charles problems at home were continuing. Rosie continually sought the help of the 15<sup>th</sup> Precinct. The police told her “find a way to live without fighting” when they would get called after Herbert had assaulted her. The neighbors called the police one day because Herbert was assaulting Rosie and had thrown her through the lower glass portion of the back door. Wendy got a knife and told her dad to let her mom go. Rosie told Wendy to put the knife down.

Charles life was forever altered when out of desperation, Rosie called her father and told him she feared for her life, that Herbert would kill her one day. Rosie’s father advised her to buy a rifle for her protection. Rosie went to Montgomery Wards and bought rifle. Charles recalls his mother stored the rifle in his room. He said there was a hole in the wall in his room and they stuffed it in the wall.

Charles was home one evening, when Herbert forced the door open. In front of the children, Herbert beat Rosie in the face, held a gun to Rosie's head and told her to leave the house, that his name was on the deed. Charles remembers that his mother looked like "she had just lost a fight with a boxer". Herbert left the house and the kids helped Rosie barricade the door. Herbert returned to the house was yelling and trying to break the door down; shouting that he was going to kill everyone. Marc, Wendy, Stephanie and David were hiding in another room watching. Charles remembers his mother asking him to go get the rifle. With the children watching, Rosie used the rifle to shoot her husband, their father.

Charles then recalled Herbert leaving and the police coming for his mother. The police did not take the rifle, they left it in the house. Charles remembered getting the house and his siblings put together in case child protective services came. Charles was hoping someone was coming to help. No one ever came. Herbert returned to the home and threatened to press charges against Rosie if she didn't allow him to stay.

Charles was trying to manage competing forces in his life, the right path vs the wrong path. On the right path, he would go to school, play music, play basketball and focus on plans for his future. Charles friend,

Diane (Colston) Maddock, stated that Charles was funny and had never known him to get into trouble. He came to her house every other day and they talked on the phone a lot. She would try to keep him focused on his future by telling him to stay humble and get an education, things her grandpa used to say to her.

Charles maintained a loving relationship with his mother, his paternal grandfather and his siblings, despite the abusive relationship with his father. Charles took Wendy to concerts; Harold Melvin, Stevie Wonder and the Funkadelics. Stephanie remembered that Charles would bring her to ballet lessons regularly. She found this remarkable that a teenage boy would take time out to do this and he never complained about having to do it. David remembered Charles letting him sit in on band practices. Charles allowed David to play his drum off to the side of his band practice. He was a devoted and protective brother.

Charles was a child who found refuge in music. He found self-esteem in music. His maternal grandfather, mother and many school band teachers support and nurtured this talent. He was recognized in the community and by “older guys” for his talent. Rosie did everything she could to foster this ambition. Rosie had a Plymouth Fury III; it was brown and had a huge

trunk. Rosie used to drive Charles to different music practices at Local 212 on the way to Mack Stamping. Rosie's trunk could hold a big amp and lots of instruments and the car could hold several people. Ann Cameron, a friend of Rosie's from Wayne State, felt so strongly about Charles music, that she paid for him to record a 45 record. Charles separately played the guitar, piano, drums and sang vocals. A sound engineer then put it all together. His grandfather and mother pulled together the \$60 for Charles to go to Denby HS band camp.

Charles and his buddy Darryl McCorvey were playing basketball at Osbourne HS. Charles heard music coming from a church. He and Darryl went inside, Charles asked if he could join the church choir. Charles was soon was playing regularly with the church.

Charles and Michael Hollis met through "Jelly" a Pure Pleasure band member, Pure Pleasure would let the two of them sit in with them as long as they helped haul and set up equipment. Michael Hollis referred to Charles as his best friend at the time, their connection was music. Charles and Michael started their own band. Michael Hollis, who has gone on to have a long musical career, believes Charles would have done the same if not incarcerated. Michael shared "It makes me cry to think of my best friend

who is every bit as good as I, maybe better, but for a twist of fate ended up in such a different place.” Michael humbly contrasted this with himself who went on to be a successful musician and has played for two sitting US Presidents.

Charles played basketball with Craig Goldman, who went on to be in the military. He had even visited an Air Force recruiter and signed up for the military at Craig’s advice. Charles was supposed to leave for the Air Force on August 16, 1976. He was arrested on August 2nd, 1976. The recruiter came to the Wayne Co Jail and told Charles if he able to get out of jail, they would still take him.

Charles was described by Michael Hollis as a “tough guy” but above everything else “a good guy and a good friend.” When asked what Michael meant by “tough guy”, Michael said “if someone were to try and push him (Hollis) around, Charles was a guy that would have let the person know that they couldn’t do that.”

On the wrong path, Charles was a child who was regularly mistreated at home and did not feel safe. Darryl McCorvy, friend and neighbor, remembers Rosie working a lot and Herbert being very strict, equating him to a “slave master”. Furthermore, Charles was mistreated by children who

did not want black children in their neighborhoods or schools. Charles didn't feel safe at home, in school or in the neighborhood. The idea of instant friends in his new neighborhood, appealed to Charles. He felt the pressure of his peer group to join in for a sense of belonging. One this wrong path, Charles was angry and was acting out. He was acting in a way that was contrary to his character of all who knew him.

Charles started to have negative interactions with the Police. Charles' friend Charlie McCroy bought an M-16 in an alley for \$10. He was actually shocked that it happened. The man asked if he wanted to buy a gun. Charlie said sure how about \$10, thinking you could never get a gun for \$10. He was stunned when the guy handed him the gun and walked away with the \$10. He brought the gun to Charles. Without giving it any thought, Charles and Charlie decided that they needed to walk around the neighborhood and show everyone. The police responded within a block of leaving a friend's home within hours of getting the gun. When the boys were separated, Charles was told he was going to the boy's home. Charlie was given two options by the police officer. One was to go to the boy's home. The second, the police officer offered was to give him a running start, explaining if he could get away, he wouldn't have to go to the boy's home but the officer

was going to shoot at him, and if he shot him in the back, he would say it was because Charlie ran.

Charles then started to steal cars. Charles said the few times he stole cars, he was hoping to get caught and sent to the youth home. Charles found the youth home to be calm and relaxing compared to his home. He never thought about potential dangers that could have come from these thefts. Out of desperation and frustration with his home life, Charles pleaded with the judge to leave him in the youth home or send him to the training school. The judge sent Charles home.

Charles suffered many setbacks in high school that prevented him from staying focused on his ambitions. He was not allowed to play on the Denby football team because of a heart irregularity. He was unable to take a role in the Denby school play because his father wouldn't allow it. His father made him tell the school that he unable to fulfill the role. He was suspended by a Denby teacher he liked for writing her a love note. Looking back, he understood how appropriate this suspension was, but at the time it felt like a rebuff from someone for whom he cared. He was expelled from Denby HS, a school he loved. He thought the academics at Denby were far better than those at Finney High School. This made him feel like he was

robbed of a better education. He was unable to play basketball because of his weapons charge at Denby and a broken leg at Finney. He missed 27 days of school for negative behavior.

Charles was told by the church; he could no longer play with them unless he came up with \$300 to join the church. He said “man, I’m 15. How am I going to get \$300”?

To Charles, all of this felt like rejection after rejection. All these things would have kept Charles engaged in positive activities and not seeking acceptance from others. Charles describes himself as a good student, one who enjoyed school. His parents emphasized education. But Charles grades suffered though many transfers and periods of absenteeism due family issues, illness and his school problems at Denby.

Charles tried to leave. His relationship with Herbert was worse than ever. Herbert hated Charles’ music and was always yelling “turn that shit off”. Darryl McCorvey remembers Charles practicing in the basement with another musician and his dad yelling “get them niggers out of here”.

Charles said Herbert seemed to be against all of his successes. Rosie said that Herbert wasn’t happy and didn’t like to see others happy. Herbert kicked Charles out of the house because his brother David knocked over a lamp. He

yelled to Charles “get the fuck out of my house”. Charles quickly left home, determined to never return. He slept in an abandon house basement and at friends for several days. He did not think through the consequences of what it would mean to live on his own and soon had to return home.

Charles parents were fighting a lot, the lights and gas were turned off more and more, and Herbert was volatile. Wendy asked him, “Dad, don’t you love us anymore”? His answer was no. Rosie had another pregnancy during this time and had complications; she lost the baby and she was in the hospital. While she was in the hospital, Herbert accused the kids of stealing \$300 and kicked them all out of the house. Wendy remembered Lamont (Charles) going one way and all the other kids going another. She was begging Lamont (Charles) to come with them. Charles needed time to be alone but then came back.

Charles was trying to decide which life would get him out of his house the quickest; being a success at school and music, or trouble with the law and ending up in the boys’ home; never imagining that his consequences could be much graver.

Craig Goldman lamented that “he (Charles) got no love from his father. If not for the father Charles wouldn’t have got in trouble.” In 1989,

CS Widom conducted a pioneering study on 900 individuals with experience of abuse prior to the age of 11 years, and she demonstrated a clear link between trauma and antisocial behavior, showing that such children were at a greater risk of being arrested in adolescence. Early studies by Widom and colleagues have been supported by other recent findings demonstrating that incarcerated male adolescents often have a history of trauma, including chronic victimization along with an intergenerational experience of violence.<sup>7</sup>

Charles' struggle between the right and wrong path demonstrates that his character traits are not fixed. You see two different pictures of who Charles is as described by friends and family. He is a child who knows right and wrong, but like all children, sometimes he makes the wrong decisions.

## **PSYCHOLOGICAL EVALUATIONS**

After interviewing and testing Charles and reviewing interviews provided by Mitigation Expert Jessica Carrier and Investigator Michael Lynch of Charles' family members, Dr. King did not observe those

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<sup>7</sup> Widom C. S. Child abuse, neglect, and adult behavior: Research design and findings on criminality, violence, and child abuse. *American Journal of Orthopsychiatry*. 1989;59(3):355–367, (Burton, Foy, Bwanausi & Johnson, [1994](#); Erwin, Newman, McMackin, Morrissey & Kaloupek, [2000](#); McGruder-Johnson, Gleaves, Stock & Finch, [2000](#); Scarpa, [2001](#); Steiner, Garcia & Matthews, [1997](#); Vermeiren, [2003](#))

“homicidal tendencies” referenced in the initial presentence investigation report that Charles has no recollection of even participating in the presentence interview. Indeed, he believes he was never interviewed for the report.

Dr. King notes that “anyone subject to the atrocities that Charles encountered coupled with poor social circumstances, a lack of paternal model, and little to no structure would likely pursue the same path that Charles did. Testing results showed him to be someone of average intelligence, a talented musician, someone who is passionate about education but because of poor mentoring and austere economic circumstances chose a lifestyle of deviant behaviors ending up a victim of the legal system. This is not to say that Charles is not responsible for his actions. Neither is it to say that he is not culpable. Rather it should be stated that given the proper guidance, Charles probably would have been a responsible citizen.

Juvenile’s potential for rehabilitation. In my opinion, Charles’ life since the murder strongly supports the conclusion that he was not “the individual with a sociopathic personality disturbance who is homicidal.” This prior opinion was offered without any context and devoid of any psychological testing.”

**C Juvenile offender’s “chronological age and It s hallmark features—among them, immaturity, impetuosity and failure to appreciate risks and consequences.” *Miller*, 567 US at 477.**

Dr. King’s report (**Attachment 4: Dr. King Psychological Evaluation**) concluded that Charles Lewis’ behavior at age 17 was consistent with the hallmark features of youth and adolescence. Like any adolescent, 17-year old Charles Lewis failed to weigh risks and rewards in the same way that an adult would. He was also less capable of considering long term consequences and alternatives as compared to adults.

At the time of his arrest, Mr. Lewis was a highly impulsive, a very angry young man who had tremendous difficulty managing any negative emotions that he had. This Court should take note of Dr. King’s behavioral observations, test results and his observations regarding the strong family support that will make it more likely than not that Charles will succeed upon his release and that his unwavering family support provides insight to the family and Charles’s character.

The *Miller* Court noted that the biological differences present in juveniles, which are established by both developmental psychology and neuroscience, both lessen a youth’s moral culpability and enhance the

prospect that, as the years go by, his “deficiencies will be reformed.” *Miller*, 567 US at 472 (internal citations omitted). Dr. King described Mr. Lewis as very much the sort of adolescent that is described in the literature and in the *Miller* case.” (I, 60).

## **V. STATEMENT OF FACTS**

On July 31, 1976, at approximately 1:30 in the morning, off duty Detroit Police Officer, Gerald Swpitkowski was shot and killed on the corners of Harper and Barrett. Dennis Van Fleteren, an off-duty Detroit Police Officer and partner of the deceased was an eye witness to the murder. Van Fleteren testified that he met the deceased on the night of the murder. (TT pg 69). He also testified that he and the deceased went to several bars and ended up at Oty's Saloon where they had a few drinks. (TT pg71).

Van Fleteren testified that some time before 1:30 Swpitkowski left the bar and headed down Harper street. (TTpg72). Van Fleteren testified further that he was talking to Swpitkowski when a white Mark IV pulled up on Harper with the lights out next to Swpitkowski. (TT pg 73). He further testified that he saw Swpitkowski fall into the street and simultaneously heard a shotgun blast come from the driver's side of a white Mark IV. (TT pg 75).

Van Fleteren testified that he ran into the street and attempted to stop the Mark IV by waiving his hands (TT pg 77) testified that the driver of the white Mark IV sped up and nearly ran him down. (TT pg 76-78). Van Fleteren testified that he crouched down, directed his full attention towards the license plate number and memorized the license plate number. (TT pg 76-77). Van Fleteren testified that at the time of the incident he thought that the shot that killed his partner Swpitkowski came from the white Mark IV. (TT pg 78). And, that there was no other traffic in the streets.

Jay Smith testified that he was driving down Harper in his Ford LTD with the following three passengers, Kim Divine, front passenger, Gloria Ratachek, back seat passenger side and Donald DeMarc, back seat driver's side. (TT pg 135). Jay Smith testified that he pulled up in front of Oty's Saloon and double parked in the street to let Kim Divine out. Jay Smith further testified that he looked in his rear view mirror and saw a flash come from the driver's side of a white Mark IV that was traveling down Harper with the lights out heard a shotgun blast come from the side of Harper that the white Mark IV was on. Jay Smith also testified that he saw the headlights of the white Mark IV go off right after the shot was fired. (TT pg 137). Jay Smith further testified that the white Mark IV was traveling west on Harper at a high rate of speed.

Detroit Police Officers Joseph Grayer and Lorraine Williams were the first officers to arrive on the scene of the crime. Lorraine Williams was the only officer that arrived on the scene of the crime. Lorraine Williams were the only officer that arrived on the scene that testified. Williams testified that she talked to Dennis Van Fleteren at the scene and he was irrational and intoxicated (TT pg. 230).

According to the testimony, several minutes later Andrew Kuklock, Gerald O'Connor, Michael Kudla and Michael Yanklin also arrived on the scene of the crime. Some of the officers took statements from witnesses and some of the officers transported witnesses from the scene of the crime to the police homicide section. One of the officers was given the license plate number of a white Mark IV. The police learned later that the white Mark IV was owned and driven by Leslie Nathaniel. An arrest warrant was issued for Leslie Nathaniel and a swat team was sent to apprehend Mr. Nathaniel and impound his white Mark IV.

Three hours after the murder Leslie Nathaniel was arrested. Mr. Nathaniel stated that he was driving his white Mark IV down Harper with the lights out on the night that the deceased was killed, and that he did not hear a gunshot or see anyone get shot. Mr. Nathaniel was later released from

custody and his car was destroyed in the Seventh Precinct impound Lot. (TT pg 399-412).

Three juveniles were arrested in connection with the murder of Gerald Swpitkowski, Jeffrey Mulligan (15), Mark Kennedy (16) and Ronald Pettway (16). Two of the juveniles Mark Kennedy and Ronald Pettway made incriminating statements implicating the Defendant Charles Lewis and were released from custody. The record indicates that Jeffrey Mulligan was initially charged with the offense along with the Defendant. However, the charges against Jeffrey Mulligan were later dropped when he agreed to testify against the Defendant. (TT pg 361-373). Charles Lewis was the only one charge with this offense.

Collectively the three juveniles testified that they met with the Defendant on the night of the murder an that the four stole a blue or green Ford Maverick then drove to another location and stole a yellow Grand Torino. The four left with Jeffrey Mulligan and the Defendant in the yellow Grand Torino and Ronald Pettway and Mark Kennedy in the Ford Maverick. The four proceeded to 14181 Eastwood where the Defendant accosted Raymond Cassabon and the Defendant stated "Give me your fuckin money." Mr. Cassabon refused to comply with the Defendant's demands and was shot in the leg. The four juveniles apparently left Eastwood and traveled to

Harper and Barrett where the Defendant asked Swpitkowski for his wallet then shot him with a sawed off shotgun. (TT pg. 242-335, 347-397, 414-456).

The defendant in this case Charles Lewis, turned himself in to attorney Gerald Lorence on August 1, 1976.

Wayne County Circuit Court Judge Deborah Thomas's provided the following in her opinion and order in a post-conviction motion. That there were two versions of the deceased death were presented to the jury. The three juveniles testified collectively that Jeffrey Mulligan was driving a stolen yellow Grand Torino, and that Ronald Pettway was a passenger in the back seat, seated on the passenger's side of the car with a sawed off shotgun. The three also testified that the yellow Grand Torino pulled up to the curb, and further that the deceased was standing at a bus stop when the Defendant requested his walled then shot him in the head with a sawed-off shotgun. (See **Attachment 5**: Opinion, Judge Debra Thomas)

The events of July 31, 1976 should never have happened. Certainly, the youths who came together than evening had hung out before. They had even stolen cars before and used the cars in an immature game of chase. One car trying to outrun or out maneuver the other.

But something was different about this evening. Someone brought a shotgun. Even in self-serving testimony of those juvenile's that testified there was no discrepancy on who brought the shotgun; Ron Pettway. Ron Pettway harbored the shotgun in the family garage and for reasons we don't know brought that shotgun when he met his friends that night. There was never any evidence or testimony offered that anyone other than Ron made that decision. His singular act set into motion a sequence of events that resulted in the senseless shooting of Mr. Cassaban and the tragic death of Mr. Sypitkowski.

By all witness's accounts and their testimony, the intent of the night was not to murder another human being; but rather to steal a car and maybe rob somebody.<sup>8</sup> The alleged story told by witnesses was a typical story of juvenile crime. Boys gathered, some leave, some stay. Fatso and PeeWee were at home with Darryl McCorvey. Charlie McCoy missed his bus after work and therefore he said Charles Lewis does not end up going to a house party with him. Mark Kennedy, Ron Pettway (Big Ron), Jeffrey Mulligan (Bump) and Charles came over to Fatso and Pee Wees. Testimony suggests they may have been at Ron Pettway's or the Johnson's, some testimony

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<sup>8</sup> Trial Transcript Case 76-5890, page, pg 247

suggests they met on the corner of Barret and Glenfield.<sup>9</sup> The four of them left the Johnson home together. Darryl McCorvey, MC, decided to stay back and talk to Matilda and does not leave with them. Fatso, who was still talking on the phone to a girl, and Pee Wee decided not to go at all. The group that assembled was random.

This was not the act of a gang or even a selective neighborhood group, just random. Darryl thought the plan for the night was to steal a car or two and maybe go to an “arcade on Gratiot and 7”. They liked to joy ride and chase each other if they had two cars. Different plans were offered by several different kids, there was no set plan.

The events were a series of impetuous and impulsive decisions. The objects to commit the robbery were collectively gathered. The gun was brought by Ron Pettway to Glenfield and Barrett.<sup>10</sup> A coat hanger for breaking into cars was provided by Darryl McCorvey. Mark testified he obtained a screwdriver and pliers.<sup>11</sup> The gun and tools are the catalyst that sets into motion the night’s events. Mulligan testified in the second trial that he was driving the yellow Ford Torino and no one told him to make the turn onto Barret, he did not turn because they saw a man and Charles did not tell

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<sup>9</sup> Trial Transcript Case 76-5890, page 245

<sup>10</sup> Trial Transcript Case 76-5890, page, pg 372

him to drive slowly.<sup>12</sup> Again, the decisions were impulsive with little thought of the potential consequences of their actions. Charles was not the driver of either of the stolen cars, the green Ford Maverick or the yellow Ford Torino.<sup>13</sup>

Police testimony stated that the gun shots did not come from either the green Ford Maverick or the yellow Ford Torino, the two cars that Charles and his friends allegedly drove.<sup>14</sup>

**While Mr. Sypitkowski was a police officer, he was off-duty that day and on vacation for two weeks. He was in civilian clothes, an orange shirt and blue pants and had been drinking. He had just left a bar.**<sup>15</sup> It would have been impossible for any stranger to identify him as a police officer. The children had no intention of harming Mr. Sypitkowski until they felt threatened themselves. This caused the children to act impulsively and fail to think through the consequences of their actions.

The juvenile witnesses gave testimony that Mr. Sypitkowski was asked for his wallet, refused and reached for his gun.<sup>16</sup> The newspaper

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<sup>11</sup> Trial Transcript Case 76-5890, page,

<sup>12</sup> Trial Transcript Case 76-5890, page 380

<sup>13</sup> Trial Transcript Case 76-5890, page

<sup>14</sup> Dennis Van Fleteren interviews, August 12 & 13

<sup>15</sup> Detroit Free Press 8/1/1976, Trial Transcript

<sup>16</sup> [Trial Transcript Case 76-5890, page](#)

reported that there was no gun found on Mr. Sypitkowski,<sup>17</sup> we know this to be false. Police Officer Van Fleteren testified that Mr. Sypitkowski had a gun, in fact it was Van Fleteren's gun and in fact Van Fleteren, for reasons still unknown, removed the gun from the crime scene that night.<sup>18</sup> Darryl McCorvy was told the next day by Bump (Jeffrey Mulligan) that during the robbery the person went for his gun. Like in other robberies that turn into homicides, the children's actions took a turn for the worse when they found their lives threatened and acted on impulse.

Studies have shown that, when children are repeatedly exposed to trauma, the amygdala — the area of the brain known to activate the physiological stress response — overdevelops. This overdevelopment increases the fear and anxiety these children experience and causes them to be hyperresponsive to frightening situations in both their physiology and their observable behavior (Pollak, 2008; Shin, Rauch and Pitman, 2006). At the same time, the development of the hippocampus — the area of the brain known to turn off the stress response — is inhibited, decreasing its capacity to control the response (Bremner et al., 2003). Impairment of the hippocampus also results in difficulties in memory, mood regulation and

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<sup>17</sup> Detroit Free Press, 8/1/1976

<sup>18</sup> Trial Transcript Case 76-5890, page, page 93 Van Fleteren testimony

contextual learning, which includes learning to differentiate dangerous situations from safe ones (Pugh et al., 1997; Rudy, Kuwagama and Pugh, 1999). In addition, high levels of stress hormones impair the development of the connections to and within the prefrontal cortex of the brain (Elzinga and Bremner, 2002; Richert et al., 2006). The prefrontal cortex plays a role in modulating the physiological stress response and is responsible for decision-making, which includes assessing a perceived threat and responding appropriately (Lee and Seo, 2007; Morgan and LeDoux, 1995; Morgan, Romanski and LeDoux, 1993; Robbins, 2000).

There were weaknesses in the prosecutor's case. The only testimony that described the crime was by juvenile co-defendants who received no sentence--no time-- in exchange for their testimony.<sup>19</sup> No gun was ever recovered.<sup>20</sup> Dennis Van Fleteren, Mr. Sypitkowski's partner testified and stands by that testimony today that his partner, Mr. Sypitkowski, was killed by a person in a white Lincoln Mark V not the in car Charles was allegedly riding a yellow Ford Torino.<sup>21</sup> Charles maintains his innocence to this day. Mike Hollis says that he had heard through his brother that Charles had taken the fall for the crime and that this "was not the Charles he knew."

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<sup>19</sup> Trial Transcript Case 76-5890, page

<sup>20</sup> Trial Transcript Case 76-5890, page

While Charles' intent and the role he played in this crime is far from clear, he was sentenced to a life sentence while other co-defendant minors who testified against him were given no time.

The facts of this crime are relevant to this *Miller* resentencing. Mandatory life sentences, the court said in *Miller*, should be reserved for those "rare children whose crimes reflect irreparable corruption," and who exhibit "such irretrievable depravity that rehabilitation is impossible and life without parole is justified". This case follows a pattern of common robberies that escalate with emotion and result in bodily harm. There is nothing particularly unusual or rare about this case. In fact, both defendants in *Miller*, *Miller* and *Jackson*, were involved in "botched robbery turn[ed] into a killing" We can imagine what might be considered that rare crime; murders of infants and young children, murders involving torture, and mass murders. The prosecution has not provided any evidence to show that Charles' conduct reflects irreparable corruption or that he has such irretrievable depravity that rehabilitation is impossible and life without parole is justified.

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<sup>21</sup> Dennis Van Fleteren interviews, August 12 & 13, Detroit Free Press 8/1/1976

## **Search for Perpetrator and Trial**

Rumors started in the neighborhood that Charles killed a police officer. Charles was scared and hid at his friend, Adrian Wilkins' house. When the police came to search the home and apprehend Charles, the family was terrorized. There were guns pointed at them, they were forced to lie on the floor. The young children, witnessed the policeman slitting Marc's seeing-eye dog's throat, hanging it from the ceiling fan and turning on the fan, spewing blood everywhere. Marc 13, Wendy 12, Stephanie 9, and David 6 were traumatized and all of them re-told the story in vivid detail.

When Rosie located Charles, she made him get into the trunk of her car, fearing for their lives. She drove him over to Lottie Peters, his father's sister's, house. Charles was advised, by his aunt, to turn himself in and he did. They called a lawyer who told them to come to his office. When they arrived at the lawyer's office, Homicide supervisor Gill was there waiting to arrest Charles.

### **Inability to advocate for himself at trial: Immature, Uneducated to the law and Unable to Appreciate the Consequences of his situation**

Information included in Charles' original presentencing report is a great example of Charles' immaturity at the time and his inability to understand the consequences of his arrest. It is replete with bragging and

boasting about criminality in an entirely inappropriate setting. Even though, he and his mother are so frightful of the police retaliation, they refuse to tell the social worker where the family was currently staying.

Charles was told to turn himself in by an attorney who arranged for the police to be at his office. Charles and his family had no knowledge of the legal system. They thought they were meeting with a lawyer for advice not walking into an arrest. Charles was not interviewed, nor did he confess. His alibis were never checked out nor were witnesses interviewed.

Jeffrey Mulligan's stepdad sent a note to Rosie on a Friday at work (both worked at Mack) through her foreman, that he needed to talk to her. She did not find the note, until Monday. The Saturday between, he had been killed by his wife, Bernice Warren. She never knew what he wanted to discuss or how it may have been valuable to his defense.

No alibi defense was raised at his first trial and without advice or preparation by his lawyer, Charles testified to his alibi at the Cassaban trial. The other juveniles who were involved in the night's events were never charged or sentenced to anything, not even in juvenile court. The only solid proof they had of Charles' involvement as the shooter, was testimony from

co-conspirators, who had deals with prosecutors in exchange for their testimony.<sup>22</sup> Police officer testimony regarding his role was conflicting.<sup>23</sup>

*Miller* cautions the court not to neglect to consider juvenile offenders may “have been charged and who might have been convicted of a lesser offense if not for incompetencies associated with youth—for example [their] inability to deal with police officers or prosecutors (including a plea agreement) or his incapacity to assist [their] own attorneys.”

### **Charles Lewis Conviction**

Charles Lewis was convicted of Murder-First Degree and was given a mandatory life sentence without the possibility of parole for a crime that occurred when he was 17 years old. Charles is now 60 years old and has been incarcerated for 43 years. As a result of the U.S. Supreme Court ruling in Miller this Court must assess culpability at the time of the crime taking into consideration his youth and to determine if he has the capacity for change.

Roper v. Simmons establishes that children are constitutionally different from adults for sentencing purposes. Their “lack of maturity” and “underdeveloped sense of responsibility” lead to recklessness, impulsivity,

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<sup>22</sup> Trial Transcript Case 76-5890, page

<sup>23</sup> Dennis Van Fleteren interviews, August 12 & 13th

and heedless risk-taking. They “are more vulnerable...to negative influences and outside pressures,” including their family and peers; they have limited “contro[l] over their own environment” and lack the ability to extricate themselves from horrific, crime producing settings. Charles’ age and family history illustrate his immaturity, recklessness, impulsiveness, and risk-taking behaviors. His history is replete with negative influences and outside pressures of which he could not extricate himself.

Graham v. Florida insists that youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole.

To just look at Charles age of 17 and say he was close to adulthood ignores the court’s observations that “youth is more than a chronological fact.” It is a time of “immaturity, irresponsibility, impetuosity, and recklessness”. Youth is a “moment and condition of life when a person may be most susceptible to influence and to psychological damage” Miller also asserts that our “history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults”.

This offense is exactly in line with and characteristic of what we know about adolescent brain development. Adolescents do not appropriately weigh risks, rewards, and future consequences and have a much harder time

considering multiple factors at the same time. For 17-year old, these deficiencies were amplified by the mere fact of being in the midst of the crime as it started out as a robbery. Once that decision was made, it was much harder, if not impossible, to divert, change course, or think about the consequences of going further.

## VI. POLYGRAPH RESULTS

Charles Lewis has continued to show a deep sense of remorse. Not a single day goes by that he does not relive those dark days of his youth. He has never condoned or found any solace in his name being associated with the loss of life. Yet he has maintained his innocence.

Mr. Lewis is well aware that this is a resentencing. At time for the court to consider a number of factors including the nature and circumstances of the offense. The file is missing a number of volumes of transcripts, documents are gone, expert reports cannot be generated

Charles, however, voluntarily participated in a polygraph examination with by J. P. Carey a certified polygraph examiner. (See **Attachment 6**; Curriculum Vitae of J. P. Carey). Mr. Carey noted the following: “I have exhaustively evaluated Mr. Lewis' polygraph re-examination. I regret that it will be of no help in clearing him. While, from a review of the reports, I have no doubt that he is innocent, his polygraph charts continue to show

diminished thoracic pneumograph amplitude, and a minimally responsive cardiovascular affect. Despite the use of the constructed accessories during recordings, no improvement in the tracings was accomplished.

I believe that over and above his heart condition, another factor is involved. Mr. Lewis, arrested at age seventeen, has no life experience outside of the institutions he has been placed in for the past forty years. There has been no response-evoking event or experience that can rise to the level of focus on this charge. The comparison questions used in the re-examination focused on actions and experiences inside the institutions. While fully cooperative, Mr. Lewis did not produce tracings that can ethically be used to issue a diagnostic opinion.” (**Attachment 7: Polygraph Results of Charles Lewis**, by J. P. Carey Consulting).

## **VII INSTITUTIONAL ADJUSTMENT**

### **Arrest, conviction and struggle for understanding**

After Charles was arrested and sitting in the county jail. He had two experiences at age 17 that were very important in his outlook on his life in jail and prison. Twice, Charles was beaten up pretty badly by members of law enforcement when he first entered the county jail. It was widely believed that he suffered these beatings because he was accused of killing an off-duty police officer in civilian clothing. His sister Stephanie knew who those

individuals were because she worked with them when she first came to the Wayne County Sherriff's department.

The second incident was within the first 48 hours of Charles entering the county jail. There were two older and larger men talking about the violent and sexual things they were going to do to Charles, while Charles sat there afraid. An older man in the lock up observed this while reading the newspaper. The older man happened to be reading the article of Charles' arrest. The man started reading the article out loud for the benefit of the two men. He talked about how Charles was part of a gang and that he was very vicious and that he had killed a police officer. This older man was using this information to dissuade the two older larger men from abusing Charles. This information caused the two men to move away from Charles. The older man said "I'm gonna start calling you KK".

Right away in prison, Charles learned that you needed to have the perception of being tough in order to protect yourself. A repeating theme in his life, victimization causes further victimization. National Bureau of Prison studies show that young first-time offenders are at increased risk of sexual victimization. Juveniles are 5 times more likely to be sexually assaulted in adult rather than juvenile facilities—often within the first 48

hours of incarceration.<sup>24</sup> Charles had never gone by the name KK until prison. He associates the name as someone with reputation that you do not mess with. He asserts, his nickname KK, has been used to avoid conflict as opposed to causing it.

### **Early incarceration: terrified and traumatized**

Charles has write ups in prison for fighting and for having weapons. His history of abuse and exposure to violence explains this primal instinct. He endured years of abuse at the hands of his father. His mother had a gun in the house to be used against his father. Both his mother and grandfather told him his mother needed a gun for protection against his father. His mother shot his father. He suffered traumatizing and violent experiences at the county jail and in prison. This explains why it took Charles years to understand he did not need a weapon to protect himself.

Charles observed many violent incidents while incarcerated over the years. This has had a profound impact on him. He is now revolted by senseless violence, especially the loss of life. He has first-hand experience of what it is like to miss out on many of life's benchmarks. Benchmarks such as independent living, graduating from high school, having children,

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<sup>24</sup> Enacted by the Senate and House of Representatives, Prison Rape Elimination Act of 2003

celebrating important anniversaries with your family, enjoying a life partner in day to day experiences and being with family during loss. He empathizes with people who have experienced a loved one's loss of life and have missed important benchmarks with these loved ones. He is looking forward to a time when he can live in peace and be free of the constant threat of explosive and violent outbursts.

In *Graham*, [we] noted that “developments in psychology and brain science continue to show fundamental difference between juvenile and adult minds”—for example, in “parts of the brain involved in behavior control.” 560 U.S., at \_\_\_\_ (slip op., at 17). We reasoned that those findings—of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s “moral culpability” and enhanced the prospect that, as the years go by and neurological development occurs, his “deficiencies will be reformed.”

### **Later incarceration: Rethinking, refocusing**

Charles has demonstrated that he has matured and has demonstrated his rehabilitation. When Charles was asked when he started to feel like his physical body was safe from harm, he thought a while and said never. “I’m still in prison and anything could happen”. He said the difference between when he was a child being physically abused and when he was afraid for his

safety in prison and now, was that he reacts to that fear differently. Violence seemed to help in when he was younger but then led to a life “that did not move forward”. Now he sees choosing other ways to handle conflict as more productive and allows him to move forward in his life. He has told other prisoners “I’m not like KK anymore, you don’t want to be KK, don’t be *somebody* in a penitentiary”. He advises that you want to be a person you can be on the outside. He has used this message in his work with Chance of Life.

Chance for Life provides life skills training to individuals incarcerated in Michigan Department of Corrections to develop themselves in a positive manner in spite of the adverse conditions of confinement. Charles believes that once he started making positive choices in his life, his life started to turn around. Once he was making good choices, he was assigned attorneys at no charge that took his case to the Supreme Court. He believes this came out of his decision to be a positive member of the community.

Charles has always sought opportunities for education and job skills while incarcerated. He has completed and has certificates of these vocational programs; Word Processing, Introduction to professional Cooking Meats, Poultry and Fish, Professional Cooking, Career Hospitality and Food Management. He also completed classes in Sanitation and Personal

Hygiene, Safe Food Preparation Steps, Preventing Cross Contamination, Careerscope, Auto Mechanics, Building Maintenance and Safe Cooking & Preheating Food. He has participated in the following personal growth classes: Impulse Control 1992, Group Counseling 1992, and earning a certificate in Communication Skills and Conflict Resolution 2019.

Charles continued his love of learning and brought his generally curious nature to prison. He spent a lot of his time taking advantage of educational opportunities offered. Charles received his GED while incarcerated. He has taken college courses in the following: Introduction to Philosophy, American Government, Inter Communications, Ethics, Criminology and Penology, Survey of Journalism, Stress Management while at Marquette. While in Lapeer, MI he took the following courses: Writing Experience, Intro to Political Sci, General Biology, Computer Programming, Print of Advertising, Intro to Geology, Adjustment, Speech Communications, Intro to Philosophy, Basic Math, Crim Law & Procedure, Legal Research, Intro to the Legal System, Salesmanship, Intro to Business, Contr Agy Comm Tra (not sure what this means on the transcript), Business Law I, Computer Programming Cobol, Bus Prog and Logic, US thru Civil, Marketing, Principals of Accounting, and Social Issues. At Montcalm Community College he took the following courses: Legal Environment to

Business, Advertising, American Criminal Law, Introduction to Paralegal, Legal Research Write, Domestic Law and General Psychology.

Charles has found a constructive outlet for his frustrations with the justice system. He has used his connections in music to obtain instruments while in prison. He has played music and brought joy to many while incarcerated. He played with the Gospel Cavaliers while incarcerated at Michigan Reformatory.

Charles has written a book about life in his neighborhood that helped him make sense of his experiences. He has managed to record and produce a CD of his music while in prison. His brother David took the raw recordings and produced them into a combined final version.

Charles prepares for his success on the outside by picturing potential conflicts and possible positive responses to them. Charles tells of a scenario where he and a lady friend are out for the evening. Someone insults his lady friend and is picking a fight with Charles. Charles says he will apologize to the man for whatever the perceived slight is and walk away with his lady friend. This was one of many scenarios he shared. He never wants to return to prison because he reacted poorly to conflict.

*Miller* assures us that science and social science studies were cited to show that “[o]nly a relatively small proportion of adolescents” who engage

in illegal activity “develop entrenched patterns of problem behavior.”

*Graham* asserts that life without parole “forfeits altogether the rehabilitative ideal.” It reflects “an irrevocable judgment about [an offender’s] value and place in society,” at odds with a child’s capacity for change.

Richard Stapleton, a licensed attorney in the State of Michigan and an expert in the Michigan Department of Corrections (MDOC) disciplinary policies and procedures (See **Attachment 8**: Curriculum Vitae of Richard Stapleton) provided a detailed report regarding Charles Lewis’ institutional and central office files.

Richard Stapleton, former chief legal counsel and hearings administrator with the Michigan Department of Corrections (MDOC), provided context to Mr. Lewis’ extensive prison history. Mr. Stapleton reviewed records from Mr. Lewis’ institutional file, counselor file, and central office file, which included work and program evaluations, security classification review screens, disciplinary records, and certificates and accomplishments. Mr. Stapleton notes that the main reason the MDOC keeps such extensive records is for the purpose of internal communication amongst staff regarding classification decisions and security concerns. As such, prison records tend to highlight and focus on the negative behavior.

After reviewing prison records spanning the course of Mr. Lewis more than 40 years of incarceration, Mr. Stapleton notes that there was nothing alarming or troubling in his file that would indicate he might be a security risk. Mr. Lewis' level two security classification indicates he is not a security concern.

When Mr. Lewis entered prison as a youth, he was placed in general adult population with no special placements, programs, or accommodations for youthful offenders. The MDOC later determined this was problematic because youthful offenders cannot adjust to the strict structure of prison without specialized attention to the particular needs of a youth.

In the late 2000s, the MDOC changed its practice of placing youthful offenders into general adult population. Instead, it began placing youthful offenders (anyone under 21) in a single facility that engages in behavior modification programming and specialized programming for juveniles. This has had an enormous positive impact on a youth's ability to adjust to the prison environment and has increased their likelihood of a successful prison stay.

Mr. Lewis, however, did not have that benefit and was left to fend for himself at the facilities that he was assigned to as a youth.. Even under these circumstances, Mr. Lewis still did well in his early years of incarceration. As

would be expected, he received a number of misconducts (or tickets) early on in his incarceration stay, but those tapered off fairly quickly.

Mr. Stapleton notes that it is commendable for Mr. Lewis that he has remained in Level II custody for the past 12 years and that this is only possible because Mr. Lewis has not exhibited any violent behavior. Moreover, Charles completed Impulse Control Programming in 1992, participated in the MDOC Career and Technical Education (CTE) program, the Food Tech Program, has worked a full variety of positions including food service, unit porter, law library clerk and chaplain clerk.

Mr. Stapleton concluded that Charles' disciplinary history reflects an average rate of misconduct that is typical of other prisoners in general population, that he is not an MDOC management problem, that his education, program and work assignment performance reports have been satisfactory, that MDOC's own risk assessment tool and parole guidelines conclude that Charles is a low risk for recidivism and violence and most importantly that "Mr. Lewis poses little risk of recidivism or violent behavior." (See Attachment 9: Expert Report, Richard Stapleton).

The COMPAS is a risk and needs assessment used by the MDOC. (. In the latest COMPAS assessment given to Mr. Lewis in November, 2012,

he scored as low risk for violence and low risk for recidivism. The parole board considers the COMPAS assessment as part of their release decision.

Mr. Stapleton scored Mr. Lewis' parole eligibility guidelines and determined that he scores as a high probability for parole. This means that if he became eligible for parole, the parole board would have to provide "substantial and compelling reasons for not granting parole" if they chose not to. The parole board is looking to release individuals who have developed a positive attitude, display maturity, and show a level of remorse. Mr. Stapleton concluded that Mr. Lewis is someone who the parole board would likely trust to become a productive member of society.

## **VIII. SENTENCING FACTORS AND**

### **Good forecast for Charles life outside**

Charles needed two things to be able to move his behavior into a positive productive and proactive behavior. The first thing he needed was to find a way to react when feeling unsafe, the second thing he needed was for his brain to mature. The trauma and his childhood delayed his maturation and the prison system itself did not create a safe environment for Charles, but he found a way to change his reaction to that unsafe feeling.

The following factors as evidence of rehabilitation:

- Mr. Lewis has been in a level two security classification for decades and has remained there, indicating he is not a security concern.
- His file contains only excellent block reports where he is described as “a role model prisoner and somebody who’s a positive influence on the prison population.”
- He has made excellent use of programming even though programming for lifers is scarce and hard to come by.
- He has pursued his education and music interest
- He has tutored and mentored other prisoners.
- He has completed and facilitated a wealth of cognitive programming for prisoners directly related to rehabilitation and cognitive restructuring.
- He has built a life of meaning by contributing to his prison community through charity work

**X. CHARLES LEWIS HAS A SOLID REENTRY PLAN THAT WILL ASSIST WITH HIS TRANSITION BACK INTO SOCIETY.**

Charles has demonstrated an ability to maintain close relationships during a very long prison stay. He is in contact often with his mother, Rosie and his sister, Wendy almost daily. He is less frequently in contact with his brothers Marc and David but has a relationship with them. His sister

Stephanie is challenged by her position as Deputy with the Wayne County. She has less contact because of this conflict but stays up to date through the rest of the family. Stephanie's son, TJ, just turned 18 years old and is completing paperwork to be able to visit his uncle. He relies on those relationships to guide him when he is feeling like he is facing a challenge. In addition to family, Charles has made a point of staying in contact with friends and mentors who are able to give him guidance. A few are highlighted below. (**Attachment 10: Charles Lewis, Family Tree, History, Photos; Attachment 11: Family Letters and Attachment 12: Re-Entry Materials**)

Rosie Lewis, Charles' Mother

Rosie is 79 years old. She is retired after 34 years at Chrysler. She has a retirement from Chrysler. She is in fairly good health although has issues with diabetes and her foot is bothering her. She says she may be so happy to have Charles back at home that it would fix her up.

Wendy Lewis, Charles' sister

Wendy is a retired navy veteran. She is on permanent disability following a terrible fall. Wendy is a law abiding person who has never been in trouble with the law. She has a stable life. Wendy owns her own four bedroom home and is financially secure. She cannot wait to share her house with her big brother and has dreamt of his return for years. Wendy has an adult daughter, Tahira, who is enlisted in the military. She maintains a

bedroom at her home for her daughter's visits. She has a friend that works at the VA who is a musician, she can't wait to introduce him to Charles.

Marc Lewis, Charles' brother

Marc has his own spacious apartment in Detroit. He is very knowledgeable about technology and his apartment is full of the latest technologies. He has a great credit score and is financially secure. He loves music.

Stephanie Lewis, Charles' sister

Stephanie is a Wayne County Deputy and has been for 27 years. She has two children, Aliya and Terrance. Aliya Jones is married to Martez Jones and they have two daughters, Ava and Andrea. Terrance, TJ, just graduated from high school this past May.

David Lewis, Charles' youngest brother

David lives in North Carolina with his significant other. He works as a system administrator with Charter/Spectrum. He has held this job for 2 years but has been in the IT sector for 10 years. He has an adult son with a disability that lives in Hawaii with his mother. He is also a musician, who could have had that as a day job, but for the security of a regular job. He recently started to play with a new jazz group. He has connections in the

music community and has some people interested in talking to Charles when he is released about his music.

Michael Hollis, friend and childhood musician with Charles

Michael is currently an associate professor at the Detroit Institute of Music Education and member of the Howling Diablos. He would like to help Charles in any way he can.

Shaka Senghor

Shaka is a community leader. He is a New York Time bestselling author of Writing My Wrongs: Life, Death and Redemption in an American Prison. He is a Fellow, W.K. Kellogg Foundation's Community Leadership Network a former MIT Media Lab Director's Fellow, and a former University of Michigan teacher. He has been incarcerated and will act as a mentor to Charles.

Georgia Manzie

Georgia has been in Charles life for many years as a friend and mentor. She is the first woman to pass the bar and become an attorney with a felony conviction. Georgia was the president of Manzie Consulting, a prison reform advocacy company based in Detroit. She now lives in Saginaw, MI. Georgia has also been incarcerated and will act as a mentor to Charles.

## A. Reentry Plan

### Identity

The defense is in possession of Charles' birth certificate. He believes he is ready to apply for a social security card through Macomb Correction offender success or employment readiness programs. There is a picture ID assistance available and I have attached the Georgia State requirements for a Georgia State ID card. Charles did have a valid driver's license 43 years ago, but he will need to investigate what needs to be done to obtain a new one.

### Housing

#### **1. Primary Plan: Wendy Lewis**

Wendy Lewis has made it clear she would welcome Charles to move in with her at 4488 Dover Castle Dr. Decatur, GA. Charles' mother, Rosie, is also living there. Wendy has owned this two-story four bedroom, for three and a half years since 2014. The home is fully furnished.

Jessica Carrier, the mitigation expert, reports that she visited this property and observed and photographed this property, see photos in appendix V. Wendy's home is in a residential neighborhood. She has an in-home entertainment center in the living room and a full dining room for family meals.

Charles would have his own bedroom and bath. Charles room has a bed, dresser and closet. Wendy welcomes Charles to live their rent free for as long as he might need. Charles is expected to clean up after himself and will assist with household chores and maintenance. Wendy is a veteran, who is on permanent disability. Wendy and Rosie typically have been in contact with Charles several times a week. Both Wendy and Rosie are prepared to support Charles financially, morally and emotionally upon his release, as well as provide him with food, transportation, and clothing. Charles goal is to be self-sufficient, as soon as possible.

## 2. Secondary Plan: Independent housing-Decatur, GA

New Way of Life Ministries, Inc is a transitional housing/shelter for men/ex-offenders. New Way is located 5.3 miles from Wendy and Rosie Lewis' home. Charles would be able to take a bus to his sister and mother's home from New Way. The program provides transitional housing for males who are looking to rehabilitate and re-enter society as productive, community oriented citizens. Fees are based on the client's ability to pay, minimum stay is 6 months, maximum one year.

## **Employment**

Charles has worked throughout his prison term and had worked prior to entering prison, as much as a child could find work. He worked as a

paper boy, had some summer jobs through programs including one cleaning police vehicles and had a few paid musical gigs. He took odd jobs unloading trucks at the Eastern Market when the opportunity provided itself. Charles has taken advantage of opportunities to learn valuable skills in prison.

Charles is excited about the idea of being able to work and provide for himself. Charles is willing to take any work but has skills in computer science, culinary arts and communications. He has worked as a music clerk, a chaplain's clerk, in the library, as housing porter, in the dining room, and in the bathrooms. He mostly received the highest score range which gave him an above average score. In the few instances he did not receive that score range, it was that he missed it by one point to put him at the high end of average scores. The few notes on his work reviews say that he is a good worker.

Charles has a resume written. The Georgia Department of Community Supervision recommends that recently released individuals should register with the following: GDOL TOPPSTEP Program DeKalb WorkSource, a registry for jobs; Goodwill Industries, job bank registry; The Atlanta Center for Self Sufficiency/ACSS serves DeKalb County with ex-offender's employment programs; Community Supports

Medical and Mental Health Services: Oakhurst Medical Center is 7 miles from Wendy's home and is accessible by bus. The fee is a sliding scale and it accepts Medicaid and Medicare. Their website describes the clinic "As a "one-stop shop for patients", Oakhurst provides a complete array of primary health care services for all of the life cycles inclusive of Adult Medicine/Family Medicine... Foot Care/Podiatry, Behavioral Health, Infectious Disease, Gastroenterology and Dental. As a Federally Qualified Health Center, our services are provided on a sliding fee scale (according to income and family size) to all, regardless of their ability to pay."

See appendix VI for map

### **Health Care Coverage**

Wendy is checking to see if she can put Charles on her healthcare plan. In not, he can access this health care while putting together a long-term plan. If approved, you would receive comprehensive health care for 1 year at no cost to the individual.

### **Transportation**

The bus-line is a short walking distance from Wendy's home, and she has 3 cars (2 of which need some work in order for Charles to be able to use) and her mother has 1 car that can be made available to Charles when he renews his driver's license. Wendy is on permanent disability and would be

available to drive Charles if needed. Wendy's house is a 10 minute walk to a strip mall with grocery store and restaurants. Wendy's home, New Life housing and medical care are all on the same bus line. See appendix VI for map

### Budgeting and Finance

Marc Lewis has the best credit rating in the family. Charles can use Marc as a resource in helping set up a financial plan and budgeting. Wendy has financial stability and can show Charles how to set himself up in Decatur, GA. He will bank at the same bank as his sister Wendy.

### Education and Recreational Time

The Technical College System of GA is nearby if Charles decides to seek more education. Right now, his goal is to work and become financially independent. But as a life-long learner, he is not ruling out future educational opportunities. He plans to have little recreational time as he feels he is behind in setting up his life. He plans to work most of his time. If he finds spare time, it will be on his music. He hopes for this to be part of his career and financial success but understands that may take time. If anything is left, he would like to laugh with his family, share meals, cook and continue to be a voracious reader.

## **XI. CONCLUSION AND REQUEST FOR SENTENCE OF 40 YEARS**

Charles Lewis is an adult. He has matured substantially up in the last 43 years. He is educated in knowledge and life skills. He has an understanding of the preciousness of life and the horror at life's loss. As Charles aged, he was able to reflect on his childhood challenges and learn from them. As illustration of this growth, is Charles attitudes about his father. He no longer is resentful towards him but chooses to focus on the good. Charles recognizes that his father adopted him and provided for him "the best he could". He has an understanding of the difficulties Herbert faced and has sympathy for him. He has developed appropriate responses to fear. Charles is no long sensation seeking but rather happy to be content.

Despite the many challenges and traumas Charles faced throughout his childhood, despite the abuse he was subjected to as a 17 year old adolescent in an adult prison, and despite his childhood being cut short by his conviction for this crime, Charles has remained optimistic. A recent music CD he created contains songs called "Amazing" because "life is amazing" and "God Has Smiled on Me". If you listen to his music, you can see the positivity emanating from his creativity. He has tried to make the most of his life in prison by obtaining an education and by playing music.

His outlook on life and his music have helped to embrace and amplify the positive aspects of his life and to influence others positively.

*Miller* asks us to think about “appropriate occasions for sentencing juveniles” to the “harshest possible penalty” as uncommon, rare. This is not that occasion. This is not that rare person or that rare crime. It rather “reflects unfortunate yet transient immaturity”, and NOT “the rare juvenile offender whose crime reflects irreparable corruption”.

The *Miller* majority reviewed decisions recognizing the inherent differences between juvenile and adult offenders and how these characteristics affect both the justification for and the appropriateness of imposing a life sentence without parole on a juvenile, finding, "An offender's age . . . is relevant to the Eighth Amendment, and so criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed" The *Miller* majority found the imposition of a mandatory sentence to be particularly subject to criticism. Specifically, the *Miller* majority proceeded to delineate the requirements for consideration when sentencing a juvenile for a homicide:

“[I]n imposing a State's harshest penalties, a sentencer misses too much if he treats every child as an adult. To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its

hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects 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. Indeed, it ignores that he 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 finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.”

The Miller majority concluded "that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment. The Miller majority did reject, however, arguments for a categorical bar to sentencing juveniles to life in prison without parole, stating, "[W]e do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into

account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."

The Miller majority emphasized that its decision served to mandate[] only that a sentence follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty. And in so requiring, our decision flows straightforwardly from our precedents: specifically, the principle of *Roper*, *Graham*, and our individualized sentencing cases that youth matters for purposes of meting out the law's most serious punishments. When both of those circumstances have obtained in the past, we have not scrutinized or relied in the same way on legislative enactments."

Addressing the statutory sentencing schemes in various states, the US Supreme Court in *Miller* noted the following: [A] judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment.

There is no doubt that Mr. Lewis' crime was appalling. So too were the crimes in Miller, Montgomery, Roper, and Graham. The Court in Miller acknowledged that Miller "committed a vicious murder" and that it was "beyond question" that he "deserved severe punishment" for the killing. Miller, 567 US at 478-479. But severe punishment is not the same as the "harshest possible penalty," which is an unconstitutional penalty for all juveniles but those whose crimes reflect irreparable corruption. Skinner, 502 Mich at 119-120, citing Miller, 567 US at 479-480.

As of today, Mr. Lewis has served approximately 42 years for this offense and is currently 60 years old. Mr. Lewis has been severely punished for this offense. In Montgomery, the Court noted that "[t]he opportunity for release will be afforded to those who demonstrate the truth of Miller's central intuition—that children who commit even heinous crimes are capable of change." Montgomery, \_\_\_ US at 736. Mr. Peters is not only capable of change, but he has changed. Even members of the Michigan Department of Corrections issued a letter remarking on the juvenile lifers. (Attachment 13: MDOC Professionals Comments)

Dr. Keating confirmed that it is "close to impossible" to predict whether an adolescent is irreparably corrupt when examining that adolescent close to the time of the offense. "[O]ur ability to predict is worse the further

away . . . in time it is from what were' trying to predict.” A better way to determine if someone is irreparably corrupt is to look at clinical and forensic evaluations once they have reached full maturity and closer to the time when one is considering their reentry into society.

There is no need to speculate about whether Mr. Lewis had the potential for rehabilitation at the time he committed this offense. Current clinical and forensic evaluations, along with an extensive review of his institutional history, indicate that Mr. Lewis is not irreparably corrupt. Mr. Lewis asks this Honorable Court to resentence him to a term of 40 to 60 years imprisonment a sufficient that is sufficient and appropriate under the circumstances.

Respectfully submitted,

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Date: September 23, 2019