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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Administrative Law Court
Honorable H.W. Funderburk, Jr., III, Administrative Law Judge

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Appellate Case No. 2020-001473

JOSEPH G. KELSEY, # 217218 .....APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE, AND PARDON SERVICES ..... RESPONDENT.

RECORD ON APPEAL

HANNAH FREEDMAN
MEGAN BARNES
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044
hannah@justice360sc.org
megan@justice360sc.org

JOHN H. BLUME
Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853
(607) 255-1030
jb94@cornell.edu

JON OZMINT
The Ozmint Law Firm
P.O. Box 6814
Columbia, SC 29260
(803) 782-0042
jon@ozmint.com

COUNSEL FOR APPELLANT

MATTHEW C. BUCHANAN
S.C. Department of Probation, Parole and Pardon Services
P.O. Box 207
Columbia, SC 29202
(803) 734-9012
matthew.buchanan@ppp.sc.gov

COUNSEL FOR RESPONDENT

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State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

293 GREYSTONE BLVD
POST OFFICE BOX 207
COLUMBIA, SOUTH CAROLINA 29202
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.state.sc.us/ppp

February 12, 2020

The Honorable H. W. Funderburk, Jr.
Judge, Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, S.C. 29201

RE: Joseph Kelsey, #217218 v. S.C. Department of Probation, Parole and Pardon Services

Dear Judge Funderburk:

Please find enclosed for filing the *Record on Appeal* dated February 12, 2020, along with proof of service in the above referenced case.

Thank you for your cooperation in this matter.

Sincerely,

Matthew C. Buchanan
General Counsel

MCB:dn

Enclosures
cc: John Blume, Esquire
Hannah Freedman, Esquire

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0061

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

JOSEPH KELSEY, #217218 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ... RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Record on Appeal*, dated February 12, 2020, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 12th day of February, 2020, addressed to:

John Blume, Esquire
159 Charles Evans Hughes Hall
Ithaca, NY 14853

Hannah Freedman, Esquire
900 Elmwood Ave, Suite 200
Columbia, S.C. 29201

I further certify that all parties required by Rule 61 to be served have been served.

Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0061

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

JOSEPH KELSEY, #217218 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ... RESPONDENT

RECORD ON APPEAL

Matthew C. Buchanan
General Counsel

South Carolina Department of Probation, Parole and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

ATTORNEY FOR RESPONDENT

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State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

293 Greystone Boulevard
Post Office Box 207
Columbia, South Carolina 29202
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

November 15, 2019

Mr. Joseph Kelsey #00217218
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Kelsey:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Vote Count: 2 Rejected - 3 Parole

Sincerely,

Nettie C. Jacobs
Board Support Services

South Carolina Department of Probation, Parole and Pardon Services
Criteria for Parole Consideration

Inmate Name	SCDC#
KELSEY, JOSEPH G.	00217218

SC Board of Probation, Parole and Pardon Services
P.O. Box 50666
Columbia, SC 29250

Criteria for Parole Consideration

The South Carolina parole law creates no right to be released on parole. Parole in South Carolina is strictly a matter of privilege or grace. The South Carolina Board of Probation, Parole and Pardon Services has absolute discretion to grant or deny parole. As such, the publication of these parole criteria in no way creates a expectancy of release; nor does it bind the Parole Board in any way to favorable parole decision or establish any presumptions of entitlement to parole.

In deciding whether or not to grant parole, the Parole Board considers, among other things, the inmate's record before incarceration as well as during incarceration. The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files are maintained by the Department of Probation, Parole and Pardon Services and are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching; inmates themselves have no right to inspect the contents of their files. If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy. The Board will investigate the inquiry and notify the inmate of the action taken.

Inmates do, however, enjoy certain rights in the parole process. The inmate has the right to appear at his parole hearing. If the inmate fails to appear, the Board may decide his/her case in absence. The inmate has the right to be represented by an attorney; however, he/she has no right to have an attorney appointed if he/she cannot afford one. At the hearing, the inmate has the right to present witnesses and evidence on his/her own behalf, but an inmate does not have a right to confront witnesses.

In deciding whether or not an inmate should be granted parole, the Board or Panel of the Board exercises its absolute discretion to the limits allowed by state and federal law. The discretion of the Board or panel aims at protecting the best interest of both society and the inmate being considered for parole. In its concern for the protection of society's and the inmate's best interests, the Board or Panel deliberates upon the "reasonable probability" that an inmate will not again violate the law, if parole is granted. When deliberating that an inmate will not again violate the law, the Board or Panel weighs the factors listed below. The Board or Panel, in its absolute discretion, also considers any other factors not listed below which it considers relevant in a particular case.

1. The risk the inmate poses to the community;
2. The nature and seriousness of the inmate's offense, the circumstances surrounding the offense, and the inmate's attitude toward it;
3. The inmate's prior criminal records and his/her adjustment under any previous programs or supervision;
4. The inmate's attitude toward his/her family, the victim, and authority in general;
5. The inmate's adjustment while in confinement, including his/her progress in counseling, therapy, and other similar programs designed to encourage the inmate to improve himself/herself;
6. The inmate's employment history, including his/her job training and skills and his/her stability in the work place;
7. The inmate's physical, mental and emotional health;
8. The inmate's understanding of the cause of his/her past criminal conduct;
9. The inmate's efforts to solve his/her problems such as seeking treatment for substance abuse, enrolling in academic and vocational education courses, and in general using whatever resources the Department of corrections has made available to inmates to help with their problems;
10. The adequacy of the inmate's overall parole plan. This includes inmates living arrangements, where he/she will live and who he will live with; the character of those with whom the inmate plans to associate in both his/her working hours and his/her off-work hours; the inmate's plans for gainful employment;
11. The willingness of the Community into which the inmate will be released to receive the inmate;
12. The willingness of the inmate's family to allow his/her to return to the family circle;
13. The attitudes of the sentencing judge, the solicitor, and local law enforcement officers respecting the inmate's parole;
14. The feelings of the victim's family, and any witnesses to the crime about the release of the inmate
15. The actuarial risk and needs assessment outlined in section 24-21-10 (F)(1) of the S.C. Code of laws; which evaluates based on Criminal Involvement, Relationships/Lifestyle, Personality/Attitudes, Family, Social Exclusion and Mental Health.
16. Other factors considered relevant in a particular case by the Board.

Reservation of Discretionary Power of the Parole Board

These criteria in no way limit the absolute discretion of the Parole Board or Panel to make parole decisions on a case-by case basis and to grant or deny parole as it determines to be in the best interest of society and the intimate under review.
In some cases, the Board may decide that the inmate should be granted parole if the inmate completes one or more stated conditions. When this is the case, the Board may grant a parole that becomes effective when the inmate completes one or more stated conditions. Should the inmate fail to complete any one of these conditions or disobey any rule or regulation of the South Carolina Department of Corrections before satisfying the stated conditions to make his parole effective, the Board may rescind the inmate's parole and treat the case as though parole had been rejected. In other cases, the Board may feel it needs more time to form its decision. In such cases, the Board may simply take the parole consideration under advisement and reschedule it at a later date. Similarly, the Board may postpone a parole hearing in order to dispose of detainers or pending charges. If the Board rejects an inmate for parole, the inmate will be given written notice of rejection stating the reasons for rejection. Decisions of the Board have no precedential effect whatever and in no way limit the Board's absolute discretion at later parole hearings.

After rejection for parole, the procedure of scheduling of rehearing is as follows:

1. An individual serving time for a violent offense defined in §16-1-60 of the South Carolina Code of Laws 1976 will be reheard for parole two years following the date of parole rejections. Applicable legal exceptions may allow for a one year hearing.
2. An individual serving time for a nonviolent offense defined in §16-1-70 of the South Carolina Code of Laws 1976 will be reheard for parole one year following the date of parole rejections.

I certify that the above material has been explained to me, and I have received a copy.

Inmate's Signature: Joseph Kelsey	Date: 7/17/2019

Witness Signature: [illegible]	Date: 7/17/2019

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0061

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

JOSEPH KELSEY, #217218 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ... RESPONDENT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 61 of the Rules of Procedure for the Administrative Law Court and contains all material proposed to be included in the Record on Appeal by all of the parties and not any other material.

Matthew C. Buchanan
General Counsel

South Carolina Department of
Probation, Parole and Pardon Services
P. O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

February 12, 2020

THE STATE OF SOUTH CAROLINA
ADMINSTRATIVE LAW COURT

Honorable H. W. Funderburk, Jr., Administrative Law Judge
Docket No.: 19-ALJ-15-0061

JOSEPH KELSEY, #217218 ..... APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF
PROBATION, PAROLE AND PARDON SERVICES .....RESPONDENT.

SUPPLEMENTAL RECORD ON APPEAL

HANNAH L. FREEDMAN
MEGAN BARNES
Justice 360
900 Elmwood Ave., Ste. 200
Columbia, SC 29201
(803) 765-1044
hannah@justice360sc.org
megan@justice360sc.org

JOHN H. BLUME
Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853
(607) 255-1030
jb94@cornell.edu

JON OZMINT
The Ozmint Firm
5205 Forest Drive, Suite 1
Columbia, SC 29206
(803) 782-0042
jon@ozmint.com

COUNSEL FOR APPELLANT

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Memorandum Supporting Parole for Joseph Glen Kelsey

Submitted November 4, 2019

JOHN H. BLUME
Cornell Law School
159 Hughes Hall
Ithaca, NY 14853
(607) 255-1030

JON OZMINT
The Ozmint Firm
5205 Forest Dr., Suite 1
Columbia, SC 29206
(803) 782-0042

HANNAH L. FREEDMAN
Justice 360
900 Elmwood Ave.
Columbia, SC 29201
(803) 765-1044

I. INTRODUCTION

Joseph Glen Kelsey (Joe) was sentenced to life imprisonment for a murder he participated in at the age of sixteen. In describing the offense, the South Carolina Supreme Court explained that the evidence "overwhelmingly prove[d]" that the victim died at the hands of his older codefendant, Geoffrey Payne: although the cause of death was inconclusive, she either died "by Payne strangling her to death, or by Payne lighting the fuse of [a] pipe bomb that exploded in her mouth." Simply put, Joe, the youngest of the three co-defendants, did not kill the victim—Payne did. Nevertheless, twenty-five years later, Joe remains incarcerated while Payne has been released by this Board.

Thus, to deny Joe parole given his nearly perfect institutional record and his proven remorse, rehabilitation and reliable re-entry plan would be an arbitrary exercise of power. Over the past quarter century, Joe has earned two college degrees, volunteered more than a thousand hours each to end-of-life care for terminally ill prisoners and crisis counseling for suicidal inmates, and successfully completed numerous faith-based and other programs designed to ready him for release. He has a well-developed plan for reentry, which includes strong family support, stable housing, and numerous suitable employment opportunities. In short, Joe has done all he can do; it is now up to this Board to give him the same opportunity it recently gave his older, clearly more culpable co-defendant. Following his hearing on November 13, 2019, Joe should be granted parole.

II. THE OFFENSE[1]

On July 10, 1994, when Joe was sixteen years old, a handful of teenagers got together to hang out and drink beer at the house where Joe was staying after his family moved out of state,

[1] Except as otherwise indicated, the facts described in this memorandum are drawn from two South Carolina Supreme Court opinions: Joe's direct appeal, *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998), and the

leaving him behind for the summer. Among those teenagers were best friends Geoffrey Payne (Payne) and Jamie Lynn Lee (Lee),[2] neither of whom Joe knew well. They were both older than Joe.

Around midnight, Payne and Lee went to a Texaco station where they found fifteen-year-old Melanie Richey, alone and limping. They struck up a conversation with her and learned that she had cut her foot sneaking out of her house. They offered to take her with them to clean up the wound. Melanie agreed. When they got to the party, however, Payne "repeatedly tried to coax [her] into having sexual intercourse with him. [She] refused Payne's advances."[3] Payne was frustrated—he told Lee "he was so mad he could kill [Melanie]"[4]—so he laced her drink with ecstasy, an illegal drug known to "encourage unsafe sexual behavior."[5]

At 3:30 AM, after the other teenagers had fallen asleep, Melanie asked for a ride home. Payne and Lee invited Joe to go along for a drive.[6] Payne told Lee to bring a wrench to "to knock [Melanie] out with,"[7] and he told Joe to bring some pipe bombs the boys had made earlier in the day, which Joe "assumed Payne wanted to [use to] blow up mail boxes."[8] The four got into Lee's car, with Lee driving, Joe in the passenger's seat, and Payne and Melanie in the back. "[T]he music

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only other published case that discusses the codefendants' relative culpabilities, the appeal in Geoff Payne's post-conviction proceedings, *Payne v. State*, 355 S.C. 642, 586 S.E.2d 857 (2003).

[2] This codefendant's name is alternately spelled "Jammie," "Jamie," and "James" in different parts of the record and published opinions. To avoid confusion, this memorandum refers to him as "Lee" throughout.

[3] *Id.* at 59, 502 S.E.2d at 67.

[4] *Id.*

[5] *See* NAT'L INST. ON DRUG ABUSE, *Drug Facts: MDMA (Ecstasy/Molly)*, https://www.drugabuse.gov/publications/drugfacts/mdma-ecstasymolly (rev. June 2018).

[6] *Kelsey*, 331 S.C. at 59, 502 S.E.2d at 67.

[7] *Id.*

[8] *Id.*

was 'obscenely' loud," and Lee "was going about 90 m.p.h."[9] when he noticed Melanie's foot had kicked the gear into neutral. Lee "turned around and saw that Payne had [Melanie] in a 'strangle hold type position.'" A few minutes later, he heard "two quick, empty thud type sounds"[10] as Payne hit Melanie "twice on the head with a wrench."[11] Melanie "was limp, her face was pale, and her lips were blue." Payne announced that Melanie was "knocked out,"[12] "she's not breathing. I think I've killed her."[13] Lee believed Melanie was unconscious but alive; Joe, who had CPR training, checked Melanie's pulse and was confident she was dead.[14] Nevertheless, Payne "had sexual intercourse" with her body[15] and the boys carried her into the woods. Payne "instructed [Joe] to place a pipe bomb into [Melanie's] mouth. [Joe] complied. Payne then lit the fuse, and the two ran."[16]

It took law enforcement six weeks to find Melanie's body. During that time, Melanie's parents, desperate to find her, asked for help from the teenagers at the party the night she disappeared. When they spoke to Joe, he lied (as did Payne and Lee) about what he knew and what Payne, Lee and he had done. He also lied to law enforcement. Joe acknowledges, and deeply regrets, that had he been truthful sooner, the Richey family would have been spared the pain of additional time not knowing what happened to their daughter. When police eventually recovered

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[9] *Id.* at 59–60, 502 S.E.2d at 67.

[10] *Id.* at 60, 502 S.E.2d at 67–68.

[11] *Payne*, 355 S.C. at 645, 586 S.E.2d at 859.

[12] *Kelsey*, 331 S.C. at 60, 502 S.E.2d at 67–68.

[13] Transfer Hearing Tr. 9:21–24, *In re Kelsey*, No. 94-JU-35-14 (Dec. 5, 1994).

[14] *Kelsey*, 331 S.C. at 60–61, 502 S.E.2d at 68. The principle investigator into Melanie's murder testified that Joe checked Melanie's pulse and reported that "[s]he's dead. I can't find a pulse. She doesn't seem to be breathing." Transfer Hearing Tr. 9:21–24.

[15] *Payne*, 355 S.C. at 645–46, 586 S.E.2d at 859.

[16] *Kelsey*, 331 S.C. at 60–61, 502 S.E.2d at 68.

Melanie's body, enough time had passed that there were only "skeletal remains" left,[17] making it impossible for the coroner to conclusively identify how Payne killed her.[18]

Joe was subsequently arrested. As a juvenile, he appeared in Family Court. After a hearing, due to the seriousness of the charges, his case was transferred from Family Court to the Court of General Sessions where he was tried jointly with Payne. Lee testified against Payne and Joe in exchange for a reduced sentence of ten years. His testimony confirmed that Payne murdered Melanie.[19] Thus, although Joe was present for Melanie's death and participated in the destruction of her body—facts he admitted at trial and for which he has accepted full responsibility—this was Payne's crime. Payne and Lee brought Melanie to the party. Payne attempted to rape her and when she resisted, Payne convinced Lee to put ecstasy in her drink. Payne strangled Melanie and hit her with a wrench. Payne had sex with Melanie's body. And Payne lit the fuse that ensured that even if Melanie was still alive, she would not survive his attack. The words of the South Carolina Supreme Court bear repeating: the evidence "overwhelmingly proves that Payne murdered [Melanie]."[20] Lee has been free for nearly twenty years, and on March 20, 2019, this Board paroled Payne, leaving Joe the only codefendant still incarcerated. In deciding whether to grant parole, this

[17] Transfer Hearing Tr. 6.

[18] Dr. Joel Sexton, the forensic pathologist who conducted the autopsy, testified that as between the three possible causes—bomb, strangulation, drug overdose—it was a "coin toss," "fifty/fifty" how Melanie died. Trial Tr. vol. II, 1014:17–20, *State v. Kelsey & Payne*, Nos. 95-GS-35-089, 95-GS-35-090 (Sept. 15, 1995). An affidavit from Dr. Sexton reaffirming this aspect of his testimony is attached to this memorandum as Appendix 1 (App. 001–002).

[19] *Payne*, 355 S.C. at 646, 586 S.E.2d at 859. The only discrepancy between Joe's testimony and Lee's testimony was the precise timing of Melanie's death. Joe testified, consistent with his statements to law enforcement, that Melanie was dead when Payne took her out of the car, whereas Lee testified that she was still alive at that point. *Compare Payne*, 355 S.C. at 646, 586 S.E.2d at 859 ("After Payne strangled the victim, . . . [Joe] testified that the victim was dead.") *with id.* ("After Payne strangled the victim, Lee testified that the victim was still alive.").

[20] *Payne*, 355 S.C. at 646, 586 S.E.2d at 859.

Board must take into account that the person primarily responsible for this crime has already been released.

III. REDEMPTION

Joe's growth and development over the last twenty-five years is an inspiring redemption story, and he is a poster child for the maxim that that a troubled teenager can rise above their past misdeeds and mature into a productive, generous, humble, devout adult.

A. Joe's "Backstory"

Joe and his twin sister are the youngest of their parents' five children. When Joe was eight years old, his parents divorced and his father, who was in the military, moved to Augusta, Georgia. By early high school, Joe, like many teenage boys from broken homes, became rebellious and his mother sent him to live with his father and step-mother. At first, the move was a success. Joe was "very liked by the students and faculty" at his new school, did well academically, and even helped found his high school's first wrestling team.[21]

However, just as Joe was settling in, his father was assigned a new post in Maryland. Disappointed and angry about having to start all over again, Joe's grades "dropped dramatically" and he began to misbehave.[22] His short-sighted, immature teenage judgment was in full force when he asked his father to let him stay behind in Augusta for the summer after the rest of his family moved to Maryland. His father acquiesced (in a decision he deeply regrets as well).

B. Joe's SCDC Accomplishments

Joe was still a teenager when he entered the Department of Corrections. It is both fair and accurate to say that he is not the same person who now seeks an opportunity to be released on

[21] Trial Tr. vol. IV. 1573.

[22] *Id.* at 1573, 1565.

parole. Joe has taken advantage of the opportunities available to him to express his profound remorse for his role in Melanie's death and to demonstrate his growth, maturity and readiness to resume his place in society.

First, Joe has a strong work ethic. He has been employed continuously since he first entered SCDC in 1994 and has held the following jobs:

- Recreation assistant at Lee Correctional (4/4/1995 to 7/5/1995)
- Teacher's assistant at Lee Correctional (7/6/1995 to 8/16/1995)
- Senior teacher's assistant at Lee Correctional (8/17/1995 to 8/28/1997)
- Material handling equipment operator at Lee Correctional (9/2/1997 to 1/12/1998)
- Teacher assistant at Lieber Correctional (2/23/1998 to 9/3/1998)
- Prison Industries Clerk at Lieber Correctional (9/4/1998 to 4/9/2012)
- Teacher aide, library clerk, and education teaching assistant at Lee Correctional (4/12/2012 to 1/22/2014)
- CIU program participant (1/23/2014 to 12/15/2015)
- Chaplain Assistant and custodial worker at Evans Correctional (12/30/2015 to 3/14/2016)
- Paraprofessional counselor at Broad River (3/18/2016 to present)[23]

Additionally, Joe's prison record is exemplary. He has no violent disciplinary convictions during his *entire* incarceration, something very difficult to do for a person who enters the system as a teenager. Furthermore, he has not had a single infraction of any kind in over fifteen years.[24] Joe has maintained this nearly perfect institutional record by a deliberate process of educating himself and growing his faith.

Joe is a devout Christian and his deep and abiding faith has led him to seek out opportunities to serve those in his SCDC community. Several years ago, he finished JumpStart's rehabilitation program with a "blue folder," JumpStart's highest level of certification, and he

[23] A copy of Joe's SCDC work history is attached to this memorandum as Appendix 2 (App. 003).

[24] Joe's only major disciplinary violation in twenty-five years of incarceration was for using marijuana in 2003.

recently finished JumpStart's Leadership Training Program. His mentor at Broad River, Mr. Gary R. Minion, explained that in the weekly JumpStart meetings, Joe is "passionate in his commitment to his God, seeking to improve himself since his incarceration, and demonstrates care for fellow residence [sic]." And his mentor in the JumpStart Leadership Training program, Mac Ogburn, describes Joe as having been "one of the outstanding leaders in the program from the very beginning," by "tak[ing] the initiative to embrace the program and its values and giv[ing] guidance to many in the program in addition to other inmates at BRCI."[25] Joe has also been a member of the Kairos organization since 1996 and has completed over 40 weeks of programing through Men's Fraternity, two faith-based organizations that help incarcerated men learn to live and lead by embracing Christ's lessons and replicating his example in their own lives. When he was incarcerated at Evan Correctional Institution, Joe worked as a Chaplain Assistant, teaching Bible studies and life-skills classes, from 2016 until he was moved to Broad River.[26]

Joe has also been involved in various secular programs. In 2013, he completed Prisoner Assistance Scholastic Services, a six-month rehabilitative education program with ten modules related to conflict-resolution and violence-reduction. He later went on to teach those same classes. Additionally, in 1997 and in 2011—at Lee and Lieber, respectively—Joe volunteered to share his experiences with young people through Operation Behind Bars, and he was a charter resident at Lieber's Character-Based Unit in 2012 and at Lee's in 2013.

[25] Letters from Mr. Minion and Mr. Ogburn are attached to this memorandum as Appendices 3 (App. 004) and 4 (App. 005), respectively.

[26] A letter from Thomas Speigal, one of Joe and Melanie's high school friends, is attached to this memorandum as Appendix 5 (App. 006). Mr. Speigal, also a devout Christian, described meeting with Joe last year and "see[ing] the light of Christ in him. He has a sense of peace that I am striving to achieve. . . . [Joe] is developing a relationship with God that truly inspires me." Mr. Speigal plans to be "a constant contact for [Joe] during the rest of his life (no matter where that takes place)."

Joe also used his technological skills to design a library database at Lieber Correctional, which he completed over a multi-year period. He then taught a sequence of incoming library clerks how to use the database, and it remains in use at SCDC today. Similarly, when Joe worked as an administrative clerk he designed methods to handle inventory, billing, and personnel files. His work was of such a high quality that the applications he developed have been shared across prison industries at other correctional institutions, including MacDougall, Ridgeland, and McCormick. Joe later designed a database in the education system to track student enrollment and scheduling. Additionally, he served on the Student Advisory Council at Lee Correctional Institution's PUSD ABE High School, a position that drew on his leadership and teaching abilities. When Joe worked as a teacher's aide, his supervisor described him as "a hard-working, self-motivated, and quiet worker" and "an asset to the education program" who displayed "diligence, obedience, loyalty, punctuality, truthfulness, flexibility, responsibility, and dependability."

Joe has taken advantage of all the educational opportunities available to him. Within a year of his incarceration, he earned his GED, scoring so high (top five percent of test-takers that year) that he received a letter of commendation from the State Superintendent of Education.[27] In June of 1998, Joe earned a diploma from Summerville High School, and that month he began tutoring other inmates to help them achieve their GEDs. When Joe took the WorkKeys skill exam in 2002, he scored in the very top percentiles in each of the three domains tested.[28] His scores on this test, as well as his continued education, earned him a WorkKeys Certification (Gold) in 2012.

[27] A certificate and this letter are attached to this memorandum as Appendix 6 (App. 007–008).

[28] Joe scored as follows: 90/90 on applied mathematics, placing him in the highest possible testing level; 81/90 on locating information, placing him in the second highest possible testing level; and 87/90 on reading for information, placing him in the highest possible testing level. A certificate with this information is attached to this memorandum as Appendix 7 (App. 009–010).

In 2013, Joe was one of a small handful of inmates selected for the Columbia International University (CIU) Prison Initiative Program, a faith-based education program that admits students based on their intellectual potential as well as their peace-making skills and ability to "provide a positive impact on the prison population."[29] Joe graduated in December 2015 with 100% attendance, a 4.0 GPA and an Associate's Degree in Biblical Studies with additional coursework in IT Training and Comparative Religion.[30] In the words of one of the CIU professors, Professor Stephen Baarendse, Joe is "a fine example of rehabilitation in prison, and when I think of him, I can't help but think of his biblical namesake, who during his time in prison lived with integrity and served his fellow prisoners and supervisors well." Another, Professor Mike Thompson, wrote that Joe "has one of the brightest minds that I've encountered in my 20 plus years of teaching. . . . While he has the capacity to teach the courses I led, Joseph always kept the posture of a humble learner."[31]

Grace Dye, the Assistant Director of the CIU program who has known Joe for six years, wrote a letter on her own behalf urging this Board to grant Joe. She described Joe as follows:

> [Joe] is by far one of the gentlest and most determined men I've ever met. . . . Mr. Joseph Kelsey would be an excellent candidate for parole based on the maturity and character I've seen consistently displayed in his life over the years that I have known him. He has refused to waste his years of incarceration and has, instead, chosen to serve others and to continue to challenge himself to grow through on-going education. He has a strong support system, a solid education, and a clear vision for life. **Mr. Kelsey is the kind of man I would want for a neighbor and believe our community would be better for having him as part of it.**[32]

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[29] The CIU Prison Initiative Program's selection process is "rigorous and competitive." CIU only admits 15 inmates annually, and students are required to focus "all of their time and energy on academics during their two years in the program and graduate with an accredited Associate of Arts Degree upon completion."

[30] A copy of Joe's diploma from CIU is attached to this memorandum as Appendix 8 (App. 011). A letter from Dr. Bryan Beyer, Dean of College of Arts and Sciences, is attached to this memorandum as Appendix 9 (App. 012–013).

[31] These letters are attached to this memorandum as Appendices 10 (App. 014) and 11 (App. 015–016).

[32] This letter is attached to this memorandum as Appendix 12 (App. 017).

Since graduating from CIU, Joe has continued his education by taking correspondence courses at Ashworth College. He completed his degree requirements in the summer of 2019, and he will be awarded a Bachelor's of Science Degree in General Studies (with a concentration in Business Administration) in December. As was true of his Associate's Degree, Joe is graduating with a 4.0 GPA. He is one of only five CIU graduates ever to have earned a bachelor's degree while incarcerated.[33]

But, perhaps the best testament to Joe's rehabilitation is his work with hospice and the Crisis Stabilization Unit (CSU). Joe volunteered with the hospice service at Lee Correctional Institute and later at Kirkland Correctional R&E Institute during his incarceration at those institutions, providing terminally ill inmates with physical and emotional support at the end of their lives. He fed, bathed, and counseled the dying; he also read to them and helped them write letters to loved ones. When Joe moved to Broad River in 2016, he could not continue with the hospice services, but because of his success in the CIU program and experience as a hospice volunteer, he was eligible to serve as an Inmate Mental Health Companion (previously called a Para-Professional Counselor) in Broad River's Crisis Stabilization Unit (CSU).

The CSU is a mental health program created by SCDC "in order to address and provide therapeutic treatment to inmates identified as being in a state of critical mental instability." It serves as the sole state-wide facility for "up to 32 male crisis inmates who can be admitted from any state level correctional institution" and "also accommodates 32 specially selected inmate watchers who have obtained associates degrees from Columbia International University."[34] The "watchers" are

[33] *See* Appendix 9, *infra* App. 012–013.

[34] A letter from C. Austin Edmundson in support of Joseph Kelsey is attached to this memorandum as Appendix 13 (App. 018).

"responsible for observing crisis inmates with the directive of providing emotional support, modeling positive behaviors, and alerting relevant staff if medical care is needed or behavioral concerns are noted."[35] Prison officials credit the CSU for a substantial drop in the number of inmate suicides across the state over the past three years.[36] Recently, Joe was selected as one of three spokespeople for the program during the filming of a television report on the CSU's successes, demonstrating the trust and confidence SCDC leadership places in Joe.[37]

Joe was one of the first inmate observer volunteers during the CSU's inaugural year, and for the past 43 months, he has worked with CSU employees to provide treatment to inmates suffering mental health crises.[38] Although Joe has a minimum 2 custody level classification (making him eligible for transfer to a lower-custody facility with character-based units), he has opted to remain at Broad River so he can continue to work with the CSU because that is where he believes the need is greatest. Joe, moreover, has gone beyond the requirements of the counselor role; as one of the CSU nurses, Courtney Olds-Williams, explained, Joe "w[ears] many hats."[39] He volunteers to operate a client library that provides inmates on the CSU with donated books, including Bibles, as an office clerk, and in the medical treatment room, spending several hours each week preparing and filing internal reports and tracking and ordering medical inventory. Joe

[35] *Id.*

[36] *See* Caroline Hecker, *It's National Suicide Awareness Week. These Inmates Are Looking Out for Those Who Feel Hopeless*, WIS NEWS, Sept. 9, 2019, https://www.wistv.com/2019/09/09/its-national-suicide-awareness-week-these-inmates-are-looking-out-those-who-feel-hopeless/. A copy of the program, recorded in DVD format, is included with Joe's parole packet.

[37] The CSU's success has been widely praised in the local media. *See, e.g.*, *id.*; *see also* T. Michael Boddie, *Inmates Learn to Give Listening Ear to Each Other*, CHARLESTON POST & COURIER, June 14, 2019, at A1. A copy of the article is attached to this memorandum as Appendix 14 (App. 019).

[38] A summary of Joe's participation in the CSU is attached to this memorandum as Appendix 15 (App. 020).

[39] A copy of a letter from Nurse Olds-Williams is attached to this memorandum as Appendix 16 (App. 021).

has received multiple commendations—including one from Director of SCDC Bryan Stirling—"for his devoted and enthusiastic service to the program." In 2017, to further his work with the CSU, Joe completed a follow-up course titled A Review of Psychiatric Emergencies. And in June 2019, Joe completed Boundaries, a course designed specifically to teach parameters to inmate volunteers in the CSU.[40]

As of October 2019, Joe had provided emergency counsel to 243 inmates over the course of more than 1500 hours. The manager of the CSU, Paul Dennis, describes Joe as displaying "exemplary patience, understanding, and compassion." According to Mr. Dennis, Joe "has been a constant benefit to the CSU" by "promot[ing] the program and suicide prevention here at the institution and in newspaper and television interviews. On and off the job, he is a caring, respectful, and dependable example to his fellow inmates."[41] Another supervisor and mental health professional at the CSU, C. Austin Edmundson, has noted that Joe is "dependable, honest, courteous, and responsible. [He] work[s] well under pressure and is known to go above and beyond his assigned duties to volunteer for tasks that greatly improve the efficiency of our program and contributes to the success of our mission." Joe, according to Mr. Edmundson, "has shown growth from his time and prison" and, if released, "would be successful" because he "has all of the characteristics to be a positive and impactful member of the community."[42] And Ann-Marie Elwood, RN, who also works with Joe at the CSU, wrote that Joe has always gone "above and beyond executing his assigned duties and helping inmates through their crisis situations. I have witnessed first-hand Mr. Kelsey give up his personal time to assist and pray with inmates in their

[40] Copies of these commendations and certificates are attached to this memorandum as Appendix 17 (App. 022–025).

[41] A copy of this letter is attached to this memorandum as Appendix 18 (App. 026).

[42] *See* Appendix 13, *infra* App. 018.

time of great need." Based on her relationship with Joe and conversations with him about his past and future, Ms. Elwood opined that "Mr. Kelsey should be given the chance to re-enter society and be a productive member of the community."[43]

C. Joe's Psychological Evaluation

Dr. Susan Knight, a board-certified forensic psychologist, performed a full psychological evaluation of Joe to assess his "developmental and psychosocial functioning prior to his incarceration; functioning over his incarceration; risk for future violence; and transition needs."[44] Dr. Knight's evaluation confirms what Joe's actions indicate: he is rehabilitated and extremely unlikely to reoffend. According to her report, Joe presently exhibits clinically stable functioning, with no evidence of major mental disorder, cognitive deficits, personality pathology, or antisociality. On a comprehensive measure of risk of violence, taking into account historical, clinical, and risk management variables, Dr. Knight found that Joe is at a low risk for committing future violent offenses, with strong protective factors in place. And SCDC staff who spoke with Dr. Knight described Joe as "very dependable," as an inmate who "has integrity," as "calm, mild-mannered" and "trustworthy," and as a "model inmate." In sum, Dr. Knight concluded, Joe

[43] A letter from Nurse Elwood is attached to this memorandum as Appendix 19 (App. 027).

[44] A copy of Dr. Knight's report is attached to this memorandum as Appendix 20 (App. 028–046). Dr. Knight's evaluation was more comprehensive than the standard psychological evaluation administered to individuals post-parole but pre-release. Specifically, Dr. Knight performed three clinical interviews with Joe totaling 10 hours plus telephone interviews with many members of his family. She gave Joe the Minnesota Multiphasic Personality Inventory, 2nd Edition (MMPI-2), a tool designed to assess personality and affective functioning, and the HCR-20^{V3}, a tool designed to assess an individual's future risk of violence. Dr. Knight evaluated Joe for any mental conditions or diagnoses detailed in the Diagnostic and Statistical Manual for Mental Disorders, Fifth Edition (DSM-V). With respect to the MMPI-2, Dr. Knight reported that Joe's results "were indicative of someone with high self-confidence, minimal emotional distress, regrets regarding life decisions, good sociality, and well-controlled anger and frustration tolerance." With respect to the HCR-20^{V3}, Dr. Knight reported that Joe "represents a low risk for future violent acts." And with respect to her clinical evaluation for DSM-V diagnoses or mental conditions, Dr. Knight found that Joe has no mental disorders or any other DSM-V diagnosis.

"exhibits the requisite clinical stability for successful community reintegration, with a low risk of future violence, and a secure transition plan."

D. Joe's Juvenile Status

The totality of the evidence overwhelmingly paints a picture of remorse, rehabilitation, and redemption. It also demonstrates the truth of the emerging awareness that the crimes in which many juveniles are involved are not a reflection of bad character, but rather are often a product of the "transient qualities" of youth. Since Joe has been incarcerated, the Supreme Court of the United States has issued three landmark decisions based on the categorical rule that juveniles "are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 567 U.S. 460, 471 (2012).[45] And Joe exemplifies the juvenile offender the Supreme Court envisioned when it held that a redeemed juvenile is entitled "some years of life outside prison walls." *See Montgomery v. Louisiana*, 136 S. Ct. 718, 736–37 (2016). Most importantly, Joe's actions as a sixteen-year-old youth are not evidence of "irretrievable depravity," as his record and innumerable accomplishments illustrate. Joe's steady progress in terms of self-control, patience, education, ambition, empathy, and work skills stand as testaments to his potential for re-integration, success, and further achievement in society if this Board will just give him a chance.

In a letter dated September 24, 2019, Joe's counsel requested a special hearing before this Board to ensure that his youth receives the attention these cases require. Specifically, Joe asked that the Board consider, in writing, a set of factors related to his youth that the state's and the

[45] This conclusion is based on three differences between juveniles and adults. First, teenagers are less mature than adults, with an underdeveloped sense of responsibility, and are therefore more inclined to act on impulse. *Id.* Second, teenagers are more susceptible to negative influences and outside pressures because they have limited control over their environments and "lack the ability to extricate themselves from horrific, crime-producing settings." *Id.* And third, "a child's character is not as well formed as an adult's; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity." *Id.* (internal quotation marks and brackets omitted).

nation's highest courts have identified as carrying constitutional weight for juvenile offenders.[46] Matthew C. Buchanan, General Counsel for the Department of Probation, Parole and Pardon Services, responded on October 1, 2019, indicating that the Board has no obligation to provide such a hearing because, according to Mr. Buchanan, "information about [Joe's] early life, his home environment, and his efforts to rehabilitate himself can be presented at the hearing."[47] The Board, Mr. Buchanan assured Joe, "will no doubt listen to anything provided on his behalf at the parole hearing." As a person sentenced to life as a juvenile for participating in an offense under the influence of older, more culpable defendants, and who has a long track record of demonstrated maturity and rehabilitation, Joe, unlike adult offenders, has a right to not only have the Board consider, but to act upon these considerations and allow him to re-enter society.

IV. RELEASE PLAN

During Joe's incarceration, he has maintained and renewed healthy and loving relationships with his family members and friends. He has the full support of his family, including his father, step-mother, mother, and siblings. Joe has housing and employment available through JumpStart. Alternatively, he can live with his father in South Dakota or with his mother in Texas. Additionally, one of Joe's high school friends, Jennifer Montgomery, came back into his life in 2007. Jennifer is the Dean of Students at a public college in Augusta, Georgia, and in July 2019 she purchased a three-bedroom home in Augusta with the encouragement of Joe's family. If Joe is released, he plans to marry Jennifer. If that happens, they plan to move into their home. Pursuant to the Interstate Compact, Joe is eligible for parole transfer to Georgia and his transfer would likely be approved before his release. *See* Interstate Commission Rule 3.101. If not, Jennifer and her

[46] A copy of this letter is attached to this memorandum as Appendix 21 (App. 047–053).

[47] A copy of Mr. Buchanan's response is attached to this memorandum as Appendix 22 (App. 054–056).

mother, who also lives in Augusta, are prepared to support Joe's reentry with unconditional love, transportation, and financial assistance.

Joe has outstanding offers of employment in four fields: at Woolly's Grill & Cellar, a restaurant near his father's home in South Dakota; landscaping and property maintenance Painted Clouds Farm, a farm owned by his step-mother in South Dakota; working residential and commercial construction with RH Electrical and Maintenance Inc., near his mother's house in Texas; and working for Lambert Logistics, an international delivery service company in Augusta, Georgia, where he would be able to put his experience and training in IT to use.

Long term, Joe plans to continue to serve his community in any way he is able, including volunteering to speak to at-risk youth, donating his time as a hospice caregiver, or engaging in faith-related service. If he does settle in Augusta, Joe will join Jennifer's church, Lakemont Presbyterian, where her father was a pastor for twenty-five years, and he will continue to be actively involved in Bible studies and ministry.

V. CONCLUSION

In sum, under any circumstances, Joe Kelsey should be granted parole. He has accepted responsibility for his role in Melanie Richey's death, and taken advantage of every opportunity available to him in SCDC to demonstrate that he has the values, faith, work ethic and skills to be a productive member of society. His exemplary disciplinary record and history of service have earned him the right to a second chance, and he has a solid workable release plan in place. But, this is not just any set of circumstances. Joe was the youngest and least culpable of the three individuals charged with Melanie Richey's murder. Jamie Lee was released many years ago. Last March, this Board granted parole to Geoffrey Payne, who was older than Joe, who set the whole series of events culminating in Melanie's death in action, and who is the person the South Carolina

Supreme Court described when it stated the evidence "overwhelmingly prove[d] . . . murdered [Melanie]."[48] It would be the height of arbitrariness to release Payne and keep Joe Kelsey behind bars.

For all of the foregoing reasons, Joe Kelsey should be granted parole.

[48] *Payne*, 355 S.C. at 646, 586 S.E.2d at 859.

Appendix 1

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

In re: Parole Hearing of Joseph Kelsey)

AFFIDAVIT OF DR. JOEL S. SEXTON

I, Dr. Joel S. Sexton, declare as follows:

1. I received my medical degree from the Medical University of South Carolina (MUSC) in 1968. I finished my residency at MUSC in 1972. I passed National Pathology Boards Certification in Anatomical and Clinical Pathology (1972) and Forensic Pathology (1973). I taught at MUSC and was the Charleston County Medical until 1981 when I entered private practice at Newberry County Memorial Hospital in Newberry, S.C. I served as the Hospital Pathologist until retiring from active practice in 2008. From 1972 to 2008 I was a consulting forensic pathologist for coroners through the state. From 2000 until 2008 I was the owner of Newberry Pathology Associates. I am now retired, but at the time of Mr. Kelsey's trial I was a practicing physician with a specialty in pathology and a subspecialty in forensic pathology. I performed the autopsy on Melanie Kaye Richey.

2. I was contacted by Mr. Kelsey's attorneys in this matter in the fall of 2019. At their request, I reviewed my findings from the autopsy of Melanie Kaye Richey, my testimony at the trial, the body diagram I prepared, autopsy photographs, and the SLED toxicology report,

3. I found nothing that would change the opinion I gave in court. There is nothing in the evidence to prove that Melanie Richey was alive or dead at the time of the bomb blast. The blast caused extensive fracturing and destruction of the base of her skull, brain, face and neck structures. The blast injury was the only clearly positive finding at autopsy. It was sufficient to cause immediate death.

4. Whether Melanie Richey died of the alleged drugs she was administered or alleged strangulation could not be clearly established because of the skeletonization of the body, which destroyed the necessary hyoid bone, soft tissue and fluids needed for these determinations.

5. Therefore, on the death certificate and during the testimony in court all three (bomb, drugs, strangulation) had to be considered and listed as the probable cause(s) of death.

I affirm, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Joel S. Sexton, M.D.

10-23-2019
Date

Sworn to and subscribed before me
this 23rd day of October 2019

Notary Public for the State of South Carolina

My commission expires: 3-29-26

Internal Inmate Search
March 22, 2019

Appendix 2

- Home
- Search
- ?

Secured Applicationslogout
JOSEPH GLEN KELSEY (00217218)

Search Results [+/-]

Identification **Personal** **Case History** **Movement** **Escapes** **Credits** **Programs**
Transfer Requests

Earned Work Credits

Job Description		Start Date	End Date	Termination Reason	Job Level
PARA-PROF COUNS#1 SKILL		03/18/2016			3F7 → 3+ yrs In BRCI/CSU
CHAPLAIN ASSISTANT		02/05/2016	03/14/2016	INSTIT TRANSFER to BRCI	3F7 → 3 mos In Evans CI Chapel
CUSTODIAL WORKER		12/30/2015	02/04/2016	LATERAL TRANSFER	3F5
CIU PROGRAM		01/23/2014	12/15/2015	INSTIT TRANSFER to Evans CI	3F5 → 2 yrs student In CIU
TEACHER AIDE		04/12/2012	01/22/2014	INSTIT TRANSFER to KCI	3F5 → 2 yrs In Lee CI Educ.
MECHANIC HELPER		04/01/2004	04/09/2012	INSTIT TRANSFER to Lee CI	3F5 13 yrs clerk In Lieb.PI
~~LAUNDRY HELPER~~	0 dys	09/23/2003	09/23/2003	INMATE REQUEST	3F5 - 6 mos/only maj. disclp.
MECHANIC HELPER		01/16/2003	09/22/2003	DISCIPLINARY/~~LOCK-UP~~	2F5 admIn. trans. to Lee CI
~~WARDKEEPER ASSISTANT~~	5 dys	01/10/2003	01/15/2003	INSTIT TRANSFER to Lieb.CI	2F5 returned/PI need
MECHANIC HELPER		09/04/1998	01/09/2003	INSTIT TRANSFER to BRCI	2F5 mass trans.
TEACHER ASSISTANT		05/04/1998	09/03/1998	INMATE REQUEST	2F5 → 6+ mos In Lieb.CI Educ.
TEACHER ASSISTANT		02/23/1998	04/30/1998	~~DISCIPLINARY~~/LOCK-UP	2F5 - 4 dys lock-up/no charge
~~FOOD SERVICE AIDE~~	5 dys	01/15/1998	01/20/1998	LATERAL TRANSFER	2F5 → Job trans./Inst. need
MATERIAL HANDLING EQ OP		09/02/1997	01/12/1998	INSTIT TRANSFER to Lieb.CI	2F5 → mass trans.
SENIOR TEACHER ASST.		10/03/1995	08/28/1997	INMATE REQUEST	2F5 → 2+ yrs In Lee CI Educ.
SENIOR TEACHER ASST.		08/17/1995	09/15/1995	INSTIT TRANSFER	2F5 -18 dys/trans. to court
TEACHER ASSISTANT		07/06/1995	08/16/1995	PROMOTION	3F5
RECREATION ASSISTANT		04/04/1995	07/05/1995	LATERAL TRANSFER	3F7 → Job trans./Inst. need
~~LIBRARY HELPER~~	5 dys	03/03/1995	03/08/1995	INSTIT TRANSFER to Lee CI	5F5 → mass trans.

Earned Education Credits

EEC Description	Start Date	End Date	Termination Reason
BONUS 4-7 HRS/WK	09/25/2012	12/11/2012	COMPLETED EDUC PROGRAM
BONUS 4-7 HRS/WK	11/04/1998	01/21/1999	INMATE REQUEST
BONUS 4-7 HRS/WK	03/03/1998	04/24/1998	COMPLETED EDUC PROGRAM
LVL 3 - FULL TIME(NO EWC)	01/21/1998	02/22/1998	PROMOTION
BONUS 4-7 HRS/WK	07/18/1995	08/16/1995	INMATE REQUEST
LVL 7 - FULL TIME(NO EWC)	01/10/1995	03/02/1995	INSTIT TRANSFER

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[Version: *3.2.2* Built: *10/04/2018 03:49:03 PM* Time: *09:11:38 AM*]

Appendix 3

Mr. Gary R. Minion
1013 Orangeburg Dr.
West Columbia, S.C. 29169

June 26, 2019

South Carolina Department of
Probation, Parole and Pardon Services
ATTN: C/O JON OZMINT
P.O. BOX 6814
Columbia, S.C. 29260

RE: JOSEPH GLEN KELSEY SCDC ID: (00217218)

PAROLE HEARING

TO THE HONORABLE MEMBERS OF THE PAROLE BOARD:

My name is Mr. Gary Minion, I am a graduate of Columbia International University, and Retiree of AT&T after 32 years of service. For the past 7 years I have devoted my time to minister to the residence at BRCI.

I am writing this letter on behalf of Mr. Joseph Glen Kelsey. Mr. Kelsey graduated the Faith-Based Prison Rehabilitation JUMPSTART program with the highest rating we offer. He is also a graduate of Columbia International University Prison Initiative program with an Associates of Bible Degree and now working on finishing completely coursework to receive a Bachelors Degree from CIU.

I have known Mr. Kelsey for 3 years in a mentoring capacity, He regrets his past and is remorseful of his actions and looking forward for what the future holds for him. He is a capable table leader in our weekly JUMPSTART meetings as well as weekly group meetings in his dorm, I have found him to be passionate in his commitment to his God, seeking to improve himself since his incarceration, and demonstrates care for fellow residence. He is presently mentoring residents of the Greenwood Dorm through the CIU prison program. If he is paroled he would be eligible for JUMPSTART housing at 458 North Church Street, Spartanburg, SC. 29303 if he chooses. Also, he has a strong support group, possible job opportunities and a place to live if approved for parole.

Thank you for your consideration on behalf of Mr. Kelsey for parole. Please take into account his accomplishments since incarceration, his character, and his efforts to improve himself.

Sincerely,

Gary R Minion

Mr. Gary R. Minion

Appendix 4

September 25, 2019

Honorable Member of the SCDC Parole Board

Re: Parole Hearing for Joseph Kelsey

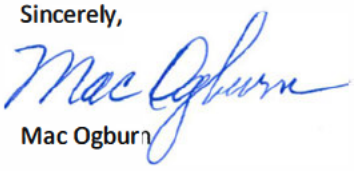
It is my pleasure to submit this letter of recommendation for parole for Joe. I am a Jumpstart volunteer mentor at Broad River Correctional Institute and have been for over 6 years. My background is 40 years in the commercial real estate business. I started my own firm until retirement in 2012. During that time I was able to evaluate people on a daily basis and had up to 25 people in the company. So my endorsement for Joe comes from many years of personal experience. As a fellow Christian brother of Joe, I am convinced of his heart's condition. Joe entered the Jumpstart program in May of 2016 and successfully completed the requirements for graduation in July of 2017. He began Leadership Training in October of 2017, and became a Table Leader in March of this year.

Joe has been one of the outstanding leaders in the program from the very beginning. He has taken the initiative to embrace the program and its values and given guidance to many in the program in addition to other inmates at BRCI.

On many occasions he has expressed to me the great remorse he has for his actions as a teenager and compassion for the family of his victim. He has made efforts to express this with the victim's family. Joe is a very reliable and trustworthy person. Today he is not the person that was placed in confinement 25 years ago. He has certainly rehabilitated himself.

Joe has an excellent plan for parole. He is planning to get married upon release, has a home waiting for him and steady employment available. He will be successful. Thank you for thoughtful consideration of parole for Joe.

Sincerely,



Mac Ogburn

Appendix 5

October 7th, 2019

Dear Honorable Members of the Parole Board:

South Carolina Parole Board
c/o Jon Ozmint
P.O. Box 6814
Columbia, SC 29260

My name is Thomas Speigal. I am a teacher in Naples Florida and an elder at "Naples Christian Church". I was close friends with Joe in high school and am proud to say that we are still friends to this day. He was also my neighbor and the co-captain on the Lakeside High School Wrestling Team.

I visited Mr. Kelsey last summer and once I was able to sit face to face with him I could see the light of Christ in him. He has a sense of peace that I am striving to achieve. I have worked with people from a wide range of situations and backgrounds while serving at my church and have developed the ability to sense if someone is just using my faith to get something they want from me. I am absolutely certain that Joe's faith is genuine and I cannot wait to see how he uses his past to glorify our Lord and Savior. Joe and I also have a phone call scheduled every Sunday at 6 PM. We discuss what we experienced during the previous week, the scripture that we are studying, and prayer requests. I plan on being a constant contact for him for the rest of his life (no matter where that takes place).

I am very familiar with this case. I was friends with Melanie. I was at the party the night that Melanie died and I was interviewed frequently by the FBI. I took Melanie's mother to high school parties so she could look and see if her daughter was there. I know that this was a horrific crime and I also know that it would have never taken place if Joe was mature enough to avoid the situation all together (I believe he was 16 when this happened). He was always such a brilliant person and I believe that a lack of supervision, maturity, a negative social group, and drugs/alcohol greatly influenced this crime. These are not excuses, Joe is guilty of this crime, and he has accepted full responsibility for his role in the matter.

Joe has been furthering his education, working with people in Hospice and the Suicide Prevention Program in the institution he currently resides, and is developing a relationship with God that truly inspires me. I am so thankful that he has turned to God instead of the many other evil things that are out there.

Joe was such a kind, intelligent, and gifted person that I could not believe he would be involved in anything of this nature. He made the most horrible mistake a human can make and will never forgive himself for it. Joe has spent 25 years of his life in prison and is doing whatever he can to prepare himself to be a positive member of society upon his release. I believe that Mr. Kelsey has found God; I believe that he is sorry, and I believe that he would be a valued member of any community.

Sincerely,
Thomas Speigal

SOUTH CAROLINA DEPARTMENT OF EDUCATION

Certificate of Award

To

JOSEPH GLENN KELSEY

SUPERIOR GED EXAMINATION SCORES

For Achieving a Score of 345

Mick Zais
State Superintendant of Education

MARCH 1, 1995
Date

David B Stat Jr.
GED Administrator

GED Testing Office ■ 1429 Senate Street ■ Columbia, SC 29201

Appendix 6

025

App. 007
ROA035

STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

Mick Zais
Superintendent

1429 Senate Street
Columbia, South Carolina 29201

Dear GED Graduate:

Congratulations on earning a score on your GED exam that places you in the top 5 percent of South Carolina's GED graduates. This is a significant accomplishment that undoubtedly required dedication and hard work. We salute you for your achievement and want you to know that we are proud of you. Enclosed is a certificate, which is suitable for framing, commending you for your accomplishment.

A GED diploma opens doors for many graduates—to new jobs, to post-secondary educational opportunities, to increased self-esteem. We hope that you are already reaping the rewards of your accomplishment, and we wish you continued success in pursuing your educational and career goals.

Sincerely,

Mick Zais

Mick Zais
State Superintendent of Education

MZ/ds
Enclosure

phone: 803-734-8492 • fax: 803-734-3389 • ed.sc.gov

Appendix 7

Official Express Score® Skill Report

WorkKeys®

E0434258-418126-15

WorkKeys ®
Summary

Report for: JOSEPH KELSEY *Test Date:* 11/2012
Test Site: SCDOC *Report Date:* 11/09/2012

Applied Mathematics (Levels range from 3 to 7) Level: 7 Scale Score: 90

This person scored at Level 7. Individuals with Level 7 skills can set up and solve complex problems requiring extensive calculations and several conversions between systems of measurement. They can calculate percent change, set up and manipulate complex ratios and proportions, determine multiple areas or volumes of two- and three-dimensional shapes, determine the best economic value of several alternatives, and locate errors in multiple-step calculations. This is the highest level measured by this test.

Locating Information (Levels range from 3 to 6) Level: 5 Scale Score: 81

This person scored at Level 5. Individuals with Level 5 skills can correctly use complicated workplace graphics, such as complex forms and tables, multivariable graphs, and detailed diagrams, to compare trends and main points, and/or summarize information within a single graphic or across more than one graphic representing related information.

Reading for Information (Levels range from 3 to 7) Level: 7 Scale Score: 87

This person scored at Level 7. Individuals with Level 7 skills can apply concepts from densely detailed selections, such as excerpts from complex regulatory and legal documents, to new situations. They can understand difficult concepts and complex procedures containing jargon and technical terms whose definitions must be derived from context. Level 7 is the highest level measured by this test.

We hope you find this WorkKeys information useful. If you have questions about these scores or about the WorkKeys system or skills, please contact WorkKeys (96), ACT, 2201 North Dodge Street, P. O. Box 168, Iowa City, IA 52243.

LS=Level Scores:
Use for selection, promotion, or other individual high-stakes purposes. For more information on Level Scores go to: http://www.act.org/workkeys/pdf/forms/interp.pdf

SS=Scale Scores:
Use to show growth over time and provide group comparisons in outcome measurement. Not intended for selection and hiring. Scale Score range: 50-90. For more information on Scale Scores go to: http://www.act.org/workkeys/pdf/scale score interp guide.pdf

ACT®

Official Express Score® Skill Report

WorkKeys®

E0434258-418126-15

WorkKeys ®
Summary

Report for: JOSEPH KELSEY *Test Date:* 11/2012
Test Site: SCDOC *Report Date:* 11/09/2012

Applied Mathematics (Levels range from 3 to 7) Level: 7 Scale Score: 90

This person scored at Level 7. Individuals with Level 7 skills can set up and solve complex problems requiring extensive calculations and several conversions between systems of measurement. They can calculate percent change, set up and manipulate complex ratios and proportions, determine multiple areas or volumes of two- and three-dimensional shapes, determine the best economic value of several alternatives, and locate errors in multiple-step calculations. This is the highest level measured by this test.

Locating Information (Levels range from 3 to 6) Level: 5 Scale Score: 81

This person scored at Level 5. Individuals with Level 5 skills can correctly use complicated workplace graphics, such as complex forms and tables, multivariable graphs, and detailed diagrams, to compare trends and main points, and/or summarize information within a single graphic or across more than one graphic representing related information.

Reading for Information (Levels range from 3 to 7) Level: 7 Scale Score: 87

This person scored at Level 7. Individuals with Level 7 skills can apply concepts from densely detailed selections, such as excerpts from complex regulatory and legal documents, to new situations. They can understand difficult concepts and complex procedures containing jargon and technical terms whose definitions must be derived from context. Level 7 is the highest level measured by this test.

We hope you find this WorkKeys information useful. If you have questions about these scores or about the WorkKeys system or skills, please contact WorkKeys (96), ACT, 2201 North Dodge Street, P. O. Box 168, Iowa City, IA 52243.

LS=Level Scores:
Use for selection, promotion, or other individual high-stakes purposes. For more information on Level Scores go to: http://www.act.org/workkeys/pdf/forms/interp.pdf

SS=Scale Scores:
Use to show growth over time and provide group comparisons in outcome measurement. Not intended for selection and hiring. Scale Score range: 50-90. For more information on Scale Scores go to: http://www.act.org/workkeys/pdf/scale_score_interp_guide.pdf

ACT®

WorkReady SC
SOUTH CAROLINA
GOLD
is awarded to
Joseph Kelsey
a recognition of certified skills in
Applied Mathematics,
Locating Information
& Reading for Information.
Certificate: 36456. Issue date: 11/16/12

WorkKeys® is a national workforce development system that permits a direct comparison of the skills and levels of skills needed to perform a job with the skills and levels of skills an individual currently possesses. This certificate reports an individual's Applied Mathematics, Locating Information and Reading for Information skill levels in relation to the level of these skills needed in 90 percent of the jobs and occupations contained in ACT's WorkKeys® database. The ACT job profile database now contains thousands of job profiles. This certificate is only awarded to individuals who meet the performance criteria for at least a Level 5 across all three skill areas. Individuals who perform at a Level 5 have the following skill proficiencies:

APPLIED MATHEMATICS
Skill Level 5

LOCATING INFORMATION
Skill Level 5

READING FOR INFORMATION
Skill Level 5

WorkKeys

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Columbia International University

The Trustees of
Columbia International University
upon the recommendation of the Faculty have conferred upon

Joseph Glenn Kelsey

the degree of

Associate of Arts

with all honors, rights and privileges appertaining thereto.
Given at Columbia in the State of South Carolina, in this month of December, in the year of our Lord two thousand fifteen.

Chairman of the Board of Trustees
Duplicate Copy

COLUMBIA INTERNATIONAL UNIVERSITY
1923

President

Appendix 9

CIU | PRISON INITIATIVE

October 23, 2019

To Whom it May Concern,

We are writing on behalf of Mr. Joseph Kelsey (SCDC #217218) who is a graduate of our Columbia International University Prison Initiative Program. The Prison Initiative is a 24 month, 60 credit Associate of Arts degree program within the South Carolina Department of Corrections. This program is designed for inmates with significant sentences who have demonstrated a potential to make a difference within the walls of SCDC. The selection process is rigorous and competitive and only 15 inmates are chosen to participate each year. Students focus all of their time and energy on academics during their two years in the program and graduate with an accredited Associate of Arts Degree upon completion.

The general expectation by SCDC and the University is that each graduate of the CIU Prison Initiative program would be assigned to a SCDC facility (ideally in groups of twos and threes) with the goal of serving as model prisoners as well as peace-makers within the general population. Many of our graduates go on to teach classes, serve hospice patients, and lead Character-Based Dorm units. As with other faith-based programs of similar design, such as the program at Angola Prison in Louisiana, the impact of the critical thinking skills, peace-making skills, and religious faith linked to sound education should provide a positive impact on the prison population.

Mr. Kelsey was selected to participate in this program in Kirkland's Cohort #7 and graduated in December 2015. Following graduation, he volunteered to serve in the Crisis Stabilization Unit at Broad River Correctional Institution in order to care for and encourage fellow inmates during a vulnerable season in their lives. While serving these men he has also relentlessly continued his education and is on track to graduate this December 13, 2019 with a Bachelor of Science Degree from Columbia International University. Not only will he graduate with a 4.0 grade point average but he will also graduate with honors as Summa Cum Laude.

We are incredibly proud of Mr. Kelsey's accomplishments. He is one of only five Prison Initiative graduates who has gone on to complete their bachelor's degree after completing our program and look forward to celebrating this milestone with him in a few weeks.

The University does not make any formal recommendation for any of our graduates because of our potential lack of objectivity and/or conflict of interest due to our

relationship with the individual as volunteers within the SCDC system but the university believes it is appropriate to provide you with standardized data regarding participants within our program which you may or may not wish to review based on the request of our graduate. Because of federal regulations regarding access to student information, the University has gained written permission from Mr. Kelsey to release this information for your review:

Academic Information based on his completion of the two year A.A. program in 2015:

Number of Semester Credits Completed: 68
Cumulative Grade Point Average for the above Credits: 4.0 (on a 4.0 scale)
Attendance Pattern: on time, prepared, consistent & faithful attendance (100%)
General Demeanor as a Student: humble, respectful, persistent, seeks to learn
Attitude towards Learning: teachable, engaged, submitted quality work, motivated, ambitious
Interaction within the Cohort: stable, respected, gentle
Disciplinary Issues: none

I hope this information may be beneficial to you as you review Mr. Kelsey's case.

Respectfully submitted,

Bryan Beyer, Ph.D.
Dean of College of Arts and Sciences

COPY: Andre T. Melvin, M.Div., CIU Prison Initiative Director

August 7, 2015

Appendix 10

Honorable Members of the Parole Board
c/o Mr. Jon Ozmint
P. O. Box 6814
Columbia, SC 29260

Letter on behalf of Joseph Kelsey, Kirkland CI

Dear members of the Parole Board,

Joseph Kelsey, resident of Kirkland Correctional Institute, has asked me to write a letter on behalf of his request for parole. It is a joyful privilege for me to do so.

I am a professor in CIU's Prison Initiative degree program who was privileged to teach Joseph and his fellow students in Cohort 7 their introduction to English literature course in July 2014. I will always look back on this course as the highlight of my 15 years of teaching at CIU. I had never before taught this semester-long course in a three-week intensive span, and I knew that the reading and writing assignments would challenge the students. The entire cohort responded wonderfully to the academic challenge, and in all of this, I noted the leadership Joseph took in his humble and quiet way among his peers. He was consistently respectful, cheerful, and hard-working in class, and from his first writing sample I could see his considerable academic gifts. It was clear to me too that his fellow prisoners esteemed him. He earned the highest percentage grade in the course, but you would never know it from his quiet, humble demeanor. Though he excelled in academic ability, he also stood out to me for his eagerness to learn. He was the only student from his group to send me a personal card expressing his appreciation for the course—an unusually thoughtful gesture I will always remember with gratitude.

Obviously, I have not had the privilege of knowing Joseph during the years of his incarceration to compare his maturity now with his character when he first entered prison. My assumption would be that there has been a profound change in him for the better. The person before me now impresses me with strength, quietness, and maturity—evidences that I take as the fruit of a true and lasting spiritual renewal. I have returned several times in the past year to speak in chapel, and have found Joseph's posture always to be quiet, humble, and teachable. There is an evident consistency and maturity about his person—a lack of showiness, a quiet stability, a spirit of rest.

I believe Joseph will make a very positive contribution to society. He seems to me to be a fine example of rehabilitation in prison, and when I think of him, I can't help but think of his biblical namesake, who during his time in prison lived with integrity and served his fellow prisoners and supervisors well (see Genesis 39:21-23). Joseph Kelsey seems to me such a man. Based on the maturity I have seen in his person during the (admittedly limited) time I have had to observe him in class and chapel settings, I would add my recommendation to his parole request.

Sincerely,

Stephen A. Baarendse

Stephen Baarendse
Associate Professor, English and Humanities
Columbia International University
(803) 807-5421
sbaarendse@ciu.edu

CHRISTIAN FAMILY CHAPEL

September 22, 2015

Dear Members of the Parole Board,

It is with great pleasure that I write to you on behalf of Joseph Kelsey. I have had the privilege over the past two years to get to know Joseph through the Columbia International University Prison Initiative Program.

As a professor in this initiative since its inception in January 2007, I have seen how the program gives hope and changes the lives of the student-inmates. Many of the students that come to us have had little educational or life success. Through a rigorous program of academic study, our students are challenged to grow spiritually, intellectually and emotionally.

Those of us who are blessed to teach in the program have the opportunity to mold and shape hungry students into disciples of Jesus Christ. We challenge these students to not simply get good grades, but to grow into the people that God wants them to be – men and women who are wholly committed to God.

Since I've taught at Kirkland from the beginning of the program, I've had the opportunity to teach every male student who has come through the program. If my math is correct, that is about 120 students. While each of those students are memorable to me even after 8 ½ years, a few stand out for various reasons. Joseph Kelsey is one of those students.

Joseph has one of the brightest minds that I've encountered in my 20 plus years of teaching. His intellectual capacity is so great, it was no easy task to provide adequate challenge in his course work. However, as intelligent as Joseph is, he has never gloated in his intelligence but has always responded with humility and a genuine hunger to learn more. While he has the capacity to teach the courses I led, Joseph always kept the posture of a humble learner. He has been a professor's dream student.

Joseph is one of the most gentle and unassuming people I've ever met. I credit that to a deep and abiding faith in Jesus and the time he has spent in prison, daily dealing with the consequences of his crime. If the purpose of prison is to provoke in someone a sorrow for their crime and to see them rehabilitated for the purpose of becoming a productive member of society, then I think that goal has been achieved in Joseph's life.

I don't take lightly the crime Joseph has committed, but I do not believe who he was as a minor is the man I have known over the past two years. I have great confidence that if given the chance to reenter society and become an asset to the community, the Parole Board will have no regrets about their decision to accept Joseph as a candidate for parole.

10365 Old St. Augustine Road • Jacksonville, FL 32257 • P: 904.262.3000 • F: 904.262.3862 • www.christianfamilychapel.com

I would gladly welcome Joseph Kelsey back into society and look forward to seeing how he continues to grow as a Christ follower, whether in the custody of SCDC or as a free man outside. I regret that I am unable to give live testimony to you, but thank you for your thoughtful consideration as I speak on behalf of Joseph. I pray that you will have great wisdom as you make hard decisions that affect inmates, their families, the families of the victims and society at large.

Sincerely,

Mike Thompson
Pastor to College and Senior High Students
Christian Family Chapel / Jacksonville, Florida

Appendix 12

October 8, 2019

Dear Parole Board Members,

I am writing on behalf of Joseph Kelsey (#217218). I work on staff at Columbia International University. Our institution has provided a letter stating Mr. Kelsey's involvement in our program but has a policy not to recommend alumni based on its unbiased position. I am writing, however, from my own experience which should in no way be reflected as a recommendation from CIU itself.

This coming January will mark six years since I initially met Joe. I had the privilege of getting to know him during his two years as a CIU student and have seen him and interacted with him on numerous occasions since his graduation in December of 2015. He has always been respectful, kind, and gracious. I've had the opportunity to interact with hundreds of inmates over the last six and a half years and Joe is by far one of the gentlest and most determined men I've ever met.

Joe has spent the last three and a half years working in the Crisis Stabilization Unit at Broad River Correctional Institution –sitting with and listening to men who are in a severe life crisis and are often a threat to themselves. The responsibility is not an easy one and yet he has served these men with humility and faithfulness; offering them hope in the middle of their despair.

If given the opportunity, I believe Mr. Joseph Kelsey would be an excellent candidate for parole based on the maturity and character I've seen consistently displayed in his life over the years that I have known him. He has refused to waste his years of incarceration and has, instead, chosen to serve others and to continue to challenge himself to grow through on-going education. He has a strong support system, a solid education, and a clear vision for life. Mr. Kelsey is the kind of man I would want for a neighbor and believe our community would be better for having him as part of it.

Sincerely,

Grace Dye

Grace Dye
Assistant Director
CIU Prison Initiative

Appendix 13

TO: Honorable Members of the Parole Board

From: C. Austin Edmundson, M.A., LPC-A, NCC, CCMHC

Subject: Joseph Kelsey (217218)

Date: 4/26/2019

Since June 4th, 2018, I have worked as a Qualified Mental Health Professional for the South Carolina Department of Correction's Crisis Stabilization Unit. The South Carolina Department of Correction's Crisis Stabilization Unit at Broad River Correctional Institute's Greenwood Unit has the ability to accommodate up to 32 male crisis inmates who can be admitted from any state level correctional institution. The unit is equipped with nursing, mental health technicians, and security staff 24/7. The unit also accommodates 32 specially selected inmate watchers who have obtained associates degrees from Columbia International University. These watchers are partly responsible for observing crisis inmates with the directive of providing emotional support, modeling positive behaviors, and alerting relevant staff if medical care is needed or if behavioral concerns are noted. It is in this role, of inmate watcher, that I have had the opportunity to know and work with Mr. Kelsey.

I have witnessed first-hand the compassion and dedication that Mr. Kelsey has towards his fellow inmates. He is dependable, honest, courteous, and responsible. I know Mr. Kelsey to work well under pressure and is known to go above and beyond his assigned duties to volunteer for tasks that greatly improve the efficiency of our program and contributes to the success of our mission. He is well organized, efficient, easily develops rapport with the crisis inmates as well as staff.

Aside from working with the crisis inmates, I insist on an open door policy with the inmate watchers. In conversations with Mr. Kelsey, he has discussed his crime in detail. He expressed regret and remorse when speaking about his crime. He accepts responsibility for all the pain that he caused and has worked to understand and change the attitudes that led to his behaviors. He has shown growth from his time in prison. It is my opinion that Mr. Kelsey, should he be given the opportunity to reintegrate back into society, would be successful and has all of the characteristics to be a positive and impactful member of the community.

Respectfully,

, LPC-A

C. Austin Edmundson, M.A., LPC-A, NCC, CCMHC

Inmates learn to give listening ear to each other

Bible-based program offers training, degree as SC prison suicide rate rises

BY T. MICHAEL BODDIE
tmboddie@postandcourier.com

COLUMBIA — For the past three years, the S.C. Department of Corrections has tried using inmates to help fellow prisoners who are feeling suicidal.

"We are basically on the front line of suicide prevention," said one inmate who keeps watch over his peers at Broad River Correctional Institute in Columbia. (The Post and Courier was asked by corrections officials not to identify the inmates by name.)

Even with the program, South Carolina's inmate suicide rate reached an all-time high last year, at 11, almost double what it was in 2017.

SCDC director and state prisons chief Bryan Stirling said the department is the state's largest provider of mental health care. About one fourth of all state inmates are mental health patients, and many need treatment.

Despite the setbacks, corrections spokesperson Chrysti Shain said staff and inmates hope the program will prevent deaths by suicide.

Please see **INMATES**, Page A4

T. MICHAEL BODDIE/STAFF

A prisoner at Broad River Correctional Institute in Columbia acts as an "Inmate Health Companion," listening and talking to another prisoner who has contemplated death by suicide.

Prisons teach inmates to assist in bringing down suicide rates

INMATES, from A1

"You have administrative staff, you have security, you have nursing staff, you have mental health staff," said another inmate. "And then you have us."

A report from the National Center on Institutions and Alternatives says while inmate companions have become popular in parts of the country, national correctional standards say they should only supplement, not substitute, for professional staff monitoring.

"When folks initially come here, they've shut down. We try to build a rapport with them, we try to get them to communicate," one inmate said. "I try to tell them, 'If you don't tell the counselor everything, then they don't know how to treat you.' If you try to bake a cake and leave out one of the ingredients, the cake is not quite a cake."

South Carolina inmates who have shown warning signs for suicide live on the first two floors of a dorm set aside for them at the Broad River complex. Above them are men who are trained to be a listening ear.

Assistant deputy director of behavioral health services Kennard Dubose said some reasons people are admitted to the dorm can be episodes of drug-induced psychosis or receiving bad news from court or from home. The behavioral health services administrator also said a typical stay is 10 to 15 days but can "vary, depending on the situation."

A group of about 30 prisoners, dubbed the Inmate Health Companions, routinely check on their peers who are on suicide watch. They are prepped with both hospice training and a degree in Biblical studies from the Columbia International University (CIU) seminary.

> *"There's fruit that takes place from investing in people and being willing to recognize them as a human."*
> **Inmate companion**

Though the program training is Bible based, the inmates are taught to listen and find commonalities to talk about.

"We'll talk to them for half an hour to four hours about the world, about sports, about anything to find something that we have in common," an inmate companion said.

The Broad River housing unit was designed with a calm light blue tone, with art covering the walls both inside and outside of the TV room. Unit manager Paul Dennis said, it's supposed to give the place a therapeutic feel.

"We want them to feel their worth," Dennis said.

The training, formally called the CIU Prison Initiative, does not provide specific counseling training. "They're trained to listen," said Grace Dye, a CIU administrator for the program.

Inmate Health Companions say they've seen more than 1,000 patients in three years.

But not every day is successful.

The suicide numbers are still high as three South Carolina inmates have killed themselves so far this year.

One inmate companion was 16 when he received a life sentence for murder. He said he's been able to relate to young people serving long sentences, and he often sees inmates come into the housing unit in a dark state of mind, then leave with newfound hope.

One day, a patient asked him, "Can those people get me in here?" believing that someone from his previous institution might somehow find him and hurt him.

The inmate stayed with him, talked and listened for about four hours. Days later, the patient was sent back to his institution. He soon was back at Broad River, in need of help.

"I passed out books that night, and he spent 10 or 15 minutes picking out books," the inmate companion said. He eventually picked one book and went back to his cell. The patient committed suicide later that night.

"That was probably the most impactful thing that I've had to go through, and it's why I'm not about to say that somebody is fine."

The inmates still do what they can for each other.

"And then, in six months time, we get a letter from them, from their parents, from their wife, from their kids, and they're in society being productive and being responsible," another inmate companion said. "There's fruit that takes place from investing in people and being willing to recognize them as a human."

Appendix 15

CRISIS STABILIZATION UNIT

Participation details for Inmate Mental Health Companion **Joseph Kelsey 217218**, as of 10/1/19,

Entered Program:	March 2016 (CSU opened)
1-on-1 Constant Observation Hrs:	1584
Crisis Inmates Observed:	243
Total Number of Crisis Inmates Treated by Program:	1628
Total Hrs. of Observer Training:	62
Training Topics:	Observer Orientation/Suicide Prevention Psychiatric Emergencies Recognizing/Understanding Mental Illnesses Karpman Drama Triangle Borderline Personality Disorder Antisocial Personality Disorder Post-Traumatic Stress Disorder Schizophrenia Blood Borne Pathogens & Blood Spill Clean-up
Additional Duties:	- Maintain records system for non-confidential client activity, constant observations, and observer training. - Inventory, prepare supply orders, and stock supplies for the Medical Treatment Room. - Issue and collect shaving razors for observers. - Clean rails, poles, and stairs.
Previous Related Experience:	- Hospice Care Provider (2 yrs.). - Columbia International University Prison Initiative: AA in Biblical Studies, BS in General Studies, Ministry to R&E Youthful Offenders (2 yrs.). - Personal Psychological Development Diploma from the Prisoner Assistance Scholastic Service. - Taught "life-skills" classes on anger management, conflict resolution, non-violent communication, drug addiction, gang diversion, victim awareness, living with a purpose, and re-entry into society. - Operation Behind Bars. - Christian Counseling Class.

Appendix 16

October 15, 2019

To the Honorable Members of the Parole Board,

In January of 2019, after working 5 years at Broad River Correctional Institution in main medical, I decided to take on the challenge of responsibilities and duties as the head nurse at Broad River's Crisis Stabilization Unit (CSU). It was quite overwhelming and there was so much to learn. One of the first CSU workers to extend his helping hand was Mr. Joseph Kelsey. I observed immediately that Mr. Kelsey was a respectful and caring person, he helped show me what CSU was all about. I shortly learned that Mr. Kelsey wore many hats and that along with all of his responsibilities, he always maintained a positive and respectful attitude.

When there was a time that I needed help, Mr. Kelsey was always one of the first inmates to step up and offer his knowledge and assistance. One of the many hats Mr. Kelsey voluntarily took on, was keeping track of all of our medical inventory. He maintained a very organized and accurate system to ensure our medical inventory remained up to date and fully stocked. As a new nurse to CSU, he helped me find items that I couldn't and always let me know when there were supplies that needed to be ordered.

I also observed his interactions with our patients that were be monitored on a crisis status. No matter the patient or circumstance, he always displayed a reassuring, comforting and therapeutic demeanor with each patient. His peer CSU workers have always described him as dependable and considerate. My staff, co-workers and superiors have consistently made positive remarks regarding his conduct and work ethic. I observed for myself how Mr. Kelsey continuously conducted himself as a role model for all inmates and exceeded many expectations regardless of the adversities he had to face.

As I continue to work with Mr. Kelsey daily, I have no doubt that when given the opportunity to rejoin society, he will continue to be successful and utilize the skills and trades that he has acquired during his incarceration. I believe that he will make a positive impact in our society and share his knowledge and compassion to better our communities.

My observation and testimony of Mr. Kelsey is written with honesty and from my own experience so that members of the parole board can have an accurate understanding of the type of man Mr. Kelsey has become and will continue to be regardless of the decision of the parole board.

Thank you for your time and consideration,

Courtney Williams, RN

Courtney Olds-Williams, RN, Interim Head Nurse

Broad River Correctional Institution, Crisis Stabilization Unit

(803)896-2884

Broad River Correctional Institution

Greenwood Crisis Stabilization Unit

Certificate Of Achievement Certifies That

Joseph Kelsey

Is Awarded This Certificate For

Contributing to the Operation & Success of the Crisis Stabilization Unit

Given at Broad River Correctional Institution, this 24th day of March, 20 17

Director, Bryan Stirling

Regional Director, Region 1, Bernard McKie

Deputy Director of Operations, Mike McCall

Director, Behavioral Health, Kennard Dubose

Unit Manager, Paul Dennis

Warden, Dennis Bush

BROAD RIVER CORRECTIONAL INSTITUTION

~ GREENWOOD CRISIS STABILIZATION UNIT ~

Inmate Observer Duties

The Crisis Stabilization Unit (CSU) is a unique mental health program created by the South Carolina Department of Corrections in order to address and provide therapeutic treatment to inmates identified as being in a state of critical mental instability by way of medical attention for self-inflicted injuries, psychological counseling to encourage coping skills and address thinking patterns that incite destructive behavior and 24-hour observation to address and prevent destructive actions while in the care of the Crisis Stabilization Unit.

In support of the CSU is a team of inmate observers who volunteered to assist the crisis inmate client's progress toward mental stability. Inmate volunteers qualify to assist CSU staff by way of completing a two-year accredited Associate of Arts Degree in Spiritual Guidance, Counseling and Psychology. Further qualifications comes through the volunteer's record of exemplary behavior and consistent participation in programs designed to progress the inmate population into changing destructive thinking and behaviors while promoting productive and positive re-integration into society.

Inmate observer duties and functions consist of:

- *Providing assistance to security utilizing the developed rapport to de-escalate potential hostile situations.*
- *Providing visual confirmation of client's well-being during a five (5) hour cycle.*
- *Document client's behavior at 15-minute intervals.*
- *Assist mental health counselors when requested in group therapy by sharing experiences relatable to client's circumstance that may guide client to positive participation.*
- *Assist medical personnel through immediate notification of emergency situations (i.e. self-mutilation, physical illness and/or discomforting side-effects of medications).*
- *Providing an affirming presence to discourage self-destructive behaviors.*
- *Providing encouragement and positive support through listening.*
- *At the request of the client, provide spiritual guidance and or counseling through prayer, scripture reading, singing, etc.*
- *Providing grooming assistance (showering, shaving, haircuts, laundry and food distribution).*
- *Daily cleaning of client cells and emergency cleaning of body waste and blood spills.*
- *Providing daily maintenance and upkeep of the CSU building.*
- *Managing and distributing reading materials for clients.*

I/M Joseph Kelsey has been an exceptional volunteer that has assisted during our first year with the CSU Program at Broad River Correctional Institution and has been awarded a Certificate of Excellence for his devoted and enthusiastic service to the program.

Paul Dennis

Unit Manager, Paul Dennis

3-24-17

Date

Certificate of Completion

The Chapel of Broad River Correctional Institute
and the Crisis Stabilization Unit of Greenwood Recognizes:

Joseph Kelsey

for the completion of *Boundaries*—a course designed to teach parameters

Signature—Chaplain and Facilitator	**June 4, 2019** Date
Signature—Co-facilitator	**June 4, 2019** Date

Certificate of Completion

JOSEPH GLENN KELSEY

has completed the course titled A Review of Psychiatric Emergencies by James Trent, PhD. This course meets the qualifications for 10 hour(s) of training credit.

Presented by

Benjamin Watson, LMSW

Qualified Mental Health Professional
Broad River Correctional Institution
Greenwood – Crisis Stabilization Unit

July 18, 2017

Appendix 18

CRISIS STABILIZATION UNIT
- MEMORANDUM -

TO: Whom it may concern

From: Mr. Paul Dennis, Program Manager

Subject: I/M Joseph Kelsey 217218

Date: October 1, 2019

Joseph has been a volunteer worker here in the CSU since its creation in March of 2016. The CSU is a unique program in which mental health, medical, security and administrative personnel, team with trained inmate volunteers to provide treatment to inmates suffering mental health crises.

Over the past three and a half years, Joseph's main role as an Inmate Mental Health Companion has afforded him the opportunity to spend 1,584 hours in prescribed, one-on-one situations with 243 troubled inmates, helping to safeguard, counsel, and encourage them. In doing so, he has displayed exemplary patience, understanding, and compassion.

Additionally, all inmate volunteers dutifully perform certain custodial tasks. Above and beyond these expected roles, Joseph serves in an office clerk capacity, making reports and filing records. He assists the medical staff by inventorying, preparing orders for, and stocking the medical treatment room. He is entrusted to issue and collect shaving razors for his fellow inmate workers. Joseph has also volunteered to operate a client library, issuing donated books and Bibles to inmates during their stay here.

Joseph has been a constant benefit to the CSU. He has promoted the program and suicide prevention here at the institution and in newspaper and television interviews. On and off the job, he is a caring, respectful, and dependable example to his fellow inmates. These, and the other qualities he exhibits, make me confident that he will be successful in whatever his future holds.

S/

Appendix 19

To: Member of the Parole Board

From: Ann-Marie Elwood, RN

Subject: Joseph Kelsey (217218)

Date: 10/05/2019

Beginning June 2018, I have worked as a Registered Nurse in the Crisis Stabilization Unit at Broad River Correctional Institution. I have witnessed Mr. Kelsey go above and beyond executing his assigned duties and helping inmates through their crisis situations. I have witnessed first-hand Mr. Kelsey give up his personal time to assist and pray with crisis inmates in their time of great need.

Mr. Kelsey volunteers for countless tasks to assist in improving the program. He has taken on the responsibility of keeping up with medical inventory. He does an exceptional job of organizing the medical equipment, ordering supplies monthly, and maintains our inventory quarterly.

I have also been afforded the opportunity to meet his supportive family on his frequent visits. I have been able to discuss Mr. Kelsey's crime with him many times. He expresses deep regret and remorse for his actions. He acknowledges the pain he has caused by the choices he made at the delicate age of 16. In my opinion, Mr. Kelsey should be given the chance to re-enter society and be a productive member of the community.

Ann-Marie Elwood, RN

Ann-Marie Elwood, RN

Susan C. Knight, Ph.D., ABPP
Licensed Clinical Psychologist
Board-Certified Forensic Psychologist
knight@apsforensic.com

Applied Psychological Services, LLC
1941 Savage Rd., Ste. 100A-606
Charleston, South Carolina, 29407
(843) 637-5729-Phone; (843) 410-2802-Fax

PSYCHOLOGICAL EVALUATION FOR PAROLE

Examinee: KELSEY, Joseph Glen
Date of Birth / SCDC#: [redacted] 1977 / #217218
Dates of Evaluation: March 21, 2019; April 19, 2019; and June 27, 2019
Examiner: Susan C. Knight, Ph.D., ABPP

IDENTIFYING DATA: Mr. Joseph Glen Kelsey is a 42-year-old, single, Caucasian male, currently incarcerated in the South Carolina Department of Corrections [SCDC] for convictions of Murder, Arson NEC, and Criminal Conspiracy. His convictions originated from McCormick County, with an offense date of July 12, 1994. On September 22, 1995, after a jury trial, he was sentenced to life, with parole eligibility after twenty years. Thus, since his life sentence was imposed, he has been incarcerated for over 24 years. Mr. Kelsey's attorneys, Mr. John Blume, Esq., and Mr. John Ozmint, Esq., requested a forensic psychological evaluation to evaluate Mr. Kelsey in preparation for his parole hearing in November 2019. Pursuant to this request, the examiner assessed his developmental and psychosocial functioning prior to his incarceration; functioning over his incarceration; risk for future violence; and transition needs.

SUMMARY OPINION: Based on evaluation data, which includes clinical interviews and psychological testing with Mr. Kelsey; interviews with his parents, siblings, fiancé, fiancé's mother, former marriage and guidance counselors, and SCDC staff; and review of psychosocial, legal and correctional records; and letters of support, the following was found as summarized.

Parole Eligible Offense: At the time of the offense, Mr. Kelsey was 16, having just finished his 11th grade school year. He was living without adult supervision, as his family had recently moved out of state. The incident occurred with slightly older male peers, also charged in the incident. Both codefendants have been released. Mr. Kelsey has taken full responsibility for his actions over 25 years ago, with insight, remorse, and empathy for the crime and those affected.

Course of Incarceration: Mr. Kelsey earned his high school diploma in 1995; an Associate of Arts Degree in Biblical Studies from Columbia International University in 2015; and will graduate with a Bachelor of Science from Ashworth College in December 2019. He has completed many trainings, and programs, including JumpStart. He presently works in the CSU as an inmate companion. He has very few disciplinaries, with only 6 infractions over 24 years.

Violence Risk Assessment: Using an empirically validated risk assessment, Mr. Kelsey's risk of future violence is low. He has had no altercations or violent infractions in prison. He is well past the age of peak violence, and is clinically stable, with no history of substance use disorder, personality pathology or psychopathology. His incarceration reflects diligent and conscientious commitment to academic, vocational and prosocial pursuits. SCDC staff described him as "very dependable;" "has integrity;" "is calm, mild-mannered;" "trustworthy;" and a "model inmate." They expressed no concerns with Mr. Kelsey making parole.

Transition Plan: If paroled, Mr. Kelsey will reside in Augusta, Georgia, with his fiancé, in her home. She is employed as the Dean of Students at Georgia Military College, and he has been offered employment at a logistics company. He has very strong familial ties, who have all pledged their financial, emotional, and social support post-release.

SOURCES OF INFORMATION: The following sources of information were reviewed in forming the opinions found in this report:

Legal and Psychosocial Records

1. Academic records from North East Independent School District, Jefferson County Public Schools, and Columbia County School District, dated from August 1989 to June 1994;
2. Discovery documents, including police reports, crime scene investigation documents, SLED and FBI reports, witness and defendant statements, polygraph reports, and autopsy report, dated July 1994 to September 1995;
3. Trial Transcript, Vol. I through IV, dated from September 18 to 22, 1995;
4. South Carolina Department of Corrections Records for J. Kelsey, including Warden's Jacket, Central Record, and Medical records, dated from November 1994 to June 2019;
5. Supreme Court of South Carolina, *State v. Joseph Kelsey,* 331 S.C. 50 (1998);
6. Supreme Court of South Carolina, *Geoffrey R. Payne v. State*, 355 S.C. 642 (2003);
7. J. Kelsey Apology Letter to the Richie Family, dated September 1, 2016;
8. News Article, '*SC Prisoners train to help prevent suicides by fellow inmates,'* by T. Michael Boddie, Post & Courier, dated June 14, 2019;
9. News Story, *"It's national suicide awareness week. These inmates are looking out for those who feel hopeless,"* by Caroline Hecker, WISTV.com, September 9, 2019;
10. SCDC Inmate Search Detail Report, last accessed October 12, 2019;
11. Affidavit from forensic pathologist, Joel M. Sexton, MD, dated October 23, 2019;

Certificates of Education and Accomplishments

12. S.C. High School Equivalency Diploma, dated March 1, 1995;
13. SC Dept. of Education Certificate of Award for Superior GED Examination Scores, and congratulatory letter from the State Superintendent of Education, dated March 1, 1995;
14. SCDC Certificate of Appreciation for 'Service and Leadership to the Lee CI Education Department,' dated August 28, 1997;
15. S.C. High School Diploma from Summerville High School, dated June 9, 1998;
16. SCDC Certificate of Achievement for GED Teaching Assistant, dated June 29, 1998;
17. Pre-Q Rubber Company, Certificate of Completion, dated March 3, 2005;
18. SCDC Training Certificate from Lieber CI – Prison Industries, dated April 6, 2010;
19. SCDC Certificate of Appreciation for '12 Years of Dedicated Service to Prison Industries,' and Support Memorandum, dated April 19 and 29, 2010;
20. SCDC Certificate of Appreciation for Volunteering in Library Services over the past five years, dated March 25, 2011;
21. Work Keys Summary, dated November 9, 2012;
22. CIU Transcript of Courses and Grades, dated from 2013 to 2016;
23. SCDC Certificate of Appreciation 'In Recognition of Outstanding Hospice Volunteer Services,' dated August 2, 2013;
24. PASS Diploma for Successful Completion of all Ten PASS Modules, with attached Letter from C. Carbone, Esq., dated December 19, 2013;
25. PASS Certificates of Completion for Modules, Victim Awareness; Gang Diversion; Domestic Violence; Anger Management; Addiction; Parenting; Nonviolent Communication; Conflict Resolution; Living with Purpose; and Re-entry Into Society, dated from April 8, 2013 to December 19, 2013;
26. Kirkland CI Certificate of Achievement Pre-Release Program, dated September 20, 2015;

27. CIU Prison Initiative Certificate of Completion for 25 Hours of Training in Comparative Religion, dated November 16, 2015;
28. Men's Fraternity Certificate 'Quest for Authentic Manhood,' dated November 20, 2015;
29. SC Pathways Certificate of Recognition for Volunteer Hospice Service at Kirkland R&E Infirmary, dated December 10, 2015;
30. CIU Certificate of Achievement in Recognition of IT Training from Columbia International University, dated December 11, 2015;
31. Columbia International University Associate of Arts Degree, dated December 2015;
32. SCDC Certificate of Excellence 'In Recognition of Your Personal Commitment, Dedication and Performance' on the CSU Unit, dated June 30, 2016;
33. BRCI CSU Certificate of Achievement for 'Contributing to the Operation and Success of the Crisis Stabilization Unit,' dated March 24, 2017;
34. JumpStart Certificate of Completion "In the Category of Blue,' dated June 12, 2017;
35. SCDC Certificate of Completion of 'Review of Psychiatric Emergencies' for 10 Hours of Training Credit, dated July 18, 2017;
36. Columbia International University Letter, from Bryan Beyer, PhD., Dean of College of Arts and Sciences, dated August 15, 2017;
37. Pure Life Ministries Graduation Certificate, dated August 8, 2018;
38. Men's Fraternity Certificate, 'Winning at Home and Work,' dated November 29, 2018;
39. Curriculum vitae of Mr. Joseph Kelsey, dated March 27, 2019;
40. SCDC CSU Certificate of Completion for 'Boundaries' training, dated June 4, 2019;

Letters of Support and Offered Employment

41. Mr. Bill Gray, Administrative Coordinator / Prison Industries, on April 19, 2010;
42. Ms. Janine Keene, Examinee's twin sister, dated July 6, 2015;
43. Ms. Sarah Jagoditsch, Examinee's Fiancé's grandmother, dated July 8, 2015;
44. Mr. Rex M. Divine, Former SCDC Employee, dated August 1, 2015;
45. Mr. Stephen Baarendse, Associate Professor, CIU, dated August 7, 2015;
46. Ms. Ashlea Kelsey, Examinee's niece, dated August 9, 2015;
47. Ms. Amanda Chaney, Examinee's Cousin, dated August 13, 2015;
48. Ms. Keely Burwinkel, Examinee's high school acquaintance, dated August 20, 2015;
49. Ms. Cindy Reid, RN, Mother of fellow CSU worker, dated August 22, 2015;
50. Ms. Tonya Kelsey, Examinee's Sister, dated September 1, 2015;
51. Ms. Henri E. Baskins, Community Relations Council, September 13, 2015;
52. Mr. Thomas Speigal, Examinee's high school friend, dated September 15, 2015;
53. Mae K. Guinn, Ed.S. Former Highschool Guidance Counselor, September 19, 2015;
54. Ms. Amanda Kelsey, Examinee's half-sister, dated September 20, 2015;
55. Mr. Wayne Novotny, Examinee's uncle, dated July 20, 2015;
56. Pastor Mike Thompson / Christian Family Chapel, dated September 22, 2015;
57. Mr. Benjamin Kelsey, Examinee's brother, dated September 24, 2015;
58. Ms. Frances Jagoditsch, Examinee's fiancé's mother, dated October 2, 2015;
59. Mr. Charles T. Kelsey, Examinee's brother, on October 5, 2015;
60. David Cashin, PhD., CIU Prison Initiative Program, dated October 12, 2015;
61. Mr. Aparna Desal, SCDC Employee, dated October 13, 2015;
62. Ms. Bethany Wilks, Examinee's fiancé's sister, dated October 19, 2015;
63. Senior Pastor Nate Wilks, Calvary Presbyterian church, dated October 19, 2015;
64. Dr. John K. Hill, LMFT, Center for Care and Counseling, dated October 20, 2015;

65. Rev. William R. Pauling, Pastor / Mount Ebal Baptist Church, dated October 21, 2015;
66. Mr. Richard Hernandez, RH Electrical and Maintenance, Inc., dated September 25, 2017;
67. Ms. Donna Kelsey, Examinee's mother, dated September 25, 2017;
68. Mr. Charles Kelsey, Examinee's father, dated October 17, 2017;
69. Ms. Lynn Westberg, Examinee's stepmother, dated October 17, 2017;
70. Mr. Henry Flint, MHT, with the CSU Unit in SCDC, dated October 24, 2017;
71. Mr. J. Gudvangen, BSN, RN, SCDC Employee, dated October 26, 2017;
72. Ms. Jennifer Montgomery, Examinee's fiancé, dated October 31, 2017;
73. Mr. Paul Dennis, Program Manager / CSU Unit at SCDC, dated November 18, 2017;
74. Mr. C. Austin Edmondson, MA, with the CSU Unit in SCDC, dated April 26, 2019;
75. Mr. Gary Minion, volunteer minister with JUMPSTART, dated June 26, 2019;
76. Mr. Mac Ogburn volunteer and mentor with JUMPSTART, dated September 25, 2019;
77. Mr. Paul Dennis, Program Manager / CSU Unit at SCDC, dated October 1, 2019;
78. Mr. Richard Hernandez, RH Electrical and Maintenance, Inc., dated October 4, 2019;
79. Nurse Ann-Marie Elwood, RN, CSU Unit at BRCI, dated October 5, 2019;
80. Ms. Donna Kelsey, Examinee's mother, dated October 6, 2019;
81. Mr. Thomas Speigal, Examinee's high school friend, dated October 7, 2019;
82. Ms. Grace Dye, Assistant Director / CIU Prison Initiative, October 8, 2019;
83. Mr. Charles T. Kelsey, Examinee's brother, on October 11, 2019;
84. Ms. Jennifer Montgomery, Examinee's fiancé, dated October 11, 2019;
85. Painted Clouds Farm, Inc. [offer of employment] dated October 12, 2019;
86. Ms. Lynn Westberg, Examinee's stepmother, dated October 12, 2019;
87. Mr. Michael Fiorello, PhD., Pastoral Counselor, dated October 12, 2019;
88. Mr. Walter Westberg, Examinee's Half-Brother, October 12, 2019;
89. Mr. Phil and Vicky Wetzel, Wooly's LLC [offer of employment] October 13, 2019;
90. Mr. Charles Kelsey, Examinee's father, dated October 13, 2019;
91. Mr. Benjamin Kelsey, Examinee's brother, dated October 14, 2019;
92. Nurse Courtney Olds-Williams, CSU Interim Head Nurse, dated October 15, 2019;l
93. Senior Pastor Nate Wilks, Calvary Presbyterian church, dated October 14, 2019;
94. Ms. Tonya Kelsey, Examinee's Sister, dated October 18, 2019;
95. Ms. Ashlea Kelsey, Examinee's niece, dated October 19, 2019;
96. Ms. Amanda Kelsey, Examinee's half-sister, dated October 19, 2019;
97. Ms. Frances Jagoditsch, Examinee's fiancé's mother, dated October 20, 2015;
98. Ms. Bethany Wilks, Fiancé's sister, dated October 20, 2019;
99. Ms. Janine Keene, Examinee's twin sister, dated October 20, 2019;
100. Bryan Beyer, PhD., Dean of Columbia International University, dated October 23, 2019;
101. Mr. Casey Lambert, Lambert Logistics, Inc, [offer of employment] undated;

Interviews/Testing

102. Clinical Interview with Mr. Joseph Kelsey, two hours, on March 21, 2019;
103. Clinical Interview with Mr. Joseph Kelsey, three and one half hours, on April 19, 2019;
104. Interview (by telephone) with Ms. Janine Keene [sister], on June 27, 2019;
105. Interview (by telephone) with Ms. Jennifer Montgomery [fiancé], on June 28, 2019;
106. Interview (by telephone) with Ms. Fran Jagoditsch [fiancé's mother], on July 2, 2019;
107. Clinical Interview and Psychological Testing with Mr. Joseph Kelsey, four and one half hours, on June 27, 2019;
108. Interview (by telephone) with Ms. Donna Kelsey [mother], on June 24, 2019;

109. Interview (by telephone) with Mr. Charles Kelsey [father], on July 16, 2019;
110. Interview (by telephone) with Mr. Ted Kelsey [brother], on July 13, 2019;
111. Interview (by telephone) with Mr. Tonya Kelsey [sister], on July 11, 2019;
112. Interview (by telephone) with Mr. Ben Kelsey [brother], on September 23, 2019;
113. Interview (by telephone) with Ms. Lynn Westberg [stepmother], on September 24, 2019;
114. Interview (by telephone) with Mr. Paul Dennis, Program Manager in SCDC's Crisis Stabilization Unit [CSU] at BRCI, on September 26, 2019;
115. Interview (by telephone) with Nurse Courtney Olds-Williams, SCDC Nursing staff in CSU at BRCI, on October 3, 2019;
116. Interview (by telephone) with Mae Guinn, Ed.S., former school guidance counselor, on October 17, 2019;
117. Interview (by telephone) with Dr. John K. Hill, marriage counselor, on October 18, 2019.

DISCLOSURE OF NON-CONFIDENTIALITY: Prior to the evaluation, Mr. Kelsey was provided information regarding the purpose and non-confidential nature of the evaluation. He was informed that any provided information would not be confidential and, at his attorneys' discretion, may be distributed to the parole board. Mr. Kelsey endorsed an understanding of the parameters of the evaluation and provided his consent to proceed.

Pertinent Social History *[Pre-Offense]*: As a young child, Mr. Kelsey was raised within an intact family, with his twin sister and three older siblings. He moved frequently due to family dynamics. His father served in the military (U.S. Army) and earned a degree in nuclear engineering, and his mother was a teacher and a homemaker. At age 8, his parents divorced, which was sudden and acrimonious, due to his father's affair. His father left the country shortly thereafter, due to being stationed in Germany. He remarried and had two additional children. Mr. Kelsey was subsequently raised by his mother, who remarried when he was 12. At age 15, he left his mother's home in Colorado to live with his father in Augusta, Georgia. He reported no abuse of any kind during his upbringing, citing his parents' divorce as his only childhood trauma.

Parole-Eligible Offense: The homicide offense took place on July 12, 1994, in McCormick County, South Carolina. *[Note: SCDC records indicate Marlboro County, which is incorrect].* Mr. Kelsey had been residing with his father and stepmother in Augusta since January 1993. His mother and her husband remained in Colorado. In June 1994, Mr. Kelsey completed his 11th grade year at Lakeside High School in Evans, Georgia. Several weeks after the school year ended, in late June 1994, his father, stepmother and their children moved to Maryland. He had no additional family in the state, and was left without adult supervision, to stay here and there with teenage friends. During this time, he worked at a "cricket farm," frequented parties and socialized with other teenagers. He was "really worried about friends, girlfriends and being accepted" and his "self-esteem was not good."

At one point, he and his peers began to make pipe bombs, in order to see them explode. As a kid, he had seen his older brother make such a device, and as children they had "strung fireworks together" for a similar effect. Mr. Kelsey, his two codefendants, Geoff Payne and Jamie Lee, and additional peers experimented with these items. For example, they "blew up one in the backyard…just to watch stuff go boom, like adrenaline, being teenagers."

On the evening of the offense, he described a party, where he and his friends were "hanging out" and consuming alcohol, with no adult supervision. His codefendants arrived at the party with the victim (15-year old female), who was in need of first aid due to a recent cut on her foot. Most of the evening, Mr. Kelsey was on the phone with his girlfriend, who was not at the party. He reported drinking "three beers over the whole evening" and denied any drug use. He stated his two codefendants gave the victim beer, and eventually crushed up an ecstasy tablet in her drink. He was not involved in these activities. He reported Mr. Payne attempted to have sex with the victim. Eventually, Mr. Payne and Mr. Lee, decided to take the victim home, and Mr. Kelsey came along as he thought they might "blow up a pipe bomb" along the way.

During the ride, Mr. Lee was driving. Mr. Kelsey was sitting in the front seat, with Mr. Payne and the victim in the back seat. At some point, he "looked back and saw Geoff [Payne] choking the victim." He felt "horrified, shocked" and "curled into a ball." His other codefendant "stopped the car" at which point, Mr. Kelsey "checked her pulse and there was no pulse." Immediately afterwards, "Geoff [Payne] tried to have sex with her" as they were stopped on the side of the road. He stated all three took the victim's body into the woods, and Mr. Payne asked Mr. Kelsey for the pipe bomb. He instructed Mr. Kelsey to put it in her mouth, which he did, and then Mr. Payne lit the pipe bomb. Mr. Kelsey felt very scared, and cried all night when they returned home. He "didn't tell anybody because I didn't want anything to do with it, I didn't want to be associated with it..." Thus, he did not tell the victim's family what happened or her whereabouts.

[Mr. Kelsey's account is consistent with the S.C. Supreme Court's ruling in Payne v. State (2003), in which the Court stated, "whether the victim died by Payne strangling her to death, or by Payne lighting the fuse of the pipe bomb that exploded in her mouth, the testimony overwhelming proves that Payne murdered her." It is also consistent with the opinion of the trial's forensic pathologist, who affirmed in a 2019 affidavit that, "There is nothing in the evidence to prove that Melanie Richey was alive or dead at the time of the bomb blast…Whether she died of the alleged drugs she was administered or alleged strangulation could not clearly be established because of the skeletonization of the body…Therefore…all three (bomb, drugs, strangulation) had to be considered and listed as the probable cause(s) of death."

In discussing the offense, Mr. Kelsey stated, "the pain caused the victim's family is something that can never be made up for." He specifically discussed his decision to not inform them of what happened, thus, prolonging their pain and suffering. Even though he did not commit the homicide, he "feels responsible and guilty, I did everything wrong, every step of the way, I should have made sure she got home safely." He was very tearful when describing the incident.

COURSE OF INCARCERATION: Mr. Kelsey began his sentence in SCDC on **November 22, 1994,** for charges unrelated to his life sentence. He has since maxed out his sentence on those charges, as they only carried one to two years. In September 1995, his 'life eligible' sentence began. In 2015, Mr. Kelsey first became eligible for parole, with prior parole hearings on November 18, 2015 and November 15, 2017.

Given the length of his incarceration, he has been housed at numerous institutions. More recently, in 2014, he was placed at Kirkland CI, to complete his Associate of Arts degree for the Crisis Stabilization Unit, and then eventually to Broad River CI in order to work fulltime in the Crisis Stabilization Unit, where he presently resides.

Academic: On March 1, 1995, Mr. Kelsey earned his South Carolina High School Equivalency [GED], with very high percentiles on all subjects tested, placing him "in the top five percent of South Carolina GED graduates." In June 1998, he was awarded his High School Diploma through Summerville High School. In 2012, he earned his WorkKeys Certification at the 'Gold' Level; and in 2013, completed all training modules for graduation from the PASS [Prisoner Assistance Scholastic Service] program. In December 2015, he graduated with an Associate of Arts Degree in Biblical Studies from Columbia International University [CIU]; and in December 2019, will graduate from Ashworth College with a Bachelor of Science in General Studies, with a concentration in Business Administration from CIU. Per the Dean of CIU, Mr. Kelsey was one of 15 inmates selected to participate in the CIU program, and "one of only five Prison Initiative graduates who has gone on to complete their bachelor's degree after completing our program."

Vocational: Mr. Kelsey has worked consistently in SCDC, since 1995. From 1995 to 1997, he worked as a Clerk in the Education/Guidance counselor's office at Lee CI; in 1998, as a Teacher's Assistant in GED Education at Lieber CI; from 1998 to 2012, as an Administrative Clerk in PI, at Lieber CI, during which time he was certified in tire retread and repair, and as a forklift operator; from 2012 to 2014, as an Administrative Clerk in Education at Lee CI; from 2014 to 2015, as a Student in the CIU Prison Initiative at Kirkland CI; in 2016, as a Chaplain Assistant at Evans CI; and from 2016 to present, he has worked as a para-professional counselor, in the Crisis Stabilization Unit at BRCI. With his current position, he works with suicidal inmates, "talks to them, it's a great opportunity to help people." He teared up speaking of a recent suicide, and appeared very empathic with regard to the patients' conditions. He resides on the upstairs floor of the unit, with the other inmate companions.

Activities/Accomplishments: Mr. Kelsey has also been involved in numerous prosocial pursuits over his incarceration, in an attempt to rehabilitate his life, and to help others. In 1997, and again 2011, he was involved in 'Operation Behind Bars' to prevent youth from involvement in crime. From 2006 to 2011, he volunteered in the library to assist in the creation and maintenance of library databases for staff and inmates to use. In 2012 and 2013, he served as a Charter Resident of the Character Based Units at Lieber CI and Lee CI, assisting to further CBU's goals of recidivism reduction and prosocial character building. In 2012 and 2013, he served on the Student Advisory Council at Lee CI in order to bring academic issues to the attention of staff. In 2013 and 2015, he worked as a hospice volunteer at Lee CI and Kirkland CI. Although too numerous to mention, he has continued to participate in trainings to enhance his skills, as he is motivated perform to the best of his ability. Of particular note, in 2019, he completed JumpStart Leadership Training, which is reserved for "blue folder JumpStart graduates, who have been unanimously approved by the existing leadership."

Throughout these activities, and as listed above, he has been awarded many 'Certificates' of 'Excellence,' 'Achievement,' 'Participation' and 'Completion.'

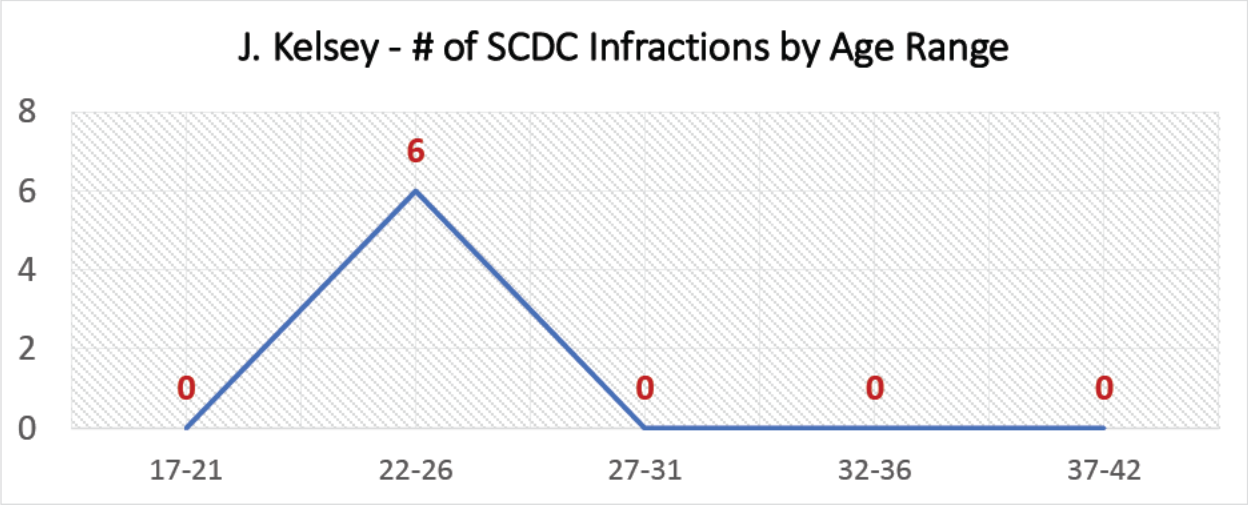
***Faith-Based Programming*:** He has also been involved in faith-based programming, to include Kiaros in 1996; Men's Fraternity 'Quest for Authentic Manhood' in 2015; earned a 'Blue Folder' from JumpStart in 2017; and in 2018, completed 'Men's Fraternity: Winning at Work and at Home.' Additionally, in 2016, he worked as a Chaplain's Assistant at Evans CI during which he facilitated Bible studies and life-skills classes, among other duties.

***Interpersonal Functioning*:** Mr. Kelsey is presently engaged to Jennifer Montgomery, whom he originally knew from Lakeside High School. They rekindled a relationship around 2007, when she wrote to him. They wrote letters, and spoke on the phone frequently, until she came to see him at the end of 2013. Since that time, she has visited "twice a weekend, every weekend" and they talk frequently. They have immediate plans to marry if he is released on parole. Her mother visits him with regularity, and they have established a close relationship.

Medical/Mental Health: Mr. Kelsey has remained essentially healthy over his incarceration. No medical conditions have been identified, and he does not take any type of medication. In 2017, he incurred a nasal fracture from an injury playing basketball, and required surgery at Palmetto Health Richland. He has no history of additional surgeries in SCDC. He reported his only mental health encounter as during his September 1995 trial, when he experienced anxiety surrounding the legal proceedings. SCDC records note he was treated with Vistaril, 50 mg, for several days due to "situational anxiety." He has no history of any additional mental health evaluation or treatment during his incarceration.

Substance Use: Regarding substances, he reported consuming "homemade wine" during his early years of incarceration. He reported no alcohol in at least "ten years." He also reported marijuana use during his earlier years, with his last use "16 years ago." He presently views any substance use as "counter-productive" to his goals and has no urges or desire to use. Per SCDC records, in September 2003, at age 26, he tested positive for "THC/Marijuana." This is his only substance-related infraction and only 'Major' conviction/infraction on his record.

Disciplinary: Mr. Kelsey's **'Record Summary Sheet'** from SCDC dated June 24, 2019, indicates he has had "no escape history;" "no criminal charges while in custody;" "no priors;" and "no detainers." Regarding disciplinary infractions, he has no convictions for 'Assaultive Disciplinaries.' He has incurred six 'Non-Assaultive Disciplinaries,' only one of which was classified as 'Major.' These charges include Damage, Destroy Property [March 2002, Other]; Out of Place [February 2003, Minor]; Refusing or Failing to Obey [April 2003, Minor]; Use or Possession of Marijuana [September 2003, Major]; Out of Place [March 2004, Other]; and Out of Place [May 2004, Other]. His last infraction occurred at age 26.



*Only 1 of the 6 infractions was classified as 'Major.' All others were 'Minor' or 'Other.'

SCDC Collateral Interview Data: In addition to reviewing his entire SCDC file, the examiner interviewed SCDC staff members familiar with Mr. Kelsey.

Paul Dennis [CSU Program Manager]: Mr. Dennis has worked with Mr. Kelsey for the past three and a half years in CSU, where he is the Program Manager. He stated Mr. Kelsey is responsible for "managing the guys on crisis, watching them one to one, when guys are in need, or a danger to themselves or others, he assists with peer support. He does well, he's soft-spoken, he gives them his story…" Mr. Dennis further described him as "mild-mannered, follows the rules and regulations, no issues with discipline." He stated Mr. Kelsey is "my assistant, with the supplies, and with putting everything in order, does all the things that keep the program running…he's trustworthy, no issues, gets along with fellow inmates well, and works well with the staff back here." Mr. Kelsey resides upstairs of the CSU unit with the other inmate companions and "they're like a family up there, he's one of 32 when we're fully staffed."

Mr. Dennis was asked if Mr. Kelsey had any sort of leadership role on the CSU unit. He stated, "yes, he's my assistant, so he stands out from the rest of the inmate companions." Mr. Dennis chose him for his assistant as he is "a hard worker, dependable, and he has integrity." When asked if he would have any concerns with Mr. Kelsey granted parole, he stated "I don't see anything, from the temperament he has in here, from how he is doing, no issues, I haven't seen anything that would caution me."

Nurse Courtney Olds-William [CSU Nurse]: Nurse Olds-Williams has worked at SCDC for the past six years, and works in the CSU unit with Mr. Kelsey. She works with Ms. Kelsey "eight hours a day, sometimes ten hours a day." He "keeps track of all of our supplies, he is so well-organized, so professional, and it can get chaotic." He "keeps everything accurate, keeps the inventory accurate, he is very dependable." She further described him as a "model inmate, well-spoken, calm, all the inmates love him…" She also noted he has very good relationships with all of the staff, and that she has never seen any disciplinary issues from Mr. Kelsey. When asked if she would have any concerns with Mr. Kelsey being granted parole, she stated "none whatsoever, no concerns." She stated, "I can trust him, I can be in a room alone with him, and trust him, and you can't say that about many inmates."

TRANSITION PLAN: If granted parole, Mr. Kelsey has multiple options of where to reside and work, given his very strong support system. The preferred option is to reside with his fiancé, Ms. Jennifer Montgomery, in Augusta, Georgia, living in a recently purchased home, with immediate plans to marry. She has very strong ties to the Augusta community, with regard to her family and career, where she works as the Dean of Students and Assistant Executive Director at Georgia Military College. Her mother resides within several miles, and has pledged her strong support of Mr. Kelsey's release, as her son-in-law. She and her family will provide financial, emotional, and social support, upon his release. Regarding employment, Mr. Kelsey has been offered a job by Lambert Logistics, Inc., out of Martinez, Georgia, working for Casey Lambert.

Mr. Kelsey also has the option of residing in South Dakota, where his father and stepmother reside; or in Corpus Christi, Texas, where his mother resides. His fiancé would relocate with him to either of these locations. If the latter two options are exercised, then his parole would be transferred via the Interstate Compact for Adult Offender Supervision (ICAOS).

In order to confirm his proposed plans, and to 'vet' his relationship with Ms. Montgomery, the examiner spoke with Ms. Montgomery, her mother, their marriage counselor, and a professional educator and counselor who has known them both since teenagers. Mr. Kelsey's family was also contacted to confirm the proposed plans, and to assess their role and support in his transition.

Collateral Interviews [Fiancé and Fiancé's Mother]: His fiancé is 41 years old, and resides in Augusta, Georgia, in a recently purchased home. She has resided in the Augusta area for 33 years, with present employment at Georgia Military College. Her family resides within several miles of her residence. She described first meeting Mr. Kelsey in high school, during which time they were acquaintances. More recently, she began building a relationship with Mr. Kelsey around 2007, and they became engaged in 2013. She described their relationship as "completely committed" and she sees him eight times month, "the maximum." She verified his release plan, noting plans to "get married the right way" in a local church once he is released.

In an interview with his fiancé's mother, she stated she has met Mr. Kelsey many times and has met his family. Her mother described the relationship between her daughter and Mr. Kelsey as "genuine and reciprocal" and that she "approves of their plan to get married." Her mother stated she "cares about" Mr. Kelsey and is "happy to support him in any capacity."

Collateral Interview [Former Marriage Counselor]: Dr. John K. Hill, DMin, LMFT, is a licensed marriage and family counselor in the North Augusta area, with a counseling degree from Yale University and a Doctor of Ministry degree from Columbia Theological Seminary. Ms. Montgomery and Mr. Kelsey sought pre-marital counseling from Dr. Hill after their engagement. Ms. Montgomery was present in his office, with Mr. Kelsey on the phone, during sessions. Dr. Hill believed they had at least six sessions focusing on their relationship and Mr. Kelsey's rehabilitation efforts. In his experience and opinion, the relationship "seemed very real, solid" and genuine. He found Mr. Kelsey to be "very reasonable, intelligent, very remorseful…" and believed they would have the makings of a "good marriage." He also emphasized that Ms. Montgomery knew Mr. Kelsey from high school, and thus, had a basis to reach out and begin a friendship when she did, versus someone without such history. He has known Ms. Montgomery "for years" in the Augusta area, and believed her to be a sincere, stable, and authentic individual.

Collateral Interview [Former School Guidance Counselor]: Ms. Mae Guinn, Ed.S. has worked in the field of education for over 27 years, and is now retired. In the 1990's, she served as the high school guidance counselor at Lakeside High School, where both Mr. Kelsey and Ms. Montgomery were students. She recalled both as "good kids" and "normal and well-liked." She has also known Ms. Montgomery for years, as both reside in the Augusta area. She described Ms. Montgomery as "a very solid person, level-headed." She believes their relationship is real and "not a pseudo-relationship." If Mr. Kelsey is paroled, she offered counseling sessions as part of their "re-integration plan."

Collateral Interviews [Examinee's Family]: Mr. Kelsey's family members, including his mother, father, stepmother, twin sister, older sister, and two older brothers were interviewed regarding support post-incarceration. His mother stated "we will do anything we can to help, everybody's on the same page," with all members expressing "total" and "absolute" support. His family has also met his fiancé, Jennifer, and stated "her family has accepted Joe." All family members are financially stable, with successful careers, or have retired.

CLINICAL PRESENTATION: For each interview, Mr. Kelsey presented as neatly dressed in prison-issued attire, with very good attention to grooming and hygiene. He was polite, respectful, and cooperative. He presented as mild-mannered, and forthcoming with all information asked. His mood was pleasant and stable, with appropriate, full range of affect. He was soft-spoken, with normal rate and prosody of speech. He was thoughtful and deliberate with his responses, and at times, exhibited emotional responses (e.g., sadness, tearfulness) when discussing sensitive topics regarding his background and the offense. There were no abnormalities observed in his psychomotor functioning. His thought process was linear and organized, with no bizarre content. Judgment and insight appeared good. There were no overt indicators of major mental disorder, personality disorder or cognitive deficits.

Clinical Functioning: Mr. Kelsey reported no symptoms consistent with a mental disorder, including major mood instability related to depression, mania, hypomania, or anger dyscontrol; psychotic symptomatology; self-injurious conduct, suicide attempts, or suicidal or homicidal ideation; traumatic stress; chronic elevated anxiety, panic attacks, intrusive worry or phobias; or obsessive-compulsive symptoms. With regard to current functioning, he reported no dysregulation in mood, affect, appetite, sleep, energy level, concentration, memory or cognition.

Psychological Testing: On June 27, 2019, Mr. Kelsey was administered the **Minnesota Multiphasic Personality Inventory®, 2nd Edition (MMPI®-2),** which is the preferred test of SCDC for use in conditional parole evaluations. The MMPI®-2 is an assessment measure designed to assess personality and affective functioning. Validity indicators are included measuring a test-taker's overall approach and response style.

Validity scales indicated Mr. Kelsey responded to all items, responded consistently and without exaggeration or minimization of symptomatology; and without significant defensiveness: F-Scale [T = 45]; L-Scale [T = 52]; K-Scale [T = 66]; and S-Scale [T = 59]. In his case, the slight elevation on the K-scale is reflective of a well-functioning individual, who sees his life as well-managed and with good emotional control, self-sufficiency and the ability to cope, rather than defensiveness. This result is found more often in individuals of higher education and SES status, and is consistent with his scores on the additional validity indices.

Clinical findings were indicative of someone with high self-confidence, minimal emotional distress, regrets regarding life decisions, good sociality, and well-controlled anger and frustration tolerance. Findings were also significant for a history of antisocial conduct and authority issues, during adolescence, of which Mr. Kelsey was very open in reporting. Items on the elevated subscales have a 'historical bias' and tap into 'admissions of delinquencies in the past.' Thus, such results are in line with his history, and to be expected given his legal situation. They do not reflect current antisocial pathology, and his record reflects no such behaviors in many years. In addition, one substance subscale was slightly elevated, [Scale AAS, T = 65], however, all other substance measures were within normal limits. In reviewing the critical items with Mr. Kelsey, this reflected his openness in reporting prior substance use, and does not reflect current use. As with all psychological assessment measures, interpretation of results must take into consideration the totality of evaluation data, to include all records and collateral data, in determining diagnostic and personality findings. Overall, Mr. Kelsey's MMPI-2 profile does not support clinical instability, mental disorder or personality psychopathology.

DIAGNOSTIC FORMULATION: The following diagnoses are rendered according to the *Diagnostic and Statistical Manual for Mental Disorders, 5th Edition,* (DSM-5).

- **Diagnosis:** No Diagnosis
  (Previously Axis I & Axis II)
- **Medical Conditions:** None Known
  (Previously Axis III)

Mr. Kelsey has no history of mental disorder; and he does not presently meet criteria for a personality disorder, cognitive disorder, adjustment disorder, substance disorder or other psychopathology. Thus, no diagnosis is offered.

VIOLENCE RISK ASSESSMENT: A violence risk assessment measure was utilized to supplement the above data and more formally evaluate the issue of future violence risk.

HCR-20^{V3}: The **HCR-20^{V3}** is an interview and assessment tool designed to assess an individual's risk of future violence. This tool has been subject to rigorous empirical validation, and is used routinely in parole evaluations for those serving life sentences. [1, 2] The HCR-20^{V3} is comprised of twenty items in *Historical*, *Clinical* and *Risk Management* domains that combine to assess an individual's overall level of violent recidivism risk. Thus, the measure captures past, present, and future risk variables. These variables have been demonstrated via research to correlate with an individual's risk of violence. Items are assessed for the *presence* of the risk factor, and the *relevancy (low, moderate or high)* of the item to address future violence for that individual. Information on these variables was obtained through in-depth clinical interviews with Mr. Kelsey, collateral interviews and by review of collateral data.

- **Historical** variables are considered over an individual's lifetime and include history of: 1) *violence*; 2) *violent attitudes;* 3) *antisocial behaviors*; 4) *instability of relationships;* 5) *instability of employment*; 6) *substance use*; 7) *major mental illness*; 8) *personality disorders*; 9) *traumatic experiences*; and 10) *problems with treatment response*.

With regard to ***history of violence***, Mr. Kelsey has had no known violent behavior prior to the offense, or during his present incarceration. With regard to the homicide offense at age 16, prior court decisions are clear that his codefendant gave the victim illicit drugs, strangled her, and lit the fuse of the pipe bomb. Mr. Kelsey's role was limited to a failure to act in an effort to prevent harm to the victim, and of placing the pipe bomb in her mouth. This latter action would be considered the 'violent act,' however, he believed she was already dead, and his codefendant lit the fuse. Nevertheless, since the pathologist cannot definitely determine the cause of death (e.g., drugs, strangulation, and/or explosion), his action would be considered violent, given that he aided his codefendant in this endeavor, and was present when the fuse was lit. This seems to be his only 'act of violence' over his 42 years. Thus, this factor is historically *present*, but of *low relevance* when considering the circumstances and current risk management strategies.

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[1] Laura S. Guy et al., *Influence of the HCR-20, LS/CMI, and PCL-R on Decisions About Parole Suitability Among Lifers*, 39 LAW HUMAN BEHAV 232 (2015).
[2] David R. Shaw, Office of the Inspector General, Special Report: *The Board of Parole Hearings: Psychological Evaluations and Mandatory Training Requirements* [July 2010] https://www.oig.ca.gov.

Regarding a related factor, data did not indicate that Mr. Kelsey has a history of entrenched ***violent attitudes***; therefore, this factor is *not present*.

Considering a pattern of ***antisocial behaviors*** (criminal activity other than violence), Mr. Kelsey has no history of juvenile offenses. At age 17, he incurred charges related to stealing a car for the purpose of "joyriding" and did not stop for police. His SCDC disciplinary record indicates very few infractions given the length of his incarceration, with six infractions in over 24 years. All but one was classified as 'Minor' or "Other' by SCDC. Further, most of his infractions would not be considered 'antisocial' conduct, as they would not be illegal if he were in the community (e.g., Refusing to Obey; 'Out of Place' etc.). Therefore, he has no established 'pattern' of antisocial conduct, and thus, this factor is *not present*.

In consideration of ***instability in relationships***, Mr. Kelsey was first incarcerated at age 17, and thus, had no truly serious relationships prior to his incarceration. Since 2013, he has been in a committed relationship, with his now fiancé. All available sources, including her family, cite their stability, love and mutual companionship, as a very positive development. Further, he has maintained positive relationships with his family, over his incarceration, which remain strong and committed. Thus, he has no pattern of relationship instability, (defined as multiple short-term, turbulent or conflictual relationships). As such, this factor is *not present*.

Regarding ***instability of employment***, Mr. Kelsey was a teenager at the time of his arrest, and had no sustained work history of any length. During his incarceration, he has held multiples types of jobs, with most of significant length, spanning years. For example, he worked for two years as a clerk in education; and for 12 years as an administrative clerk in PI. He is currently employed in the CSU unit, working as a para-professional counselor, with suicidal inmates, where he has worked for over three years. Of note, his history is not reflective of periods of unemployment, firings, poor performance reviews, conflicts with supervisors or coworkers, or other chronic problems. On the contrary, he has received many positive accolades for his work performance. Therefore, this factor is *not present*.

Regarding ***history of substance abuse***, Mr. Kelsey drank alcohol frequently as a 16 year-old, however, he did not experience negative consequences from use. In prison, he has not consumed alcohol in over 10 years, and has no alcohol-related infractions. He has never met criteria for an alcohol-related disorder. He socially experimented with substances as a teenager, with his use in line with adolescent experimentation. He did not use more than five times, with no negative consequences from use. In SCDC, he used marijuana during his earlier years, and has one substance-related infraction when he tested positive for THC. His use did not rise to the level of a substance-disorder, and he has not used in 16 years. Additionally, substances were not a contributing factor in the offense conduct. Therefore, this factor is considered *not present*.

For the risk factor of ***major mental disorder***, Mr. Kelsey has no history of major mental disorder. Therefore, this risk factor is *not present*. Additionally, he does not meet criteria for a ***personality disorder*** of any kind. SCDC records do not indicate diagnoses of personality disorders, and he did not meet criteria for a personality disorder upon current clinical evaluation. Therefore, this factor is *not present*.

Regarding history of ***traumatic experiences***, Mr. Kelsey did not endorse a history of trauma, and collateral sources do not indicate such history. He has never experienced symptoms of traumatic stress (e.g., PTSD).Therefore, this risk factor is *not present*.

Mr. Kelsey has no ***history of problems with treatment response.*** He has no history of requiring any type of treatment, thus, this is not directly applicable. Additionally, he has complied with various programs, trainings, educational endeavors and other rehabilitation efforts, with excellent response. Therefore, this factor is *not present*.

- **Clinical** risk factors are considered over the past six months and include recent problems with: 1) *degree of insight;* 2) *violent ideation or intent;* 3) *symptoms of major mental disorder;* 4) *instability of functioning*; and 5) *treatment or supervision response*.

Mr. Kelsey's ***degree of insight*** into his offense, and current functioning is very good due to intact cognitive abilities, committed self-reflection over many years, and openness regarding his life choices. He speaks openly about the offense, and demonstrates in-depth insight into his role, insight regarding victim impact, and insight regarding how he has grown and evolved over his incarceration. Therefore, this factor is *not present*.

There is no indication that Mr. Kelsey has had any recent problems with ***violent ideation or intent*****,** therefore this risk factor is *not present*. He does not have a major mental illness; therefore, he has no ***recent symptoms of major mental disorder,*** including affective, behavioral or cognitive instability. As such, this risk factor is *not present*. He is clinically stable at the present time, and thus his ***stability of functioning*** is good; therefore, this risk factor is *not present*. He has had no issues with ***recent treatment or supervision response****,* as he is not required to undergo any treatment, or supervision at the present time. He is compliant with all supervisors on the CSU unit. Therefore, this factor is *not present*.

- **Risk Management** factors represent an assessment of variables (out of custody) over the next six months and include future issues or problems with: 1) *professional services and plans*; 2) *living situation*; 3) *level of personal support*; 4) *treatment or supervision response*; and 5) *level of stress and coping*.

Regarding ***professional services and plans***, Mr. Kelsey has been offered a full-time job which he can start immediately upon release. He is not in need of other types of professional services (e.g., medical or mental health), and thus this factor is *not present*.

Relatedly, his ***living situation*** is very secure, as he will move in with his fiancé, who has just purchased a home. He is also welcome to reside with any number of family members, who are all financially stable. Therefore, this risk factor is *not present*. With regard to ***level of personal support***, Mr. Kelsey will have strong family and extrafamilial support. He has the unwavering support of his fiancé, with whom he will live, as well as her family which resides in very close proximity. Although they do not reside locally, he has the very strong support of all of his family members. His many letters of support provide additional evidence on this factor. Therefore, this risk factor is *not present*.

Regarding the factor of future ***treatment or supervision response***, Mr. Kelsey has no known needs for medical or mental health treatment at the present time; and has no history of compliance issues with supervision during his incarceration. Of note, he was chosen out of the 32 inmate workers in CSU to be the personal assistant of the program director, indicating strong qualities of compliance and dutifulness. Additionally, he has no interpersonal or clinical impediments that would hinder a positive response to parole supervision. Therefore, evidence supports a future positive treatment and supervision response. As such, this factor is *not present*.

Finally, the risk factor of future problems with ***level of stress or coping*** was considered. If released on parole, Mr. Kelsey would be faced with the challenges of adjusting to a very different 'outside world,' which may be stressful for anyone in his situation. However, as outlined above, he will have very strong personal support. He has also coped well in the stressful environment of the CSU, with his supervisors referring to him as "calm" and an asset to the program. Therefore, this risk factor is considered *present*, as with any transition of this magnitude, but of *low relevance*, given his support system and individual strengths.

In sum, based on the evaluation and application of the HCR-20^{V3} risk factors to Mr. Kelsey's specific history and situation, it is opined that only 2 out of 20 risk factors are *present*, but both are of *low relevance*. This factor includes *History of Violence* regarding the homicide offense over 25 years ago. Factors contributing to this offense are no longer present, and risk management strategies have evolved to reduce risk, to include: maturity past adolescence; longstanding prosocial lifestyle; education and viable job skills; clinical stability; insightfulness; and strong psychosocial support. The factor, *Stress and Coping,* was present, given potential release after many years. However, this is effectively addressed through his proven coping skills, and strong psychosocial support; and is thus, of low relevance.

Table 1. [Summary of HCR-20^{v3} Risk Factors, Presence and Relevance].

HCR-20^{v3} Risk Factor	Presence	Relevance to Risk Management
History of Violence	*Historically Present* (No serious violence prior to homicide or in 24+ years)	*Low* – Well Managed via age; maturity; longstanding prosocial lifestyle; job skills; education; clinical stability; insight & psychosocial support
Future Stress and Coping	*Present* (Related to transition after lengthy incarceration)	*Low* – Strong Coping Resources and Support Upon Release to Mitigate Stress

Taken together, in consideration of his individual, case-specific details, and available risk management strategies, data from the HCR-20^{v3} indicates Mr. Kelsey represents a low risk for future violent acts.

SUMMARY: Based on evaluation data, which includes clinical interviews and psychological testing with Mr. Kelsey; interviews with his parents, siblings, fiancé, fiancé's mother, former marriage and guidance counselors, and SCDC staff; and review of psychosocial, legal and correctional records; and letters of support, the following was found.

Prior Criminal Record and Supervision: Per 'parole criteria' set forth by the SC Board of Paroles and Pardons,[2] "***The offender's prior criminal record and adjustment under any previous programs of supervision*,"** was considered as part of his pre-offense history. Prior to the parole-eligible offense, Mr. Kelsey had no juvenile or adult charges. In the weeks after the offense, he incurred several minor charges, for which he maxed out his time in 1996. He has had no previous programs of supervision (e.g., parole or probation).

Parole-Eligible Offense*:** Per the Board's criteria, **"*The nature and seriousness of the offender's offense, the circumstances surrounding that offense, and the prisoner's attitude toward it;"* as well as the, *"the offender's understanding of the causes of his past criminal conduct" were assessed. At the time of the homicide, Mr. Kelsey was 16 years old, in mid-adolescence, with neurobiological maturity far from complete. Weeks before the homicide, his family had moved out of state, leaving him without any adult supervision, with no structure, and in the company of teenage peers. The homicide was committed with adolescent codefendants, one of whom also received a life sentence. Although his peers were charged as adults, Mr. Kelsey was waived to General Sessions via a transfer hearing, as he was still a juvenile.

Data from the trial testimony, and post-conviction holdings from the S.C. Supreme Court, are clear that the victim was murdered by his codefendant Geoff Payne by either drugs, strangulation or explosion; with the forensic pathologist unable to determine the cause of death. Thus, Mr. Kelsey's role was minimal as compared to his co-defendants, with regard to physical harm to the victim. However, Mr. Kelsey withheld information about the homicide, and did not disclose any information to her family. This needlessly prolonged their pain and suffering. Mr. Kelsey recognizes this decision as one that was very painful to the victim's family, and expresses much regret and guilt over his inaction in this regard. Further, he has accepted full responsibility for all of his actions and decisions surrounding the offense. His 'attitude' is one of great remorse, shame, and sadness for the victim's family and their loss.

Due to years of introspective reflection, he demonstrates very good 'understanding of the causes' of his criminal conduct, including lack of adult supervision; adolescent susceptibility to peer influence; poor decision-making due to desire for peer acceptance; and adolescent immaturity.

In consideration of the Board's parole criteria regarding, ***"The offender's attitude toward family members, the victim, and authority in general,"*** Mr. Kelsey has expressed significant remorse and empathy for the victim's family, and for the victim. He has written a letter of apology to the family in which he expressed, "Each day, I comprehend more fully, and regret more deeply, the devastation I brought on your family…[and] realize that there is nothing I can say or do to diminish the pain I have caused you…" He "cannot apologize enough" and "I am truly sorry for taking Melanie out of your life." He expressed similar sentiments during the present evaluation, with much tearfulness and emotion.

[2] https://www.dppps.sc.gov/content/download/120663/2749351/file/Parole+Board+Manual+June+7+ 2017.pdf.

Regarding 'attitude' towards authority, he has maintained compliance towards authority figures as evidenced by very few infractions over his incarceration, and by the many favorable letters of support from SCDC staff and supervisors. His direct supervisor also lauded his compliance and responsibility to this examiner regarding his current job.

***Course of Incarceration*:** In consideration of the Board's parole criteria: ***"The offender's adjustment while in confinement, including his progress in counseling, therapy, and other similar programs designed to encourage the prisoner to improve himself*;" "*The offender's employment history, including his job training and skills and his stability in the workplace*;" and "*The offender's efforts to solve his problems*;"** the following was found.

Mr. Kelsey's efforts at self-improvement have been committed, sustained, and sincere. He has availed himself of a multitude of educational endeavors, social programs, and work opportunities in order to 'solve his own problems,' to include earning multiple degrees; and accumulating hundreds of hours of vocational training. As a result, he has gained ready skills for the community, to include a college education; forklift and tire work certifications; computer and library skills; hospice experience; and ministry.

Additionally, in reviewing his many letters of support, those *professionals* who have worked with Mr. Kelsey during the course of his incarceration described him as: "an asset…to society;" "sincere, empathic, caring;" "remorseful;" "passionate in his commitment to God:" "volunteers for countless tasks;" "does an exceptional job;" "expresses deep regret and remorse for his actions;" "dependable, honest, courteous, and responsible;" "accepts responsibility for all the pain he has caused;" "is known to go above and beyond his assigned duties;" "quiet humble demeanor…consistently respectful, cheerful and hardworking;" "respectful, kind and gracious;" "served with humility and faithfulness;" "the kind of man I would want for a neighbor;" "an outstanding leader;" "selfless;" "very reliable and trustworthy;" "hardworking, self-motivated and quiet;" "expressed to me great remorse;" "has certainly rehabilitated himself;" "has displayed exemplary patience, understanding and compassion;" "I would hire him again;" "I can honestly say he was remorseful;" "superlative student;" "shown excellent character;" "respectful and helpful attitude;" "humble learner;" "gentle and unassuming;" "valued employee;" and "a fine example of rehabilitation in prison."

Furthermore, SCDC correctional staff interviewed indicate he has made a very positive adjustment, and they reported no hesitation regarding his potential release on parole.

Risk Assessment*:** In consideration of the Board's parole criteria of, ***"the risk that the offender poses to the community," Mr. Kelsey was assessed using an empirically validated risk assessment measure (HCR-20^{v3}). This measure consists of 20 risk variables, within Historical, Clinical and Risk Management domains. Results indicate Mr. Kelsey is at low risk for future violent recidivism. Primary contributing factors to the homicide offense are no longer valid or present, which primarily involved his immaturity, youthfulness, and attendant characteristics of impulsivity, recklessness, and poor future orientation. Additionally, his age of 42 further reduces his risk, as youthful offenders account for the majority of violent crime. Mr. Kelsey also has a very strong transition plan in place, with a ready place to live, employment, financial support and strong social support. Such stability is a powerful mitigator against future violence, and further supports a finding of 'low' risk.

The Board's parole criteria of, ***"The offender's physical, mental, and emotional health"*** was also considered in assessing his risk. Mr. Kelsey is clinically stable, and without symptoms of mental disorder. He has no history of mental health treatment during his incarceration. Records indicate he is in good medical health, with no treatment indicated at the present time.

Transition Plan**:** The Board's parole criteria: ***"The adequacy of the offender's overall parole plan, including his proposed residence and employment,"*** was considered. Mr. Kelsey has proposed to reside with his fiancé, in her home, in Augusta, Georgia. She is well-established, having lived in the area for 33 years, and is employed as the Assistant Executive Director and Dean of Students at a local military college. Her family resides within several miles, which would provide more structure and support.

[Note: Given that their relationship primarily developed during Mr. Kelsey's incarceration, it was initially approached with skepticism. Information from collateral sources was sought to better understand the dynamic. Her mother was contacted, who had also been initially skeptical. She has since visited Mr. Kelsey many times over the years, and has observed their relationship develop. She believes from her close observations that it is a real, and genuine commitment. Their marriage counselor was also contacted, as they have engaged in premarital counseling sessions. He vouched for the genuine nature of the relationship, and for Ms. Montgomery's sincerity and stability, whom he has known for years. He further noted that Mr. Kelsey and Ms. Montgomery knew each other prior to the offense, which provided additional evidence of a genuine relationship. Additionally, their high school guidance counselor, who knew both as teenagers, and has known Ms. Montgomery for many subsequent years, vouched for the sincerity, stability and authentic nature of Ms. Montgomery and their commitment. Finally, Mr. Kelsey's entire family has met Ms. Montgomery at least once, and in some cases, multiple times. They too vouched for the sincerity and stability of their relationship, citing enthusiastic approval for their proposed marriage plans.]

For work, Mr. Kelsey has been offered full-time employment at Lambert Logistics, Inc., which is akin to a courier/delivery company, and which he can start immediately. He and his fiancé plan to marry shortly upon his release, and find a church community in the local area, which would provide additional support.

Family Circle**:** Finally, in consideration of the Board's criteria: ***"The willingness of the offender's family to allow the offender, if he is paroled, to return to the family circle,"*** the examiner spoke with Mr. Kelsey's mother, father, stepmother, two older brothers, older sister, twin sister, fiancé and fiancé's mother. They would all welcome Mr. Kelsey back into the 'family circle,' providing him psychosocial, financial, emotional and spiritual support. His fiancé and her mother are also excited to welcome him into their extended family. It should be noted that he has been offered multiple residences in several states, given his family's commitment to his release.

In sum, Mr. Kelsey exhibits the requisite clinical stability for successful community reintegration, with a low risk of future violence, and a secure transition plan.

Respectfully Submitted

October 24, 2019

Susan C. Knight, Ph.D., ABPP
Licensed Clinical Psychologist
Board-Certified Forensic Psychologist

Date Signed

Cornell University
Law School

Lawyers in the Best Sense

JOHN H. BLUME
Samuel F. Leibowitz Professor of Trial Techniques
Director, Clinical Advocacy & Skills Programs
Director, Cornell Death Penalty Project

158 Myron Taylor Hall
Ithaca, New York 14853-4901
T: 607.255.1030
F: 607.255.3269
E: jb94@cornell.edu

September 24, 2019

Jerry B. Adger, Director
South Carolina Department of Probation, Parole and Pardon Services
2221 Devine Street, Suite 600
P.O. Box 50666
Columbia, SC 29250

Re: Joseph Glenn Kelsey (SCDC# 217218)

Dear Mr. Adger:

I am the Director of the Cornell Juvenile Justice Project and co-counsel for Joseph (Joe) Kelsey, who was 16 years old at the time he was sentenced to a term of life imprisonment for his participation in a murder coordinated by his older codefendant, Geoffrey Payne. In March 2019, the Board granted Mr. Payne parole a decision we do not quarrel with but who, as will be explained in more detail in the materials that will be submitted to the Board in Mr. Kelsey's parole packet, was clearly the most culpable of the three persons convicted of participating in the victim's death. This is not a matter of counsel's opinion; it is a matter of judicial fact: in the words of the South Carolina Supreme Court, the evidence "overwhelmingly prove[d] that Panye murdered [the victim]," "strangled the victim," "hit the victim twice on the head with a wrench," "had sexual intercourse with the victim," and "lit the fuse" of the bomb that destroyed her body. *See Payne v. State*, 355 S.C. 642, 645–46, 586 S.E.2d 857, 959 (2003).

The purpose of this letter, however, is to ensure that our client, who has demonstrated remorse and rehabilitation and has provided a solid release plan, be given the benefit of his status as a juvenile offender and that the Board fully consider the qualities that make children different for sentencing and release purposes. Simply put, Joe has proven that his crime does "not reflect irreparable corruption" and he more so than Mr. Payne has earned the right to live the rest of his "years of life outside prison walls." *See Montgomery v. Louisiana*, 136 S.Ct. 718, 736–37 (2016).

Recent decisions from the Supreme Court of the United States and the Supreme Court of South Carolina stand for the constitutional maxim that juveniles are different from adults for sentencing purposes. *See generally id.*; *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). Following the reasoning of these decisions, individuals who committed crimes when they were juveniles must receive special consideration during parole hearings and, absent strong evidence of irreparable corruption, are entitled to live "some years of life outside prison walls." *Montgomery*, 136 S.Ct. at 737. Although Joe was a juvenile at the time of his offense, because his trial and sentencin

occurred decades ago he did not receive the benefit of an individualized sentencing hearing. As a result, it now falls to this Board to give special credence to Joe's youth and attendant circumstances. I write to detail the decisions noted above and, in the spirit of these decision, to request a special hearing for Joe.

In *Miller v. Alabama*, the United States Supreme Court held that a juvenile convicted of a homicide offense cannot be sentenced to life in prison without parole unless the sentencer holds an individualized hearing that gives weight to the unique frailties of youth, including "diminished culpability and greater prospects for reform." 567 U.S. at 471. The *Miller* Court's rule grew out of two lines of Eighth Amendment precedent. The first, *Roper v. Simmons*, held that the Eighth Amendment categorically prohibits states from executing juvenile offenders, no matter how severe their crimes. 543 U.S. at 551. The second, *Graham v. Florida*, held that the Eighth Amendment categorically bars life without parole for juveniles who commit nonhomicide offenses because, the Court explained, juveniles are entitled to "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 560 U.S. at 75.

Underpinning *Miller* is the basic rule that "a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect 'irreparable corruption.'" *Montgomery*, 136 S.Ct. at 726 (quoting *Miller*, 567 U.S. at 479 80). In *Aiken v. Byars*, the Supreme Court of South Carolina fleshed out what *Miller* means in practice and detailed a nonexhaustive list of factors that courts must consider before sentencing juveniles:

> (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence";
> (2) the "family and home environment" that surrounded the offender;
> (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him;
> (4) the "incompetencies associated with youth for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and
> (5) the "possibility of rehabilitation."

410 S.C. at 544, 765 S.E.2d at 577 (quoting *Miller*, 567 U.S. at 477 78). Most recently, the United States Supreme Court held that *Miller* applies retroactively, effectively granting new hearings for hundreds of juvenile offenders across the country. *Montgomery*, 136 S. Ct. at 732. The Court explained that states have two options to implement *Miller*'s requirements: they can give the juvenile offenders new sentencing hearings like the ones described in *Aiken*, or they can consider juvenile homicide offenders for parole. *See id.* The Court gave examples of the kind of evidence that would be relevant to a parole determination, including participation in rehabilitative programs, employment in the prison system, and service as a role model to other inmates. *See id.*

The cases make clear that states must give juvenile offenders a realistic and meaningful opportunity for release by giving great weight to youth at every stage of the criminal process, including parole hearings. In the wake of the *Miller* trilogy, other states have adopted new

requirements for parole hearings for juvenile offenders. California, for example, amended its parole statute to require the board to "give weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." Cal. Penal Code § 4801(c). Similarly, Louisiana's parole board must "give great weight to the fact that youths are less responsible than adults for their actions." Directive 03-304-DIR from the Louisiana Board of Pardons and Parole. Appendix A, attached to this letter, contains a full overview of other states' post-*Miller* reforms aimed at protecting juvenile offenders' constitutional right to a realistic and meaningful opportunity for release.

The need for a realistic and meaningful opportunity underpins numerous decisions holding that a parole board's failure to give weight to youth and to grant parole to deserving juvenile offenders "violates, at a minimum, the Eighth Amendment ban on cruel and unusual punishment." *Brown v. Precythe*, No. 17-cv-4082, 2019 WL 3752973, at *4, n.2 (W.D. Mo. Aug. 8, 2019) (collecting cases); *see also Md. Restorative Just. Initiative v. Hogan*, No. ELH-16-1021, 2017 WL 467731, at *21 (D. Md. Feb. 3, 2017); *Wershe v. Combs*, No. 12-1375, 2016 WL 1253036, at *3 (W.D. Mich. Mar. 31, 2016); *Greiman v. Hodges*, 79 F. Supp. 3d 933, 945 (S.D. Iowa 2015); *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D.N.C. 2015); *Atwell v. State*, 197 So.3d 1040, 1041 -42 (Fla. 2016); *Diatchenko v. Dist. Att'y for Suffolk Dist.*, 27 N.E.3d 349 (Mass. 2015); *In re Hawkins v. N.Y. State Dep't of Corr. & Cmty. Supervision*, 140 A.D.3d 34, 39 (N.Y. App. Div. 2016). These cases have found state parole procedures unconstitutional for juveniles where "opportunities for release are 'remote,' rather than a true parole scheme." *Hogan*, No. ELH-16-1021, 2017 WL 467731, at *21.

Collectively, then, these opinions highlight that what carries constitutional weight in a juvenile case is not whether a sentence is formally classified as with or without parole. Rather, the appropriate inquiry is (1) whether a juvenile has received an opportunity for release based on demonstrated maturity and rehabilitation; (2) whether this opportunity is "meaningful" as measured by the actual rates of release for deserving juvenile offenders; and, (3) whether the parole system has given constitutionally appropriate weight to the juvenile's lessened culpability. *See Graham*, 560 U.S. at 70, 75 76, 82.

Additionally, the South Carolina Supreme Court has explained that an arbitrary parole decision violates a putative parolee's right to due process. *See Cooper v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008). Where, for example, the Board only considers the nature of the offense, the Board's order is "defective" and its decision "arbitrary and capricious." *Id.* Here, a decision to deny parole to Joe the youngest, least culpable codefendant with a stellar institutional record but to grant it to Payne who was older and at whose hands the victim died and was raped—would be arbitrary and capricious. This is made even more true by the fact that Joe is also entitled to heightened procedural protections because of his youth.

It is incumbent on this Board to give great weight to Joe's youth, his relatively reduced culpability compared to his codefendant, and his impressive maturity and rehabilitation since the time of the offense. Doing so will ensure that a juvenile whose crimes reflected only transient immaturity—and who has since matured will not be forced to serve a disproportionate sentence

in violation of the Eighth Amendment. Specifically, I am requesting that the Board explicitly consider, in writing, the following factors related to Joe's youth, in addition to the criteria already applicable to all parole applicants:

1. Joe's chronological age at the time of his offense;
2. The incompetencies associated with youth, including an impaired ability to deal with police officers, prosecutors, and defense attorneys, an inability to resist peer pressure, and a diminished understanding of risks and consequences;
3. Joe's relative immaturity at the time of the offense, as evidenced by his subsequent growth and maturity in prison;
4. Joe's home and environment at the time of the offense;
5. Joe's limited participation in the offense relative to his codefendant and the ways that peer pressure may have affected him;
6. The obstacles Joe faced as a youth in the adult correctional system;
7. Joe's intellectual capacity;
8. Joe's efforts to rehabilitate himself, including his participation in a wide range of rehabilitative and educational programs;
9. Joe's sincere remorse; and
10. Any other mitigating circumstances that the Board is inclined to consider.

Only when South Carolina requires special hearings for juvenile offenders and mandates the consideration of the above factors in these hearings will the State be in accord with the United States and South Carolina Supreme Court decisions establishing different substantive and procedural rules for cases including parole hearings involving juvenile offenders. We hope that your response reflects the evolving case law and that of other states.

Respectfully submitted,

John Blume
Director, Juvenile Justice Project
Cornell Law School
Ithaca, New York 14853-4901
(607) 255-1030
jb94@cornell.edu

cc: Kim Frederick

Appendix A

The table below contains examples of the guidelines states have implemented for their parole boards in light of the holdings in *Graham v. Florida*, 560 U.S. 48(2010), *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), and the growing national trend:

Factors Parole Board Must Consider Relating to the Youth of a Juvenile Offender:

	California	Connecticut	Louisiana	Nebraska	West Virginia
Age at time of offense		X	X	X	X
Diminished capability/culpability of juveniles	X		X	X	X
Immaturity at time of offense or increase in maturity	X	X	X	X	X
Obstacles faced by Juveniles in adult correctional system		X	X		
"Hallmark features of youth"	X		X		X

Resources Provided by Statute to Juvenile Offenders for Parole Hearings:

	California	Connecticut	Massachusetts
Time allotted for hearing			2-3 hours
Structure of hearing (in-person, teleconference & if separate from adult offenders)			In-person
Access to Attorney		X	
Attorney can participate in parole hearing	X	X	X

Below is a complete list of the statutory and regulatory changes states have implemented regarding parole board considerations for juveniles.

California:

- Statute instructs parole board to "give weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and

increased maturity of the prisoner in accordance with relevant case law" Cal. Penal Code § 4801(c).

- And further, " [i]n assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual" Cal. Penal Code § 4801(c).
- Attorneys can submit written materials before the hearing
- Attorneys may make closing statements

Connecticut:

- A year before the parole hearing, counsel is appointed by the Office of the Chief Public Defender for indigent individuals to help prepare for the hearing
- Demonstrated substantial rehabilitation since crime
- Person's character, background, and history, as demonstrated by factors, included, but not limited to, such person's correctional record
- Age and circumstances of such person as of the date of the commission of the crime
- Lack of education or obstacles faced as a youth in the adult correctional system
- Remorse and increased maturity

Louisiana:

- Directive 03-304-DIR from the Louisiana Board of Pardons and Parole states that the parole board must "give great weight to the fact that youths are less responsible than adults for their actions." At a minimum the board must consider:
    - Age and circumstances at the time of the offense,
    - "Hallmark features of youth" at the time of the offense, including "diminished understanding of risks and consequences, diminished ability to resist peer pressure, and diminished ability to control surroundings,"
    - Demonstrated remorse, growth, and increased maturity,
    - The offender's contributions to the welfare of others through service,
    - Efforts to overcome addiction, trauma, or substance abuse (where appropriate),
    - Lack of education or obstacles faced as a youth in the adult correctional system, and
    - Overall degree of rehabilitation
- Additionally, the panel is to consider available information on mental health history and current state of mental health

Massachusetts:

- Superior court is authorized to allow payment of expert fees in connection with the initial parole hearing and prisoners are entitled to judicial review of the parole board decision.
- Hearings last 2-3 hours and are held in person
- Attorneys provide open and closing statements
- Primary focus is questioning of the prisoner by board members
- Prisoner given 25 minutes for supporting witness testimony

b

Nebraska:

- The board must consider:
  - The offender's age at the time of the offense,
  - The offender's level of maturity,
  - The offender's ability to appreciate the risks and consequences of his or her conduct,
  - The offender's intellectual capacity,
  - The offender's level of participation in the offense, and
  - Any other mitigating factor or circumstance submitted by the offender

West Virginia:

- Board must ensure a "meaningful opportunity" and consider the "diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner during incarceration" W. Va. Code § 61-11-23(b;); § 62-12 13b(a),(b).
- The board must also review educational and court documents, and consider:
  - Age at the time of the offense,
  - Immaturity at the time of the offense,
  - Home and community environment at the time of the offense, and
  - Evidence of remorse

c

Appendix 22

State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 DEVINE STREET, SUITE 600
POST OFFICE BOX 50666
COLUMBIA, SOUTH CAROLINA 29250
Telephone: (803) 734-9220
Facsimile: (803) 734-9440
www.dppps.sc.gov/

October 1, 2019

John Blume, Director, Juvenile Justice Project
Cornell Law School
Ithaca, New York, 14853-4901

Re: Joseph Kelsey SCDC# 217218

Dear Mr. Blume:

I have been asked to respond to your September 24, 2019 letter. You have requested that due to the fact that Mr. Kelsey was a juvenile when he committed his offenses that he should be given special consideration in his upcoming parole hearings.

As a preliminary issue, the South Carolina Board of Paroles and Pardons is an independent body from the Department of Probation, Parole and Pardon Services (PPP). The Board is a body whose members are selected by the governor with the approval of the South Carolina Senate. Their decisions are their own, and they have the sole authority in South Carolina to award parole.

I am well aware of the case law you cite in your letter regarding the recent changes in how juveniles are to be sentenced if otherwise treated as adults. However, these opinions address sentencing only.

The *Miller v. Alabama* opinion and its progeny do not contemplate or address South Carolina law as it existed prior to January 1, 1996. The current law gives a sentencing judge discretion over the sentence for murder, from thirty years up to life in prison without the possibility of parole. So clearly, the *Miller* and *Aiken v. Byars* holdings apply to a judge's sentence if the judge was contemplating life without parole.

However, prior to January 1, 1996, the only sentence for murder in South Carolina was for life. The judge did not have any say over parole eligibility, which is defined and awarded purely by statute. Sentencing judges in South Carolina do not have any authority over a defendant's parole eligibility.

Mr. Kelsey received the only sentence which was available for a conviction of murder in South Carolina at the time of his offense. By operation of South Carolina law, he was parole eligible after the service of twenty years. Consequently, *Miller* and *Byars* do not apply to his situation.

You also state that you believe changes must be made in order to afford Mr. Kelsey "a realistic and meaningful opportunity for release." Mr. Kelsey is receiving hearings before the Parole Board. Each time he is before the Board, he has a realistic and meaningful opportunity to be released to parole. The Board is authorized to conditionally parole each eligible inmate who appears before it. Mr. Kelsey is no different.

South Carolina has not applied the reasoning behind *Miller* and *Byars* to parole hearings of inmates who were juveniles at the time of their offense. "We hold the principles enunciated in *Miller*... apply ... to all juvenile offenders who may be subject to a sentence of life imprisonment without the possibility of parole." *Byars*, 410 S.C. at 545.

Your request that the Board give "great weight" to Mr. Kelsey's youth and reduced culpability again only applies to sentencing. As a candidate for parole, Mr. Kelsey is no longer a juvenile. As an adult, the Board's statutory requirements are that they "carefully consider the record of the prisoner before, during, and after imprisonment." S.C. Code §24-21-640. He can only be paroled if he "has shown a disposition to reform; that in the future he will probably obey the law and to lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him."

You have cited other jurisdictions that have modified their parole analysis requirements as it relates to juvenile offenders. Those voluntary efforts may be persuasive, but definitely not mandatory. Furthermore, the authoritative case law in *Miller* and *Montgomery v. Louisiana* do not address whether a juvenile sentenced to life with parole is constitutionally entitled to a more extensive parole review.

The *Montgomery* decision by the U.S. Supreme Court stated that a possible remedy for a *Miller* violation was to consider those inmates for parole. *Montgomery*, 136 S. Ct. at 736. The Court did not take that opportunity to outline any additional considerations those parole hearings should take.

Lastly, in response to your request for the explicit considerations enumerated in your letter, the Board is under no obligation to do additional research into such factors you describe, nor is it required to explain its reasoning in great detail. The *Cooper* decision only requires the findings of fact and conclusion of law to be separately stated, which the Board does for all its denials of parole routinely. The Board does not have to explain its reasoning in detail, because the

Administrative Law Court lacks the authority to overturn a Board decision or substitute its own, beyond determining whether the Board followed proper procedure. *Cooper*, 377 S.C. at 500.

Any information about Mr. Kelsey's early life, his home environment, and his efforts to rehabilitate himself can be presented at his hearing. The Board will no doubt listen to anything provided on his behalf at the parole hearing.

South Carolina remains fully within the bounds of the Constitution when it comes to parole hearings. The holdings in the recent Supreme Court cases do not address parole hearings, instead focusing on the sentencing stage. The Court had the opportunity to add special requirements for parole hearings of former juvenile offenders, but neglected to do so. Consequently, the Board is under no obligation to change its procedures.

I hope this has addressed your concerns.

Sincerely,

Matthew C. Buchanan
General Counsel

State of South Carolina
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY
Governor

JERRY B. ADGER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

November 19, 2015

Mr. Joseph Kelsey #00217218
Kirkland Reception And Evaluation Center
4344 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Kelsey:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense

Sincerely,

Larry Ray Patton, Jr.
Director of Parole Board Support Services

11/18/2015

State of South Carolina

Department of Probation, Parole and Pardon Services

HENRY McMASTER
Governor

JERRY B. ADGER
Director

2221 Devine Street, Suite 600
Post Office Box 50666
Columbia, South Carolina 29250
Telephone: (803) 734-9220
Fax: (803) 734-9440
www.dppps.sc.gov

November 16, 2017

Mr. Joseph Kelsey #00217218
Broad River Correctional Institution
4460 Broad River Rd.
Columbia, SC 29210

RE: NOTICE OF REJECTION

Dear Mr. Kelsey:

It is my responsibility to inform you, on behalf of the South Carolina Parole Board, that the Board has reached a decision regarding your parole hearing. The Board hereby makes the following CONCLUSION OF LAW:

After careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10 (F) (1) of the South Carolina Code of Laws. The Parole Board had determined that your parole must be denied.

You will be notified 30 days prior to your next scheduled parole consideration date.

FINDINGS OF FACT:

Nature And Seriousness Of Current Offense
Indication Of Violence In This Or Previous Offense
Criminal Record Indicates Poor Community Adjustment
Vote Count: Unanimous To Reject

Sincerely,

Larry Ray Patton, Jr.
Director of Parole Board Support Services

11/15/2017

Joseph Kelsey 217218
BRCI - Greenwood B2094
4460 Broad River Rd.
Columbia, SC 29210

January 5, 2018

Mr. Larry Ray Patton, Jr.
Director of Parole Board Support Services
P.O. Box 50666
Columbia, SC 29250

RE: REPORT AND ASSESMENT REQUEST

Mr. Patton:

Please provide me with any DPPPS reports concerning me, my suitability for parole, likelihood of reoffending, etc., and any assessment tools applied to me and their results. If you cannot provide me with this information, please let me know what I must do to obtain it. Thank you for your assistance.

Sincerely,
Joseph Kelsey

Joseph Kelsey 217218
BRCI - Greenwood B2094
4460 Broad River Rd.
Columbia, SC 29210

March 27, 2018

Mr. Larry Ray Patton, Jr.
Director of Parole Board Support Services
P.O. Box 50666
Columbia, SC 29250

RE: 2ND REQUEST FOR REPORTS AND ASSESSMENT (1ST REQUEST DATED JANUARY 5, 2018)

Mr. Patton:

Please provide me with any DPPPS reports concerning me, my suitability for parole, likelihood of reoffending, etc., and any assessment tools applied to me and their results. If you cannot provide me with this information, please let me know what I must do to obtain it. Thank you for your assistance.

Sincerely,
Joseph Kelsey

[unidentified female voice]: And that is the chart. And we're here for case number ___ Geoffrey Payne.

Jennings: Morning.

Baxter: Good morning. [clearing throats] Um, Geoffrey Payne?

Payne: Yes sir.

Baxter: Good morning Geoff. Mr. Payne, uh, probably got to ya. Could you tell me who came in with you there and we have your attorney here with you and uh some other guests. Okay and I'll let Mr. Jennings introduce them, okay? Tell me who is there with you first.

Payne: Right behind me this is Pamela Bassey, she is my step-mother, she is also an employee of SRS and one of my number one supporters. On my right is Miss Vikki Scott, hopefully my future employer and my landlord. And on my right is my father Bob Payne, retired from SRS and definitely my number one supporter.

Baxter: And we have Mr. Jennings here. Would you like for him to go ahead and introduce the people and start on this side?

Payne: Sure, that'd be great.

Jennings: I'd be happy to introduce them. Of course y'all know my co counsel Guillermo Roy to my left and this is Shareem Hinsodia. Shareem is also a lawyer but she's not here as a lawyer, she's here as a witness in favor of Geoff Payne's parole, she's down [unintelligible] from the uh Turning Leaf program that she's involved with uh down at Allendale. Um, Mr. Payne would like to speak first. We understand we have a lot of bodies but we all want to be respectful of your time and we're all going to be brief and Mr. Payne's presentation and keep it to less than five minutes.

Baxter: Okay in the interest of time and to be fair with everybody else, like I said, if they'll be very brief I'll let them go ahead and go but if not it's gonna be about three people on his side that we can talk to and we've got attorneys here on his side. Alright?

Jennings: Yes sir, that's right. We understand. The people behind me will not be speaking.

Baxter: Okay that's fine go ahead. Go ahead please.

Payne: Ladies and Chairman Baxter and all the members of the board, I'm thankful for this opportunity. You might ask as I did how a kid with the opportunities I had could go so far astray. Through daily prayer and sincere remorse I have given that a lot of thought over the last 25 years. None so much as I did in the 40 days immediately after Melanie Richey's death. I take full responsibility for my actions and for the results of my inactions, such as when I hid the details of the events of July 12, 1994 from my family, her family, and from law enforcement. I should have come forward more promptly than I did and I can only imagine the suffering that Melanie's family continues to experience and I have great empathy for their grief. As I listen to the recordings of my previous hearings I understand that it's their desire for me to never be released. I respect their feelings because of their loss. I just believe that the only way I can ever

hope to alleviate their grief is by proving my sincerity through my actions while on parole. So with the help of through meaningful programming and introspection I found that a toxic mix of youth, above average mental immaturity, and the overwhelming notion of needing the acceptance of my peers, along with the use of mind altering drugs like LSD combined with alcohol, in hindsight clearly had me headed to either prison or the grave. I needed and deserved the sentence I received and I thank God, daily, for the opportunity of incarceration. I have used this time wisely to make myself a better man, by identifying and addressing the root causes of my destructive behaviors. I also received certificates in hospice end of life care, bee keeping, including my journeyman certificate, which is a first for someone in South Carolina prison and took five years of hands-on experience. I've got carpentry, animal grooming, and fork lift operator driver's license, all of which are viable careers for me or vocations for me on the street. I achieved my GED and gold work key certificate (?) and am currently pursuing an associate's degree in prisons [?] administration in correspondence from Ohio University, where I maintain a 4.0 GPA. I am cofounder and charter member of over fifteen programs at Allendale: the first ever registered beekeeper's club and toastmasters' international club inside a South Carolina prison, as well as the cornerstone GED program, which SCDC is now implementing at other prisons. I am also the leader of by far the largest animal program of any institution in the state, as a matter of fact it's larger than all of them combined. We oversee over 400 animals and we even got the attention of Jackson Galaxy, who came out and filmed an episode of his hit show that aired this past year on Animal Planet. I've tutored men in basic math and literacy for ten years, and for almost as many years, I have mentored hundreds of men and women through pretrial intervention in the Operation Behind Bars Program, trying to help them make better decisions with their lives than I made with mine. I've served as a leader and mentor for the last seven years to thousands of men ever since former warden John Pate sent me to Perry Correctional Institution to learn about their character program and returned to Allendale to create a program of our own. For the next five years I moved from wing to wing and unit to unit expanding the character program and raising up, uh, leadership teams to support the program as I moved on to the next unincorporated area. In the last three years, I've been chosen by SCDC out of 20,000 inmates to work with Dr. DeVosse (?) out of Ohio State University on a study of the character program, to work with Dr. Hayden Smith out of USC, and to work with Dr. Leslie Hill out of the Citadel on a book demonstrating the positive effects of animal programs on inmates. Just this year I was chosen by Mr. Pate in his new role as the state-wide character program coordinator as one of the first ambassadors whose responsibility is to ensure the uniformity of the character program at every institution in the state. So Jumpstart, Freshstart, and BridgeBuilders of the Low Country affiliated with Blackaby Ministries have all offered to provide transitional assistance and have even requested that I speak at events on their behalf. My immediate plan if released is to live in the guest house at ____ Estate in Jackson, South Carolina while I will also be employed by the owners, Mr. and Mrs. Scott—Mrs. Scott here beside me—as the property manager. When I get my driver's license, I will go to work at Collum Lumber in Allendale, South Carolina where Mr. Scott is the owner and C.E.O. I will also volunteer at Friends for Life Center Animal Shelter in Barnwell, South Carolina, where Mrs. Scott is the operator and the organization's president. Ladies and gentlemen of the board, for me the system of correction and rehabilitation has worked. The man speaking to you today bears no resemblance to the teenager that entered these prisons a lifetime ago. If you grant me parole, I can assure you I will not let you down. I will make you proud of the decision you make here today and I will be an asset to my family, my church, and my community, who have continued to support me for the last 25 years and who I know will support me for my successful transition to society. I thank you again chairman Baxter and members of the board for this opportunity to talk to you today and I am happy to answer any questions you have.

Baxter: Okay, uh, what about your supporters. I'll let one or two of those speak for you.

Jennings: Yes sir. Mr. Chairman, if I could, uh, if I could quickly go next and, and Mr. Malloy is going to wrap it up for us at the end. Um, I've represented Geoff since 2012 and in those seven years I've had a chance to see what you got a glimpse of just then: a completely rehabilitated uh wonderful applicant for parole and who would do nothing but make the whole system proud if he got the privilege of parole, and I couldn't be more sincere and genuine in saying that to you. As I said in a cover letter with the packet I sent to you all in advance, former warden John Pate who talked to me for about two hours recently about Geoff, but for the prohibition would be here himself and would tell you without question this is the most deserving candidate for parole that he's seen in his 30-plus years. Um, you know appearing before you this morning I feel like genuinely um, um, I'm representing a large network of very respected South Carolinians, including a lot of SCDC staff, uh advocacy groups, prison ministry groups, uh lawyers, people at the Animal Planet television show uh and others, including inmates by the way who are closely watching this case because with respect to the inmates, uh they think to themselves what incentive do I have to rectify, to rectify my behavior or to rehabilitate if Geoff Payne can't make parole. Then why should I reform. And so I really and truly say to you today that Geoff is the poster child for somebody who is rehabilitated, who has shown leadership in every way, through Operation Behind Bars, Jumpstart, all these character based programs that he's shown genuine leadership in, uh he is the poster child of someone whose only stumbling block to parole is emotional victim opposition from the parents of Melanie Richey who was brutally murdered uh 25 years ago. And as a parent or a grandparent we all empathize with that, that loss and that emotion but these fine folks still travel here from Illinois every two years uh to tell you we don't ever want him paroled and uh they have said in previous hearings that they believe that that is a reduction of his sentence. Uh, well respectfully, at the time he was convicted of murder there was an option there for them to give him with a life eligibility for parole after 20 years, which he got, instead of life with 30 year eligibility, or life with no parole eligibility, or quite frankly under the circumstances the death penalty. Uh, Geoff Payne received life with 20 years eligibility and he is now approaching his 42nd birthday and served 25 years uh on this sentence. So, when you have a situation where these fine folks are of the opinion that you should never ever parole him it just cries out uh for the whole system uh to stand up and do what uh the whole idea of parole and the notion of parole calls for and that is to judge him by the criteria that are in the statute and that are in your parole uh policies. And I respectfully submit he has met or exceeded every one of those, in every way, without question. And uh, with pleasure would be someone who in any assessment such as COMPAS would hit a grand slam home run and and and set every record for uh one who the criteria shows should, uh, be uh again should be deserving of parole. I will not go into um previous issues that I've brought to your attention in a letter um about um statements made by the victim's mother uh before uh because it really is with great respect that we all approach their uh testimony, but her testimony two years ago suggested to this court that Geoff is cold and that he's callous and he lacks remorse and that's truly just not the case. At age 17 when this unspeakable murder occurred Geoff and the other two codefendants all lied to Melanie's parents and and told them they didn't know where she was and for some 40 days plus they agonized over finding their daughter, where is she, and it was a horrible time. But what they don't tell you is that 25 years ago it was Geoff Payne who was the first one of the three codefendants who came forward and gave a confession and led the sheriff to Melanie's remains. Uh but for, even as a drug crazed 17 year old, but for his actions then, their agony might have been prolonged even more. Um, so, I submit to you that this man who was correctly convicted under a hand of one hand of all theory and has a codefendant who uh is the the so-called perpetrator or trigger man um who is at Broad River, uh. There is an opportunity for them to still express their ire against parole with respect to the man who actually took their daughter's life uh and if they lump them all together as they have before then I just ask you to take, keep that in perspective and

and to realize that that there's nothing in this record at all that says that this man should be denied based on every criteria in the statute he deserves parole and I only ask you to please consider doing just that. Uh, Shareem will briefly speak next and then Vicky and then I assume we will wrap this thing up and let the family [unintelligible chatter]

Shareem Hinsodia: Thank you, I promise to keep my comments brief. Uh, this is my first time before the parole board, uh, that's how important I felt uh this was to come today. I've gotten to know Geoff Payne extremely well over the last several years through my current job and through my position on uh executive volunteer board at Allendale Prison where Geoffrey Payne also serves as a member and an inmate leader. My background differs a little bit from some others you're going to hear from today. Uh prior to my current work on prison justice issues I was an undercover intelligence officer for the Central Intelligence Agency for ten plus years working in Africa and the Middle East and then in Washington D.C., and I mention this only because I want to highlight that a lot of my training in my position, it was important to be able to read people, and sometimes being able to read a person correctly had life and death consequences. I wanna be very clear that no one can be right about people all the time and I'm not pretending to say that I am, but I have gotten to know Mr. Payne and from the first time I met him he impressed me as an exceptional person, very intelligent, very compassionate, both for people and for animals that he's cared for and saved the lives of. He's a team player and he's very hard working. Since he entered the prison at a very young age, Geoff has taken almost every available class and program that's been in front of him, as he mentioned, and I've witnessed him as a clear and standout leader at Allendale. I see how people look at him and look to him for guidance, for mentorship, he's mentored countless other men, helping them get their GEDs, teaching them uh about compassion and empathy, and through the animal program he's also shown a great deal of leadership as well. He's a constant presence at the Allendale Program Center, working with others on existing programs and creating new programs. Today, I briefly mentioned that I'm a staff attorney working on criminal justice issues for a reentry organization called Turning Leaf that's based out of North Charleston. I know that you're aware of the many U.S. Supreme Court decisions that have been taking place over the last several years that talk about the difference between the juvenile mind and the adult mind. Geoff, as you are aware, was 17 when this incident took place. He, as you, know the uh the juvenile mind is different. That's science not, not opinion. He has spent every moment since this incident took place and since his recognition of participation in it, not only making amends but doing good deeds and good work. According to experts the best parole systems in this country have certain key factors and the most important among them is willingness to reward those who have taken the initiative and gone above and beyond and I see Geoff as person number one that has done that, um, I haven't met anyone else that quite meets his image. And I just end with a quote from the animal program, that Animal Planet program that he mentioned that had filmed a segment at Allendale last year. And they quoted Geoff 'cuz he was, he's the prime person on the animal program, and he talked about if not for the second chance of one of these animals in this program, every single one of them would have been euthanized. And without a second chance afforded men and women in our prisons we've wasted all of their lives. Whoever you are, you deserve a second chance. I think he was right, and please I ask of you give Geoff a chance today.

Chairman Baxter: Thank you, next who wants to go?

Jennings: Uh, Vikki, beside him.

Vikki Scott: Mr. Chairman and members of the board. I'll keep this very brief. I want to thank you for allowing me to speak today. As a volunteer at Allendale Correctional, two to four days per week, I work closely not only with the inmates but with the staff and administration. That has given me, over the six years that I have volunteered, uh an opportunity to observe the trust and respect that the staff and the administration have for this man. Um, they all know that Geoff lives by the motto of retired warden John Pate and that is always do the right thing, especially when no one is looking, or watching, and that's what he always does and he tries to get other inmates to also live by that motto. Um I know that if the staff and administration were allowed to speak, they would be here gladly and would speak favorably of Geoff. Um, Mr. Payne stands out not only to staff and administration but also to us volunteers and um, we can count on him, extremely. And especially me because he facilitates the animal program for me. And I know his ethics, his work ethics, his integrity, and his character. And this knowledge has brought me and my husband to offer him a job in the family business and also we would provide him a place to live on our property. Um, as a volunteer with JumpStart, Art for Hope, the character program, and the animal program, I have worked with probably thousands of inmates. I, uh, in the six years, know no other man that is as deserving in my opinion as Geoff Payne to be released. And so I hope you will consider that. Thank you.

Chairman Baxter: Thank you ma'am. Alright.

Jennings: Mr. Chairman, his father, Bob Payne, is a retired nuclear engineer with the Savanna River Plant and sitting beside him there. I think he will keep it to 30 seconds or less. He's appeared at every previous hearing.

Chairman Baxter: Alright, thank you sir.

Bob Payne: Uh, I have stood by my son since he was born. I've been right there. I've visited him every week, every other week for the past 25 years, um, I'll be there. Like, like I've said I'm retired, I'm there for him, I'll help him with his transition into the uh, life behind these walls, I'm ready for it. I've been ready for it. That's all. Thank you.

Jennings: My cocounsel Mr. Malloy.

Senator Malloy: Thank you Mr. Chairman. So I'll just by by repeating everything everybody said. Just, injustice anywhere is a threat to justice everywhere. What that talks about is responsibility, and what is a responsibility when we see an injustice. And so there's a responsibility that we all end up having. Um, he has a responsibility and we have a responsibility. He was 17 years old, we do know the science now, um, that is different then that what we knew of then. But as long as the hand of one is the hand of all, you were there, you're responsible. The system held him responsible. One person gets a life plus fourteen years, one person gets ten years, he gets a, he gets a life that makes him eligible for twenty years. There's a question about what has happened to him. So he's been denied three times, and the three times that he's denied, you know a lot of times we see what happens is that they go back and they don't continue to get better, they give up. He didn't give up. So I think the most impressive thing is that whenever he goes back after he is denied, he continued to end up working. I've got a certificate here for 4,488 hours on the character housing unit. That's impressive. You know, it's interesting for what we are required of those who we incarcerate in our society. They have a responsibility. And so, when we look at it now, we look back, he was sentenced by the toughest, in the toughest court, by the toughest solicitor that we have, Donnie Myers, back in those days. And what happened is that after he has gone there, what he has done,

is that he has continued to award all of the accolades that be given, you know, he's fit with that. The complements (?) we've given, he's fit within that. He's done the work. And so, what else is required? And so we understand that it is just a horrible circumstance. But we cannot go back in time, we can only connect the dots going backward, we can't connect them going forward. What he has done is he has given us a blueprint as to what he will do. We've seen that. And if there was a time to end up making huge mistakes within the system, we would have seen that. You look at his sheet, to see where he came in, what he was doing, and in the end as it rose toward the jobs that he had, he was a ward keeper. And so I'll conclude by just saying, you know, uh I give you the same recourse. I don't come here very much. Um, Mr. Jennings called me, he says I don't think I'll take another case if I don't get this guy out. I said I'll take a look. I've heard from a lot of people around the state as to how I got involved. From, um, Tim Scott's team, um, who had supported him in some issues down in Allendale, and from Terry Richardson who was going to a basketball game with me and he says, you know what, he says the confederate flag came down from the statehouse, we have a NCAA. Things change. We had a responsibility, it happened, then they didn't decide to end up rewarding our state, whether you, which side you're on it doesn't matter. He said guess what. We're going to punish you. We're going to not let you have a basketball tournament in this state until you do what you're supposed to do. Under our guidelines. So may not be everybody's guidelines, it's NCAA's guidelines. We give you NCAA tournament when y'all take the flag down. And so they did it, we got a tournament coming in. And so now, so, with that responsibility, everybody want it down? No. Some did, some didn't. But it came down, now we have the tournament. Are we better? I think that we are, we are, we are, we are better, so what I would just say is that things that occurred it's never too late to be the person that you could have been. And I think that now he is trying to prove to us that he should, gonna be the person he could have been. And so the last thing is that, what is required. Y'all heard that. Do just, little mercy, welcome him with god. But it doesn't fit me. You gotta give him a chance to do that.

Chairman Baxter: Alright thank you. Well I thank everybody for their time, I know that everybody had a lot to say, but let me see if anybody got any questions before we conclude. Any board members have any questions? Well thank you very much, if y'all will step outside we'll let you know something, okay.

Payne: Thank you so much.

[witnesses leave, shuffling sounds, chatter]

Chairman Baxter: We got opposition?

[female voice]: Yes.

Chairman Baxter: Everybody here? We're here for the parole case of Geoffrey Payne. Alright, if I could get each of ya to state your name for the record please.

Mr. Richey: Alright, Steve Richey.

Mrs. Richey: And I'm ___ Richey.

Chairman Baxter: Alright, we have heard from Mr. Payne. We do have the facts of the case before us, and we have reviewed those facts so now we want to hear from you, whether you're for or against parole. If somebody wants to make a statement you're more than welcome to do that at this time.

[sister] Richey: Hi, um, thanks for hearing us. This is really hard. You know, uh, I forgave him a long time ago for what he did, not because he asked for my forgiveness because he didn't, and not because he deserves our forgiveness, because he doesn't. Um, and not even because I think I have the right to forgive him because some things only God can forgive, but he took something away from us that we can't get back and I wouldn't want him to take anything else. Um, I don't know if he's made things right with God for what he did, I don't know if he's made his peace with the world, but for the sake of his eternal soul I hope he has, but today we're not concerned with the afterlife but with this life and with whether or not he has a chance to be released. Um, I want to be very clear what this case is not about. This is not him being in the wrong place at the wrong time, this is not he made a poor choice that had catastrophic consequences. This man is a sexual predator, an active participant in the kidnapping, rape and murder of a 15 year old. I don't know how you come back from that, at least not in this life, and I think the only thing more tragic to what happened is he had a chance to do it again. That would one of the greatest I think injustices and one that I'm not sure I could come back from. I don't know if I can make it out here every time there's a hearing, we have another one in October, but I want each and every one of you to know that I opposed parole last time, I oppose parole this time, and I oppose parole every time.

Chairman Baxter: Okay, alright. Anybody else?

Mr. Richey: Uh, you know, I been at, uh, over the many years an unfortunate number of legal hearings and proceedings so I'll be brief. You said you have the facts before you. Before anyone would uh consider uh voting uh voting for any type of parole for Payne I would encourage you to read the record. Uhh, yeah, he uh tried to uh drug, sexually assault, strangle, drag out into the woods, and where a pipe bomb was put in my daughter's mouth and her head blown off, and where her remains were left for 42 days with us frantically searching for her, not knowing what happened to her. Uh, it was the most horrific crime and a most horrible loss to us. Yes, we have strived to forgive, but that, that does not remove accountability, uh the uh justice system of the state of South Carolina sentenced, if my memory is correct, in Mr. Payne's case, to uh life plus five years, and we urge you to honor every second of that sentence. We see no reason for it to be any shorter. So yes, I oppose parole.

Chairman Baxter: Alright, ma'am?

Mrs. Richey: I too oppose parole. I want to tell you what's not in the record. She was 15 years old. She was our first-born, just weeks, just a few weeks from her 16th birthday. We were going to get her a car—a used car. And, she was the life of our family. She was, she was, everything to us. Our daughters are everything to us. And the first time I met Mr. Payne was during those seven weeks that she was missing. [Thank you] And uh, my husband and I spent days, weeks, looking for her, talking to anybody we could ever find that knew her, and we met Mr. Payne and his father at their home and he looked in our eyes and he lied to us. Oh, he didn't know what happened to her. He didn't know what happened to her. She went to a party, they drugged her tea with ecstasy, and told her, told her that they were going to take her home. Instead they put her in the back of a car where they sexually assaulted her, where they strangled her, where they took her body out into the woods and put a pipe bomb into her mouth. All of this happened in just a few hours and then she was gone missing but we waited for seven weeks, looking for her. Looking everywhere for her, talking to Geoffrey Payne, talking to his codefendants, they were involved as well. I do forgive him. I, I truly do forgive him. But he must be held accountable for what he did. I know that my daughter is in heaven. So one day I'll see her again. But in this life we never got to see her graduate from

high school, go to college, get married, have kids. He took away more than just that time that we had with her. He took her future. And he took a lot of our future as well. I can't, I can't say that he should get out, ever, cuz there's uh, the investigators at the time when she was gone and after all the pretrial, pretrial stuff was going on, said that, if they had not, if Geoffrey Payne had laid low and done nothing else, they may never have found her. They would have never found our daughter. He murdered her. So no, I am not for parole.

Chairman Baxter: We're very sorry for the circumstances that brought you here, but we thank you for coming in. If you step outside we'll let you know our decision.

[people leave]

Chairman Baxter: Any thoughts? Anybody want to say anything?

Male voice: I vote for parole.

Male voice: I vote parole.

Female voice: I vote parole.

Male voice: I vote parole.

Male voice: I vote for parole.

Chairman Baxter: And uh, Baxter, parole. Okay, uh, Geoffrey Payne, [shuffling] for the record, he gets parole. Mr. Payne will be paroled today. We want him to have no contact with the victim, the victim family for the duration of his supervision, relevant residency, move out the state, a psychological, uh, make sure he take anger management counseling, and uhhh that's it.

[unidentified female voice]: Case 33 - Joseph Kelsey. 33. Mr. Kelsey is being represented by Attorney John Ozmint.

Frederick: Thank you.

unintelligible

Frederick: Ok, thank you.

unintelligible

Frederick: Good Morning, Mr. Kelsey.

Kelsey: Good morning.

Frederick: How are you doing, sir?

Kelsey: I am doing good. Thank you.

Frederick: Good. Thank you for being here. We know Mr. Ozmint. Good morning, sir, how are you doing?

Ozmint: Good morning. Fine, ma'am thank you.

Frederick: Good. Mr. Kelsey would you please introduce who else you have with you today, sir?

Kelsey: Yes, ma'am. This is Hannah Freedman, she's also an attorney. Behind her is Dr. Susan Knight, Ms. Wynn, Jennifer Montgomery, my dad, and Casey Lambert.

Frederick: Welcome. Thank you all so very much for being here today to support Mr. Kelsey. We appreciate that. Mr. Kelsey, do you wish to begin or would like Mr. Ozmint or Ms. Freedman to begin.

Kelsey: I..I'd like to begin.

Frederick: Ok.

Kelsey: Thank you.

Frederick: Please tell us what you have been doing to prepare for parole, sir.

Kelsey: Mostly education. Um I have always believed in the change and growth that corrections can accomplish. And I have made the most of every, every educational opportunity available, not just by studying hard, but by using everything I've learned to help other inmates grow with me. I've had the privilege of encouraging them as a teacher's aide and tutor. I've taught life skills classes, trained other clerks to use computers, led Bible studies. Um I'm currently a leader in the JumpStart industry. I...Hospice volunteer training gave me the opportunity to spend two years caring for terminally ill inmates and inmate mental health companion training has given me the chance to spend the last three and a half years sharing with suicidal inmates the lessons I've learned from my experiences and the reason for the hope we have in Christ. These opportunities [unintelligible] at Lieber & Lee, and even though I have a minimum two custody level, I stay at Broad River to work in the crisis unit because it's where I believe the need is the greatest...um...I have amazing support from all of my family, as well as from friends and members of my community. Um if granted parole, I have a home to go to in a safe area, I have four job offers…

Frederick: Alright, Mr. Kelsey who do you plan to live with, sir?

Kelsey: um… I could… I could go to JumpStart but also I could live with my dad or my mom. I have job opportunities near both of them.

Frederick: Ok and what type of work are you planning to do, sir?

Kelsey: The job near my mom is a Residential and Commercial Construction, the job where my dad is that's a… a uh… it's a ranch, Painted Cloud Farms. But I also have… I prefer to work with Mr. Lambert, he came here today. He has an international delivery service and the company's been running about four years and I hope that working for him I can used what I learned recently earning a bachelor's degree and the computer skills I gained over thirteen years in prison industries to help that company grow.

Frederick: Alright, sir, you mentioned a number of programs and things that you participated in during your incarceration. What do you believe will be the most beneficial to you and will be the most helpful to you if you are paroled?

Kelsey: Um hospice… hospice was one of the most impactful things that I have done since I've been in here. Just having the chance to… to exercise the compassion and empathy that is now a part of who I am that, that I can go out there and take care of people and put people before me, especially when it's, you know when it's not easy, when it is something that is very difficult.

Frederick: Alright, um thank you for that. Mr. Kelsey, some of us received your packets and um when I was reading it, one of the things that struck me is...that you talked about for six

unimaginable long weeks you let this family agonize over the whereabouts and safety of the young lady. So speak to us about that, how you could do that at that time, but now you are talking about your experiences with hospice? Talk to us about that please, sir.

Kelsey: As, as a 16-year old, I was… I was unbelievably selfish. I wanted the crime that I had been a part of to never have happened. I didn't, I didn't want to believe that I could be part of something so horrible and I tried to push it out of my mind and, and not face reality and I was alone there in Augusta and I was just doing everything I could to… hold it together and I didn't know who to turn to, I… nobody knew what happened other than my codefendants and I just didn't feel that there was anybody that I could go to and I regret more than anything and I can't even imagine the terror that experienced over that six weeks and I am very sorry for that…

Frederick: And did you actually place the pipe bomb in her mouth, sir?

Kelsey: Yes ma'am, I did.

Frederick: And what are your thoughts on that today, sir?

Kelsey: I still… I still have a hard time understanding everything that happened. I know that I am responsible and I hold myself responsible but when my codefendant suggested putting it there I just did it. I didn't… I didn't think, I mean I assumed that she was already dead, I had checked the pulse. I believed she was dead and that we were destroying evidence. I didn't think about the family and what that part of the crime, the impact that would have on them.

Frederick: Alright.

Kelsey: I thought about it since then. I think about it all the time.

Frederick: Thank you, sir. What are you going to do to ensure that you don't find yourself in a situation like that in the future, where you might be influenced by someone else?

Kelsey: I mean that, that is so far from who I am now. I am not, I am not that same kid. Not only will I never again be responsible for that type of pain but every opportunity that I have to ease the suffering of others I take. I can't imagine being involved in anything like that ever again when more than anything I just want to help people and help people not go through the type of pain that I am responsible for.

Frederick: Thank you, sir. Um, Mr. Osmund do you wish to speak now or would like some of his supporters to speak?

Osmund: I think what I am going to do is I am going to let co-counsel, Hannah Freedman, um introduce um Susan Knight and, and introduce the case and remind you of a couple facts of the case and introduce Dr. Knight, who is going to speak briefly and then the only other witness we would like to speak to you addresses your question Madam Chair and that is that that six week period, this whole window of opportunity, this window of disaster, um I did want you to hear from Joe's dad because he has some poignant words that I think speak to all of us as parents, but Hannah if you were going to introduce Dr. Knight and talk a little bit more about the facts of the case in light of the chairperson's questions and then.

Freedman: Yes, sir. Good morning honorable members of the parole board.

Frederick: Good morning.

Freedman: Thank you for hearing from us. Joe came into prison when he was only 16 years old, 25 years later Joe is a different person, and 25 years later Joe is the only one of his codefendants who remains incarcerated. As you all are well aware, in March of this year, you granted parole to Joe's older, more culpable codefendant, at whose hands the victim died. That is not a matter of opinion, that is a finding of judicial fact from the South Carolina Supreme Court. This Board released Mr. Payne and it would be unjust and arbitrary to not also give Joe the same opportunity, especially in light of his extreme rehabilitation. Dr. Knight is a licensed clinical psychologist who conducted a full psychological evaluation on Joe and she also administered him a validated risk assessment. Dr. Knight?

Knight: Good morning, thank you for giving me a few minutes. I am a Board certified forensic psychologist. I have evaluated many hundreds of criminal defendants, both in custody and out. Many of those evaluations have been violence risk assessments and that is what I was asked to do in Mr. Kelsey's case. To do that, I used the HCR-20. It is a well-researched, comprehensive measure of violence risk and it is a measure that is routinely used in parole hearings for lifers. To complete the measure I interviewed Mr. Kelsey for over 10 hours, I interviewed all of his family members, I interviewed SCDC staff that are familiar with him, I reviewed his entire SCDC file and I reviewed all of the discovery and trial transcript from the homicide. So I had a lot of data uh by which to score this measure. The measure indicated that Mr. Kelsey is at um very low, he is at very low risk for any kind of violent recidivism, any kind of criminal recidivism. And in addition to that to better assess his clinical stability I used the MMPI-2, that is a personality and uh psychology measure that SCDC uses for their conditional parole evaluations. On the MMPI-2, there were no indications of any clinical instability, personality disorder, or psychopathology. It was, it came out as very clinically stable. So those two measures, using all of the comprehensive data that i had, indicates that Mr. Kelsey is at a very low risk for any kind of criminal or violent recidivism and he is very clinically stable. Both of those things combined, bodes well for a safe transition if released.

Frederick: Thank you, Dr. Knight. We appreciate that very much. Alright now, is it Mr. Kelsey's father? Good morning, sir.

Kelsey's father: Yes, ma'am. Uh I, I have to deeply regret that the decision that I made was responsible for Joe's being even involved in the unfortunate, disastrous events of *unintelligible* death. We were a military family, we had been reassigned to the D.C. area that summer. We had to leave at the beginning of the summer. Joe had done well in school uh he uh had a good job for the summer and a family to stay with and I made the decision, regrettably, that we could leave a 16 year old under those circumstances and pick him up at the end of the summer and bring him back to live with us and finish his school in Maryland. I uh just regret over and over, for Joe's sake, that I had not made that decision.

Frederick: Thank you, sir.

Osmond: Also present is… you've heard from all of these witnesses behind me before and I am not going to rehash that. You have letters in your packet from all of them. I am just going to talk about three things: I am going to briefly discuss the facts of the case, I am going to talk about and give you the highlights of Joe's 25+ years in DOC, and then I am going to talk you about the man I know. In light of the fact that you have paroled Mr. Payne, who I have no doubt is because of the nature of this board and the thoroughness that you review these cases and having listened to Mr. Payne's hearings, I know Mr. Payne was deserving of parole. I also know, as you know, that Mr. Payne was the person who, according to the victim's family was the ringleader, the instigator, according to the victim's family, and the Supreme Court of our state, and the facts of the case, he is the one who killed Melanie. The fact is, the relevant fact, the most poignant fact is...is as Hannah stated, in November of '17, Joe and I sat here, most of the same crowd, and after that hearing I drove directly to the parole board, and I told you in my letter why I did that. I saw this coming. I listened to Mr. Payne and I knew his record was pretty good, and I listened to his hearings and I knew he was making progress with this parole board, as we have, as Joe has. I knew he had picked up votes for parole. And I saw this train coming where the man who killed Melanie, the older, the adult, was going to be paroled before the juvenile who didn't kill her. And so I did something I have never done. I drove to the Triple P building. I called one of you, it may have been Mr. Eldridge, Mr. Babson, I can't remember which one it was and asked for a reconsideration and, and the vote was the same, the outcome was the same. But for 16 months the juvenile who didn't kill Melanie has been incarcerated and a deserving parole candidate who actually did kill this young lady has been freed. I just wanted y'all to know that's why I did what I did that day. Um the second thing I want to talk to you about is an exemplary record. I mean maybe a record that you have never seen before in terms… I mean quite frankly because Joe's a smart guy, just capacity wise, he has intellectual capacity that not many folks who come into our system, as you know, not many have. Eighth grade average education level and below is what we

are taking in our gates everyday in our prison system, we all know that. Because of that Joe's record is just exemplary. From operation behind bars, just to… before some of the other stuff was available, to serving as a teacher's assistant, which he has continued to do if you look at his record, he's continued to do that no matter what else he's been doing, he has continued to help people get their education. To completing his… walking away from his good PI job, walking away from his certainty of a great assignment and coming to the CIU program and agreeing to be placed wherever the system would need him. Earning his associate's degree there, with a 4.0 GPA. Being chosen and you've got a video, and I don't know if any of you have had a chance to look at it, being chosen to work in the crisis intervention unit, which is saving, literally saving, the lives of suicidal inmates on a daily basis. But he was actually one of two inmates allowed to speak to the newspaper reporter during that taping session and explain what that program does and if you look very carefully you will see the back of Joe's head, on that video. I hope you had a chance just to watch that, because it also shows, not only was he there, but he was a leader in that program and this agency trusted him enough to be sort of the spokesperson for that program. Obviously he told you about his hospice work, he's got three family, let's see he's got, if you did the math - he's got six brothers, half-brothers - six siblings, half-brothers and full siblings, who are behind him. He's got three families. He's got his father, he's got his mother and her new family, and he's got his fiancee, Jennifer's, family. All of whom stand ready to support him. You've got job offer letters in your packet, you've got pictures of the actual home that he would live in, so if you parole Joe, the parole examiner will be able to choose from one of several, your, your agent will be able to choose from one of several options, in terms of housing and employment. All of that's taken care of. There is no doubt that he has the support to, to make it, there is no doubt that he is deserving of parole. There is no doubt, not just from what you heard from Dr. Knight from her assessment she's done, but your own compass assessment tells you he's low-risk to reoffend. The great unknown is this: this family, Melanie's family, is hurt. They've been hurting for years and they've been to this board for years and they've told you that Mr. Payne was the ringleader, the instigator, that's an exact quote from Melanie's father. But their pain may drive them to be here again today and to take all of their anger and ask you to use your discretion to perpetuate an injustice. I've been asked to do that… not in a situation probably as serious as yours, but I can… when I eliminated phone revenues in this agency, phone commissions. It really hit me one day because of some advocacy groups I had met with, that it was inmate families paying those costs. I thought about that thing and I prayed about it and said we are going to eliminate phone commissions, even though there going to the state budget, we are going to eliminate it. I had people come in and tell me, that you have absolute discretion, like you as the board have here. Nobody can second-guess you if you continue to try use, allow budget writers, use that money as they see fit, and if you do this you are going to make some people really angry.

Frederick: Mr. Osmond, as you know, we have a number of people that we are trying to hear.

Osmond: I am trying to…

Frederick: So if you could please wrap it up, I would greatly appreciate it.

Osmond: But I… Please don't allow your absolute discretion to perpetuate an injustice. The adult killed Melanie, has been paroled because he deserves it. A more deserving man sits before you today, he was a child when this crime was committed, he was 16 years old. Please don't allow your discretion, don't use discretion, it's a powerful thing, to perpetuate the injustice of continuing to confine the child, when the adult who killed her, has been set free. Joe Kelsey has done everything he could do to prove to you that he deserved parole, give him a chance. You will never regret it. Thank you!

Frederick: Thank you, sir, very much. And we thank you all for being here today. Mr. Kelsey is there anything else you would like us to know, sir?

Kelsey: All, all the positive things that you have heard today, from the many opportunities I have been given to the incredible support I have, they couldn't have happened without me first acknowledging that my conviction and sentence were the justice that I deserved. I am not here in prison because of anybody else, I am here because of what I did and what I failed to do and regardless of the circumstances I put myself in, my age at the time, or anything else, it is only because I accept full responsibility for my crime that I was able to become a completely changed person and begin making a difference for good.

Frederick: Thank you so very much, sir. We do thank you all for being here today and supporting him. We really do. If you all could please step out of the room, *unintelligible* Mr. Osmond, if you don't mind, if you could just stay in the room for one second, please, sir.

Osmond: Yes, ma'am.

Frederick: Thank you.

people leaving room

Frederick: Mr. Osmond we know that you are very passionate about your client and we appreciate you submitting the packets. However, not everyone is receiving these because you are mailing them to our home addresses and I don't know if it's because you are not mailing to the office or not, but the policy is if it's mailed here, it becomes part of the record. If it is not, it is not part of the inmate's record. So we do have the new address on Graystone, um if you are mailing to that but…

Osmond: I...I

Frederick: I just wanted to make you aware that not everyone received the packet, so they could be floating around somewhere so we don't want that to be an issue for anyone, so in the future if you don't mind just mailing them to the office, three weeks in advance, the staff will make sure that we all get a copy.

Osmond: Well, let me...I'll accept that criticism but I do mail a copy to the board as well.

Frederick: Ok, and it's not, it is not criticism at all sir, we are simply trying to help you and let you know the circumstances and we like to do that on the record so that everyone is aware of what is being said.

Osmond: I got it, I got it.

Frederick: But in no way is it a criticism.

Osmond: The… the only reason I do want people to have a copy. This one was exceptionally large, exceptionally voluminous and I apologize for that. But I do… unless you just tell me you don't want to receive them at home, I feel like it does give board members the opportunity to review this in a more um convenient fashion but I will always continue to send a copy, a master copy, to the parole board staff so that that makes it into the record. I think I did that this time, I do apologize. I mailed it a couple of days later this time, there were a lot of other, obviously there was other people…. I was waiting on some stuff.

Frederick: Yes, sir, we completely understand that. We appreciate that. We just wanted to make you aware of that sir. So thank you very much.

Osmond: Thank you.

Osmond leaves room

[unidentified male voice]: The room is clear.

unintelligible

Frederick: Good morning.

[unidentified male voice]: Good morning.

Frederick: You are all here for the parole case of Joseph Kelly, Kelsey, excuse me. *indistinguishable* Could you please state your names for the record?

Richey: Steven Richey.

Deborah: Deborah Richey.

Eargel: Um Al Eargel, E-A-R-G-E-L.

Frederick: Thank you, sir.

Frazier: Wendy Frazier, F-R-A-Z-I-E-R.

Frederick: Ok. We are very sorry for the circumstances that have brought you here today. We thank you for being here. We do have the facts of the offense before us and we have heard from Mr. Kelsey. Now we would like to hear from you all, whether you are for or against parole and if you would like to make a statement you are more than welcome to do so. Who would like to begin?

Richey: Uh...ahhh... I guess the uh first point, you have your facts of the case in front of you. Ahh...I hope you didn't miss the obvious one, Kelsey by his own written and verbal statements, on the stand, is the one that put a pipe bomb into my little girl's mouth and blew her head off. Ok, uh, that's I don't know how many ways I can say or go into that but ah and he was also the same one for 40 some days afterwards lied to our faces and avoided and gave us misleading stories about went on, and just let us wonder what happened to our daughter for all those days and her sudden disappearance. We had no idea that he had blown her up and scattered her remains in the woods of South Carolina. So...yeah I...yeah from my chair I have trouble understanding this whole process, how something like that is even being considered for parole. Obviously it can, we're here. Uh a lot of things. We have been to several of these parole hearings. Um you know they were all sentenced on the same day, at the same trial but on different days, we have come back here, time after time, uh, uh, a lot of things have just uh you know confused me, uh, you know I've never said this before, but I ask you "Are you ok with this sort of person, no matter how reformed, being out and getting on the bus with your daughter and putting a pipe bomb in her mouth and I guess when he comes up for parole again. I don't know, I just don't, uh, the, um, one of the other persons, as I am sure you are aware on this, was paroled earlier this year, and uh, when that happened it was really hard to explain to my daughter why we were the ones being escorted out with an armed guard, I guess to protect you guys from me. I don't… I don't. Uh and that's why my daughter is not here, she was convulsing in the elevator because she couldn't believe that the guy who had murdered her big sister was um was being released. Um you know throughout the uh whole thing, it was all very consistent, to all of them,

including Kelsey, they lied time after time and when asked why "Well we didn't have to tell the truth until we were cornered." They have always been sorry that they were caught, they've always been grateful for parole hearings, for the crime itself uh not, not so much. Uh we...we realize...when people come to trial we realize that they have rights, they should, you know our court system. Uh we have, we have trouble understanding why uh the people who murdered our daughter, duly convicted from a jury, sentenced by a judge, sentenced to life plus, we have trouble understanding why their rights seem somehow more than us. We feel like we are the ones being jerked around, and uh. You know, I guess, I am an engineer by trade and uh I always look at numbers and I have trouble understanding the numbers here. We had our daughter for 15 years, and the people involved at a very young age are all being, you know, two of them have already been paroled here. They have been given back to their families with forty-some years left on their lives and our daughter's gone forever. We had her for a brief time and she, she's gone. You know I have trouble understanding the balance there, there at all. Uh...you know I, we very much believe in forgiveness, it's the core of who we are, and we have strived to forgive everybody here but uh there is still an accountability and you do sow what you reap, you uh reap what you sow. Uh uh so no matter how reformed someone is we do not understand why they should be released one year, uh one month, one week, one day, one minute, one second, one nanosecond early. We do not understand at all why they should ever deserve anything but the full of extent of their, of their sentence. So uh as you could probably tell, I yes, I oppose that person who put a pipe bomb in my little girl's mouth and blew her head off, yes I oppose his receiving parole.

Deborah: Yes my husband and I are in agreement. I still miss her everyday. *unintelligible* She deserves justice, we deserve justice. We're not asking for anything less than what they were tried and convicted of. They were given life plus and I believe they should serve the full sentence. Thank you.

[unidentified voice]: Thank you.

Eargel: Thank you. Uh I have uh a letter from Solicitor Hubbard, who is the present solicitor of the 11th Judicial Circuit, that includes the McCormick County. Uh I would be happy to read it to the board.

"Esteemed Members of the Parole Board. I have received notice of Joseph Kelsey's request for parole for the offenses of murder, possession of a pipe bomb, adn criminal conspiracy. Please be advised that this office opposes the granting of parole for this individual. This is one of the most heinous and senseless murders that has occurred in McCormick County, South Carolina. Three defendants took the victim, 15-year-old Melanie Richey, to a party in Martez, Georgia. She was drugged and then driven to a remote area in McCormick County. At least one of the defendants attempted to have sex with her, after she had been rendered unconscious. The defendant and at

least one of the codefendants carried Ms. Richey into a wooded area, where Mr. Kelsey admitted to placing a pipe bomb he had made into the victim's mouth. Allegedly, the other codefendant lit the fuse igniting the bomb and killing the victim. Ms. Richey's body was discovered 46 days later. Mr. Kelsey was arrested in Maryland, returned to South Carolina, convicted by a jury and given a life sentence by the presiding judge. This defendant showed no mercy regarding Melanie Richey's life. After she was killed, he, along with his codefendants, left her remains in the woods to be consumed by animals and time. The violent use of a pipe bomb the defendant made and placed in her mouth by him reveals the callous, heartless, and the dangerous nature of Mr. Kelsey. This office is adamantly opposed to parole for Joseph Kelsey. I consider him a continued threat to society and respectfully request that you deny his request. Thank you for allowing me the opportunity to address this important matter. Respectfully S.R. Hubbard III, Solicitor of the 11th Judicial Circuit."

Frederick: Thank you, sir.

Eargel: I am a deputy solicitor uh for Solicitor Hubbard. Uh My career has been between being in law enforcement, I've worked for *unintelligible* County for a number of years, I worked for the City of Columbia police department, and I have been a prosecutor, I began to work for Donnie Myers in 1993. During that time, I have seen a fair share of heinous crimes. And I can remember as a young prosecutor in 1995 being in McCormick with Solicitor Myers, during the trial of this case. And I was telling Melanie Richey's parents this morning, that in my thirty-plus years in law enforcement, this is one of probably top three or five cases that have just remained. It's like yesterday, I could see myself sitting in the McCormick Courthouse during the course of that trial. I remember the testimony, I kept thinking to myself how could anyone commit such a heinous act on a 15-year-old child. I too would respectfully ask y'all to deny Joseph Kelsey's request for parole.

Frazier: I am Wendy Frazier. I am a victim advocate for the 11th circuit. I have been doing this for thirty-plus years. I was a police officer, um, and a victim advocate, all of this time. Um, I agree, this is one of the worst cases I have ever seen in my entire career, um, I just can't even imagine the pain that they're having to go through over and over again coming to these hearings and I know it's the defendant's rights to have the hearings but I they have been coming for seven years every single hearing. And this crime that Kelsey committed is one of the most heinous on the planet and just due to the simple nature of the crime, I strongly oppose parole.

Frederick: Again, we are very sorry for the circumstances that brought you here today. We appreciate you coming in. If you all would please exit the room, we will have an answer for you in just a moment.

Richey: Thank you for hearing us.

Frederick: Thank you.

people leaving room

Frederick: Is there any discussion? Ok voice votes, please

Taylor: Taylor, parole.

[unidentified male voice]: parole

[unidentified male voice]: deny

Eldridge: Eldridge, parole

Frederick: Frederick, deny. Mr. Kelsey will be denied parole today. The vote is 3-2.

JUSTICE 360 ADVANCING EQUALITY IN THE CRIMINAL JUSTICE SYSTEM

900 ELMWOOD AVENUE
SUITE 200
COLUMBIA, SC 29201

OFFICE 803.765.1044
WWW JUSTICE360SC.ORG

November 13, 2019

South Carolina Parole Board
c/o Matthew Buchanan, General Counsel
2221 Devine Street #500
Columbia, SC 29201

Via Email to: Matthew.Buchanan@ppp.sc.gov and via U.S. mail

Re: *Joseph Glen Kelsey*

Dear Members of the Board,

We are writing to formally request that any member of the Board who voted against parole for Joe Kelsey call for reconsideration and a revote before the full Board. The Board's decision this morning to deny Mr. Kelsey parole is arbitrary and capricious and rises to the level of a constitutional violation.

As a matter of law, this Board violates a putative parolee's right to due process when it fails to "adhere to statutory requirements in rendering a decision." *Cooper v. S.C. Dept. of Probation, Parole & Pardon Servs.*, 377 S.C. 489, 499, 661 S.E.2d 106, 112 (2008). Moreover, where, as here, the Board fails to take account of the full range of parole criteria and instead renders a decision on the basis of matters that "are fixed as of the date of the offense and can never be changed by the actions of [a putative parolee] while incarcerated," the Board's decision is "arbitrary and capricious." *Id.* at 499 500, 661 S.E.2d at 111 12 (cleaned up). In such a case, the remedy is a reversal of the parole denial. *See id.*

In Joe's case, there can be no doubt that the Board's decision was arbitrary and capricious. His situation is unusual because this Board recently paroled Geoff Payne, Joe's older, more culpable codefendant, which creates a record for comparison. Even a cursory review of that record shows that is impossible to square the decision to parole Payne with the decision to deny that same opportunity to Joe: Joe was less responsible for Melanie's death; Joe was younger than Payne; Joe has taken advantage of every single opportunity to rehabilitate himself and has eclipsed Payne in terms of education, volunteer hours, and prison record. Under any possible metric, Joe is more deserving of parole than Payne, and the Board's decision to deny to Joe what it gave to Payne is arbitrary and capricious.

As a threshold matter, this Board's discretion is not unlimited, and it is prohibited from making findings of fact that purport to overrule established precedent from the Supreme Court of South Carolina, the final arbiter of fact and law in this state. *See* S.C. CONST. art. V, § 1. The facts of the case, as determined by the Supreme Court of South Carolina, are as follows: "Whether the victim died by Payne strangling her to death, or by Payne lighting the fuse of the pipe bomb that exploded in her mouth, ***the testimony overwhelmingly proves that Payne murdered her***." *Payne v. State*, 355 S.C. 642, 646, 586 S.E.2d 857, 859 (2003) (emphasis added). Joe, on the other hand, was convicted under the law of parties; there has never been any legal dispute that Joe's role in the crime was limited to following Payne's instruction "to place a pipe bomb into Richey's mouth," which Payne then lit. *State v. Kelsey*, 331 S.C. 50, 60, 502 S.E.2d 63, 68 (1998). Simply put, Payne killed Melanie Richey and Joe did not. If this Board's decision to deny parole to Joe but to grant it to Payne is based on the facts of the crime, that decision is arbitrary and capricious.

Moreover, Joe is less culpable than Payne for other reasons that carry constitutional weight. Joe was younger than his codefendants, and the Supreme Court of South Carolina has held that "the chronological age of the offender" matters in an assessment of culpability. *Aiken v. Byars*, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014) (quoting *Miller v. Alabama*, 567 U.S. 460, 477 (2012)); *see also* Transcript of Oral Arg. at 10, *Malthena v. Malvo*, No. 18-217 (United States Supreme Court, Oct. 16, 2019) ("If there's anything that *Miller* says . . . it can be summarized in two words, which is that youth matters."). If this Board's decision to deny parole to Joe but grant it to Payne is based on "the circumstances surrounding [the] offense," or the offenders' relative culpability, the decision is arbitrary and capricious.

The exercise of Board discretion cannot be used to justify willfully ignoring judicially established facts or facts their previous decisions about defendants arising out of the same criminal case. As individual members and as a Board, discretion does not authorize arbitrary and capricious decisions that fly in the face of justice and basic, fundamental notions of fairness and equity; that discriminate against juvenile offenders as compared to adult offenders, under US Code Section 1983; or, that demonstrate a reckless, if not intentional disregard of judicially established facts and for previous and recent board decisions in the same matter.

The Board this morning asked Joe about his role in the offense, including whether he placed the bomb in Melanie's mouth and whether he has considered the impact on her family of his failure to report what happened in the weeks after Melanie's death. Joe answered truthfully. In comparison, at the hearing granting Payne parole, the Board never asked Payne whether he raped Melanie, whether he hit her with a wrench, whether he strangled her, whether he lit the fuse on the bomb that destroyed her body, or whether he ever thought about the impact of those actions or his failure to disclose them on Melanie's family. Our Supreme Court and the record in this case confirm that Payne did all of those things. Payne's lawyer blamed Joe for Melanie's death and misrepresented the facts as found by the Supreme Court to this Board. The Board has an obligation to engage in a neutral assessment of the record and to rely on the facts as laid out by the judicial system; it has no authority as a matter of law to engage in judicial factfinding or to deny parole based on an untruthful, inaccurate determination of the facts. The disparate treatment between

Payne and Joe is unjust, arbitrary, and reveals that the Board's decision-making process hinges, at least in some cases, on unconstitutional factors.

By denying parole to Joe this morning, this Board sent a clear message to all inmates in the custody of the South Carolina Department of Corrections: do not bother bettering yourself because it does not matter. Joe is a model inmate and more importantly, a repentant, humble, reformed man. Undoubtedly, Joe will continue to better himself and contribute to the prison community, parole status notwithstanding, because that is who Joe is. But other inmates looking at Joe's case will not take away the same message. The decision to deny parole to Joe when Payne is a free man highlights the fiction that our parole board is fair and consistent.

The adult offender who instigated and orchestrated this crime is free. The man whose hand killed Melanie is paroled and the child who did not remains in prison. As a matter of justice, morality, and law, we ask this Board to reconsider and grant Joe parole. Any other outcome in this matter makes renders our parole process nothing more than a roulette wheel, unfettered by objective facts, rehabilitative records, or fundamental fairness.

Sincerely,

John H. Blume

Hannah L. Freedman

Jon Ozmint by Hannah Freedman

Cornell University
Law School

Lawyers in the Best Sense

JOHN H. BLUME
Samuel F. Leibowitz Professor of Trial Techniques
Director, Clinical Advocacy & Skills Programs
Director, Cornell Death Penalty Project

158 Myron Taylor Hall
Ithaca, New York 14853-4901
T: 607.255.1030
F: 607.255.3269
E: jb94@cornell.edu

November 25, 2019

Valerie Suber
Director of Paroles, Pardons and Release Services
P.O. Box 207
Columbia, SC 29202

Re: Reconsideration request for Joseph Kelsey

Dear Ms. Suber:

Please accept this letter as a formal request for reconsideration of the November 15, 2019 (received November 21, 2019), parole decision for Joseph Glen Kelsey (Joe). Our request for reconsideration is based on three things: (1) the Parole Board's decision is facially arbitrary and capricious and makes clear that the Board either "based its decision on erroneous information" or issued a decision that violates due process; (2) some members of the Board did not receive the information Joe's counsel submitted and Joe therefore requires an opportunity to "provide additional information that the Board did not have during the hearing"; and (3) the Board's 3-2 decision to grant Joe parole is procedurally defective, where the sixth member of the Board was not present and there was no reasonable opportunity for Joe to request a continuance for a hearing in front of the full Board. *See* S. C. BOARD OF PAROLES & PARDONS, *Operation Manual*, 40 (November 6, 2019) ("Policy and Procedure Manual").

1. The Board's decision is facially arbitrary and capricious or based on erroneous information. As a matter of law, the Parole Board violates a putative parolee's right to due process when it fails to "adhere to statutory requirements in rendering a decision" by ignoring any of the enumerated parole criteria and focusing on matters that "are fixed as of the date of the offense and can never be changed by the actions of [the inmate] while incarcerated." *Cooper v. S.C. Dep't of Probation, Parole & Pardon Servs.*, 377 S.C. 489, 499–500, 661 S.E.2d 106, 111–12 (2008) (cleaned up). In such an instance, the Board's decision is considered arbitrary and capricious. *See id.*; *see also Wyndham Enterprises v. City of North Augusta*, 401 S.C. 144, 149, 735 S.E.2d 659, 662 (2012) (finding an agency decision to be arbitrary and capricious where the decision "was based solely on opinion and conjecture"). Moreover, the Board's own rules, detailed in the Policy and Procedure Manual, implicitly prohibit the Board from issuing a decision on the basis of "erroneous information." *See* Policy and Procedure Manual at 40.

In the present case, the Board's decision to deny Joe parole was either arbitrary and capricious or based on "erroneous information." His situation is unusual because this Board

recently granted parole—by unanimous vote—to his older, more culpable codefendant, Geoff Payne, at whose hands the victim died. By contrast, Joe's parole denial, which required two members of the Board to change their votes from Payne's hearing to this parole hearing, was based on a single factor: the nature and seriousness of the current offense. Letter Re: Notice of Rejection (Nov. 15, 2019). A comparison between Joe and Payne with respect to their relative roles in the offense and culpability; their prison records and evidence of rehabilitation; and their release plans makes clear the fundamental problems with Joe's most recent denial.

The facts of the case are not up for debate.[1] Two opinions from the Supreme Court of South Carolina have detailed the codefendants' relative roles, and in both opinions, the Court was clear that Payne—not Joe—murdered the victim. With respect to Payne, the Court wrote the following: "Whether the victim died by Payne strangling her to death, or by Payne lighting the fuse of the pipe bomb that exploded in her mouth, the testimony overwhelmingly proves that Payne murdered her." *Payne v. State*, 355 S.C. 642, 646, 586 S.E.2d 857, 859 (2003).[2] With respect to Joe, the Court was also clear: Joe's role in the offense was limited to "plac[ing] a pipe bomb into [the victim's] mouth," which Mr. Payne then lit. *State v. Kelsey*, 331 S.C. 50, 60, 502 S.E.2d 63, 68 (1998). As a matter of fact and law, Joe is less culpable than Payne.[3]

There are only two ways that any member of the Board could reach the opposite conclusion. The first is that they relied on "erroneous facts," either from the agency's internal "[p]arole case summary, which the agency considers to be exempt from public records requests,[4] or from Mr.

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[1] It is worth noting that the Board is not a judicial body but an executive agency, and as such, it has no discretion to overrule or rewrite judicial findings of fact or law, and especially not those found by the Supreme Court of South Carolina. *Compare* S.C. CONST. art. V § 1 *with* 24 S.C. Code Ann. § 24-21-10.

[2] Even the victim's family has repeatedly acknowledged that Payne was the most culpable of the three codefendants. In the words of her father, "Payne was the instigator, the organizer, the leader. There is no doubt of his guilt and his role in this, including where they used explosives to, you know, blow up her body and to hide the remains in the woods." Audio of Geoffrey Payne Parole Hearing, at 38:30 (February 25, 2017). Payne "tried to drug, sexually assault, strangle, [and] drag [their daughter] out into the woods." He is responsible for the victim having "her head blown off." Audio of Geoffrey Payne Parole Hearing, at 30:20 (March 3, 2019). *See also* Audio of Geoffrey Payne Parole Hearing, at 32:30 (Oct. 8, 2014) ("The people involved in this, and Mr. Payne in particular, committed a horrendous and brutal murder.").

[3] Joe is also less culpable than Payne because he was younger than his codefendants, and the South Carolina Supreme Court has held that "the chronological age of the offender" matters in an assessment of culpability. *Aiken v. Byars*, 410 S.C. 534, 544, 765 S.E.2d 572, 577 (2014) (quoting *Miller v. Alabama*, 567 U.S. 460, 477 (2012)).

[4] The agency classifies the parole case summary as a "matter exempt from disclosure under the FOIA." Policy and Procedure Manual at 15–16. However, the list of FOIA exemptions is narrow and includes 19 enumerated items, none of which encompasses the agency's description of the offense as it is presented to the members of the Board. *See* S.C. Code Ann. § 30-4-40. While, in some circumstances there is a need to protect a parole agent's confidential communications with persons who have information about a candidate's suitability for parole, that does not apply to a description of the offense. Aputative parolee has a right, as a matter of due process, to see and if necessary challenge erroneous information upon which the

Payne's most recent parole hearing. *See* Parole Hearing of Geoff Payne (March 20, 2019) (accusing Joe of being the primary perpetrator of Melanie's murder and urging the Board to "express their ire against parole with respect to the man who actually took their daughter's life"). The second is that the two members who voted to deny parole because of the nature of the offense relied "solely on opinion and conjecture" and decided that they understand the facts of the case better than the Supreme Court of South Carolina, which unlike the Board, carefully reviewed the actual testimony presented at trial and in post-conviction proceedings. *See Wyndham Enterprises*, 401 S.C. at 149, 735 S.E.2d at 662. Their decision to grant parole to Payne but deny it to Joe, under circumstances where there can be no legitimate legal dispute that Payne's role in the offense was substantially more serious, violates the promise of "fundamental fairness" inherent in due process. *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009).

The decision by only two members of the Board to deny Joe parole is arbitrary and capricious and satisfies the agency's requirements for reconsideration.

2. Joe requires an opportunity to "provide additional information." At Joe's hearing, the Chairperson indicated that some members of the Board had not received the materials the undersigned submitted. And when Mr. Ozmint returned to his office after the hearing, he found that the parole packets he put in the mail the week before to the Department's headquarters had been returned as undeliverable; Mr, Ozmint readily admits that he neglected to use the board's recently changed address. Joe must not be punished for this fact; he has a right to a parole hearing before a Board that has considered all of the relevant materials. Because not all of the members of the Board have considered the information that supports Joe's parole application, Joe requests a new hearing in order to "provide additional information that the Board did not have" on November 13. Policy and Procedure Manual at 40.

3. Joe's parole denial is procedurally defective. The Policy and Procedure Manual promulgated by the Board requires that "[o]ffenders convicted of a violent crime will be scheduled for parole hearings before the full Board only." Policy and Procedure Manual at 14. Joe's hearing, however, was scheduled before a five-member assembly; the sixth member, Christopher F. Gibbs, communicated to the Chairperson as early as the Tuesday before Joe's hearing that he could not attend because of urgent family matters. By the time Joe's counsel became aware of this fact, at 5:30 on Tuesday night, it was too late to request a new date before the 7:45 hearing time the next morning; Joe's supporters had already booked hotels and arrived by land and by air in Columbia, as had the victim's family. The result is that Joe's parole hearing was not scheduled "before the full Board," as required by the Policy and Procedure Manual at 14.

Moreover, "[m]embers are required to attend all hearings of the full Board." *Id.* at 11. Although the Board has the *authority* under its rules to "conduct business" with a quorum only, the Board also has an obligation to—at a minimum—inform putative parolees when their hearings will be held before less than the full Board, in order to give them an opportunity to request a delayed hearing with all members present. Simple math demonstrates the advantage of having all

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Board's parole decision is based, including in particular the facts of the offense, especially in a case such as this where the nature and circumstances of the offense forms the sole basis of the denial.

six members, as opposed to five, present in case requiring a two-thirds majority. It is self-evident that Joe intended a hearing before the full Board and, had he known his case would be considered by only five members, he would have requested a new hearing date. Furthermore, pursuant to Board practice and customary rules of order, any member of the board who voted on the prevailing side may request a revote on any matter before the board adjourns any meeting of the board. The Board has recognized and followed this practice before and did so after their decision in Joe's case.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks omitted). Joe has not received meaningful consideration from the two members who voted to deny him parole after voting to grant parole to Mr. Payne. Their votes, cast before an incomplete assembly of the Board and based on a single factor that indisputably weighs in Joe's favor as compared to Mr. Payne, not only undermined the appearance of impartiality but violated due process.

Whether as pursuant to the request for a revote or as a matter of fundamental fairness, having now reviewed this record and after listening to the recording of the hearing, the absent member, Mr. Gibbs, should be allowed a vote on this matter, giving Joe a hearing before the full Board, as he intended and was entitled and allowing the Board to correct this arbitrary and capricious travesty of injustice and unfairness perpetrated by only two members of the Board. In the alterative, the Board must immediately reconvene and hold another hearing with all members present.

Respectfully,

John H. Blume

Hannah L. Freedman

Jon Ozmint

cc: Jerry Adger
Ben Aplin
Christopher Gibbs

STATE OF SOUTH CAROLINA	)	
		IN THE FAMILY COURT
COUNTY OF MCCORMICK	)	
IN THE INTEREST OF:	)	TRANSCRIPT
JOSEPH G. KELSEY	)	OF RECORD
A MINOR UNDER THE AGE OF	)	94 JU 35-14
SEVENTEEN	)	DECEMBER 5, 1994

B E F O R E:

THE HONORABLE C. DAVID SAWYER, JR.

A P P E A R A N C E S:

LISA BERNARDIN, ESQUIRE
ASSISTANT SOLICITOR
DONALD V. MYERS, ESQUIRE
SOLICITOR, ELEVENTH JUDICIAL CIRCUIT
MICHAEL MEDLOCK, ESQUIRE
ASSISTANT SOLICITOR, ELEVENTH JUDICIAL CIRCUIT
ATTORNEYS FOR THE STATE

DOUGLAS STRICKLER, ESQUIRE
COLUMBIA, SOUTH CAROLINA
ATTORNEY FOR THE DEFENDANT

COURT REPORTER:

CAROLYN L. MINICK

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THEY WENT ABOUT TWO HUNDRED YARDS FROM THE COUNTY LINE OF MCCORMICK INTO MCCORMICK AND I WOULD SAY NO MORE THAN THIRTY OR FORTY FEET INTO THE WOODS WHERE THE SKELETAL REMAINS BELIEVED TO MELANIE RITCHIE. AT THIS TIME WE CALLED A FORENSIC TEAM TO COME OUT AND A BOMB TEAM TO COME OUT, OUR ARSON/BOMB TEAM WITH SLED.

Q WHY DID YOU CALL THE ARSON/BOMB TEAM IN?

A IT HAD BEEN ALLEGED AFTER MS. RITCHIE HAD BEEN PUT IN THE WOODS THERE WAS A PIPE BOMB IGNITED SOMEWHERE AROUND THE BODY OF MS. RITCHIE.

Q WHERE WAS THE SKULL IN RELATIONSHIP TO THE OTHER REMAINS?

A APPROXIMATELY TEN FEET AND I THINK TWO INCHES FROM THE REST OF THE SKELETAL REMAINS.

Q ALL RIGHT. WHO PERFORMED THE AUTOPSY?

A DR. SEXTON OUT OF NEWBERRY.

Q WHAT DID HE STATE AS THE CAUSE OF DEATH?

A BLUNT TRAUMA TO THE HEAD DUE TO SOME TYPE OF BOMB.

Q NOW THE FBI HAD ALSO INVESTIGATED THIS CASE?

A YES.

Q ALONG WITH OFFICIALS FROM COLUMBIA COUNTY?

A THAT'S CORRECT.

Q AND SLED?

A THAT'S RIGHT.

Q FROM THE RESULTS OF THOSE INVESTIGATIONS, WHAT COULD YOU

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DETERMINE HAPPENED IMMEDIATELY PROCEEDING THE DEATH OF MELANIE RITCHIE IN GEORGIA?

A LET ME REFER TO MY NOTES, PLEASE. (PAUSE) THE FBI WAS BROUGHT IN. THEY WERE DOING A PRELIMINARY INVESTIGATION ON KIDNAPPING. IT WAS VERY APPARENT FROM WHAT THEY REVIEWED WITH ME THAT IT WAS MORE THAN JUST A MISSING PERSON. HER POCKETBOOK WITH A LARGE AMOUNT OF MONEY WAS LEFT IN IT. SHE WAS PREPARING TO HAVE HER SIXTEENTH BIRTHDAY AND WAS GOING TO GET A CAR. SO IT WAS VERY EVIDENT THAT THIS WAS A LITTLE BIT MORE THAN A MISSING PERSON. IT SHOWED THAT JULY 11, 1994, AT THE KERCHER RESIDENCE AT 4031 OREGON TRAIL ROAD, MARTINEZ, THERE WAS A PARTY GOING ON WITH MIKE KERCHER, JOEY INGRAM, TOMMY SPEIGLE, TOMMY WARZINGLE, APRIL REECE, JOE KELSEY, JEFFREY PAYNE, AND JAMIE LEE IN ATTENDANCE. MOSTLY THEY WERE JUST DRINKING BEER ALL NIGHT LONG. SOMETIME AROUND MIDNIGHT MR. LEE AND MR. PAYNE LEFT THE RESIDENCE TO GO TO A CONVENIENCE STORE LOCATED ON EVANS-TO-LOCK ROAD. THERE THEY SAW A YOUNG LADY USING THE TELEPHONE. IT APPEARED THAT SHE HAD HURT HER FOOT. MR. PAYNE STATED THAT HE KNEW HER BY SIGHT BUT DIDN'T ACTUALLY KNOW HER. MR. LEE HAD NEVER SEEN HER BEFORE. AT THIS TIME THEY WERE TALKING TO THE YOUNG LADY ABOUT A HURT FOOT AND HOW SHE HAD HURT HER FOOT. SHE TOLD THEM THAT SHE HAD SLIPPED OUT OF HER HOUSE, WENT TO TRY TO FIND HER BOYFRIEND'S RESIDENCE, COULD NOT, AND IN THE PROCESS SHE HAD CUT HER FOOT. AND THEY ASKED HER TO COME BACK TO THE

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RESIDENCE -- WELL, PRIOR TO THAT, THEY WANTED TO TAKE HER TO THE HOSPITAL BUT SHE SAID SHE DIDN'T WANT TO GO BECAUSE HER MOTHER WORKED AT THE HOSPITAL AND SHE WAS SCARED SHE MIGHT FIND OUT SHE SLIPPED OUT OF THE HOUSE. AT THAT TIME THEY TOOK HER BACK TO THE PARTY WHERE MR. PAYNE TOOK HER UPSTAIRS AND ADMINISTERED FIRST AID TO HER FOOT WITH AN ACE BANDAGE AND THEN WENT DOWNSTAIRS AND STARTED DRINKING BEER.

Q FROM STATEMENTS AND THE INVESTIGATION WHO LEAVES WITH MELANIE RITCHIE?

A OKAY. AT SOME TIME IN THE EARLY MORNING HOURS ON THE TWELFTH ---

Q THIS IS JULY 12?

A YES, MA'AM. IN THE EARLY HOURS, GUESTIMATING SOMEWHERE BETWEEN FOUR AND FOUR-THIRTY IN THE A.M. MR. KELSEY, MS. RITCHIE, MR. PAYNE, AND MR. LEE EXITED THE RESIDENCE IN MR. LEE'S VEHICLE, A WHITE FOUR DOOR HONDA, AND HEAD SUPPOSEDLY TO TAKE MS. RITCHIE HOME. THAT'S WHAT THEY HAD TOLD MS. RITCHIE THEY WERE GOING TO TAKE HER BACK TO HER RESIDENCE.

Q WHO WAS SITTING WHERE IN THE CAR?

A OKAY. THE SEATING ARRANGEMENT WAS JOE KELSEY IN THE FRONT SEAT. MR. LEE DRIVING HIS VEHICLE AND MR. PAYNE AND MS. RITCHIE IN THE BACK SEAT.

Q DO THEY TAKE HER HOME?

A NO. THEY GO DOWN FURIES FERRY ROAD WHICH IS HIGHWAY 28 INTO SOUTH CAROLINA.

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Q WHAT HAPPENS IN THE CAR ONCE THEY GET INTO SOUTH CAROLINA?

A OKAY. SOMETIME RIGHT AFTER ENTERING THE STATE OF SOUTH CAROLINA MS. RITCHIE'S FOOT HITS THE GEAR SHIFT LEVER IN THE CONSOLE THERE KNOCKING IT INTO NEUTRAL, CAUSING MR. LEE TO LOOK BACK TO SEE WHAT'S GOING ON. AND MR. KELSEY ALSO. AND THEY SEE MR. PAYNE STRANGLING MELANIE RITCHIE, IN A STRANGLE HOLD.

Q WHAT HAPPENS NEXT? WHAT DO THEY DO AFTER THEY SEE THAT?

A THEY ASK WHAT'S GOING ON. AND HE SAYS, "I THINK SHE'S NOT BREATHING. I THINK I'VE KILLED HER."

Q DID THEY THEN STOP THE CAR?

A NO, AT THIS TIME THEY PROCEED ON DOWN. MR. PAYNE ADVISES MR. LEE TO GO TO A PLACE CALLED THE OLD GHOST BRIDGE WHICH IS A BRIDGE ON THE MCCORMICK COUNTY/EDGEFIELD COUNTY LINE. THE ROAD IS CALLED GARRETT ROAD.

Q WHAT DO THEY DO WHEN THEY REACH THAT POINT?

A OKAY. PRIOR TO REACHING -- I MIGHT WANT TO ADD AND MR. LEE ALSO ADDS THAT HE HEARS MR. PAYNE HITTING MS. RITCHIE WITH A -- SOME TYPE OF WRENCH OR SOMETHING. OKAY. AT THIS TIME THEY ARRIVE AT THE BRIDGE, PARK ON THE BRIDGE. MR. KELSEY GETS OUT AND CHECKS MS. RITCHIE'S PULSE AND SAYS, "SHE'S DEAD. I CAN'T FIND A PULSE. SHE DOESN'T SEEM TO BE BREATHING."

Q WHAT HAPPENS NEXT?

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A MR. PAYNE ADVISES MR. KELSEY AND MR. LEE THAT HE IS GOING TO HAVE SEX WITH HER. THAT'S WHAT HE WANTED FROM THE GET-GO AND HE COMMENCES TO HAVE SEX WITH MS. RITCHIE.

Q EARLIER IN THE KERCHER RESIDENCE SHE REFUSES TO HAVE SEX WITH HIM, IS THAT CORRECT?

A THAT'S CORRECT.

Q DID THEY GIVE HER ANYTHING WHILE THEY WERE AT THE KERCHER RESIDENCE?

A YES. MR. PAYNE AT SOME POINT CAME TO MR. LEE AND TOLD HIM TO GET THE ECSTACY HE HAD OUT OF HIS VEHICLE.

Q WHAT IS ECSTACY?

A IT IS A DRUG THAT SUPPOSEDLY THAT THE TEENAGE YOUNG PEOPLE THINK THAT IT MAKES A LADY WANT TO HAVE SEX, AROUSES THEM SEXUALLY. AND THEY GOT THIS DRUG. MR. LEE -- IT WAS IN A TABLET FORM. HE DICES IT UP INTO A POWDER FORM WHICH HE STATED HE THEN SNIFFED ONE LINE OF IT HIMSELF. AND THEN HIM AND MR. PAYNE PUT IT IN SOME ICE TEA AND ADVISED MS. RITCHIE THAT IT WAS ASPIRIN IN THE TEA TO HELP HER STOMACH BECAUSE THE AMOUNT OF BEER SHE HAD DRANK PRIOR TO THAT HAD MADE HER STOMACH TO BE UPSET.

Q SO SHE DIDN'T KNOW SHE WAS CONSUMING THE ECSTACY?

A NO, MA'AM, SHE HAD NO IDEA THERE WAS ECSTACY IN THE ICED TEA.

Q ALL RIGHT. WHERE ARE MR. LEE AND MR. KELSEY WHILE MR. PAYNE IS HAVING SEX WITH AN UNCONSCIOUS MELANIE?

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A THEY'RE IN THE DEN OF THE KERCHER RESIDENCE LISTENING ---

Q WHILE THEY WERE IN SOUTH CAROLINA.

A OH, EXCUSE ME. YOU'RE BACK AT THE BRIDGE. THEY'RE AT THE REAR OF THE VEHICLE. THEY BOTH WENT TO THE REAR OF THE VEHICLE WHILE MR. PAYNE WAS HAVING SEX WITH MS. RITCHIE.

Q ALL RIGHT. WHAT DID THEY DO WHEN MR. PAYNE FINISHES?

A OKAY. MR. PAYNE DID NOT FINISH. AN UNKNOWN VEHICLE CAME ABOUT TEN MINUTES AFTER MR. PAYNE STARTED HAVING SEX WITH MS. RITCHIE AND CAUSED THEM TO JUMP INTO THE VEHICLE AND GO INTO EDGEFIELD COUNTY. AND THE VEHICLE PASSED THEM BY. AND WHEN THE VEHICLE GOT OUT OF SIGHT, THEY TURNED BACK AROUND AND CAME BACK TO THE BRIDGE TO GET MR. PAYNE'S CLOTHES THAT HE HAD LEFT ON THE BRIDGE. MR. PAYNE GOT DRESSED AND THEN MR. PAYNE DRESSED MS. RITCHIE.

Q WHAT DID THEY DO THEN?

A THEY DROVE FURTHER INTO MCCORMICK COUNTY, UP A HILL ON THE RIGHT SO THEY COULD DISPOSE OF THE BODY.

Q HOW DID THEY DO THAT?

A OKAY. AT THAT POINT MR. KELSEY AND MR. PAYNE ATTEMPT TO GET MS. RITCHIE UP AN INCLINE. THEY HAVE TROUBLE. MR. LEE ASSISTS THEM IN GETTING UP THE INCLINE, AND THEN HE GOES BACK TO THE VEHICLE WHILE MR. KELSEY AND MR. PAYNE DRAG THE BODY APPROXIMATELY TWENTY TO TWENTY-FIVE MORE FEET -- YARDS INTO THE WOODS.

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Q OKAY. HOW DID MR. KELSEY GET INVOLVED IN LEAVING THE PARTY WITH MR. LEE AND MR. PAYNE? DO YOU KNOW HOW THAT CAME ABOUT?

A PAYNE AND LEE TOLD HIM THEY WERE GOING TO TAKE HER HOME AND TO GET ONE OF HIS PIPE BOMBS AND THEY WOULD BLOW UP A MAILBOX ON THE WAY BACK IS WHAT IT SHOWS.

Q JUST A FEW MORE QUESTIONS. THE ORIGINAL STATEMENTS THAT PAYNE AND LEE HAD GIVEN YOU PUT JOE KELSEY IN THE BACK SEAT WITH MS. RITCHIE?

A THAT IS CORRECT.

Q PAYNE AND LEE, WOULD IT BE FAIR TO CHARACTERIZE THEM AS FRIENDS OF FAIRLY LONG STANDING?

A YES, SIR, THAT COULD BE -- YES, SIR.

Q A NUMBER OF YEARS AS FRIENDS?

A YES, SIR.

Q AS IT TURNS OUT, ACCORDING TO LEE IN THE SECOND STATEMENT, JOE WAS IN THE FRONT SEAT, FRONT SIDE PASSENGER?

A YES, SIR, THAT IS CORRECT.

Q DOES MR. LEE IN HIS SECOND STATEMENT INDICATE THAT JOE KELSEY TOOK ANY PART IN STRANGLING MS. RITCHIE?

A NO.

Q DOES MR. LEE IN HIS SECOND STATEMENT INDICATE THAT JOE KELSEY TOOK ANY PART IN STRIKING MS. RITCHIE ON THE HEAD WITH A I BELIEVE IT'S A WRENCH?

A YES, SIR, A BOX END TOP WRENCH IS WHAT HE DESCRIBED.

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Q DOES MR. LEE INDICATE THAT MR. KELSEY PARTICIPATED IN HITTING HER IN THE HEAD WITH THE WRENCH?

A NO, SIR, HE DOES NOT.

Q LET ME ASK YOU THIS. HOW DID YOU FIND OUT THAT THERE MIGHT HAVE BEEN A WRENCH IN THE CAR?

A MR. KELSEY ADVISED US OF THAT UPON INTERVIEWING HIM.

Q AND THEN LATER WHEN YOU SPOKE WITH MR. LEE, HE CONFIRMED IT?

A HE SAID THE SAME THING, RIGHT, CONFIRMED IT.

Q IT'S A FACT -- IT COMES ABOUT MR. PAYNE ASKING MR. LEE TO GET THE WRENCH AND MR. LEE BRINGING IT TO THE CAR?

A EXACTLY.

Q MR. KELSEY WAS NOT INVOLVED IN BRINGING THE WRENCH TO THE CAR?

A NO, SIR.

Q HOW DOES MR. LEE DESCRIBE JOE KELSEY'S REACTION AT THE TIME THEY TURN AROUND AND SEE -- WHEN THE FOOT COMES UP AND KNOCKS THE CAR OUT OF GEAR AND THEY BOTH EVIDENTLY TURN TO SEE WHAT'S GOING ON IN THE BACK SEAT? DOES MR. LEE DESCRIBE ANY REACTION ON THE PART OF JOE KELSEY?

A YES, SIR. HE SAID HE KIND OF BALLS UP IN A FETAL POSITION.

Q OKAY. I KNOW JOE DESCRIBED THEM PLAYING LOUD MUSIC IN THE CAR WHILE THEY WERE RIDING AROUND. DID YOU ASK MR. LEE ABOUT THAT?

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STATE OF SOUTH CAROLINA

COUNTY OF MCCORMICK

COURT OF GENERAL SESSIONS

STATE	)	
	)	TRANSCRIPT OF RECORD
-VS-	)	
JOSEPH GLENN KELSEY AND	)	95-GS-35-089
GEOFFREY RYAN PAYNE	)	95-GS-35-090

SEPTEMBER 15, 1995
LEXINGTON, SOUTH CAROLINA
SEPTEMBER 18-22, 1995
MCCORMICK, SOUTH CAROLINA

V O L U M E I

B E F O R E:

HONORABLE MARC H. WESTBROOK, JUDGE; AND A JURY.

A P P E A R A N C E S:

DONALD V. MYERS, SOLICITOR
JULIUS H. BAGGETT, ASSIST. SOLICITOR
ERVIN J. MAYE, ASSIST. SOLICITOR
ATTORNEYS FOR THE STATE

DOUGLAS S. STRICKLER, ESQUIRE
ATTORNEY FOR THE DEFENDANT KELSEY

RICHARD J. BREIBART, ESQUIRE
JOHN J. MCCAULEY, ESQUIRE
ATTORNEYS FOR THE DEFENDANT PAYNE

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	SEPTEMBER 21, 1995	
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FOR THE DEFENDANT KELSEY:		
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	(IN CAMERA)	
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JOSEPH GLENN KELSEY		
	CROSS BY MR. BREIBART	1308
	CROSS BY SOLICITOR MYERS	1363
	REDIRECT BY MR. STRICKLER	1466
DAN CHOATE		
	DIRECT BY MR. STRICKLER	1496
	CROSS BY MR. BREIBART	1515
DAN CHOATE		
	(IN CAMERA)	
	CROSS BY MR. BREIBART	1530
DAN CHOATE		
	CROSS BY MR. BREIBART	1543
	CROSS BY SOLICITOR MYERS	1548
	REDIRECT BY MR. STRICKLER	1550

HAROLD HARRISON		
DIRECT BY MR. STRICKLER	1553	
HAROLD HARRISON		
(IN CAMERA)		
DIRECT BY MR. STRICKLER	1559	
MAE GUINN		
DIRECT BY MR. STRICKLER	1563	
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Q THERE BEING AN ABSENCE OF ANY HARD EVIDENCE WITH REGARD TO THE OTHER TWO CAUSES, WOULD YOU BE IN A POSITION TO POSSIBLY STATE OR TO WHAT DEGREE OF CERTAINTY CAN YOU STATE THAT DEATH WAS CAUSED BY THE EXPLOSION?

A WELL, AS I MENTIONED, THE ONLY HARD EVIDENCE THAT WE HAD AT AUTOPSY IS THE DESTRUCTION WHICH THE EXPLOSION CAUSED. SO BASED ON THE AUTOPSY FINDINGS, THAT WOULD BE THE MORE PROBABLE CAUSE OF DEATH. ALSO BASED UPON THE HISTORY WE WERE GIVEN THAT THE PERSON WAS ALIVE ACCORDING TO THE STATEMENTS, THAT WOULD ALSO POINT TO THE FACT THAT THE BOMB WOULD HAVE CAUSED DEATH. BUT AS FAR AS HAVING ANY ABSOLUTE PROOF OF ANY OF THOSE THREE, THAT'S WHY I HAD TO PUT ALL THREE OF THEM AS POSSIBLE CAUSES OF DEATH.

Q THANK YOU VERY MUCH, DOCTOR.

MR. BAGGETT: THE WITNESS IS WITH YOU.

THE COURT: MR. STRICKLER.

MR. STRICKLER: THANK YOU, SIR.

CROSS EXAMINATION

BY MR. STRICKLER:

Q LET'S JUST FORGET ABOUT THE HISTORY THAT YOU GOT, DOCTOR, OKAY, AS TO MELANIE RICHEY BEING ALIVE BECAUSE THAT HISTORY IS BASED ON STATEMENTS MADE BY ONE PERSON IN THIS COURT AND ANOTHER PERSON WHO HAS CONTRADICTED THEM IN THE VAST MAJORITY OF HIS STATEMENT.

MR. BREIBART: YOUR HONOR, I HAVE TO OBJECT TO

THE FORM OF THE QUESTION. IF HE WOULD LIKE TO ASK A QUESTION.

THE COURT: SUSTAINED. JUST LIMIT IT TO A QUESTION.

MR. STRICKLER: YES, SIR.

Q FORGET THE HISTORY. LET'S ASSUME IT'S ALL WRONG, OKAY? LET'S ASSUME YOU ARE DEALING WITH BONES. THAT'S WHAT YOU ARE DEALING WITH IN THIS CASE, RIGHT?

A YES, THAT'S CORRECT.

Q NORMALLY IN A CASE OF MANUAL STRANGULATION, THE TYPICAL MANUAL STRANGULATION YOU THINK OF, THUMBS ON THE NECK IF YOU WILL, THAT'S WHEN YOU CLASSICALLY WILL FIND DAMAGE TO -- WHAT BONE WAS IT?

A THE LITTLE HYOID BONE.

Q THE HYOID BONE. THAT IS ONE OF THE CLASSIC SYMPTOMS OF MANUAL STRANGULATION?

A SOMETIMES YOU WILL ALSO HAVE INJURY TO THE THYROID CARTILAGE, WHICH IS YOUR ADAM'S APPLE.

Q THAT'S DIFFERENT FROM WHAT YOU WOULD SEE IN A CASE OF YOU WHAT YOU TERM IN YOUR FIELD LIGATURE STRANGULATION, STRANGULATION WITH SOME ROPE OR SOMETHING ELSE; RIGHT?

A THAT'S CORRECT.

Q THERE ARE FORMS OF MANUAL STRANGULATION THAT WOULD NOT NECESSARILY RESULT IN CRUSHING OF THE HYOID BONE; FOR EXAMPLE, IF STRANGULATION IS ACCOMPLISHED WITH AN ARM LOCK

ACROSS THE NECK AS OPPOSED TO PRESSING IN WITH THE THUMBS, STRANGULATION IN THAT INSTANCE CAN EVEN BE ACCOMPLISHED WITHOUT CRUSHING OF THE HYOID BONE; CAN'T IT?

A IT CAN BE ACCOMPLISHED AND HAVE NO INJURY TO THE NECK. THE ONLY FINDINGS THAT WE WOULD SOMETIMES SEE IN FRESH BODIES ARE PETECHIAL HEMORRHAGES IN THE WHITES OF THE EYES BUT NOTHING IN THE NECK PER SE. THE SAME IS TRUE SOMETIMES OF HANGING AND/OR LIGATURE TYPE STRANGULATION.

Q ALSO CONSISTENT IN THE CASE OF STRANGULATION, YOU CLASSICALLY FIND OR OFTEN FIND EITHER BRUISES ON THE SURFACE OF THE SKIN OR BRUISING UNDERNEATH THE SKIN. IF YOU REFLECT IT BACK AND LOOK AT THE LAYERS UNDERNEATH, YOU CAN FIND EVIDENCE OF BRUISING THERE; CORRECT?

A YOU MAY. THAT IS CORRECT.

Q OF COURSE, THESE ARE THINGS WHICH YOU CAN'T FIND IN THIS SITUATION BECAUSE IT'S DEPENDENT ON, ONE, THE EXISTENCE OF THIS BONE, WHICH WAS GONE?

A CORRECT.

Q AND, TWO, THE EXISTENCE OF SKIN THAT YOU CAN LOOK FOR EVIDENCE OF MARKS, ACTUAL THUMB PRINTS IN SOME SITUATIONS OR BRUISING IN THE SKIN; RIGHT?

A THAT'S CORRECT.

Q LET ME ASK YOU THIS. WHAT WOULD YOU FIND IF YOU CONDUCTED AN AUTOPSY FOR SOMEONE WHO DIED OF A HEART ATTACK? WHAT WOULD BE CLASSICAL SYMPTOMS OF THAT?

A A PERSON WHO IS IN THE RIGHT AGE RANGE WOULD CHARACTERISTICALLY HAVE NARROWING OF THE CORONARY ARTERIES OR A VERY LARGE HEART. A PERSON EVEN THIS YOUNG IN RARE CASES CAN HAVE A VERY LARGE HEART THAT SOMETIMES THEY HAD SYMPTOMS OF HEART ATTACKS FROM THE PAST. SOMETIMES THEY HAVE NOT. SOMETIMES THEIR FIRST SYMPTOM IS DEATH.

Q OKAY. AND THAT WOULD REQUIRE THE ABILITY TO ANALYZE THE HEART AND INTERNAL ORGANS TO MAKE THAT DETERMINATION AS TO CAUSE OF DEATH, RIGHT?

A YES, THAT'S TRUE.

Q LET'S TURN TO -- I DON'T KNOW -- STROKE, OKAY? WHAT WOULD BE THE CLASSICAL SYMPTOMS YOU WOULD FIND IN A CASE OF STROKE?

A AT THE AUTOPSY YOU WOULD FIND GENERALLY IN A PERSON THIS YOUNG, ALTHOUGH IT WOULD BE QUITE RARE, USUALLY PEOPLE WHO DIE OF STROKES ARE IN THEIR 30S OR OLDER. A YOUNG PERSON IN THEIR 20S AND 30S THAT DIES OF A STROKE WILL HAVE HEMORRHAGE AT THE BASE OF THE BRAIN BECAUSE A SMALL VESSEL HAS BULGED AND FINALLY RUPTURED CALLED A BERRY ANEURYSM BECAUSE IT'S LIKE A SMALL BERRY THAT IS AT THE JUNCTURE OF SOME OF THESE VESSELS.

THIS CAN OCCUR AND CAUSE A PERSON TO DIE SUDDENLY. THEY HAVE A BLINDING HEADACHE AND THEN SUDDENLY DIE IN A MATTER OF MINUTES OR AN HOUR OR SO OR THEY SURVIVE. ABOUT A THIRD OF THE PEOPLE DIE, TWO-THIRDS SURVIVE FOR A WHILE

AND A THIRD OF THOSE DIE LATER IF THEY NOT TREATED WITH PROPER SURGICAL TREATMENT.

Q IN ORDER TO MAKE THAT CONCLUSION, YOU WOULD HAVE TO BE ABLE TO ANALYZE AN INTERNAL ORGAN, THE BRAIN IN THIS PARTICULAR CASE?

A THAT'S CORRECT.

Q ANAPHYLACTIC SHOCK. WHAT DOES THAT TERM REFER TO?

A BASICALLY IT'S THE BODY'S REACTION TO SOME ANTIGEN IN THE ENVIRONMENT THAT THEY ARE ALLERGIC TO. IT CAUSES THE PERSON TO HAVE DIFFICULTY WITH THEIR BREATHING TO THE POINT WHERE THEY ARE UNABLE TO BREATHE ENOUGH TO BE ABLE TO SURVIVE.

OFTEN THERE IS A CHANGE IN THE LUNG THAT WE CAN SEE AROUND THE BRONCHI, WHICH ARE THE AIRWAYS INTO THE VARIOUS PARTS OF THE LUNG. YOU WILL SEE INFLAMMATORY CELLS OF A CHARACTERISTIC TYPE CALLED EOSINOPHILS AROUND THAT AIRWAY. THIS IS WHAT WE OFTEN SEE IN A PERSON WHO HAS AN ANAPHYLACTIC TYPE OF SHOCK, WHICH CAN KILL YOU VERY SUDDENLY.

Q THAT'S WHEN YOU READ ABOUT EVERY ONCE IN A WHILE SOMEBODY GETS STUNG BY A BEE OR SOMETHING LIKE THAT AND HAS ANAPHYLACTIC SHOCK AND DIES, RIGHT?

A RIGHT. USUALLY THIS PERSON THOUGH WITH SHOCK HAS HAD AN EPISODE IN THE PAST OF SOME REACTION. IT'S EXTREMELY RARE FOR SOMEBODY TO DIE WITH THEIR FIRST REACTION FROM

ANAPHYLACTIC SHOCK UNLESS IT'S SOME TYPE OF DRUG. USUALLY THEY HAVE HAD THE DRUG BEFORE BUT JUST MAY OR MAY NOT HAVE REACTED TO IT.

Q IF SOMEONE CUTS THEMSELVES AND CUTS ONE OF THE MAJOR ARTERIES IN THE BODY AND BLEEDS TO DEATH, WHAT WOULD YOU LOOK FOR AS INDICATIONS OF THAT?

A ON A SKELETON ON SOME OCCASIONS WE WILL SEE ACTUAL CUTS IN THE BONE. IN THIS CASE WE SAW NO CUTS ON THE BONE.

Q THAT'S NOT THE QUESTION, DOCTOR.

A IF THERE WAS NO TISSUE -- I'M SORRY. I WAS GETTING AHEAD OF YOU. INSIDE THE BODY WE WOULD SEE A STAB WOUND EXTERNALLY AND A WHOLE IN THE VESSEL INTERNALLY AND MAY SEE SOME BLEEDING INTERNALLY AROUND IT OR MAY JUST SEE BLEEDING EXTERNALLY.

Q ONCE AGAIN, YOU LOOK TO THE TISSUE IN THE BODY?

A SOFT TISSUE.

Q SOFT TISSUE?

A THAT'S RIGHT.

Q NOW, SOFT TISSUE WAS NOT PRESENT IN THIS CASE?

A YES, THAT'S CORRECT.

Q WOULD IT BE FAIR TO SAY, DOCTOR, THAT I COULD STAND UP HERE FOR MAYBE, IF MY MIND IS ACTIVE ENOUGH, STAND UP HERE FOR HALF AN HOUR OR AN HOUR AND REEL OFF WAYS PEOPLE CAN DIE THAT DON'T LEAVE ANY INDICATION IN THEIR SKELETAL REMAINS? WE COULD TALK ABOUT THIS FOR A WHILE, COULDN'T

WE?
A THAT'S TRUE. THERE ARE LOTS OF DIFFERENT CONDITIONS THAT DON'T LEAVE INJURIES EXTERNALLY.
Q OKAY. NOW, THE INJURY EXTERNALLY YOU SEE IS THE PIPE BOMB OR THE INJURY TO THE SKULL THAT IS CONSISTENT WITH THE PIPE BOMB?
A THAT'S CORRECT.
Q NO PROBLEM. BASED ON THE SKELETAL REMAINS, ISN'T THAT ALL YOU CAN SAY TO A REASONABLE DEGREE OF MEDICAL CERTAINTY IS THAT THE INJURY TO THE SKULL IS CONSISTENT WITH A PIPE BOMB? YOU CAN'T SAY THAT THE CAUSE OF DEATH WAS A PIPE BOMB?
A AS MENTIONED EARLIER, THERE IS NO WAY TO KNOW THE BODY WAS, IN FACT, ALIVE; HOWEVER, WITH THAT TYPE OF INJURY AND NO OTHER INJURY AND WITH THE HISTORY GIVEN, THAT WAS WHAT I CONCLUDED.
Q ONCE AGAIN, WE ARE TO THE POINT WHERE WE DISCOUNT THE HISTORY BECAUSE IT'S ALL WRONG; OKAY? IN THAT SITUATION, IF YOU ARE IN A SITUATION WHERE YOU HAVE CONFLICTING HISTORIES AS TO WHETHER THE PERSON WAS ALIVE OR DEAD AT THE TIME THE BOMB WAS USED, OKAY? YOU GET ONE HISTORY THAT SAYS THE PERSON WAS DEAD WHEN THE BOMB WAS USED AND THE OTHER HISTORY FROM, LET'S CALL IT AN EQUALLY RELIABLE SOURCE, THAT SAYS THE PERSON WAS ALIVE WHEN THE BOMB WAS USED; OKAY? THAT'S NOT A MEDICAL QUESTION THAT YOU CAN

DEAL WITH, IS IT?
A THAT IS CORRECT.
Q THAT'S GOING TO BE A QUESTION FOR THE JURY, RIGHT?
A THAT'S CORRECT.
Q GIVEN THOSE CONFLICTING STORIES, ONE STORY DEAD DUE TO STRANGULATION, THE OTHER STORY STRANGLED BUT STILL ALIVE, PIPE BOMB CONSISTENT WITH BOTH STORIES; OKAY? WHICH IS MORE CONSISTENT, DEATH BY PIPE BOMB OR DEATH BY STRANGULATION? ISN'T IT JUST A TOSS UP AT THAT POINT?
A AS I MENTIONED, THAT'S WHY I LISTED ALL OF THESE FINDINGS.
Q IN FACT, YOUR FINAL NECROPSY DIAGNOSIS OF PROBABLE CAUSE OF DEATH IS LISTED AS EXPLOSIVE DAMAGE OF HEAD AND/OR ASPHYXIA AND/OR OVERDOSE; RIGHT?
A CORRECT.
Q YOU DON'T RULE OUT ANY OF THOSE AS PROBABLE CAUSES OF DEATH?
A CANNOT.
Q YOU CANNOT TO A REASONABLE DEGREE OF CERTAINTY SAY THAT?
A THAT'S CORRECT.
Q THAT'S BECAUSE OF THE NATURE OF THE REMAINS?
A EXACTLY.
Q CAN YOU, IF YOU HAVE A CONFLICT IN THE EVIDENCE AS TO

WHETHER THE PERSON WAS ALIVE OR DEAD, CONFLICT IN THE HISTORY PROVIDED YOU -- AND WHEN YOU SAY HISTORY PROVIDED YOU, WHAT YOU MEAN IS THE POLICE TELL YOU WHAT THEY HAVE LEARNED FROM OTHER SOURCES; RIGHT?

A THAT'S CORRECT.

Q IF THE OTHER SOURCES ARE A COUPLE OF PEOPLE, ONE OF WHOM SAYS SHE WAS STRANGLED TO DEATH AND THEN THE BOMB WAS PLACED AND THE OTHER SAYS SHE WAS STRANGLED BUT STILL ALIVE AND THE BOMB WAS PLACED, THAT WOULD BE TWO CONFLICTING HISTORIES? YOU WOULD AGREE WITH THAT, RIGHT?

A YES, THAT'S CORRECT.

Q COULD YOU IN THAT SITUATION SAY MORE PROBABLE OR LESS PROBABLE OR YOU JUST HAVE TO SAY TRAUMA CONSISTENT WITH PIPE BOMB, PROBABLE CAUSES OF DEATH, PIPE BOMB AND/OR STRANGULATION?

A THAT IS CORRECT.

Q AND THE END AND/OR IN THAT IN THIS CASE FROM YOUR PROSPECTIVE IS A COIN TOSS?

A THAT'S CORRECT.

Q FIFTY/FIFTY?

A (WITNESS NODS). (INDICATING AFFIRMATIVE RESPONSE).

Q DOCTOR, I THANK YOU.

THE COURT: MR. BREIBART.

MR. BREIBART: MAY IT PLEASE THE COURT, YOUR HONOR.

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0061

APPEAL OF FINAL DECISION
Department of Probation, Parole and Pardon Services

JOSEPH KELSEY, #217218.....APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND
PARDON SERVICES,.....RESPONDENT

BRIEF OF RESPONDENT

Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

ATTORNEY FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. **Was the Parole Board arbitrary or capricious when it denied the Appellant parole based upon the nature and seriousness of the offense?**

2. **Does due process require the Parole Board to adopt a set of procedures specific to inmates who committed their offenses as juveniles?**

STATEMENT OF THE CASE

In early July 1994, sixteen-year-old Joseph Kelsey was staying with his friend in Martinez, Georgia while his friend's father was away from home on business. On Monday, July 11, 1994, the friend left to go to work, leaving Kelsey, seventeen-year-old Geoffrey Payne, and seventeen-year-old Jamie Lynn Lee ("Defendants") alone in the house. Defendants decided to manufacture homemade pipe bombs. They constructed a number of bombs, two of which they detonated in the backyard.

Later that evening, Defendants and four others gathered at the house for a party. At around midnight, Lee and Payne left the party to go to a nearby Texaco station. When Lee and Payne arrived at the station, they spotted the victim standing near a telephone booth. She had snuck out of her house to meet with a friend and had severely cut her foot. Lee and Payne offered to take her to the house in order to clean and bandage her injuries.

The victim accepted. Lee, Payne, and the victim returned to the house at around 1:30 a.m. Lee and Payne helped the victim bandage her foot and then all three rejoined the party. Payne repeatedly tried to coax the victim into having sexual intercourse with him, who refused his advances. At several points during the night, Payne expressed to Lee his frustration.

Payne instructed Lee to crush up a tablet of "Ecstacy," a mild hallucinogen. Payne poured the powder into a mixture of tea and water in order to hide the taste of the drug. Payne gave the drink to the victim and told her it would help calm a stomach-ache she had been complaining about earlier in the evening. Payne did not tell her that the drink was laced with Ecstacy. Kelsey testified that while this was going on, he was resting on the floor by the stereo and occasionally changing the music selection. At around 3:30 a.m., Defendants decided to take the victim home.

Defendants and the victim then got into Lee's car, ostensibly to take her home. Lee was driving, Kelsey was in the passenger seat, and Payne and the victim were in the backseat.

Lee eventually drove across the Georgia border and into South Carolina. Lee testified that the music was "obscenely" loud in the car, and he was going about 90 m.p.h. Soon after entering South Carolina, Lee noticed his tachometer go from 4200 to 6000 r.p.m. Lee looked down at the gear shift and discovered the victim's foot had knocked the gear into neutral. Lee turned around and saw that Payne had the victim in a "strangle hold type position." Lee continued to drive. A few minutes later, Lee "heard two quick, empty thud type sounds." He again turned around and saw that Payne still had the victim in a strangle hold. Lee further testified that Payne had a wrench in his hand. Kelsey testified that he had also turned around and saw that the victim's body was limp, her face was pale, and her lips were blue.

A few moments later, Payne leaned forward to tell Lee to turn the music down. According to Lee's testimony, Payne stated, "I'm pretty sure she's knocked out, guys." Payne then instructed Lee to go to a bridge between Edgefield and McCormick counties. Lee drove to the bridge where he parked the car. Defendants got out of the car, leaving the victim in the backseat. Payne informed Lee and Kelsey that he was going to have sex with her. Payne took off his clothes and the victim's shorts. A few moments later, Lee warned Payne that a car was corning. Defendants quickly got back into Lee's car and began driving. After the approaching vehicle passed, Lee turned the car around and went back to the bridge. Lee testified that the victim was unconscious the entire time, and "she was definitely alive." Kelsey, on the other hand, testified that he had checked her pulse, and he believed she was dead.

Lee once again drove away from the bridge. He got approximately 100 feet down the road when Payne told him to stop the car. Defendants pulled the victim out of the car and carried her

into the woods and up an embankment where they placed her on the ground. Lee returned to the car. Payne and Kelsey remained by the body. Kelsey testified that while he was standing over the victim's body, Payne instructed him to place a pipe bomb into her mouth. Kelsey complied. Payne then lit the fuse, and the two ran. A few seconds later, the bomb exploded. Defendants returned to the house where they fell asleep.

Defendants were eventually arrested and charged with murder.[1] Kelsey was arrested in Maryland and brought back to South Carolina to stand trial. Kelsey's case was transferred from family court to the Court of General Sessions where Kelsey and Payne were tried together as adults. Payne was found guilty of murder and criminal conspiracy. Kelsey was found guilty of murder, possession of a pipe bomb, and criminal conspiracy. Kelsey was sentenced to life imprisonment for murder and consecutive sentences of five years for possession of a pipe bomb and criminal conspiracy.

The Appellant first appeared before the Board on November 18, 2015 and was denied. He was denied again at his second appearance before the Board on November 15, 2017. The Appellant's most recent hearing occurred on November 13, 2019, where parole was denied due to the nature and seriousness of the current offense. After this denial, the Appellant filed a notice of appeal before the Administrative Law Court (ALC).

The Respondent's brief follows.

[1] It should be noted that although at trial Lee and the Appellant (Kelsey) both testified that Payne was the principal actor, Lee had initially made statements that the most responsible individual was the Appellant. "Kelsey testified, and admitted his guilt of the charges other than conspiracy and murder: petitioner [Payne] did not testify. A third youth [Lee] involved in the crimes testified for the State; he had initially identified Kelsey as the perpetrator, but in later statements and in his trial testimony he identified [Payne] as the responsible individual." *Payne v. State*, 355 S.C. 642, 648, 586 S.E.2d 857, 860 (2003) (Pleicones, concurring).

ARGUMENTS

1. **The Appellant is appealing the routine denial of parole so therefore this appeal should be dismissed.**

The Appellant argues that the Board acted arbitrarily and capriciously when it denied parole and based its grounds on the nature and seriousness of the offense. However, the nature of the offense and its seriousness is one of the published factors that the Board must consider when it decides whether to grant or deny parole.

The Department respectfully submits that this Court has limited authority to review the matter. *Cooper v. South Carolina Dept. of Probation, Parole and Pardon Services*, 377 S.C. 489, 500, 661 S.E.2d 106, 112 (2008), states, "We emphasize that ... if [the Parole Board] clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in its parole form... the decision will constitute a routine denial of parole and the ALC would have limited authority to review the decision to determine whether the Board followed proper procedure."

In this case, the order denying parole includes the statement that the Board considered the factors in *Cooper*. It stated that, "[a]fter careful consideration of: (1) the characteristics of your current offense(s), prior offense(s), prior supervision history, prison disciplinary record, and/or prior criminal record, as described in the findings of fact below; (2) the factors published in Department Form 1212 (Criteria for Parole Consideration); (3) the factors outlined in Section 24-21-640 of the South Carolina Code of Laws, and (4) actuarial risk and needs assessment factors pursuant to Section 24-21-10(F)(1) of the South Carolina Code of Laws." R.*

The Board does not have to provide further rationale as to its reasons or reasoning for the denial of parole. At no point does *Cooper* require the Board to explain its reasoning, and even if the Board did provide a detailed analysis of its decision-making process, the court cannot substitute

its judgment for that of the Board. S.C. Code §1-23-380(5) (2008). "The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact."

The Appellant's repeated and protracted arguments that the Board acted arbitrarily and capriciously because of its granting of parole to his co-defendant simply cannot stand against this axiomatic rule: The ALC may not substitute its judgment for that of the Board. Whatever the Board saw in the co-defendant that was deserving of parole and not for the Appellant is left in the sole discretion of the Board. Respectfully, this Court may not overturn that decision for any reason. As the Court in *Cooper* emphasized, the Court can only review this case to determine if the Board followed proper procedure. *Id.* at 500, 112.

2. The Supreme Court's findings are not relevant to the Board's decision-making process.

The Appellant claims that the Board exceeded its authority by denying parole when it used the nature and seriousness of the offense as its grounds for denial. This is an incredible claim, because the Parole Board is the *sole* body vested with the authority to grant or deny parole.

The Appellant places great weight on the fact that the Supreme Court determined in a pair of cases[2] that the Appellant's co-defendant was the primary actor. The Appellant overreaches, however, when he tries to use the fact that the Supreme Court, when considering a *Strickland* analysis[3] in a PCR appeal[4], somehow restricts the Parole Board to only granting parole.

"The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the

[2] *Payne v. State*, 355 S.C. 642, 586 S.E.2d 857 (2003) and *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998).
[3] *Strickland v. Washington*, 466 U.S. 668 (1984).
[4] *Payne v. State*, 355 S.C. at 645, 586 S.E.2d at 859.

law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him." S.C. Code §24-21-640. It is solely the Board's authority to grant or deny parole. At no point in the opinions in *Kelsey* and *Payne* did the Court speak on when and if the Appellant should be awarded parole. And if the Court had, the Supreme Court would be guilty of violating the separation of powers doctrine that the Appellant claims the Board did.

Furthermore, as pointed out in Justice Pleicones' concurrence in *Payne*, "In the present case petitioner and his codefendant (Kelsey) presented antagonistic defenses in which each blamed the other for killing the victim." *Id.* at 647, 860. Consequently, the facts are not as set in stone as the Appellant would like to believe.

As stated above, the Board's decision to deny parole is not reviewable by this Court. The Administrative Law Court's limited authority to review a Board's decision is only to determine if it followed proper procedure. *Cooper* at 500, 112. The ALC should summarily dismiss this appeal.

3. There is no right of confrontation at parole hearings, and therefore no right to view the parole files.

The Appellant asserts a due process right to review and challenge the material that is provided to the Parole Board. This is incorrect, because parole hearings are not contested hearings. His due process rights are limited solely to receiving parole hearings, and not to parole. Parole is a privilege, not a right. *Sullivan v. S.C. Dept' of Corrections*, 355 S.C. 437, 443 n. 4, 586 S.E.2d 124, 127 n. 4 (2003).

The Appellant laments that he cannot challenge the Board's decision to deny him parole. This is true. When the Board declines to grant parole, the inmate has no rights to appeal that

decision, but may only look ahead to the next parole hearing. *Furtick v. S.C. Dep't. of Probation, Parole and Pardon Services*, 352 S.C. 594, 598 n. 4, 576 S.E.2d 146, 149 n. 4 (2003).

This is also supported by the fact that no inmate has the right to confrontation at parole hearings. S.C. Code §24-21-50 (1976). Furthermore, the information and data received by probation agents in the course of their duties (in this context, creating the parole file) is privileged and confidential. S.C. Code §24-21-290. This privilege does not belong to the offender or the inmate, as only the director or the court may order the release of those documents. *Id.* Lastly, the Board's records of its proceedings are held "subject to the order of the Governor or the General Assembly." S.C. Code §24-21-40. Again, inmates are not entitled to review their parole file.

The Appellant's reliance on the Freedom of Information Act is also misplaced. The FOIA explicitly creates an exception for "[m]atters specifically exempted from disclosure by statute or law." S.C. Code §30-4-40(4).

None of these laws were overruled by the decision in *Rose v. S.C. Dep't of Probation, Parole and Pardon Services*, No. 27940, 2020 WL 465696 (2020), as the Appellant seems to imply by arguing that without the full record to support its decision, the inmate must be granted parole. The events and circumstances of *Rose* were wholly unique regarding a contested vote count. There is no question of how many votes the Appellant received, so *Rose* does not apply in this case.

4. There was no due process violation when there was one Board member absent.

The Appellant argues that he should have been notified when one Board member was absent and allowed to request his hearing be rescheduled for another time when the full Board was in attendance. This is untenable.

The Appellant cites *Barton v. S.C. Dep't. of Probation, Parole and Pardon Services*, 404 S.C. 395, 745 S.E.2d 110 (2013), but argues the exact opposite of its holding. He argues that the Board's current practice of determining the number of votes necessary to determine if parole has been granted by the number of Board members present is arbitrary and capricious. The ratio of votes needed for parole changes based on the number of Board members present, which becomes "impermissively arbitrary" he argues, completely counter to the holding of *Barton*. (Appellant's Br., p. 16).

Thalma Barton appealed the vote count when she received four yes votes in favor of parole out of six members present. The Board's practices at the time was to require the necessary votes from the Board's *membership*, rather than the Board members *present*. *Id.* at 400, 113. This meant that regardless of the Board members present at a particular hearing, the same number of votes were required for a favorable outcome – four votes in favor for non-violent offenses and five votes for violent offenses.

The Supreme Court disagreed with that practice, and ruled that the Board should calculate its votes based on the Board members present.[5] This holding created the fluctuating number of votes required that the Appellant rails against.

The Appellant is required to receive a two-thirds majority of votes in favor of parole. "[A]t least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60." S.C. Code §24-21-645 (2010). This would require five votes when seven Board members are present, and four votes when six or

[5] The *Barton* case actually had two holdings. The Department had also considered the two-thirds majority requirement for violent offenses retroactive, and thus determined that Barton needed five votes. The Supreme Court corrected both practices, holding that the two-thirds majority was not retroactive and that the votes should be calculated based on members present. Although either holding would have worked to grant Ms. Barton parole, the Court applied both.

five Board members are present. The *Barton* court acknowledged this fluctuation of votes required, yet ruled that that was to be the correct way votes were to be counted. "[T]he terms 'majority' and 'two-thirds' as utilized by section 24-21-645 are not static terms, and their meaning changes depending on their application." *Id.* at 416, 121.

The Appellant argues that appearing before five Board members instead of the full Board is a circumstance for which he should have been given notice and an opportunity to postpone his hearing for when more Board members are present. However, at the time of his hearing, the Board only had six members.

The Board of Paroles and Pardons is a seven-member body whose members are appointed by the Governor with approval by the Senate. S.C. Code §24-21-10(B). However, whenever the Senate does not confirm the appointee, that appointment is considered rejected. S.C. Code §24-21-10(C). "If the failure of the Senate to confirm an appointee would result in the lack of a quorum of board membership, the seat for which confirmation is denied or rejected *shall not be considered when determining if a quorum of board membership exists*." *Id.* (emphasis added).

Consequently, the issues the Appellant raise are already addressed by the Code. Even if the Appellant were to argue that he did not receive a quorum by having five out of seven Board members present, the Code clearly states that the vacant seat is not to be considered.

Thus, only one Board member was not present for the Appellant's hearing. This is not an unusual circumstance, and health issues or other emergencies can cause a Board member to miss a hearing unexpectedly. To rule that every inmate has the right to demand that his hearing be moved to another date when the full Board will be present is an unworkable solution, especially

when a quorum was present. None of the cases the Appellant cites grants a party to a hearing the right to postpone a hearing when there is a quorum present in the deciding body.[6]

5. The Parole Board is not required to change its processes to give special consideration to inmates who committed their offenses as juveniles.

The Appellant argues that there has been a shift in the Constitutional Law as it relates to the sentencing of defendants who committed their crimes as juveniles. This is absolutely true when it comes to the sentencing of juveniles. However, there is no similar shift when it comes to parole hearings.

Defendants who commit their crimes as juveniles may not be sentenced to death.[7] *Roper v. Simmons*, 543 U.S. 551 (2005). They may not be sentenced to life in prison without the possibility of parole for non-homicide offenses.[8] *Graham v. Florida*, 560 U.S. 48 (2010). And they may not be sentenced to life without the possibility of parole for homicide under a mandatory sentencing scheme.[9] *Miller v. Alabama*, 567 U.S. 460 (2012). Furthermore, the *Miller* decision was held to be a substantive rule of constitutional law, and was therefore to be applied retroactively. *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016). These U.S. Supreme Court cases in the last fifteen years have admittedly changed the way juvenile defendants may be sentenced in this country.

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[6] The Appellant's arguments that the counting of the votes being fundamentally unfair also beg the question about how he may feel if there had been a full panel of seven Board members, which would have required five votes in favor of parole. Should he be allowed to postpone that hearing as well and hope that only six Board members would be present at his next hearing so that he would only have to get four out of six?

[7] "The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed." *Roper*, 534 U.S. at 578.

[8] "This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole." *Graham*, 560 U.S. at 74.

[9] "We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 479.

Although the *Miller* decision limited its holding to mandatory sentencing schemes that required life without the possibility of parole, the South Carolina Supreme Court ordered resentencing of all juveniles who received a life without parole sentence. *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). The offense of murder without aggravating circumstances committed after January 1, 1996, carries a possible penalty of thirty years to life without the possibility of parole (LWOP). S.C. Code §16-3-20(A). Even if the sentence was not LWOP but a term of years, the defendant is not eligible for parole. S.C. Code §24-13-100.

The Court in *Aiken* extended resentencing hearings to those inmates who committed their offenses as a juvenile and received a sentence of LWOP. Basing its ruling on *Miller*, the Court ordered that sentencing court must consider:

> (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"; (2) the "family and home environment" that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation."
> *Aiken,* 410 S.C. at 544, 765 S.E.2d at 577.

After considering these factors, the court may still sentence the defendant to LWOP. However, LWOP may only be the sentence after the court has considered an individualized hearing exploring the "hallmark features of youth." *Id.* at 545, 578.

The *Miller v. Alabama* opinion and its progeny do not contemplate or address South Carolina law as it existed prior to January 1, 1996. The current law gives a sentencing judge discretion over the sentence for murder, from thirty years up to life in prison without the possibility of parole. Prior to January 1, 1996, however, South Carolina's murder statute provided for a different punishment. The court could only sentence the defendant – juvenile or adult – to life, but

with the possibility of parole. At the time of the Appellant's offense, South Carolina law provided parole eligibility after the service of twenty years. S.C. Code Ann. §16-3-20 (1986).

The Appellant received at sentencing the very solution that *Montgomery v. Alabama* prescribed for LWOP sentences. "A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them." 136 S.Ct. at 736. The U.S. Supreme Court could have suggested that the *Miller* factors be used by the authorities deciding parole, but declined to do so.

In the absence of such a mandate, there is no requirement that the South Carolina Parole Board change its practices and apply the *Miller-Aiken* factors to parole consideration. The South Carolina Supreme Court mandated those five factors be considered by the *sentencing* court. "*Miller* requires the sentencing authority "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 544, 765 S.E.2d at 577 (quoting *Miller*, 132 S.Ct. at 2469).

A more closely aligned case to the Appellant's is found in *State v. Finley*, 427 S.C. 419, 831 S.E.2d 158 (Ct. App. 2019). This inmate, who like the Appellant, committed his murder when he was a juvenile and received a parole-eligible life sentence. However, his parole eligibility was to commence after thirty years of incarceration due to the law at the time of his offense in 1992. *Id.* at 422, n. 2.

Finley argued unsuccessfully that his life sentence with the possibility of parole after thirty years constituted a de facto life sentence and entitled him to a resentencing under *Aiken*. The Court of Appeals, citing the remedy in *Montgomery*, held that his parole eligibility cured any Eighth Amendment violations. Furthermore, the court did not prescribe any special considerations for the Parole Board when Finley receives his parole hearings.

Much of the Appellant's arguments advocating for a new and revised parole hearing factoring in his status as an inmate who committed his crimes as a juvenile stem from a belief that he is entitled to receive parole. This, of course, is not correct. Inmates do not have the right to parole. *Sullivan*, 355 S.C. at 443 n. 4, 586 S.E.2d at 127 n. 4.

Furthermore, the U.S. Supreme Court has specifically declined to state that the juvenile offender *must* receive parole. "A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime." *Graham*, 560 U.S. at 75. If the Supreme Court specifically allowed for a non-homicide juvenile offender to conceivably never be granted parole, then clearly a juvenile offender who committed homicide may indeed never be granted parole.

The U.S. Supreme Court has not held that inmates who committed their crimes as juveniles must be eventually paroled. The Court in *Montgomery* stated that, "prisoners like Montgomery must be given the opportunity to show their crime did not reflect irreparable corruption; and if it did not, their hope for some years of life outside prison walls must be restored." *Id.* at 736-737. The Court extended hope for release, but not a guarantee of release.

CONCLUSION

Because the Appellant is appealing the routine denial of parole, the Department respectfully requests this appeal be dismissed or the final decision of the Board be affirmed. Parole is a privilege, not a right. Although the laws regarding juveniles being sentenced to life without parole has changed over the last fifteen years, parole *eligibility* is the proscribed solution for juveniles otherwise sentenced to life without parole. Because the Appellant was sentenced to life with the possibility of parole, his sentence is already constitutional. He therefore is asking for what

this Court cannot give him: the guarantee or right to parole, or the usurping of the Board's authority by this Court granting him parole.

Respectfully submitted,

Matthew C. Buchanan
General Counsel

South Carolina Department of Probation,
Parole and Pardon Services
P.O. Box 207
Columbia, South Carolina 29202
(803) 734-9220

Columbia, South Carolina
April 6, 2020

STATE OF SOUTH CAROLINA
In The Administrative Law Court
Docket Number 19-ALJ-15-0061

APPEAL OF FINAL DECISION
Department of Probation, Parole, and Pardon Services

JOSEPH KELSEY, #217218 ..... APPELLANT

v.

S.C. DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, ... RESPONDENT

CERTIFICATE OF SERVICE

I, Dawn K. Nichols, Executive Assistant to counsel for Respondent, certify that I have served the within *Brief and Motion to Exceed Page Limit*, both dated April 6, 2020, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, the 6th day of April, 2020, addressed to:

John Blume, Esquire
159 Charles Evans Hughes Hall
Ithaca, NY 14853

Hannah Freedman, Esquire
900 Elmwood Ave, Suite 200
Columbia, S.C. 29201

Jon Ozmint, Esquire
5205 Forest Drive, Suite 1
Columbia, S.C. 29206

I further certify that all parties required by Rule 54 to be served have been served.

Dawn Nichols

Dawn Nichols
Executive Assistant
South Carolina Department of Probation,
Parole, and Pardon Services
P. O. Box 50666
Columbia, South Carolina 29250

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joseph G. Kelsey, #217218, Appellant, vs. South Carolina Department of Probation, Parole and Pardon Services, Respondent.	)	Docket No. 19-ALJ-15-0061-AP **FINAL ORDER**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an Appeal by Joseph G. Kelsey (Appellant) seeking review of a decision of the South Carolina Board of Paroles and Pardons (Board) of the South Carolina Department of Probation, Parole and Pardon Services (Department or Respondent) which denied him parole on a three to two vote in favor of parole.[1]

STATEMENT OF THE CASE

Appellant was sentenced to life imprisonment for murder with the possibility of parole. Appellant was previously denied parole on November 18, 2015, and November 15, 2017. On November 13, 2019, Appellant appeared before five members of the Board. Three members voted in favor of parole. Two members voted against parole. The decision identified the only finding of fact as the "Nature and Seriousness of the Current Offense." (R. p. 1.)

Appellant filed a Notice of Appeal on December 10, 2019. The Record on Appeal, consisting of two pages, a certificate of counsel, and a certificate of service (and a title page) was filed on February 12, 2020. Also, on February 12, 2020, Appellant moved for permission to exceed the page limit on briefs imposed by SCALC Rule 60(A). The Court granted the motion by order issued February 24, 2020.

[1] S.C. Code Ann. § 24-21-645 (Supp. 2019) requires a two-thirds vote to authorize parole for a person "convicted of a violent crime as defined in section 16-1-60 of the South Carolina Code." *Barton v. S.C. Dept. of Probation, Parole and Pardon Services*, 404 S.C. 395 at 415, 745 S.E.2d 110 at 121 (2013).

FILED
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SC ADMIN. LAW COURT

On March 3, 2020, Appellant filed a Motion to Supplement the Record on Appeal so as to include documents received by the Department and the Board prior to the hearing, prior Board denials, letters from Appellant, the transcript of a codefendant's parole hearing (held November 4, 2020), the transcript of Appellant's parole hearing and reconsideration requests, and selections from Appellant's trial and waiver hearing. The Supplemental Record on Appeal (SROA) was filed on March 3, 2020. Department's counsel stated in an email that he did not object to Appellant's supplementing the record. Nevertheless, on March 5, 2020, Department's counsel filed a response to the motion arguing that the material offered was "immaterial to the matter at issue and [was] outside the scope of the limited authority of the ALC." Appellant responded to the Department's memorandum in opposition on March 10, 2020, to which the email referenced above was attached. On March 13, 2020, the Court granted the Motion to Supplement the Record on Appeal on the ground that counsel's consent, once given, must stand.

Appellant's brief was filed March 9, 2020. Respondent filed its brief on April 6, 2020, and also filed a motion seeking permission to exceed the page limit on briefs imposed by SCALC Rule 60(A). No reply to that motion was filed. The Court granted the motion to exceed the page limit.

BACKGROUND[2]

On July 11, 1994, Appellant (sixteen years old at the time) and two seventeen-year-old friends (Payne and Lee) were left by another seventeen-year-old friend (Kirchner) at his house when he went to work. The remaining three youths began experimenting, making three pipe bombs from galvanized pipe and shotgun shells. One was detonated in the back yard of Kirchner's house and made a foot-wide hole about four inches deep. Appellant put the other two pipe bombs into his travel bag in the house.

Appellant, Payne, Lee, and four others gathered at the house for a party. All were drinking beer. Around midnight, Payne and Lee went to a nearby Texaco gas station where they encountered Melanie Richey. Richey had cut her foot while sneaking out of her house to meet a friend. Payne and Lee offered to take Richey to Kirchner's house where they could bandage her foot.

[2] The account of the crime for which Appellant is incarcerated is taken from the Supreme Court's narratives in *Payne v. State*, 355, S.C. 642, 586 S.E.2d 857 (2003) and *State v. Kelsey*, 331 S.C. 50, 502 S.E.2d 63 (1998).

Payne, Lee, and Richey returned to Kirchner's house around 1:30 a.m. when Payne and Lee helped Richey bandage her foot. The three joined the party. Payne attempted unsuccessfully to persuade Richey to have sex with him. Frustrated by her refusal, Payne expressed his anger to Richey and, allegedly, told Lee that he was so angry he could kill Richey.

Around 3:30 in the morning, Lee, Kelsey, and Payne decided to take Richey home. Payne asked Lee to get something with which he could knock Richey out. Lee found a wrench in Kirchner's garage. Payne also asked Kelsey to bring the unexploded pipe bombs.

Instead of taking Richey home, Lee drove in the opposite direction ultimately driving from Georgia into South Carolina. Payne and Richey were in the back seat where, as Lee observed, Payne had a strangle hold on Richey. Within minutes, Lee testified that he heard "two quick, empty thud type sounds." (*Kelsey*, 331 S.C. at 60, 502 S.E.2d at 68.) Lee again observed that Payne had a choke hold on Richey and was holding the wrench. Kelsey testified that Richey was limp and pale and her lips were blue.

Subsequently, Payne directed Lee to drive to a bridge on the boundary between Edgefield and McCormick counties where Payne told Lee and Kelsey "that he was going to have sex with Richey." (*Id.*) An approaching vehicle interrupted Payne, and Lee drove away but returned to the bridge when the other vehicle had passed. Lee testified that Richey was unconscious but alive. Kelsey testified that he checked her pulse and concluded that she was dead.[3]

Lee drove about 100 feet away from the bridge where the three removed Richey from the vehicle "and carried her into the woods and up an embankment." (*Id.*) Lee returned to the car, and Payne and Kelsey remained. Payne directed Kelsey to place one of the pipe bombs into Richey's mouth. "Payne then lit the fuse, and the two ran." (Id. 60-61.)[4] The bomb exploded some seconds later. The three then returned to Kirchner's home.

Eventually, Payne and Kelsey were tried as adults. Kelsey was convicted of murder, criminal conspiracy, and possessing a pipe bomb. Payne was convicted of murder and criminal conspiracy.[5]

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[3] Appellant's attorney represented that Kelsey had CPR training, thus, augmenting Kelsey's reliability on this point. (Appellant's Brief, p. 4.)

[4] Kelsey testified that Payne used a lighter to ignite the fuse. "Lee testified that Payne threw the lighter on the dashboard of his car." *Payne*, 355 S.C. at 646, 586 S.E.2d at 859.

[5] Lee testified for the prosecution at Kelsey and Payne's trial in exchange for a reduced sentence of ten years.

By the time the body was found, it was impossible to tell whether Richey was choked to death, killed by a blow to the head, or killed by the pipe bomb. The Supreme Court concluded that in any event, "the testimony overwhelmingly proves that Payne murdered her." (*Payne*, 355 S.C. at 646, 586 S.E.2d at 859.)

AUTHORTITY AND SCOPE OF REVIEW

The jurisdiction and authority of the ALC to hear appeals from the Department is limited. The Court is governed by the South Carolina Constitution, the South Carolina Administrative Procedures Act (which created the Court), and decisions by the South Carolina Supreme Court (Supreme Court) delineating the ALC's jurisdiction to hear and decide issues arising from certain State agencies. The Constitution provides as follows:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Const. art. I, 22.

However, S.C. Code Ann. § 1-23-600(D) (Supp. 2019) provides that an "administrative law judge shall not hear . . . an appeal involving the denial of parole to a potentially eligible inmate." In *Furtick v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003), the Supreme Court identified exceptions to this restriction for issues that implicate a liberty interest requiring "at least minimal due process." *Id.* at 598, 576 S.E.2d at 149.

Therefore, the Supreme Court held that the ALC has jurisdiction to review the Department's final decisions. *See Furtick*, at 597, 576 S.E.2d at 148. This review is confined to errors in method and procedure. For example, if a Board decision, because of the procedures employed, effectively renders an individual ineligible for parole, then there has been a deprivation "of a state-created liberty interest" triggering "the due process requirements of judicial review" by the ALC. *Cooper v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 377 S.C. 489 at 495-96, 661 S.E.2d 106 at 110

(2008).[6] Further, the Supreme Court held that the Board's failure to follow statutory procedure was reviewable:

> If a Parole Board deviates from or renders its decision without consideration of the appropriate criteria, . . . it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest.
>
> Undoubtedly, the Parole Board is the sole authority with respect to decisions [granting or denying] parole. However, the Legislature created this Board to operate within certain parameters. We do not believe the Legislature established the Board and intended for it to render decisions without any means of accountability.

Id. at 499, 661 S.E.2d at 111.

The Supreme Court subsequently clarified *Cooper,* emphasizing that in a routine denial of parole, the Board need only to state clearly that it considered the appropriate factors. While not precisely defining "routine," the Supreme Court provided a contextual understanding of the term:

> . . . if the Parole Board clearly states in its order denying parole that it considered the factors outlined in section 24-21-640 and the fifteen factors published in Form 1212, and that if the Parole Board complies with this procedure, the decision will constitute a *routine* denial of parole and the ALC will have limited authority to review the decision [emphasis added].[7]

Compton v. S.C. Dep't of Prob., Parole and Pardon Servs., 385 S.C. 476, 479, 685 S.E.2d 175, 177 (2009).

Thus, the ALC's jurisdiction, conferred by *Furtick,* is limited by *Cooper* and *Compton.*

Respondent contends that an appeal of a **routine** denial of parole should be dismissed because the ALC has limited authority to review a Board decision. The problem, of course, is determining of what the ALC's limited authority consists and how it is to be exercised. A further complication arises when the Board provides a minimal record from which the ALC cannot ascertain that the Board's action is supported by the evidence it considered and that its decision is, in fact, a routine denial of parole.

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[6] It is not necessary that the Board use the term "permanent" in its denial to implicate a sufficient liberty interest. In *Cooper*, the Supreme Court went on to say, "a sufficient liberty interest may be implicated to trigger due process requirements even though the Parole Board's decision did not constitute a permanent denial of parole eligibility. *Id.* at 498, 661 S.E.2d at 111 (Citation omitted).

[7] Form 1212 has either 15 or 16 factors depending on when the crime occurred. *See* 2010 Act No. 273, § 66, providing that Part II of the act takes "effect on January 1, 2011, for offenses taking place on or after that date."

STATEMENT OF ISSUES ON APPEAL[8]

1. Was the Board's decision to deny parole to Appellant, based solely on the "nature of the offense," arbitrary and capricious in light of the Board's decision to grant parole to Payne for the same offense?
2. Did the Board err when it determined that Appellant's role in the underlying criminal act was more severe than Payne's role as characterized by the Supreme Court?
3. Did the Board violate due process in determining that all aspects of parole memoranda prepared by an agency official are exempt from disclosure under the public records law thereby denying a parole applicant the opportunity to see or challenge potentially inaccurate information about the nature and circumstances of the offense upon which the parole decision is based?
4. Did the Board's decision in this case violate due process and the agency's rules by requiring Appellant to receive more than two-thirds of the votes when only five of the seven members voted?
5. Considering the evolution in the law applicable to juvenile sentencing, does due process require the Board to adopt specific procedures for those who committed crimes as juveniles to protect their right to live "some years of life outside prison walls" (*Montgomery v. Louisiana*, 136 S.Ct. 718, 737 (2016))?[9]
6. Was the Board arbitrary and capricious when it denied the Appellant parole based upon the nature and seriousness of the offense? (This question is Respondent's version of the first issue above.)

DISCUSSION

1 & 6. Is the Nature and Seriousness of the Offense, alone, a sufficient ground on which to deny parole?

[8] In view of the disjunction of the issues identified by Appellant and Respondent, all issues are listed here although the Discussion will combine 1 and 6.

[9] No U.S. cite as yet. Respondent presents only two issues; its second issue presents this question without case law citation.

a. Is the exclusive reliance on the nature and seriousness of the offense a factual finding that effectively makes the applicant ineligible for parole. On November 15, 2019, the Board, over the stamped signature of a person providing Board Support Services, rejected Appellant's application for parole by a vote of three in favor of parole and two against parole. According to this Notice of Rejection, the Board reviewed (1) the characteristics of the current offense, prior offenses, prior supervision history and/or prior criminal record; (2) the factors in Department Form 1212; (3) the factors outlined in S.C. Code Ann. § 24-21-640, and (4) actuarial risk and needs assessment as required by S.C. Code Ann. § 24-21-10(F). However, the only fact found from this review was that the "Nature and Seriousness Of [sic] Current Offense" warranted denying Appellant's parole. (R. p. 1.)

The Board, therefore, based its decision on the original crime, consequently solely on facts that can never change.[10] Grounding its decision on this single event, without supplemental findings, effectively denies Appellant's eligibility for parole. As the Supreme Court observed, "a sufficient liberty interest may be implicated to trigger due process requirements even though the Parole Board's decision did not constitute a permanent denial of parole eligibility." *Cooper*, at 498, 661 S.E.2d at 111. Furthermore, as the Supreme Court held in *Cooper*, a challenge to "the method and procedure" employed in reaching a parole decision could raise

> a sufficient liberty interest to trigger due process requirements of judicial review. If a Parole Board fails to consider **and apply** the statutorily-created parole criteria, it has the effect of rendering an inmate parole ineligible . . . . In the instant case, the Parole Board apparently failed to consider the requisite factors and, instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of [the inmate].

Cooper, at 502, 661 S.E.2d at 113 (emphasis added).

The Court acknowledges that a crime could be so egregious and so shocking to social norms that a perpetrator could and should be denied parole indefinitely. However, it is difficult to believe that a sixteen-year-old, whose sense of future consequences has not been fully developed, could be so hardened and morally corrupt as to be forever beyond rehabilitation. Appellant's devotion to education and self-improvement and his volunteering to assist other inmates experiencing emotional crises support the claimed success of his rehabilitation.

[10] The Record provided by Respondent contained no evidence from which those "facts" could be found.

b. Given the claimed success of rehabilitation reported for both Appellant and his co-defendant Payne, do inconsistent Board decisions demonstrate arbitrary and capricious decision making? The Supplement the Record on Appeal includes transcripts of Appellant's parole hearing (November 13, 2019) and the parole hearing of Appellant's co-defendant, Geoffrey Payne (March 20, 2019). Appellant was denied parole; Payne was unanimously (6–0) granted parole.

Appellant argues that the Board's denying his parole application and granting Payne's based on their participation in the same crime demonstrates an arbitrary and capricious decision.

Both inmates have compiled extraordinary records as model prisoners. Payne, who was 17 when the crime occurred, has been involved in character-based programs such as Operation Behind Bars, Turning Leaf, and Jumpstart. He obtained a GED, a journeyman certificate, and a gold work keys certificate. He is pursuing an associate degree via correspondence from Ohio University. He participated in programs to assist other inmates. Payne has plans for work and has arranged for a place to live.

Appellant, who was 16 at the time of the crime, earned his GED and an associate degree from CIU (Columbia International University). He worked with Operation Behind Bars and Jumpstart. He has also worked in crisis intervention to help other inmates. He plans to continue his education and has options for job offers and residential arrangements.

The only significant differences between Payne and Appellant derive from their respective roles in the crime. Appellant made pipe bombs and placed one of them in the mouth of the victim, whom he thought to be deceased. Payne choked and struck the victim with a wrench, raped her or had sex with her corpse, and lit the fuse that detonated the pipe bomb.

Distinguishing between these two for purposes of granting parole can be nothing but arbitrary and capricious decision making. It would be barely justifiable to parole both, but completely understandable to deny parole to both. To treat one differently fron the other can be based on nothing but arbitrary caprice.

2. Did the Board deny Appellant parole on an erroneous belief that he was the "trigger man" in the victim's murder? Payne's attorneys argued that the Board could satisfy the victim's family by paroling Payne and denying parole to Appellant. In addition, Payne's attorneys

characterized Appellant as the perpetrator and stated that the victim's family could "still express their ire against parole with respect to the man who actually took their daughter's life." (SROA, p. 81.) This statement is contrary to the facts, recognized by the South Carolina Supreme Court, that Payne choked the victim, struck her in the head with a wrench, and ignited the pipe bomb's fuse. (*See* Background *supra* and *Payne*, 355 S.C. at 646, 586 S.E.2d at 859.)

The argument by Payne's attorneys and the subsequent Board decision was based on misinformation and an improper argument bargaining Payne's parole against keeping Appellant in custody.[11]

3. Did the Board err in determining that information prepared by an agency official is exempt from disclosure thereby denying a parole applicant the opportunity to challenge potentially inaccurate information? Respondent contends that there is no right of confrontation in parole hearings. That is true. S.C. Code Ann. § 42-31-50 (2007). The Board rightfully segregates the inmate from victim witnesses. Documents, subject to redaction, are a different matter.

Respondent also contends that S.C. Code Ann. 24-21-290 (2007) classifies information and data obtained by a probation agent as privileged and confidential. For this reason, the Board mistakenly believes that a parole applicant has no right to review his parole file.[12] Yet, the Department's "Criteria for Parole Consideration" (Form 1212) includes the following:

> The record itself is prepared through investigations conducted for the Parole Board, and it becomes a part of the inmate's parole file. The files . . . are, by the statute, privileged and confidential. The confidentiality of the parole file is far reaching: inmates themselves have no right to inspect the contents of their files. **If the inmate thinks his/her file is somehow incomplete or contains some errors or other inaccuracy, he/she must notify the Board of the specific error or inaccuracy.** (Emphasis added.)

That the inmate must notify the Board of an error in a file he has no right to see is logically and legally absurd.

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[11] Respondent represents that the Board considers parole applications on a "case by case" basis. The argument allowed in Payne's parole hearing (SROA, p. 081) runs directly counter to Respondent's assertion.

[12] Respondent cites S.C. Code Ann. § 24-21-40 (2007), which requires the Board to keep a record of its proceeds and maintain those records subject to the order of the Governor or the General Assembly (a document retention rule), as a basis for denying access to the records of a public body. Apparently, the Department can choose when to ignore this rule. *See Rose v. S.C. Dep't of Prob., Parole and Pardon Servs.*, 429 S.C. 136, 141, 838 S.E.2d 505, 508 (2020).

ALC rules require that documents be redacted. Information and data can and should be provided while the privacy and identifying information of sources must be redacted or the documents must be submitted under seal. SCALC Rule 6. Therefore, evidence that formed the basis for a finding of fact could be furnished to the ALC for its review.

In this case, the Supplemental Record on Appeal provided to the Court provides ample material for review. Accordingly, no error has been shown.

4. Did the Board's decision in this case violate due process and the agency's rules by requiring Appellant to receive more than two-thirds of the votes when only five of the seven members voted? In this case, an absent member and an unfilled vacancy left the Board with only five voting members present. The two-thirds vote required for parole could be met if Appellant received four votes in favor of parole. Even if all six sitting members had been present, that would have been the case. Here, Appellant received three votes but could have been paroled only if the absent member had been present and voted in his favor.

Appellant argues that the absent vote was effectively counted as a "no" vote contrary to *Barton v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 404 S.C. 395, 418, 745 S.E.2d 110, 123 (2013):

> [the Department's] "interpretation treats nonparticipating members of the Parole Board as 'no' votes. [The Department] fails to present any authority for what is the illogical position that the General Assembly intended for non-participating [sic] Parole Board members to arbitrarily count against inmates convicted of a violent crime . . . . Put another way, [the Department] fails to bring forward any rationale as to why absent Parole Board members could not be just as well treated as 'yes' votes.

Respondent agrees that the essential holding of *Barton* is that the two-thirds requirement must be applied to the Board members present and not to the full membership. *Id.* at 419, 745 S.E.2d at 123.

Appellant also argues that he should have been notified that a member would be absent so that he could have made an informed choice to proceed or not when only five members would be present. Appellant contends that this lack of notice deprived him of constitutionally adequate notice.

Constitutionally adequate notice "turns, to a considerable extent, on the knowledge which the circumstances show such party may be taken to have of the consequences of his own conduct." *Link v. Wabash R. Co.*, 370 U.S. 626 632, 82 S.Ct., 1386, 1390 (1962) (This case was dismissed

when an attorney failed to attend a scheduled pretrial conference.). According to Appellant, when "a party risks the forfeiture of an important right, he must be on notice of what will happen if he does or does not act." (App. Brief, p. 17.) Notice, in cases under the Administrative Procedures Act, includes (1) the time, place, and nature of the hearing, (2) the authority and jurisdiction applicable to the hearing, (3) reference to the statutory sections and rules which apply, and (4) a short and plain statement of the matters asserted or a statement of the issues involved. S.C. Code Ann. § 1-23-320(B) (Supp. 2019); *Ross v. Med. U. of S.C.*, 328 S.C. 51, 63, 492 S.E.2d 62,69 (1997).

In addition, S.C. Code Ann. § 24-21-645 does not require a specific number of Board members "that must review the parole suitability of an inmate convicted of a violent crime but also does not expressly exclude the common law quorum principle." *Barton*, at 417, 745 S.E.2d at 122. As long as a quorum is present, the unexpected absence of a Board member cannot justify rescheduling a hearing. Moreover, Appellant made no objection to the composition of the Board upon his discovery the day prior to the hearing that only five members would be present. An issue not raised at the hearing below cannot be raised now on appeal. *Herron v. Cent. BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citations omitted) ("At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. It is 'axiomatic that an issue cannot be raised for the first time on appeal.'")

Appellant's argument that the composition of the Board at his hearing prejudiced him because he did not get adequate notice of that fact is without merit. For this reason, Respondent's position on this issue is upheld.

5. Does due process require the Board to adopt specific procedures for those who committed crimes as juveniles to protect their right to live "some years of life outside prison walls"? Appellant relies on *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016) for the principle that the Board should adopt special procedures for those who committed crimes as juveniles. The United States Supreme Court announced that,

> children are constitutionally different from adults in their level of culpability . . . prisoners like Montgomery [who committed murder when he was 17 years old] must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored

Id. at 736-37.

Appellant availed himself of that opportunity in his parole hearing. The ALC has no authority to make policy for the Department or to modify its governing law. Therefore, the Court declines to rule on this issue. Ultimately, the General Assembly must determine whether and how to address this situation.

CONCLUSION

The Board denied Appellant's application for parole solely on the basis of the "nature and seriousness of the offense." Although that is a required factor to be considered in an appeal, S.C. Code Ann. § 24-21-640 provides clear instructions for the Board's evaluation process:

> The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

By focusing on the crime alone, the Board fails to consider the inmate's record before and during his imprisonment and whether he has exhibited a "disposition to reform" and is likely to behave in accord with the law and social norms.

This section also requires the Board to "establish written, specific criteria for the granting of parole . . . . [which] reflect all of the aspects of this section and include a review of a prisoner's disciplinary and other records." The Board's consideration of these criteria is not reflected in its single factual finding. In actuality, a finding, based exclusively on facts that cannot change, is effectively a denial of the inmate's eligibility for parole.

In addition, the account of the crime leading to the convictions of both Appellant and his codefendant (Payne) suggests that both or neither should be paroled. Although the Board has the sole authority to grant or deny parole, its decision to parole the individual who beat the victim with a wrench, choked the victim, raped her, and set off the pipe bomb in her mouth appears to be arbitrary and capricious in light of its decision to deny parole to another participant in the crime who did not beat, choke, or rape the victim but did construct the pipe bomb and place it in the victim's mouth.

Finally, if the Board did indeed review the facts of the crime and both Payne's and Appellant's records while incarcerated, it could not have believed the statements made in Payne's parole hearing that Appellant, not Payne, had set off the pipe bomb. Likewise, it should not have allowed an argument that suggested that it could parole Payne and satisfy the victim's family by keeping Appellant in custody. An argument that appeals to that kind of bargaining taints the process, the members of the Board, and the attorneys who made it.

Appellant's remaining arguments are without merit or are beyond the authority of the ALC to address.

Although the Court has identified one decision that is arbitrary and capricious and another that was based on untrue assertions of fact and improper argument, the Board has the sole authority to grant or deny parole and does so in a case by case basis. This Court does not have the authority to grant parole or, unfortunately, the authority to rescind the Board's grant of parole.

It is, reluctantly, therefore,

ORDERED that that Appellant's Appeal is **DENIED**.

AND IT IS SO ORDERED.

Columbia, South Carolina
October 7, 2020

H. W. Funderburk, Jr.
Administrative Law Judge

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OCT 07 2020
SC ADMIN. LAW COURT

Docket No. 19-ALJ-15-0061-AP

CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, hereby certify that I have this date served the enclosed **Final Order** upon all parties to this case by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the parties' attorneys.

Hannah Freedman, Esquire
Megan Barnes, Esquire
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201

John H. Blume, Esquire
Cornell Law School
159 Charles Evans Hughes Hall
Ithaca, NY 14853

Jon Ozmint
The Ozmint Firm
PO Box 6814
Columbia, SC 29260

Matthew Buchanan., Esquire
General Counsel, DPPS
P.O. Box 207
Columbia, SC 29202

October 7, 2020
Columbia, South Carolina

Elizabeth A. Perkins
Judicial Law Clerk

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SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Hannah L. Freedman
Justice 360
900 Elmwood Ave., Suite 200
Columbia, SC 29201
(803) 765-1044

Attorney for Appellant