Exhibit C

Race, Youth, and the Death Sentence of Freddie Owens

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September 4, 2024

Introduction

Khalil Allah (Freddie Owens) was sentenced to death in 1999 for a 1997 robbery and homicide in a convenience store in Greenville County, SC. After two resentencings (2003, 2006), he now faces a death warrant. A death sentence in a crime with similar characteristics to that of Mr. Owens is extremely rare in the modern history of South Carolina. Robbery-homicides constitute over 10 percent of all homicides in the state, but only a small share lead to a sentence of death. Further, Mr. Owens was just 19 years old at the time of his crime, convicted under a theory of accomplice liability for felony-murder, and there was no finding by the jury that he was the triggerman. We are not aware of a single execution in the modern history of the state (since the creation of the current death penalty regime in 1977) in which a person who did not kill or intend to kill was executed. Were he to be executed, he would be the youngest person at the time of the crime to be executed since the execution of Earl Matthews in 1997.

After Mr. Owens' 2006 death sentence, the SC Supreme Court conducted a proportionality review, as required; this review occurred on July 14, 2008. As was the practice at the time, the search for "similar cases" was limited to those in which a death penalty was imposed. In *Moore v. Stirling* (2022), the Court expanded such proportionality reviews to include cases in which the offender was sentenced to a lesser punishment. Therefore, in this report we analyze the state of the South Carolina death penalty system as of the date of Mr. Owens' proportionality review, July 14, 2008. We seek to assess the results of "similar" cases to those of

Mr. Owens which could have been available to the Court as of the date of the previous proportionality review.

We lay out our qualifications to do this work in Appendix A, and we have provided copies of our respective Curriculum Vitae as separate exhibits. We focus in this report on the following aspects of the crime: Mr. Owens is black; he was 19 years old at the time of the crime; he had only a single aggravating situation (robbery, though he was also simultaneously charged with larceny as part of the same actions); he was a codefendant in the crime but was not found by the jury to be the triggerman. We make use of three databases to conduct our analysis: the FBI's Supplemental Homicide Reports (FBI SHR) for South Carolina (21,002 cases from 1976 to 2021); a list of all death sentences in the state compiled by Baumgartner (183 death sentences and 43 executions, 1977 to present); and a database of all death-noticed cases (384 cases from 1977 to 2021). Appendices B through D explain these databases in detail. (As indicated above, for the purposes of this report, we do not make use of any information after July 14, 2008, the date of the earlier review.)

The database that allows comparison of Mr. Owens' death sentence to those of others is organized by the date of the initial death sentence for any particular offender and crime. Many of those with a death sentence see that initial sentence overturned and later reimposed, sometimes multiple times (as was the case with Mr. Owens).[1] We do not analyze information about the second, third, or subsequent reimpositions of all US death sentences—the databases include the first imposition of a person's death sentence. Therefore, in the analysis that follows, we assess

[1] Our statistical analysis is based on comparisons of the crimes for which Mr. Owens was indicted and convicted. It does not include analysis of behavior for which Mr. Owens was never convicted, such as the 1999 homicide of Christopher Lee. If Mr. Lee is considered a second homicide victim attributed to Mr. Owens, statistical analysis shows that the death sentence rate for two-victim homicides is 3.54, meaning that more than 96% of two-victim homicides do not result in death sentences.

Mr. Owens' initial 1999 death sentence. Where appropriate, we note in the text when consideration of his 2006 death sentence, which is the one being reviewed by the Court, would make a difference. Generally, the results would not change.

Youthful Age at the Time of the Crime

It is unconstitutional to sentence those under the age of 18 to death (*Roper v. Simmons*, 543 U.S. 551 (2005)), and it is uncommon to sentence those under the age of 21. In the period before *Roper*, the number of death sentences of those under age 18 dwindled to very low numbers; in *Roper*, the US Supreme Court declared the practice unconstitutional. In the period since *Roper*, death sentences of those in the "Late Adolescent Class" (LAC; those aged 18, 19, or 20) have also dwindled to very low numbers, similar to the trend for juveniles before *Roper*. Figure 1 shows the total number of death sentences in the US (left pane) as well as sentences for juveniles and those in the LAC (right pane). The Figure is limited to the time period before July 14, 2008.

Figure 1. US Death Sentences by Age of Offender.

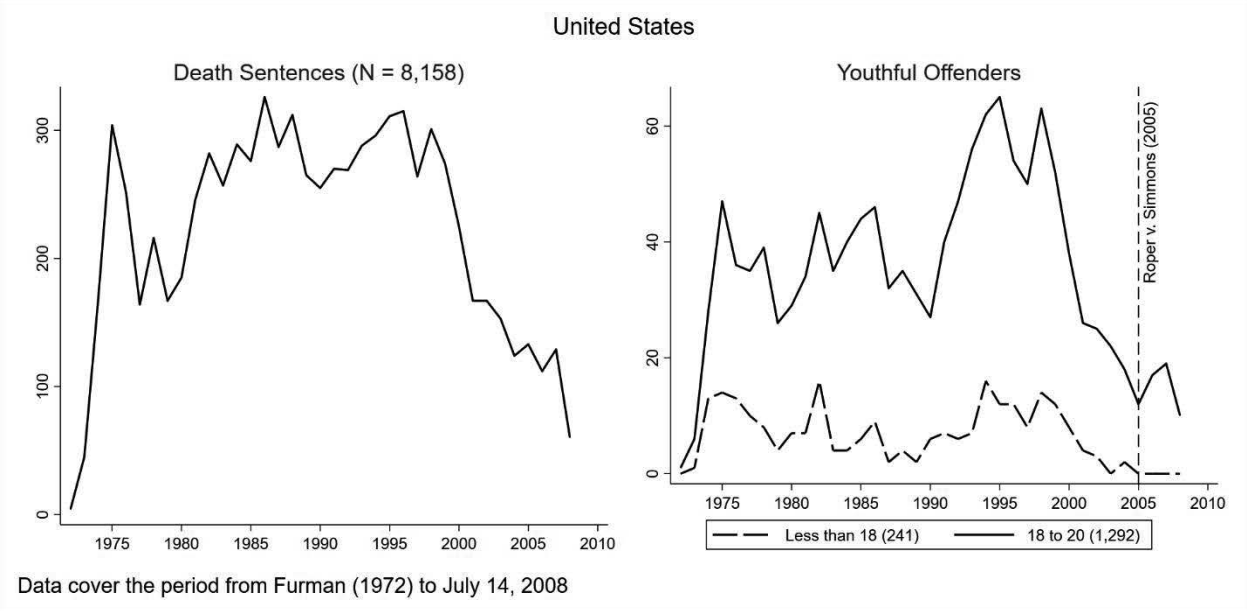
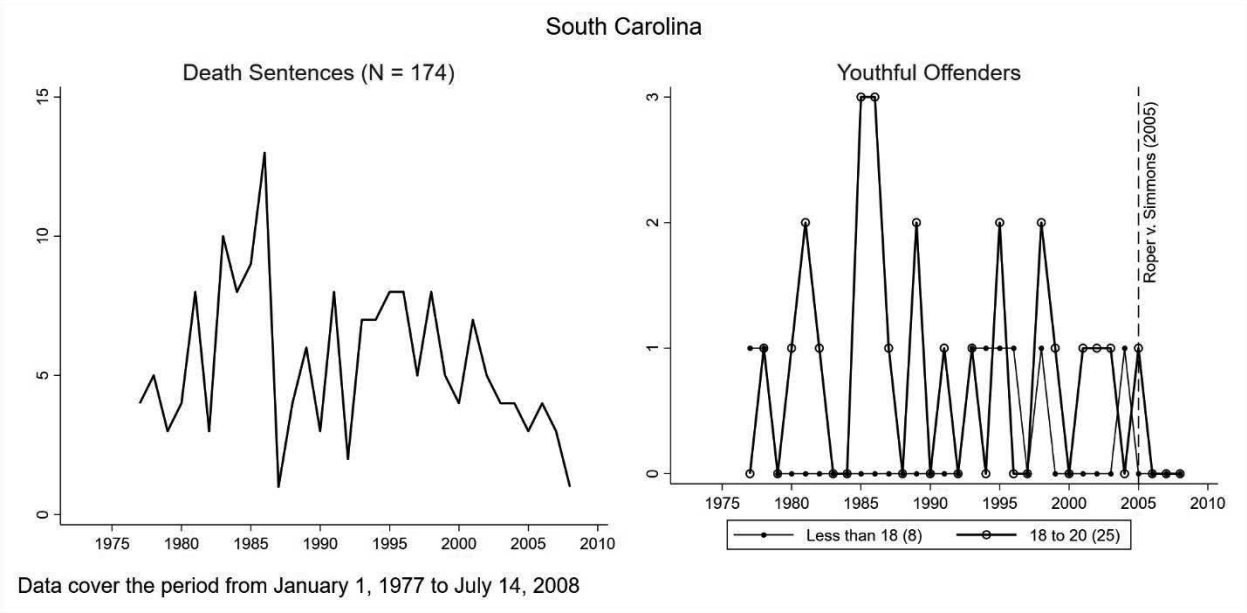


Figure 1 shows several things: First, (left pane), death sentences had declined to very low numbers from a much higher baseline in the 1980s and 1990s. Second, (right pane, dashed line), death sentences imposed on those under 18 years of age were never very common and declined to very low numbers in the years before *Roper*. Third (right pane, solid line), death sentences imposed on those over 18 but under 21 had declined remarkably since their high-point in the late-1990s. In the period since *Roper*, this decline continued, never rebounding to the values of around 40 from the 1980s and certainly not the peaks of over 60 in the mid- to late-1990s. The average number of LAC individuals sentenced to death nationally from 2005 through 2008 was 15, compared to 65 in the single year of 1995.

In South Carolina, the numbers are very similar. Statewide, 174 death sentences had been handed down by July 14, 2008; 8 were to individuals younger than 18 years at the time of their crime. For those in the LAC, 25 death sentences had been imposed. Figure 2 illustrates these trends.

Figure 2. South Carolina Death Sentences by Age of Offender.



South Carolina regularly sentenced five or more individuals to death in most years before 2002, but these numbers declined dramatically since then: 4, 4, 3, 4, 3, and 1 in 2003 through 2008, respectively. Nineteen sentences were handed down in those six years, compared to 34 in the previous six-year period and 45 in the six years from 1983 to 1988 when sentencing was at its peak. For youthful offenders, the numbers follow a similar trend. Numbers were never very high: Three LAC individuals in 1985 and 1986, two in four additional years before 2000, but only 4 such cases from 2001 through 2008, and never more than one in any single year. No individual in the LAC received an initial death sentence in 2006, 2007, or 2008, after *Roper*.

The vast majority of those sentenced to death for crimes committed before their 21st birthday have seen their death sentences reversed. While 25 such people were sentenced to death in the state, just 10 remained on South Carolina's death row as of July 14, 2008. One was executed, one died while on death row, and the 13 others had their sentences reversed. (Among the 8 juveniles sentenced, one was executed before *Roper* prohibited this outcome.) Figure 3 shows these numbers, and Table 1 lists each case.

Figure 3. LAC Individual Sentenced to Death and Remaining on Death Row, South Carolina.

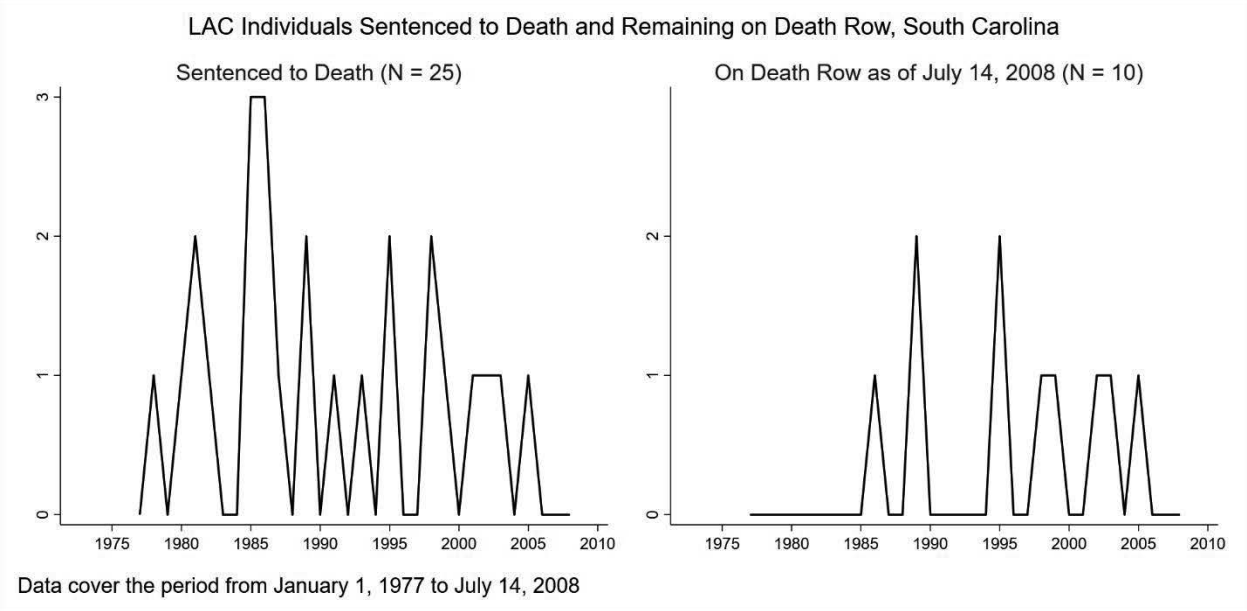


Table 1. List of LAC Death Sentences and Outcomes, 1977 through July 14, 2008.

				Outcome						
Name	County	Race	Sex	Executed	Died	Reversed	On Death Row	Age at Crime	Death Sentence	Victims
Rudolph Tyner	Horry	B	M		X			19.01*	8/11/1978	WF WM
Albert Thompson	Greenville	B	M			X		20.70	9/27/1980	WM
James Butler	Orangeburg	W	M			X		18.85*	3/21/1981	AM
Michael Sloan	Lexington	W	M			X		18.35*	10/2/1981	WF
Sterling Spann	York	B	M			X		19.08*	4/26/1982	WF
Earl Matthews Jr	Charleston	B	M	X				19.18	5/13/1985	WF
Raymond Patterson Jr	Lexington	B	M			X		19.39*	9/7/1985	WM
Kamathene Cooper	Florence	B	M			X		19.42*	10/4/1985	WM
Ernest Riddle	Cherokee	W	M				X	19.14*	2/1/1986	WF
Harold Cockerham	Horry	W	M			X		20.69*	10/11/1986	WF
James Cain	Chesterfield	W	M			X		19.57*	11/25/1986	2WM
Demetrius Gathers	Charleston	B	M			X		19.21*	3/21/1987	BM
William Bell Jr	Anderson	B	M				X	20.17*	3/15/1989	WM
James Wilson	Greenwood	W	M				X	19.24*	5/9/1989	2BF
Johnny Ray Jr	Spartanburg	W	M			X		20.18*	5/2/1991	WF
Bobby Holmes	York	B	M			X		18.50*	4/20/1993	BF
Thomas Ivey	Orangeburg	B	M				X	18.64	1/20/1995	2WM
Johnny Bennett Jr	Lexington	B	M				X	20.41*	10/19/1995	BM
Wesley Shafer	Union	W	M			X		18.78*	1/22/1998	WM
David Mcclure Jr	Barnwell	W	M				X	18.52*	4/29/1998	WM
Freddie Owens	Greenville	B	M				X	19.62	2/17/1999	BF
Denisona Crisp	Anderson	W	M			X		19.90*	10/19/2001	2BM
Marion Bowman Jr	Dorchester	B	M				X	20.64*	5/23/2002	WF
Clinton Northcutt	Lexington	W	M				X	20.52*	11/14/2003	WF
Charles Williams	Greenville	B	M				X	20.73	2/18/2005	WF

Note: * indicates that the date of birth is estimated. The estimate may be accurate only to the year or to the month. Race and sex abbreviated as follows: W = White, B = Black, A = Asian-American; M = Male; F = Female.

Higher Share of Black Offenders in the LAC

As the use of the death penalty has become rarer for offenders aged below 21, the share of black offenders in this group has grown. Another way to say this is that the decline in white offenders under 21 sentenced to death has declined even faster than the number of youthful black offenders. Nationwide, and in South Carolina, members of the LAC class who have been sentenced to death are disproportionately drawn from minority populations rather than whites. This is consistent with the idea that white offenders are more likely to be seen as "children" whereas black and brown men of the same age are more likely to be "adultified" (see Rattan et al. 2012). Baumgartner has previously analyzed these trends in a published article (see Haney et al. 2022); in the following section we replicate the key parts of that published analysis with the data available as of July 14, 2008. That earlier analysis showed that among the 142 individuals in the LAC who were sentenced to death nationwide since *Roper*, only 29, or 20 percent, were white. Whites were 44 percent of the individuals sentenced to death who were 21 years old or older, however (Haney et al. 2022, Table 4). Thus, since *Roper*, there was a substantial tendency for youthful offenders sentenced to death to be minorities. Of course, this analysis, published in 2022, was not available at the time of the 2008 review of Owens' case, so we replicate it below as of that date.

Nationally, looking at 7,326 death sentences imposed before July 14, 2008 with offenders who were either black or white, 1,127 were in the LAC. Among this group, 658, or 58 percent, were black. Since *Roper*, but before July 14, 2008, 347 death sentences were handed down to black or white offenders, of which 45 were imposed on individuals in the LAC. In that group, 29, or 64 percent, were black.

In South Carolina, looking at only black and white offenders sentenced to death, 25 of 173 have involved offenders in the LAC; 14, or 56 percent of this group, were black. Since *Roper*, but before July 14, 2008, 10 death sentences were handed down, but none of these involved a person in the LAC.

Mr. Owens was 19 years of age at the time of his crime in 1997. Greenville County has sentenced only three individuals aged 18, 19, or 20 to death in the modern era. (Mr. Owens was not yet 20 years old when he committed the crime for which he was sentenced in 1999; Albert Thompson was not yet 21 years old (sentenced to death in September 1980); and Charles Williams was not yet 21 (sentenced in 2005). Mr. Thompson was resentenced to life in prison in 1984, and Mr. Thompson was still on death row as of July 14, 2008.) Mr. Owens was the youngest person from Greenville County sentenced to death, and the only one aged under 20 at the time of his crime.

Executions of Youthful Offenders

South Carolina executed James Roach in 1986; he was not yet 18 years old at the time of his 1977 crime. Earl Matthews Jr., (19 at the time of his crime), was executed in 1997. Table 2 lists all South Carolina execution cases from 1977 through July 14, 2008 by age of the offender at the time of the crime. Were Mr. Owens to have been executed, he would have been the third youngest individual executed by the state in the modern era. The state had executed one juvenile and just one individual aged 19 at the time of the crime. All others, 37 of 39 at the time, were 21 years old or older at the time of their crimes.

Table 2. South Carolina Executions, 1977 through July 14, 2008, by Age of Offender at Crime.

Name	County	Race	Sex	Victims	Age		Execution
James Roach	Richland	W	M	WF WM	17.69		1/10/1986
Earl Matthews Jr	Charleston	B	M	WF	19.18		11/7/1997
Frank Middleton Jr	Charleston	B	M	WF BF	21.37		11/22/1996
Louis Truesdale Jr	Lancaster	B	M	WF	21.52		12/11/1998
Larry Gilbert	Lexington	B	M	WM	21.96		12/4/1998
Shawn Humphries	Greenville	W	M	WM	22.20		12/2/2005
John Plath	Beaufort	W	M	BF	22.26	*	7/10/1998
David Rocheville	Spartanburg	W	M	WM	22.52	*	12/3/1999
Joseph Shaw	Richland	W	M	WF WM	22.58		1/11/1985
John Arnold	Beaufort	W	M	BF	22.60	*	3/6/1998
Richard Johnson	Jasper	W	M	BM WM	22.61		5/3/2002
Richard Longworth	Spartanburg	W	M	2WM	22.97		4/15/2005
Andrew Smith	Anderson	B	M	BM BF	23.24		12/18/1998
Ronald Woomer	Horry	W	M	2WF WM	23.33	*	4/27/1990
Sammy Roberts	Berkeley	W	M	2WM BM	23.39		9/25/1998
Sylvester Adams	York	B	M	BM	23.95		8/18/1995
Kevin Young	Anderson	B	M	WM	24.17	*	11/3/2000
Michael Torrence	Lexington	W	M	2WM WF	25.59	*	9/6/1996
Anthony Green	Charleston	B	M	WF	25.91		8/23/2002
Ronnie Howard	Greenville	B	M	OM	26.84		1/8/1999
Cecil Lucas	York	W	M	WF WM	27.57		11/15/1996
Jason Byram	Richland	W	M	WF	27.66		4/23/2004
Leroy Drayton	Charleston	B	M	WF	27.75	*	11/12/1999
David Hill	Georgetown	W	M	WM	29.74		3/19/2004
Calvin Shuler	Dorchester	B	M	WM	31.00		6/22/2007
J D Gleaton	Lexington	B	M	WM	31.11	*	12/4/1998
William Downs Jr	Aiken	W	M	BM	31.76		7/14/2006
Michael Elkins	Jasper	W	M	WF	35.01	*	6/13/1997
James Tucker	Calhoun	W	M	2WF	35.47		5/28/2004
James Reed	Charleston	B	M	BM BF	35.48		6/20/2008
David Hill	Aiken	W	M	WM WF BF	36.31		6/6/2008
Michael Passaro	Horry	W	M	WF	36.40	*	9/13/2002
Fred Kornahrens	Charleston	W	M	2WM WF	36.61	*	7/19/1996
Larry Bell	Lexington	W	M	2WF BF	36.91	*	10/4/1996
Robert South	Lexington	W	M	WM	37.37	*	5/31/1996
Joseph Atkins	Charleston	NA	M	BF WM	38.32	*	1/22/1999
Jerry McWee	Aiken	W	M	WM	38.52		4/16/2004
Arthur Wise	Aiken	B	M	3WM WF	43.58		11/4/2005
Donald Gaskins	Richland	W	M	BM	49.50		9/6/1991

Note: * indicates that the age is estimated.

Homicides Leading to a Death Sentence

The Owens case involves a homicide with aggravators of armed robbery and armed larceny, stemming from the same incident, which was a robbery of a convenience store. Homicides with these aggravators are quite common. We can measure this with the FBI SHR, which indicate if a homicide is associated with an "underlying felony" and what that felony was. Appendix C describes this database. Robbery is the most common felony listed. In South Carolina, between 1977 and 2007, there were 13,155 homicide offenders and 174 death sentences imposed, for a rate of 1.32. In the same time period, the state witnessed 1,916 homicides with a simultaneous robbery or larceny circumstance, according to the SHR reports, and imposed death for 20 of those offenders; this rate is therefore 1.04. The bottom line is that almost 99 percent of robbery-homicide offenders avoided a death sentence.

This analysis shows two things. Crimes with this aggravator are very common, and rarely lead to a penalty of death. First, the robbery aggravator is not effective in "narrowly targeting" the state's death penalty system. Statewide, during the time of interest, 1,916 of 13,155 homicides had such a circumstance, or 15 percent. Second, only 1.04 percent of the offenders in these cases were sentenced to death. Under a system of guided discretion that would reduce the opportunity for bias or caprice, the death penalty would be "narrowly targeted" on a small percentage of homicide offenders, and a "substantial proportion" of those offenders would be sentenced to death. Neither is the case here.

Mr. Owens was one of multiple offenders in a single homicide. The FBI SHR provides indicators that allow us to calculate the number of offenders for each homicide incident. Of the 13,155 homicide offenders listed in the annual FBI SHR reports from 1977 through 2007 for South Carolina, 40 percent were involved in a crime with more than one offender: 5,252,

compared to 7,903 offenders who acted alone. Table 3 shows how common this is, and how many offenders are listed in each homicide incident.

Table 3. Number of Offenders per Homicide Incident.

Number of Offenders	N	%
Single offender	7,903	60.08
Two	2,108	16.02
Three	1,329	10.10
Four	840	6.39
Five	425	3.23
Six	324	2.46
Seven	84	0.64
Eight	64	0.49
Nine	27	0.21
Ten	40	0.30
Eleven	11	0.08
Total Offenders	13,155	100.00

Source: Calculated from FBI SHR reports, 1977 to 2007. If a single incident had 11 offenders, then 11 individuals participated in that incident, and 11 is listed in the Table.

Finally, we analayze the rate at which offenders with various circumstances increasingly similar to those of Mr. Owns face a death notice or a death sentence. We begin by looking at all homicide offenders, showing that death notices were issued in just 2.46 percent of the homicides, and death sentences imposed in 1.28 percent of the cases. Then we calculate these same values for cases that more closely resemble the facts of Mr. Owens' case. To calculate these numbers, we worked from a database provide by attorneys Lindsey S. Vann, Hannah L. Freeman, and John H. Blume, compiled for litigation in the case of *Moore v. Stirling (2020-001519)* in the South Carolina Supreme Court (see Appendix D for a full description). This database includes 168 of the 174 death sentences described elsewhere in this report. This slight discrepancy has no effect on the substantive conclusions that we reach, and use of this database allows us to look at a near-total sample of all death notices, not only death sentences.

Table 4 presents the results. The first column provides a description of the group of homicide offenders, the next three columns give the total number of death notices and death sentences, and the final three columns provide the rates. Armed robbery refers to cases with only a single aggravator of either armed robbery or armed larceny. Multiple offenders refers to cases where there was more than a single offender, and therefore a possible codefendant.

Table 4. Homicides, Death Notices, and Death Sentences by Characteristics of Case.

	Homicide offenders	Death notices	Death sentences	Death noticing rate (per 100 homicide offenders)	Death sentencing rate (per 100 homicide offenders)	Death sentencing rate (per 100 death notices)
All cases	13,155	324	168	2.46	1.28	51.85
Multiple offenders	5,252	93	39	1.77	0.74	41.94
Armed robbery	1,916	59	20	3.08	1.04	33.90
Multiple offenders and armed robbery	1,354	23	6	1.70	0.44	26.08

It is very rare for a homicide offender to receive either a death notice or a death sentence, and it becomes increasingly rare as we subset cases down to those that resemble the Owens case. There were 13,155 homicide offenders in South Carolina between 1977 and 2007; 324 of them received a death notice (2.46 percent) and 168 received a death sentence (1.28 percent). Of all those receiving a death notice, the odds of a death sentence were 51.85 percent.

Looking next at the cases with multiple offenders in the same homicide incident, 93 of 5,252 were given a death notice (1.77 percent) and 39 received a death sentence (0.74 percent). Here, the rate of sentencing among those with a death notice was 41.94 percent.

The Table next shows 1,969 homicide offenders with an underlying armed robbery charge; 59 of those received a death notice (3.08 percent) and 20 received a death sentence (1.04 percent). In this group, 33.90 percent of death noticed offenders received a death sentence.

Finally, the Table shows the cases that most closely resemble the Owens case (multiple homicide offenders and with an armed robbery charge). Here, we see a total of 1,354 homicide offenders, 23 death notices (1.70 percent), and six death sentences (0.44 percent). Death sentences in this group represent only 26.08 percent of the death noticed cases.[2]

The death penalty is uncommon among people with circumstances similar to those of Mr. Owens. In fact, looking at robbery-homicides with a codefendant, as in the case of Mr. Owens, a death sentence was imposed in less than one-half of one-percent of the cases.

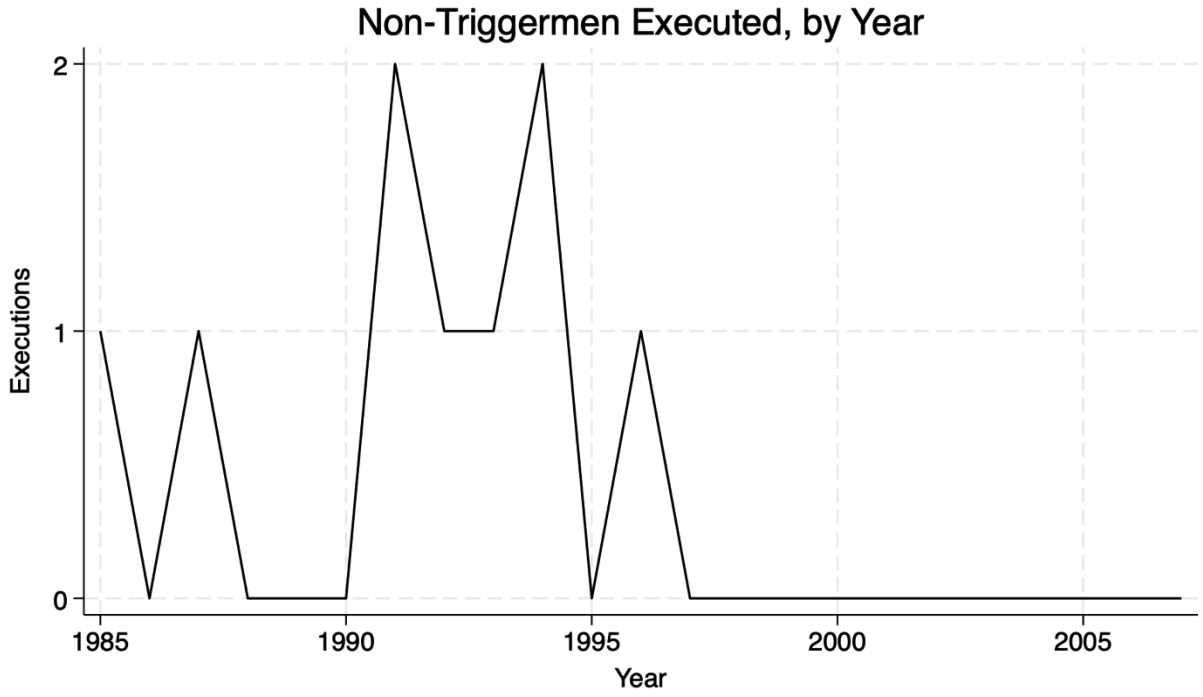
Executions for Those Who Did Not Kill

Since the first US execution in the modern period in 1977, all of those executed have been convicted of homicide. Some, however, did not directly kill the victim; they hired others to do so (murder for hire), or they were involved in the crime but were not the triggerman (law of parties, felony murder). This last group is of interest here, since Mr. Owens was convicted of participation in a felony which led to a homicide, but was not found by the jury to have been the triggerman. The Death Penalty Information Center maintains a database of every execution including facts of the cases and shows that in the modern death penalty era up until July 14th, 2008, of the 1,099 people who have been executed, there are only nine people executed without a finding that they were the person who killed the victim.[3] Figure 4 shows the number of known non-triggermen executed by year.

[2] Of these six defendants, one is Mr. Owens, two were executed, two had their death sentences reversed, and one died on death row.

[3] Source for non-triggerman cases: https://deathpenaltyinfo.org/executions/executions-overview/executed-but-did-not-directly-kill-victim. Source for executions: https://deathpenaltyinfo.org/database/executions.

Figure 4: Non-triggermen executed, by year



It is very rare that a state knowingly carries out an execution without establishing that the offender was in fact the triggerman. In 1991 and 1994, two such people were executed. There was one known non-trigger person executed in 1985, 1987, 1992, 1993, and 1996. As of July 14, 2008, the most recent year that any state had knowingly executed a person who did not pull the trigger was in 1996 in Oklahoma.

We are also able to tell where these nine executions were carried out. Table 5 shows non-triggermen executed by state.

Table 5: Non-triggermen executed, by state

State	Number of non-triggermen executed
Texas	5
Florida	1
Oklahoma	1
Indiana	1
Utah	1
Total	9

Most of the executions of non-triggermen occurred in Texas (5); Florida, Oklahoma, Indiana, and Utah each executed one such person. According to the DPIC database, South Carolina has never executed a person who did not kill the victim. We are not aware of any cases in the modern death penalty era that South Carolina put a person to death without having shown that he killed or intended to kill.

Conclusion

We have provided detailed information to help the South Carolina court system evaluate the proportionality of the punishment of death for the case of Mr. Freddie Owens. Under the system in place at the time of his earlier proportionality review, the question at hand was essentially whether the state had imposed a sentence of death to any other person with a relatively similar situation to that of Mr. Owens, and the Court found in the affirmative. Under the improved system in place since the Court's ruling in *Moore v. Stirling* (2002), the Court should evaluate the full set of similarly situated cases, some of which led to death and some of which led to a lesser punishment. The evidence reveals that the vast majority of such cases led to lesser punishments and therefore supports the conclusion that the sentence of death in the case of Mr. Owens was and is disproportionate.

Mr. Owens' case involves codefendants with a homicide-robbery circumstance. Over 1,300 offenders participated in such crimes during the period studied here (the entire period of historical relevance to this Court). From this group, just six death sentences were handed down, including that of Mr. Owens. This rate, 0.44 percent, means that 99.55 percent of such offenders avoided death.

Defining "similar" cases as all those involving the single aggravator of robbery or larceny, whether or not there was a codefendant, we see a similar result (see Table 4 above): 98.96 percent avoided a death sentence.

Death sentences are exceedingly rare among individuals aged 19 at the time of their crime, as was Mr. Owens. In fact, in 2008 at the time of his earlier proportionality review, 37 of 39 individuals executed had been 21 years old or older at the time of their crime. One was a juvenile, a practice now recognized as unconstitutional. Just one other person aged 19 had been executed in the modern history of the state's experience with capital punishment.

Finally, Mr. Owens was not found to have pulled the trigger to kill the victim in his case. We are not aware of any case where, South Carolina has executed a person in its modern era of capital punishment who did not kill or intend to kill.

Justice Stewart ended his concurring opinion in *Furman v. Georgia* (1972) with these words (internal citations omitted):

> These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of rapes and murders in 1967 and 1968, many just as reprehensible as these, the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed. My concurring Brothers have demonstrated that, if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race. But racial discrimination has not been proved, and I put it to one side. I simply conclude that the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed. (Stewart, J, *Furman v. Georgia*, 408 U.S. 238 (1972), pp. 309-310.)

The case of Mr. Owens demonstrates a similar process: He was selected from a large pool of relatively similar cases, literally over 1,000, from which a "handful" (just six) led to a sentence of death. The evidence clearly supports the conclusion that the sentence of death for Mr. Freddie Owens is disproportionate.

Respectfully submitted,

Frank R. Baumgartner Kaneesha R. Johnson

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Appendix A. Qualifications

Baumgartner

I am employed as the Richard J. Richardson Distinguished Professor in Political Science at the University of North Carolina at Chapel Hill. I received my BA, MA, and PhD degrees in political science at the University of Michigan (1980, 1983, 1986). I have been a faculty member since 1986 and have had full-time tenure-track or tenured academic positions at the University of Iowa, Texas A&M University, Penn State University, and UNC-Chapel Hill, where I have worked since 2009 as the inaugural holder of the Richardson Chair. I received tenure in 1992; was promoted to the rank of full professor in 1998; and to the rank of distinguished professor in 2005. I regularly teach courses at all levels and many of those courses involve significant instruction in research methodology. My research generally involves statistical analyses of public policy problems, often based on originally collected or administrative databases.

I have published over a dozen books and more than 80 articles in peer-reviewed journals as well as articles in law reviews and chapters in edited books. I have received a number of awards for my work, including six book awards and several awards for database construction. I am a fellow of the American Academy of Arts and Sciences, an honorary society dating back to 1780. I was awarded a fellowship from the John Simon Guggenheim Memorial Foundation in 2023. I have been invited as a visiting scholar in universities in the US, UK, France, Italy, Spain, and Switzerland. I have given over 100 invited academic lectures in universities in many countries. I have received multiple grants from the National Science Foundation totaling over $2 million as well as research grants from the State of Pennsylvania, from national funding agencies in Norway, Spain, and France, as well as from the Region of Catalonia and the European Science Foundation.

I have published two books about the death penalty. The first, *The Decline of the Death Penalty and the Discovery of Innocence* (Baumgartner et al., 2008), focused on public opinion toward capital punishment and the impact of the "innocence" argument on public opinion and on the number of death sentences handed down, nation-wide. My co-authors and I were awarded the Gladys M. Kammerer Award for the best publication in the field of US national policy from the American Political Science Association for this book in 2008. The second book, *Deadly Justice: A Statistical Portrait of the Death Penalty* (Baumgartner, Davidson, et al., 2018), provides a statistical overview of a broad range of questions relating to the "modern" (post-*Furman*) application of the death penalty: demographic characteristics of the offenders and victims, rates of use, comparison to homicide numbers, geographical patterns, eligible crimes in different states, cost, deterrence, rates of reversal, time from death sentence to execution, and so on. The book derives from and is the main text in a course I teach about the death penalty that regularly enrolls over 400 students at UNC-Chapel Hill.

My book *Suspect Citizens: What 20 Million Traffic Stops Tell Us About Policing and Race* (Cambridge University Press, 2018) won the C. Herman Pritchett Award for the best book published in 2018 from the APSA Section on Law and Courts (2019). This book uses statistical methods to analyze race- and gender-based disparities in the outcomes of millions of routine traffic stops. The results of our study have informed public policy discussions regarding police and have been cited in judicial rulings concerning the Fourth Amendment (see CV for a list).

I have also published a number of death penalty-related studies in law reviews and peer reviewed academic journals. Several of these make use of a comprehensive database of over 8,500 death sentences across the country, noting the county and year of the death sentence (see Baumgartner et al. 2020; Baumgartner, Caron, and Duxbury 2022; Haney, Baumgartner, and

Steele 2022). Others (e.g., Lyman, Baumgartner, and Pierce, 2021; Baumgartner 2022) involve a "Baldus-style" analysis of a set of homicides to determine the statistical correlates of being sentenced to death.[4] I have published work on the geographical distribution of death sentences and executions, based on a previous version of the database I use here and on a more limited one on cases eventually leading to execution (see Baumgartner et al. 2020, Baumgartner, Box-Steffensmeier et al. 2018, and Baumgartner et al. 2016). Many of these elements of my research are reflected in my book, *Deadly Justice* (see Baumgartner, Davidson et al. 2018). My most recent peer-reviewed articles drawing from a database similar to the one used here include Baumgartner, Caron, and Duxbury (2022), on the linkage between public opinion and the death penalty, and Haney, Baumgartner, and Steele (2022), on the application of the death penalty to offenders aged 18, 19, or 20 at the time of their crimes.

I have testified on matters relating to the use of the death penalty with offenders in the age group of 18, 19, and 20 years of age (*State v. Guzek*, Marion County OR, No. 17CV08248; court testimony in Salem OR, October 10, 2019); the patterns of use of the death penalty in Pennsylvania (*Cox v. Commonwealth of Pennsylvania*, court testimony, Philadelphia, PA, August 5, 2022); gender differences in use of state peremptory strikes in the case of *State v. Bell* (court testimony in Onslow County Superior Court, Jacksonville, NC, December 6, 2022); the constitutionality of the Kansas death penalty system, based on numerous challenges (*State v. Young*, Wichita Kansas, court testimony on February 9, 2023); the constitutionality of the Arizona death penalty system based on race and gender disparities in its use (*State v. Ross*, Maricopa County Arizona, court testimony on August 16–17, 2023); and various challenges to the Louisiana death penalty, including the Roper-extension question, geographical arbitrariness,

[4] A "Baldus study" refers to one similar to that conducted by Prof. David Baldus and presented in litigation leading to the US Supreme Court decision in *McCleskey v. Kemp*, 481 U.S. 279 (1987). See Baldus et al. 1983.

and race and gender disparities in its use (testimony in *State v. Neveaux*, Jefferson Parish, LA, February 20, 2024). Further, I have provided affidavits or reports in court cases in Missouri, Florida, North Carolina, Texas, and California as well. These reports and testimonies have made use of previous versions of the database I use in this report.

With Dr. Kaneesha Johnson, I wrote a report entitled "Proportionality Assessment of the South Carolina Death Penalty System" which was filed in federal court in the case of William Dickerson, March 26, 2024. That report is based on many of the same data elements as the current report.

I have also testified in Wake County (NC) Superior Court in a case regarding racial disparities in the impact of felon disenfranchisement (*Community Success Initiative v. Moore*, testimony on August 18, 2021). In addition to these cases where I have testified orally in various courts, I have submitted numerous affidavits, reports, and other analyses not requiring oral testimony in other cases, and I have been party to several amicus briefs as well. My CV provides a complete listing of these activities.

These experiences provide me with the context and background to provide testimony in this case.

Johnson

I am employed as a post-doctoral researcher at the University of North Carolina at Chapel Hill in the department of Political Science. I received my BA in political science from the University of North Carolina at Chapel Hill (2016), my MLS from the University of Chicago Law School (2022), and my PhD in government from Harvard University (2023). My research generally involves racial and ethnic politics and mixed method analyses, including statistical and historical archival research, of public institutions and policies. I have extensive experience

conducting analyses on large administrative datasets. I have previously been awarded several prestigious fellowships, including the Weiner Scholarship in Inequality and Social Policy at the Harvard Kennedy School, a dissertation research fellowship at the University of North Carolina at Chapel Hill, and fellowships from the American Political Science Association.

I have been invited to give dozens of academic talks and lectures in various countries on my research. I also teach courses at all levels, including at the undergraduate and graduate level, which usually involves instruction on various methodological techniques, and have advised students on their thesis projects.

I have published peer-review articles on road safety laws (Nwanaji-Enwerem, Nwanaji-Enwerem, and Johnson, 2021), prison data collection (Johnson, 2021), and the death penalty (Baumgartner et al., 2016). I have co-authored a book, *Deadly Justice: A Statistical Portrait of the Death Penalty* (Baumgartner, Davidson, et al., 2018), which presents a statistical overview of a broad range of questions relating to the "modern" application of the death penalty: demographic characteristics of the offenders and victims, rates of use, comparison to homicide numbers, geographical patterns, eligible crimes in different states, cost, deterrence, rates of reversal, time from death sentence to execution, and so on.

My dissertation book project, which focused on the development of social services in North Carolina and the racially disparate impact of punitive policies, was awarded the Robert Noxon Toppan prize for the best dissertation upon a subject of political science from the Harvard University Department of Government. In this project, I completed extensive analysis of administrative and census data, which included geocoding and cross-database merging.

I have worked with various organizations, as either a principle researcher or research assistant, to conduct data analysis on several topics, including felon disenfranchisement in North

Carolina (The Freedom to Vote: Felony Disenfranchisement in North Carolina, Southern Coalition for Social Justice, 2019 and *Community Success Initiative v. Moore*), prosecutorial behavior (The Justice Collaborative, 2019), and racially disparate outcomes of the foster care system in Massachusetts (Citizens for Juvenile Justice, MA).

With Dr. Frank R. Baumgartner, I wrote a report entitled "Proportionality Assessment of the South Carolina Death Penalty System" which was filed in federal court in the case of William Dickerson, March 26, 2024. That report is based on many of the same data elements as the current report.

These experiences provide me with the relevant context and background to provide testimony in this case.

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Appendix B. Compiling a List of all US Death Sentences

Baumgartner and Johnson's 2018 book, *Deadly Justice*, was largely based on the analysis of a database of all US executions, with comparisons to homicides. This database was generally similar to that provided by the Death Penalty Information Center (DPIC)[5] in its web-based executions database (see https://deathpenaltyinfo.org/database/executions). Over the past years, Baumgartner has worked with a team of students and collaborators to expand this database to include all death sentences since the *Furman* decision in 1972. He has done this by compiling other publicly available resources and those provided by fellow scholars and researchers (e.g., John Blume, Jeffrey Fagan, Scott Phillips), by state-focused capital appeals resource centers (e.g., Virginia), by national compilations from such organizations as the NAACP LDF which published "Death Row USA" on at least an annual basis for many years, from US Department of Justice publications, and by verifying available information through public records searches, court cases, various state department of corrections web sites and resources, news reports, ancestry databases, and other resources. Many states, for example, provide a list of persons currently under sentence of death, lists of those executed, and some provide lists of persons removed from death row. Such a combination allows the compilation of a complete list for that state. Some intense journalistic efforts have provided the basics of a national database (e.g. "The Condemned": https://theintercept.com/series/the-condemned/), and other investigative reporting efforts have been valuable for single states. In sum, Baumgartner and his team have used a variety of resources, triangulated them against each other, and verified the information by checking relevant documents where available.

[5] DPIC is a Washington-based nonprofit organization that provides factual information about the death penalty. More information about it is available at its website, https://deathpenaltyinfo.org/.

To date (as of August 2024), this database consists of 9,023 records of individual death sentences across the country. The database remains in a state of constant improvement, but the current version has nearly complete information for the race and gender of the offender, the state and county of prosecution, the dates of birth, crime, and death sentence, the eventual disposition of the death sentence, the date that the individual left death row (if applicable), the number of victims for which the person received a death sentence, and (for most states but not all) information on the names, race, and gender of those victims. Research on victim characteristics is on-going for some states, complete for others.

Baumgartner has collaborated with DPIC in establishing this definitive list of death sentences in the United States since 1972, and DPIC recently released a public version of this database (DPIC 2022). Baumgartner's version of the database closely mirrors this publicly released version, as he has worked with DPIC to establish it and remains in contact with them as new cases arise and developments occur in old ones. The DPIC version does not include the most recent cases, and it does not yet include the victim information that Baumgartner has compiled, since that part of the data collection project remains in progress for some states. The Baumgartner database has information on victim characteristics for almost all states at this point, but notably does not include California, a large omission. This research is currently in progress.

A number of peer-reviewed publications have derived from this database, including those listed at the end of this Appendix.

Note that there can be some ambiguities in the compilation of any such database. Particularly for the older cases, some precise dates are missing, particularly dates on which individuals were released from death row following a resentencing. Baumgartner and his team have done their best to track these dates precisely but have used a system of estimating dates

where necessary. Where dates are estimated rather than precise, this is noted in the database. No database of this type is likely to be completely free from error. However, it is a very accurate representation of the history of each of the death sentences imposed by judicial authority in the US since 1972.

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Death Penalty Information Center (DPIC). 2022. *The DPIC Death Penalty Census*. https://deathpenaltyinfo.org/facts-and-research/death-penalty-census

Peer-reviewed publications using the death sentence database:

Baumgartner, Frank R., Janet M. Box-Steffensmeier, and Benjamin W. Campbell. 2018. Event Dependence in U.S. Executions. *PLoS-ONE* 13, 1: e0190244.

Baumgartner, Frank R., Janet M. Box-Steffensmeier, Benjamin W. Campbell, Christian Caron, and Hailey Sherman. 2020. Learning to Kill: Why a Small Handful of Counties Generates the Bulk of US Death Sentences *PLoS-ONE*, 15, 10: e0240401

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Haney, Craig, Frank R. Baumgartner, and Karen A. Steele. 2022. *Roper* and Race: The Nature and Effects of Death Penalty Exclusions for Juveniles and the "Late Adolescent Class". *Journal of Pediatric Neuropsychology* 8: 168–177.

Appendix C. Compiling a List of Homicides

Homicides data come from the FBI Supplemental Homicide Reports, compiled by Jacob Kaplan and made publicly available through the Inter-university Consortium for Political and Social Research at the University of Michigan (see Kaplan 2023a). Kaplan has simply reorganized, made consistent, combined multiple years, and documented the FBI's annual reports; the underlying data are from the FBI. This database consists of over 700,000 observations, one for each "homicide incident" in the US from 1976 through 2021, as reported from local law enforcement agencies to the FBI. There is some missing data associated with this database, as Kaplan (2023b) explains. For example, there are no homicides reported in some states for some years (e.g., Kansas 1994-2004, Florida 1996-2021), and extremely low numbers in some other instances. These reflect instances where local police agencies (and sometimes entire states) have not reported to the FBI; reporting is voluntary. For any given state, it is therefore important to review the continuity in reporting. Generally, this can be ascertained simply by looking at the trends of annual homicide numbers over time. Where there are large discontinuities (e.g., a series generally reporting over 1,000 homicides per year suddenly reporting just a few or none at all), this is evidence of a lack of reporting. If such a disruption in the data series is found, then the analyst must either recognize the fault in the database or find the missing data from another source. For example, the State of Florida makes available the data missing from its FBI reports since 1996 on a state-operated web page.

The Kaplan datafile shows 771,342 homicide incidents from 1976 through 2021. Table C1 provides a summary of the cases I have removed from the database before analysis.

Table C1. Summary of Cases Removed from the FBI SHR Database Provided by Kaplan.

	Cases Affected	Incidents
Data as in the Kaplan SHR database, 1976 to 2021		771,342
Drop cases from the Virgin Islands	246	
Drop cases from Guam	22	

Drop cases with no state listed	38	
Drop cases listed as “manslaughter by negligence”	12,837	
Drop cases listed as “felon killed by police”	17,235	
Drop cases listed as “felon killed by private citizen”	13,464	
Number of homicides incidents remaining after exclusions		727,500

I drop 246 cases from the Virgin Islands, 22 cases from Guam, and 38 cases where the state was not indicated (generally cases reported by federal agencies in 2020 and 2021); this leaves 771,036 incidents. I further delete those cases coded as “manslaughter by negligence” (12,837 incidents) as well as those listed as “felon killed by police” (17,235 incidents) and “felon killed by private citizen” (13,464 incidents). The negligent manslaughter cases would generally not be eligible for first-degree murder charges. The final two sets are generally for cases where a crime is in progress and the police or a private citizen (often a store owner or manager during a robbery) kills the intruder. These also generally would not be prosecuted criminally. Subtracting these cases from the raw total leaves 727,500 homicide incidents throughout the US over the full time period.

The Kaplan / SHR database is organized by the homicide “incident” but in order to analyze the likelihood that any individual offender will be subject to the death penalty the database must be organized by the offender. Incidents may have one or more offenders as well as one or more victims. The Kaplan / SHR database allows for up to 11 offenders in each incident, recording their race, ethnicity, gender, age, relationship with the victim. It also allows for up to 11 victims, also indicating their race, ethnicity, gender, and age. I have created a row in the database for each offender, repeating the information for each victim associated with each offender. Thus, rather than listed “offender 1”, offender 2” and so on in the same row of the database, I have taken the characteristics of each offender and put them in a row unique to that

offender. Any information for the victim or the general circumstance of the crime is maintained (and therefore repeated for multiple offenders from the same incident).

I am careful not to double-count the victims in summaries of numbers of victims. However, when calculating the various combinations of offenders and victims (e.g., White kills White), it is necessary to maintain the victim information for each offender. When summarizing the total numbers of victims to avoid double-counting, I include only the victims associated with the first offender listed for any incident. This gives an accurate count of victims no matter the number of offenders associated with the case.

This transformation generates a total of 861,663 offenders across the 727,500 homicide incidents. The total number of victims associated with these cases is 765,184.

I also create the following derived variables which allow for filtering the database to use only any subset relevant to a particular research question:

1. Was there a legal death penalty statute in the state and in the year of the offense? (0 = no, 1 = yes). Some states have never allowed the death penalty and others enacted or abolished their capital punishment statutes during the period from 1972 through 2023. In comparing homicides to death sentences, it can be helpful to include only those states and years where the death penalty is an option.
2. Was the offender eligible for the death penalty based on their age? (0 = no, 1 = yes). The minimum age for eligibility was 15 until it was moved to 16 in the US Supreme Court decision of *Thompson v. Oklahoma*, announced June 29, 1988. This age was moved to 18 in the *Roper v. Simmons* decision decided on March 2, 2005.
3. Was the crime "aggravated"? (0 = no, 1 = yes). This includes any of the following characteristics:

a. Was any victim a child younger than 12?

b. Was any victim a person aged 65 or older?

c. Did the offender kill more than one victim?

d. Did the killing occur during the commission of another felony?

e. Was the weapon used something other than a firearm?

Note that these characteristics may not correspond to the statutory aggravating circumstances in any given state. However, they are meant to distinguish between crimes that may be considered less likely to lead to a capital prosecution from those that might be considered more heinous or aggravated.

4. Was the crime both "aggravated" and the offender age-eligible for capital prosecution? (0 = no, 1 = yes). This is a mathematical combination of factors 2 and 3. An aggravated crime committed by a person too young to be considered for the death penalty should not be included in such a baseline for comparison.

Table C2 gives a summary of the steps in producing this dataset and the number of cases included in each subset of it. It starts with the 727,500 homicide incidents from Table C1 and shows that these incidents were associated with 861,363 offenders and 765,184 victims. Then, for each subset identified, it shows the relevant numbers as well. Note that any one of these subsets may be analyzed, depending on the goals of the research.

Table C2. Summary of Cases with Various Characteristics.

	Incidents	Offenders	Victims
Number of offenders associated with incidents in Table C1. (Total Offenders)	727,500	861,363	765,184
Among Total Offenders: Offender eligible by age	712,283	837,046	749,126
Among Total Offenders: "Aggravated" cases	389,961	476,718	427,645
Among Total Offenders: Offender eligible by age and "aggravated" case	381,289	462,182	418,132
Among Total Offenders: Crimes in states with a valid death penalty statute (Death State Cases)	621,408	733,876	653,327

Among Death State Cases: Offender eligible by age	608,797	713,829	640,058
Among Death State Cases: "Aggravated" cases	334,784	409,427	366,703
Among Death State Cases: Offender eligible by age and "aggravated" case	327,602	397,344	358,863

The last row may be of the greatest relevance for an analysis of use of the death penalty; this is restricted to cases occurring in states with a valid death penalty, where the offender is legally eligible for death based on age, and where there was at least one of the aggravating factors listed above.

Table C3 breaks down the different aggravating factors, showing them in descending order of frequency.

Table C3. Summary of "Aggravating" Factors.

Weapon not a gun	289,396
Felony	213,043
Elderly Victim (65 or older)	43,547
Multiple Victims	39,151
Child Victim (under 12)	32,381
Any of the above aggravating factors (no multiple counting)	476,718

Many crimes include multiple aggravating factors (e.g. multiple victims of whom one or more is elderly). The total listed includes the count of all cases with one or more of these factors. Clearly, the most common factor is using a weapon other than a firearm, followed by homicides committed at the same time as an underlying felony. Tables A4 and A5 provide the breakdown of those circumstances.

Table C4. Summary of Felony Circumstances.

Robbery	85,714
Narcotic drug laws	36,775
Juvenile gang killings	32,148
Other felony type - not specified	19,976
All suspected felony type	14,491
Gangland killings	8,358
Burglary	8,165
Rape	4,634
Other sex offenses	1,558

Larceny	1,224
Total (only one circumstance listed)	213,043

Table C5. Summary of Weapons.

A. Weapons not Firearms

Knife or cutting instrument	127,262
Personal weapons - includes beating	51,459
Other or unknown weapon	41,980
Blunt object	41,242
Strangulation - includes hanging	10,743
Fire	5,877
Asphyxiation - includes death by gas	5,053
Narcotics/drugs - includes sleeping p..	2,458
Drowning	1,323
Other or type unknown	621
Poison - does not include gas	552
Explosives	481
Pushed or thrown out of window	289
Narcotics or drugs	56
Total	289,396

B. Firearms

Handgun	420,521
Firearm, type not stated	78,064
Shotgun	39,593
Rifle	29,787
Other gun	3,859
Firearm, type unknown	19
Total	571,843

A glance at the weapons listed in Table C5A shows why these crimes may be considered more aggravated than others: knife cuttings, strangulations, killings with blunt objects, by fire, or asphyxiation may be considered more heinous or more likely to make the victim suffer than the most common type of homicide, one resulting from a handgun.

Of course, none of this effort can be considered a replication of any list of death-eligible crimes in any given state. No such list is available, however, and even for a given state the SHR database generally does not provide great enough detail to ascertain perfectly whether the crime

meets the statutory requirements for a capital prosecution. Rather, this database and the variables I have created and explained above provide a relevant point of comparison for any analysis of death sentencing rates. If a state imposes *x* number of death sentences, compared to *y* number of homicides, then we can calculate the relevant rate of death sentencing, given the number of homicides. This database therefore allows a comparison to homicides in general, the broadest definition, or only to those homicides committed in death states in years with a valid statute, by offenders legally eligible by age, and with at least one of the four aggravating factors that I can identify using the FBI data as compiled by Kaplan.

State-Specific Information

The South Carolina database from the FBI and Kaplan contained no apparent points of missing data. Therefore, no adjustments have been made. Further, the state had a valid death penalty statute during the entire period since 1976. Therefore, there was no need to calculate separate data series for periods within the state when there was and was not a valid death sentence statute, as is the case in some other states.

For the purpose of this report, we have limited our data analysis to the period of 1977 through 2007. This appendix describes the larger database, which contains more years. The description of the database remains accurate in spite of this difference.

References

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Appendix D. Constructing the Death Notice Database

Our database on the 384 Death Notices is based on a comprehensive assessment of every death notice in South Carolina since 1977. We worked from a database provided by attorneys Lindsey S. Vann, Hannah L. Freeman, and John H. Blume, compiled for litigation in the case of *Moore v. Stirling (2020-001519)* in the South Carolina Supreme Court. This database consists of a record of death-noticed cases in the state since the current death penalty regime was established in 1977, through 2021. The list was compiled by Vann et al. by reference to orders from the Chief Justice of the South Carolina Supreme Court vesting jurisdiction in a specific circuit judge upon receipt of a death notice; these records were obtained from the S.C. Office of Court Administration. The list was supplemented by Vann et al.'s searches of legal databases for opinions referencing death sentences or death notices. Therefore, it should be understood in this section, we are not analyzing a sample, but a full or near-full census of every case where a death notice was issued, and we can therefore analyze what characteristics of the case are statistically more common in the cases that lead to a final sentence of death from those which do not.

Note that we were concerned here only with the original decision to sentence the individual to death or not; we did not review retrials, reversals, or new sentencing hearings, only the original sentence of death or other outcome from the death-noticed case.

Before conducting analyses, we took various steps to ensure the data were in a workable format. With the assistance of two undergraduate students from the University of North Carolina at Chapel Hill, we verified the aggravating circumstances, year of original death sentence, final case outcome, and the race and gender of the defendant and the victim(s) in each of the 384 crimes in the database using court documents and newspaper sources. The database we received had only a short summary of the facts of the case, but we did additional research to verify and expand on the information concerning aggravating circumstances, in particular. We did this by

using court documents and newspaper sources. In some cases, race and gender information may have been missing and we supplemented this in a similar fashion. We also updated the database for cases that were decided after the end of the previous data collection (e.g., cases from 2022 and 2023). The authors of this report personally reviewed these database extensions.

The original database had extensive information about the eventual outcome of the death sentence on appeal, but we recoded this information to focus only on the question of whether the death notice led to a death sentence, or not. If not, we coded the outcome as "not death" (0), and if so, as "death" (1). This is our only outcome of interest. The database had 180 cases of death and 204 cases of not death, out of 384 cases in total.