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Forensic Clinical Psychologist

Knowledge, Clarity and Passion at the Intersection of Psychology and Law.

FORENSIC EVALUATION

This report is confidential and cannot be released to parties external to the matter before the Court without permission of the Court.

NOTE: Consistent with section 8.04 of the Forensic Specialty Guidelines, since this report is currently in the public domain, it has not been redacted. (2/1/2018)

RE:	Paul Jensen ¹
CASE NUMBERS:	CR 96-49
DATE OF BIRTH:	November 2, 1981
AGE AT TIME OF EVALUATION:	32 years, 8 months
AGE AT TIME OF ARREST:	14 years, 2 months
TIME IN SDSP:	18 years, 6 months
DATE OF REPORT:	November 6, 2014
EXAMINER:	Antoinette Kavanaugh, Ph.D.

REASON FOR EVALUATION:

Paul and Shawn Springer took part in the robbery, kidnapping, theft, and murder of Michael Hare. This offense occurred near midnight on January 29, 1996. At the time of the offense, Paul was 14 years 2 months old and Shawn was 16 years 9 months old. Additionally, Shawn was serving probation related to charges of aiding and theft of a motor vehicle three counts, theft six counts, and criminal damage to property at the time of the offense. He was placed on probation on May 10, 1994, and it was to expire on his 18th birthday, April 5, 1997.ⁱ

On August 19, 1996, Shawn Springer pled guilty to kidnapping and the State agreed to drop the other charges related to this incident. In turn, he agreed to testify at Paul's trial.ⁱⁱ Shawn was sentenced to 261 years in the South Dakota State Penitentiary.

¹ Because the defendant and his father share the same name, his father will be referred to as Mr. Jenson and the defendant as "Paul" unless referenced otherwise in a quote. Similarly, his mother will be referred to as Ms. Jensen, and his sister as LaRean.

Paul's was transferred to the adult jurisdiction. On September 23, 1996, a jury found him guilty and on November 26, 1996, Paul was sentenced to life without parole for murder in the first degree and for kidnapping, 15 years for robbery in the first degree, 15 years for conspiracy to commit first degree robbery, 5 years for aiding and abetting grand theft, and 5 years for possession of a stolen motor vehicle. The court ordered that Paul was to serve his sentences concurrently.ⁱⁱⁱ

DESCRIPTION OF THE OFFENSE BASED ON DIVISION OF CRIMINAL INVESTIGATION (DCI) INVESTIGATIVE REPORTS

The dispatcher for the cab company reported that a taxicab was dispatched to the Days Inn. After picking up his fare, the dispatcher continued to talk to Mr. Hare and in her opinion, he sounded odd. Consequently, she called him on his cell phone and Mr. Hare apparently hit the send button and the dispatcher heard the following exchange. Mr. Hare said, "This is all they gave me is \$30, take it, take it,' and then another voice said, 'No, it ain't. Give us all you got.' She then heard Hare say again, 'Hey, man, that's all I got, here, take it, take it,' almost in a pleading voice." Then the phone went dead and the dispatcher called 911.

After a call that a taxicab robbery was in progress came across the police radio, the police saw and passed a cab in the area. They then pursued the cab and the driver was going too fast and got stuck in the snow. The police arrested the driver, Shawn Springer, and the passenger, Paul Jensen. Shawn told the police where the victim of the shooting was and that Paul had shot the victim. The victim died on the scene. An autopsy revealed that the victim died of multiple gunshot wounds.

RELEVANT LANGUAGE FROM MILLER:

In *Miller v. Alabama* the United States Supreme Court articulated factors that lower courts should consider when deciding a new sentence for those who had been automatically sentenced to life without parole for crimes they committed before their 18th birthday.

Those factors to be considered at the resentencing hearing include:

- (III) The Family and Home Environment. The Court stated, "[T]he family and home environment that surrounds him – from which he cannot usually extricate himself – no matter how brutal or dysfunctional" is something to be considered. (p. 15)

(2) The Offender's Age and Characteristics. The Court explained that "[T]he offender's age and the wealth of characteristics and circumstances attendant to it" are relevant factors. (p.14) Thus, even though the defendant in *Miller* was not

a young adolescent, the Court recognized it is important to consider factors beyond the youth's age such as the youth's thinking, level of impulsivity, and other characteristics and circumstances including whether the youth had extended periods away from the primary caregiver; and the circumstances of the youth's delinquent/criminal history.

(3) The Circumstances of the Offense. "[T]he circumstances of the homicide offense, including the extent of his participation in the conduct and the way family and peer pressures may have affected him..." (p. 15)

(4) The Possibility for Rehabilitation. The Supreme Court told the lower courts that "[M]andatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." (p. 15)

SUMMARY OF CLINICAL OPINION

Paul had significant environment and family factors such as maternal depression, sibling victimization, poverty and housing instability that are relevant to the issue at hand and likely contributed to his delinquency. Research has demonstrated the association between maternal depression during pregnancy and subsequent adolescent behavior. For example, Hay et al (2101) found that "mothers' depression in pregnancy placed their children at a twofold risk for antisocial outcomes [by age 16], and at a fourfold risk for violent behavior." p. 160 Furthermore, this same study demonstrated that "adolescents who were violent had been exposed to maternal depression in a greater number of time periods." p. 158. Thus, a child whose mother experiences repeated bouts of depression is at risk for demonstrating violence during adolescence.

Characteristics related to Paul that should be brought to the Court's attention are that he has had unmet mental health needs that predate the offense and he was particularly vulnerable to the influence of those who he considered to be, or longed for them to be, his friends. Unfortunately, Paul was so hungry for friendship, he allowed those people to repeatedly belittle him with the hope that they would accept him. Currently, Paul presents with many factors that support the possibility he can be rehabilitated. These factors are discussed in detail in the clinical opinion section of this report.

EVALUATION TECHNIQUES

Paul was interviewed at the South Dakota State Penitentiary on August 1 and August 2, 2014, for a total of approximately 17 hours. As part of the evaluation, the following tests were administered to Paul: Childhood Trauma Questionnaire (CTQ), Psychopathic Personality Inventory-Revised (PPI-R), and Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF). His mother, Sherilyn Jensen, was interviewed in my office in Chicago, IL on September 8, 2014. She was two hours late for the interview and the interview lasted

approximately 3 1/2 hours. His sister, LaRean, was interviewed by telephone on September 11, 2014, for approximately 30 minutes.

Mr. Don Atkinson was interviewed by telephone on November 2, 2014, for approximately seven minutes. Warden Young was interviewed by telephone on November 3, 2014 for approximately twenty minutes.

See the Appendix A for a list of records reviewed and relied upon in forming this clinical opinion.

Prior to conducting any interview or assessment, the interviewees were informed of the purpose and limits of confidentiality of the interview.

EXPLANATION OF REPORT STRUCTURE

In 2001, the American Psychological Association (APA) recognized forensic psychology as a specialty area in the field of psychology. The APA defines forensic psychology as “the professional practice by psychologists within the areas of clinical psychology, counseling psychology, school psychology or another specialty recognized by the American Psychological Association, when they are engaged as experts and represent themselves as such, in an activity primarily intended to provide professional psychological expertise to the judicial system.”^{iv}

Forensic reports are not the same as their “traditional clinical” counterparts. One significant way in which they differ is that in a forensic report, the data section is kept separate from clinical inferences or opinion section. (DeMier, 2013) For example, Specialty Guidelines 11.02 states, “forensic practitioners strive to distinguish observations, inferences, and conclusions.” (p. 16)

REVIEW OF RELEVANT RECORDS

Records Predating the Offense

Office of the Attorney General, Police, and Court Records

The Office of the Attorney General (OAG) timeline of Paul’s life indicated before he was eight years old, four DSS referrals were filed relative to his mother. The first occurred when he was three years old, when neighbors complained the children were not supervised.

Regarding his behavior at school, the OAG’s timeline indicated by the time he was eight years old, letters were sent to his mother related to his tardiness and absenteeism. This problem continued until he was removed from school to be homeschooled while he was living in Marshall, Minnesota. His lack of consistent attendance in school resulted in CHINS petitions. In addition to having a problem with attendance, when he was twelve years old,

Paul began a pattern of being disruptive at school and this too continued until he was removed from school to be homeschooled.

Over the course of his academic career, Paul displayed a variety of problematic behaviors, including yelling at staff, assaulting students, being belligerent, playing with a lighter at school, throwing snowballs at and threatening two second-graders (Paul was thirteen years old at the time).^v He was suspended multiple times and was expelled twice.^{vi} At school, Paul also tried to burn a disciplinary slip and he ended up burning the carpet. He was charged but not prosecuted for this offense.

Academic Records

Pierre Public School transcripts indicated Paul attended kindergarten, second, third, and sixth grade in that district. His absenteeism and tardiness dated back to the third grade.^{vii} Paul attended Buchanan School from third through sixth grade. In a letter written by the principal summarizing Paul's history at the school, the principal said, "His attitude and disposition was generally good until midyear of fifth grade. Paul's academic progress was at least average until midyear of fifth grade (1992-93). He had a fairly successful first term of sixth grade. Attitude and behavior changes began gradually (fifth grade) and accelerated throughout his sixth grade year at Buchanan (1993-94). By midyear in sixth grade, Paul had become a real threat to students and staff. More than one teacher or supervisor felt intimidated by him and I fully expected him to swing at me on more than one occasion." As a result of his behavior, he was suspended multiple times.^{viii}

Paul attended Jefferson Elementary School for the 1994-95 school year as a demoted sixth grader. The records indicated he had behavioral problems as well as problems with attendance, as he frequently skipped school or came to school late.^{ix} An IEP was requested during this school year. The referral form noted he often slept in class and did not try to do his work. Lee Pfeiffer completed psychological testing for Paul to see if he was eligible for special education services. Paul was twelve years old at the time. The evaluation report indicated Paul's cognitive abilities were in the average range. His academic abilities were at or above grade level in most areas. The report noted, "Paul's description of his own feelings and certainly the behaviors that he has exhibited over the past year to one and a half years, are characteristic of a generalized state of depression, of childhood onset... He does, however, have a strong family history of depression, which is significant." Recommendations included having him assessed to determine if he was a candidate for an antidepressant medication. The multidisciplinary team report from November of 1994 indicated Paul did not have a learning disability.

Paul attended Human Services Center (HSC) Alternative School in Yankton, South Dakota, from February of 1995 until the beginning of June of that year. Although Paul should have

been repeating the sixth grade at that time, he was given seventh grade work at Yankton because, per the director of HSC, “this is the lowest grade level for which we have an established curriculum. Paul completed the work with very little difficulty, requiring assistance primarily with math. He was well-behaved in the classroom and interacted respectfully with the teachers. Paul had a few ‘down’ days, but performed very well overall. A very enjoyable student.”^x

Paul was enrolled as an eighth grader in Marshall Junior High School for the 1995-96 school year. However, by October of that year, he left the school to be homeschooled. During the brief time he attended the school, he was late or absent for a total of 26 times.

Records from Department of Social Services (DSS)

Ms. Jensen has a history of involvement with DSS that dated back to when she was as young as ten years old. Because of not going to school, running away from home, and being rebellious, a CHINS report was filed against her and at one time, she was placed in foster care, yet her behavior did not improve and she became pregnant at age thirteen by her 19-year-old boyfriend.

Paul’s involvement with the Department of Social Services dated back to when he was three years old. In May of 1985, a neighbor reported Paul and his sister were outside unsupervised for long periods of time and they used “foul language.”^{xi} Ms. Jensen acknowledged that her children swore and that she often left them unattended.

A DSS note from October of 1987, when LaRean was seven years old, she told her mother she was being sexually abused by a 15-year-old family member who was staying with them. The social service worker noted an “extensive history of incest within these families.” The day after the agency confronted the alleged perpetrator and his family, he and his family moved out of state. LaRean’s report was closed as substantiated.

In 1988, there were two instances of DSS involvement alleging Paul and his sister were left at home. In October of 1988, DSS was informed they were alone for more than 24 hours. The reporting officer who looked into the matter went to their house and described it as being in disarray, without sheets on the bed, and reported the children were unkempt. The children reported they had not had a full meal in days and had not had contact with their mother since “yesterday morning.” Supposedly, their grandmother was in the home sometime the day before. While they were waiting for another deputy to arrive, two significant things occurred: 1) Paul, who was eight years old at the time, asked the sheriff to help him with his homework, and 2) Ms. Jensen returned home. She explained that the day before, she left at 5:00 in the morning and worked two jobs and spent the night in Sioux Falls. She claimed she thought her mother was with the children. The reporting

officer documented the children “had been neglected” and he took them into custody. They were placed in the Children’s Inn but ultimately returned home.

Mental Health Records

Initially, LaRean was supposed to be the identified patient for treatment provided at Capital Area Counseling Services. However, she quickly became resistant to home-based treatment, so Paul became the patient. When he was the patient, treatment lasted from February through September 1994. He had fourteen sessions. Most of these were family sessions, while some were services provided on his behalf, such as meetings with his school personnel. A few of these were individual one-to-one sessions. Initially, treatment was to help Paul “with the difficulties that he is starting to experience at school and to help Sherilyn with her overall parenting and setting structure and consistency for both children... Paul as [sic] been very much in need of male attention, as well as added structure at home from his mother.” (See session February 2, 1994)

The diagnostic assessment was completed on February 7, 1994, by social worker Larry Ling. In Ling’s opinion, Paul “needs to be identified as a severely emotionally disturbed child in need of Home-Based Services... He has become verbally abusive to his teachers and uses inappropriate language... [He] is on the verge of receiving legal consequences for excessive absences and tardiness. At home, Paul is not a behavior problem.” Mr. Ling diagnosed Paul with Oppositional-Defiant Disorder and Rule Out Mood Disorder.

Relevant factors from the Capital Area Counseling Services Client History, completed by Mr. Ling on February 8, 1994, included:

- “He has not been receiving much attention at home lately and maybe is acting out to get the attention he feels he needs.”
- “Sherilyn married Paul’s father in 1980, and he committed suicide in 1983. This has had a very significant emotional impact on Paul, because he has never known his father. Paul has been told the truth about his father, and he has been left to deal with it on his own.”
- “For the last three weeks of school, Paul has done very well and received very good grades for the first semester.”
- “Sherilyn currently has a steady job, but the family will always struggle due to unpaid debt.”

The Client History also noted Paul denied any drug or alcohol use and the use of these substances were not suspected. Additionally, Paul had never had psychiatric inpatient hospitalization.

Paul completed a *Youth Self Report for Ages 11-18*. In that document, his concerns were “problem with teacher” and “kids pick on me.” Paul also acknowledged he set fires. His mother completed the form of that instrument for parents – the *Child Behavioral Checklist for ages 4-18*. Her handwritten responses were difficult to decipher. However, she did indicate Paul’s academic problems started “this year” and he “wishes not to be in school.” Ms. Jensen did not respond to the item “gets teased a lot.”

Paul’s treatment started February 2, 1994. Over the course of the treatment which went through October 20, 1994, the focus of the sessions were:

- Establishing a routine, sleep habits. (See note from February 7, 1994)
- Helping Ms. Jensen develop better parenting skills.
 - Ms. Jensen is feeling “overwhelmed” and “paralyzed” by the situation with both of her children.
 - Both children were “extremely rude and disrespectful to their mother without any consequences for that.” (See note from February 23, 1994)
 - Paul’s behavior declined when Ms. Jensen was employed and less able to provide the appropriate structure for Paul. For example, see note from March 9, 1994.
 - Ms. Jensen’s ineffective parenting styles and how this impacted both children. (See note from March 16, 1994)
 - On April 20, 1994, he wrote, “I really believe that these children are also reacting to their environment and that Sherilyn has never been one to hold her children accountable for their behavior. She has enabled them to act out at school this year, by not holding them accountable and by not [sic] blaming the schools for what has happened.”
 - The therapist repeatedly indicated that Paul does better when his mother’s work schedule allows for her to help him to get to school regularly and on time.
 - “When the emotional level at home is lower, Paul does well.” (See note from July 20, 1994)
- Addressing Paul’s hygiene
 - Paul’s treatment plan from February of 1994 indicated that Paul had poor hygiene and the goal was for him to take “three showers a week.” (See note)
 - In the note from February 23, Mr. Ling wrote, “I am also concerned because Paul has been very resistant to taking any showers or baths (he had a foul odor about him today). The school has also noted that he smells when he gets to school and that other children have found this very offensive.”
- Addressing Paul’s behavior at school
 - In describing a meeting with school personnel and others, Mr. Ling wrote, “Everyone was in agreement that Paul is not a learning disabled child, but

- rather was making a conscious effort not to participate in the classroom activities and to be oppositional and defiant to school authority. The other influence in Paul's life right now is the difficulty that his sister has had in school this year."
- Paul complained that a particular teacher yells at him and humiliates him. In Mr. Ling's opinion, in response to this, Paul's behavior at school has escalated. On March 29, 1994, Mr. Ling discussed with school personnel the role the teacher was playing in contributing to Paul's difficulties at school and the principal agreed to talk to the teacher about this dynamic.
 - Addressing the relationship between Paul and his sister
 - Over the course of therapy, LaRean was suspended for multiple times. On at least one occasion, the suspension lasted as long as 25 days.
 - By March of 1994, Mr. Ling's impression of Paul was that he "is following his sister's footsteps."
 - On March 16, he wrote, "Paul seems to be emulating LaRean's behavior, and thinks that it is funny when he gets kicked out of school. LaRean is very much out of control at home, and has too much time on her hands with little to do."
 - On April 14, 1994, Mr. Ling wrote, "Because Mrs. Jensen is so involved in getting LaRean straightened out, Paul has been somewhat neglected in his needs and has started to act out to get some attention."
 - At one time, they considered having LaRean live with another family member, with the hopes that it would improve both her and Paul's behavior. (See note from June 8, 1994)
 - In a note from May 4, 1994, Mr. Ling indicated that Paul "is very much stuck in a rut at school and will not allow the authorities at school to tell him what to do. Part of his rebellion is fed by his mother, in that she has gotten very angry at the school system, which only strengthens Paul's resolve to be oppositional, defiant towards authority at school.
 - Addressing the role, his mother's paramour, Brent played in the family
 - The relationship between Brent and the other family members was also a point that was discussed in treatment. For example, at one point, Paul and LaRean accused him of stealing things from their rooms. (See note from July 13, 1994)

Mr. Ling's notes also provided his impressions of Paul. For example, Mr. Ling described Paul as "eager to please the adults in his life, with the exception of the school personnel." (See Client History from March 3, 1994). Similarly, "In a note from May 4, 1994, Paul comes across as a very sensitive child."

These documents also contained a student progress report, dated May 26, 1994. During that school year, Paul was absent 48 times and late 49 times. His grades dropped from B's

and C's during the first term to all F's during the third and fourth terms. In addition to poor academics, his behavior was an area of concern. He was verbally aggressive and/or belligerent towards teachers and staff. He assaulted other students and was suspended multiple times and given school restrictions, such as no recess. As a result, he had to repeat the sixth grade.

While they were in therapy, Paul and his family were evicted from their mobile home. (See note from August 22, 1994) Paul and his family demonstrated significant improvement and growth but, for the most part, this was limited to the summer months. Paul's last session was in September of 1994 and the case was closed on October 28, 1994. At that time, the prognosis for the family was "poor." It is not clear from the termination summary why the services were discontinued.

On January 3, 1995, Mr. Ling wrote a letter to the Human Services Center (HSC), recommending Paul for admission to their program. In the letter, he noted, "Certainly, his behavior is indicative of a depressed adolescent and his current conduct problems may very well be related to the fact that he is depressed and extremely unhappy. His behavior at home has escalated and become increasingly aggressive..." On February 13, 1995, at age 13, Paul was admitted to HSC because, according to him, "I need help with anger control."^{xii} Upon admission, he was diagnosed with conduct disorder and rule out depression, not otherwise specified. As part of the social history assessment, Paul explained, "In third and fifth grade, kids used to pick on me. In sixth grade, I got bigger and meaner." The social history assessment also noted Paul recently started a fire at school by setting his detention slip on fire.

In HSC, Paul participated in group, individual, and family therapy. Therapy notes from May 15, 1995 through June 20, 1995 were reviewed and a variety of themes emerged. For example, Paul frequently discussed his sister and, according to the note from May 1995, "Paul shared that he was afraid of his sister." In other notes, Paul discussed how his sister bit him, pulled his hair, and frequently assaulted him. In addition to assaulting him, his sister frequently spoke for Paul and Paul did not like this. Additionally, Paul discussed how he felt his sister monopolized their mother's attention.

Paul also addressed the losses he had experienced. For example, while he was in HSC, a friend from Pierre killed himself and Paul was sad over this loss.² Paul also discussed the guilt he felt about his father's death and how he blamed himself for that death. Additionally, while at HSC, Paul's mother was in a relationship with her paramour, Brent, who Paul referred to as "the only dad I've known." (See social work note, May 15, 1995)

² According to Paul's sister, there was a rash of teenage suicides in Pierre during this time.

Paul was discharged from HSC on June 17, 1995, without medication, and referred back to Capital Area Counseling Center. His only follow-up session in that center occurred on June 20, 1995. His case was terminated on November 7, 1995, because he was not attending sessions. Mr. Ling thought Paul had moved out of town. At the time his case was closed, his prognosis was listed as poor.

Paul's History of Conviction:

Prior to the current arrest, Paul was a suspect in many cases, according to the Office of the Attorney General (OAG) timeline. However, he had been arrested and adjudicated, either formally or informally, at least eight times. Many of his arrests did not result in adjudication. For example, Paul was arrested after he set a detention slip on fire while in the principal's office but these charges were dropped. His first arrest occurred when he was ten years old. The following chart depicts his history of arrests, as well as their outcomes. Following the charts a brief descriptions of each incident will be presented.

DATE	AGE	CHARGE/ACT	OUTCOME	SOURCE
8-1-92	10 years, 8 months	Curfew violation	90 day Diversion	1,2
7-15-93	11 years, 8 months	Theft, loss \$1.00	90 day Diversion	1,2
7-02-94	12 years, 8 months	Residential Burglary	90 day Diversion	1,2
08-11-94	12 years, 9 months	Shooting BB gun, damaged vehicle with BB gun	Placed on probation, probation amended in Feb. of 1995, ordered to HSC	1,2, 3, 4
10-06-94	12 years, 11 months	Curfew violation	Unclear	1,2
8-05-95	13 years, 9 months	Burglary- Apt. Laundry room	Unclear	1,2
12-06-95	14 years, 1 months	Shoplifting- Cigarettes	Unclear	1,2,5

Source Key

1. Paul's timeline, Office of Attorney General
2. Sixth Circuit Court Services Records
3. Pierre Police Department Records
4. Order of Disposition dated Feb. 8, 1995
5. Marshall Police Department Personal Statement- December 6, 1994

Sixth Circuit Court Services records provided details of all but the last arrest. In Paul's first arrest for shoplifting, he stole three 25 cent beef jerkies and one 25 cent beef stick. The arrest report for the residential burglary charge indicated Paul told the officer he went into the house to use the bathroom, as the one in his dwelling was not functioning. In the

case that involved the BB gun, Paul admitted to shooting the guns and the gun was returned to his mother. The prehearing case study related to this charge noted Paul needed to work on his anger issues and his mother agreed to pay for him to receive treatment at Yankton. Regarding the Burglary in the apartment laundry room, the police reports indicated an alarm went off in the laundry room, signaling one of the machines was being burglarized. One of the bills in the machine had been “treated chemically” and Paul was in possession of that bill. Paul told the police that his friend, Kyle, roughly two years Paul’s senior, told him how to steal from the washing machines. Marshall Police Department records indicated Paul was arrested on December 6, 1995, at 0452 hours for shoplifting cigarettes.

Summary of Testimony from the Transfer Hearing and Jury Trial³

As the Court has access to these documents and they are voluminous, the following points are offered from the testimony, as they are relevant to the hearing at hand. Additionally, not each person who testified on a particular theme is noted.

Issues Related to Paul’s Upbringing:

- Extensive history of incest, sexual and physical abuse on mother’s side of family. (Testimony offered by Dr. Larry Brendtro.)
- Maternal side of family noteworthy for multiple members incarcerated for sexual abuse and incest. (Testimony offered by Dr. Brendtro.)
- Paternal and maternal side of the family positive for mental health needs including depression and father hung himself. (Testimony offered by Dr. Ronald Franks, psychiatrist and Dr. Stephan Manlove.)
- His sister, LaRean, was a “surrogate mother to Paul...they were virtually being self-parented and she was older, she was taking care of him as she could.” (Testimony offered by Dr. Brendtro p. 1021-22.)
- Dr. Brendtro testified that he talked to – the principal of one of the elementary schools where Paul attended. The principal described him as “a ‘normal student from a troubled family.’...” The principal also said LaRean was memorable for her problems but Paul was not.” (Testimony offered by Dr. Brendtro p. 1023-1024.)
- Dr. Brendtro testified that Paul’s 2nd grade teacher reported that he often came to school “dirty and sometimes so tired that he slept in class.” (Testimony offered by Dr. Brendtro p. 1026.)

³ Manlove Psychiatric Group, psychiatric evaluation, completed by Steven Manlove, dates interviewed February 17, 1996 and April 28, 1996.

Psychoeducational assessment, completed by Larry Bendro, dated April 18, 1996.

Ronald Frank, MD, psychiatry evaluation of Paul Jensen

- Paul was bullied and then became a bully. (Testimony offered by Dr. Franks, psychiatrist.)
- “Paul’s mother did what she felt she could short of being as close and affectionate with Paul as she might have wanted because of what happened with her husband.” (Testimony offered at trial by Dr. Franks p. 1406.)
- Paul felt responsible for his father’s death – his father hung himself because he couldn’t take the “pressure” of having another child – Paul. (Testimony offered at trial by Dewey Ertz p. 772.)

Paul’s History of Mental Illness and Treatment:

- Not a sociopath (Testimony offered by Dr. Brendtro p. 1014-1015.)
- Paul had a history of depression and/or exhibiting depressive symptoms:
 - Paul had depression and this contributed to many behavioral problems. (Testimony offered by Dr. Brendtro.)
 - As a 6th grader Paul was depressed and kids in the community assaulted him. This left Paul feeling that “they always pick on me, nobody cares about me, why don’t I just end it...” In this state of mind Paul thought of killing himself as his dad did and that doing so would bring them back together. Paul attempted to hang himself. (Testimony offered by Dr. Brendtro p. 1032.)
 - Paul had a long-standing history of depression. (Testimony offered by Dr. Manlove and Dewey Ertz.)
 - Paul was diagnosed with depression in October of 1994 (Testimony offered by Dewey Ertz and Larry Ling.)
 - Paul had symptoms consistent with depression that predated the offense. (Testimony offered by Dr. Franks.)
 - Paul had a history of suicidal thoughts. (Testimony offered by Dr. Manlove.)
- Treatment providers, pre-offense, had concerns about how Paul dealt with peer pressure. (Testimony offered by Larry Ling p. 388.)
- Conflicting testimony regarding other diagnoses he may have had prior to the offense.
 - Oppositional Defiant Disorder. (Testimony offered by Larry Ling.)
- Conflicting testimony regarding what mental illness or disorder he had at the time of the crime:
 - Paul had Conduct disorder not depression. (Testimony offered by Dr. Franks.)
 - Paul had dependency issues (Testimony offered by Dr. Manlove.)
- Paul had poor social skills. (Testimony offered by Dr. Manlove and Joan Tamen, treatment provider at HSC.)
- Paul was bullied and then became a bully. (Testimony offered by Dewey Ertz.)
- Conflicting testimony regarding if he was depressed at the time of the crime.

- Paul needed aftercare treatment once released from the inpatient facility (HCR). (Testimony offered by Dr. Franks and Joan Tammen, treatment provider at HSC.)
- Paul made things up to be accepted by others. (Testimony offered by Joan Tamen treatment provider at HSC and Dr. Manlove.)

Testimony from school personnel included:

- Dan Cronin – Principal at Buchannan: testimony described aggressive behavior at school directed at teachers, students, and staff. Paul’s behavior got worse in the 6th grade.
- Dan Yost – Tri-Valley School Principal: Paul attended kindergarten, first and part of second grade. Testified that Paul was not a problem at school.
- Staff and teachers from his sixth grade year were afraid of Paul. (See testimony provided by Ms. Crawford and Ms. LaRoche.)

Issues Related to Incarcerating a 14-year-old Youth in an Adult Facility

- Concerned for his safety and risk of “severe emotional trauma” (Testimony offered by Lynn Delano Prior Secretary of DOC, Kevin McClain, Director of Juvenile Corrections)
- Youth incarcerated in an adult facility have “a high[er] number of infractions, they tend to lose good time as a result of those infractions, they just experience a greater difficulty in doing time. They have a tendency to be taken advantage of by other inmates and that includes, psychologically, emotionally, sexually, they are used by other inmates.” (Testimony offered by Lynn Delano Prior Secretary of DOC p. 429.)

Issues Related to the Current Offense

- Co-defendant testified that the robbery was his idea.
- Paul described the co-defendant as his “only friend.” And he called him derogatory names such as “pussy.” (Testimony offered by Dr. Larry Brendtro p. 1010)
- Shawn acknowledged that Paul looked up to him.
- Paul described co-defendant as a “father figure” and indicated that he “looked up to him.” (Testimony offered by Dr. Ronald Franks, psychiatrist p. 622)
- Co-defendant would berate Paul (Testimony offered by Dr. Stephan Manlove.)
- Paul indicated that he was involved in the crime because he wanted to “gain the respect ...to impress him..[,and Paul wanted] to look tough, to be hard, to look cool if, if you will. He thought by committing this type of crime that he no longer would have to sustain the insults or teasing of any other kids, that this would show that he was so tough that nobody else would take a chance on assaulting him.”– (Testimony offered by Dr. Franks, psychiatrist p. 624.)
- Paul had “father like admiration” for the codefendant. (Testimony offered by Dr. Franks, psychiatrist p. 665.)

- Paul viewed the co-defendant as a big brother. (Testimony offered by Dr. Manlove.)
- In describing the offense, Paul said “he thought he should just tell the cab, take me home, you know, just take me home, get out and forget it. But he just—he felt that if he did that, he would be—he would like a wimp to Shawn and that he—and that he would be pushing out...” (Testimony offered by Dr. Manlove p. 886.)

Possibility for Rehabilitation:

- Cannot be rehabilitated in the adult system (Testimony offered by Lynn Delano, Prior Secretary of DOC.)
- Possibility that a “13 or 14 [year old youth] to be successfully rehabilitated...slim.” (Testimony offered by Joe Class SDSP Warden p. 480.)

Remorse/Regret:

- Testimony was consistent that Paul displayed remorse and/or regret for the crime:
 - “Paul displayed remorse and discussed the impact of his actions and concern for the family of the victim he had murdered.” (Testimony offered by Dr. Snell – minister in Rapid City p. 705.)
 - Paul said he is “haunted” by what he did and “I think all the time about if he had a family, how they feel.” (Testimony offered by Larry Brendtro p. 1011.)
 - “He certainly seemed remorseful in thinking about the impact of this on his mother and the impact it would have on his own life and he also expressed some remorse for the victim’s family.” (Testimony offered by Dr. Franks, p. 629.)
 - He showed remorse and was “feeling horrible” about the offense. (Testimony offered by Dr. Manlove p. 930.)

South Dakota State Penitentiary Records

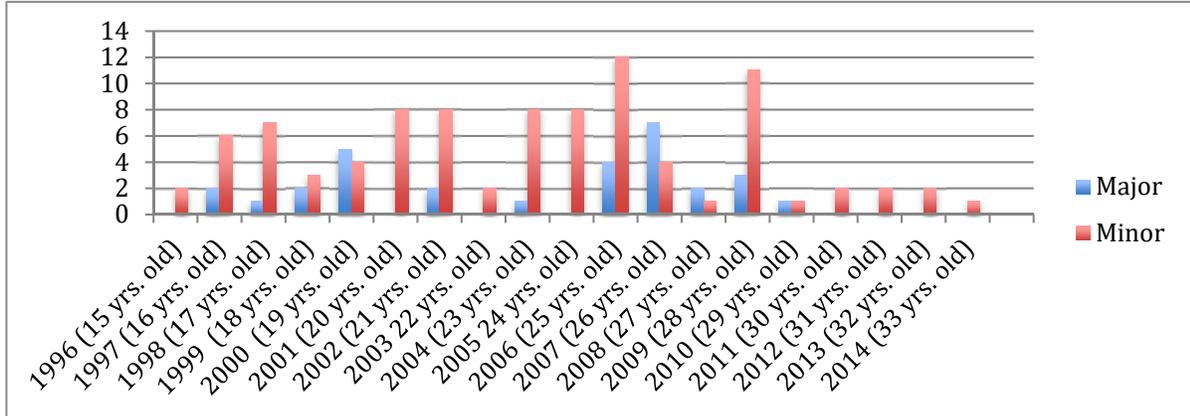
Paul’s progress report, dated July 8, 2014, indicated he was classified as high to medium custody. Furthermore, he earned his GED in 1998 and received 13 “elective credits.” However, according to the progress report, “He is not scheduled for other programming because of his life sentence.” Mark Schlosser wrote the progress report and summarizes it as Paul “began his sentence in his juvenile years. As such, he had a difficult time adjusting to prison. He has since kept employment for many years, and has cleaned up his behavior as far as disciplinary infractions go. He gets along well with staff and other inmates when they are in controlled interactions.”

Disciplinary Records:

It is difficult to provide a precise analysis of Paul’s disciplinary reports because the SDSP records were not consistent. For example, his timeline of infractions contained infractions for which there was no disciplinary report and vice versa. I have chosen to analyze his

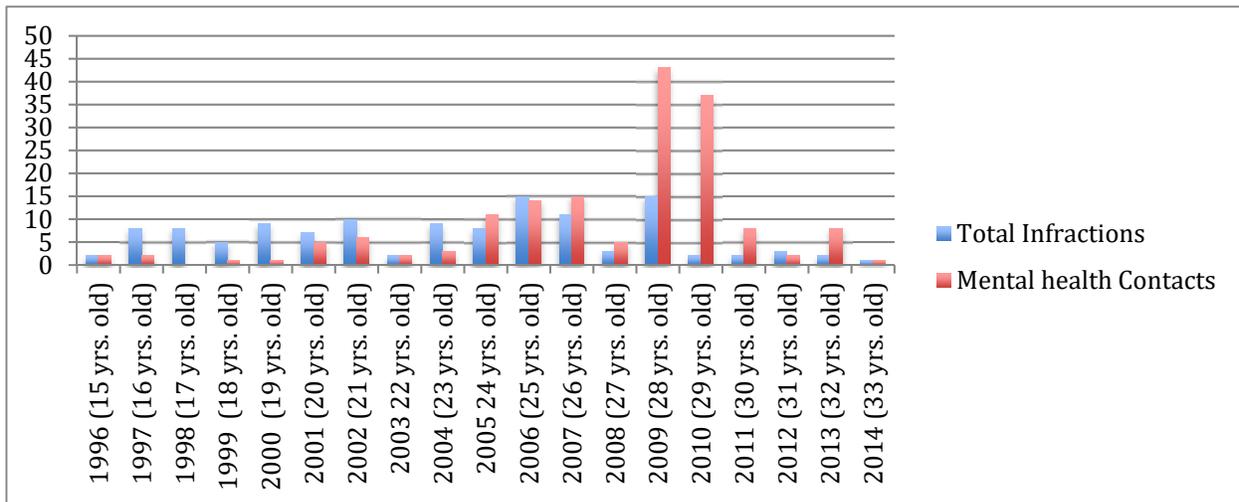
infractions based upon the disciplinary reports which I was presented. Over the past 18 years, he has earned 122 infractions. Chart A below depicts the type of infractions, minor or major, he earned by year.

Chart A



Over the past 18 years, he earned an average of 4.8 minor infractions per year. However, he had two years, 2006 and 2009, when he earned more than twice his average number of minor infractions. A review of his mental health records will follow and indicated that in these years, he also had substantial mental health contacts. See the chart that follows:

Chart B*



* One of the mental health contacts listed in 1996 occurred in 1995.

Table 1 depicts the types of behavior for which he earned minor infractions. Fifty-eight percent of his minor infractions were because he failed to make his bed, his cell was not orderly, he did not present as he should for count, or he was hanging a blanket or a towel in his room. Many of those infractions involving count were because Paul slept through

count. At times, he indicated that his medication made him sleepy. Paul frequently indicated that he was hanging a towel or blanket so that he could go to the bathroom in private. Behaviors that have been categorized as “other” include things such as horse playing, talking during chapel, having a new tattoo, using the phone when it was not his time, running in the hall, leaving a fan on in his cell when he was not in the cell, slamming a door too loud, and getting his hair cut when he was not on the list to have his hair cut.

TABLE 1: TYPES OF MINOR INFRACTIONS (TOTAL 91)

Description	Number	Percent of Minor
Sleeping through, not standing up for, or refusing to be locked up for count	20	21.90%
Not making bed, cell not in order	18	19.70%
Towel or blanket hanging up in cell	15	16.40%
Had items that were not his or not authorized	10	11.10%
Involves clothing (e.g. pants too low)	9	9.80%
Cursing at or not following C/O's directions	5	5.40%
Loitering or in an authorized area	4	4.30%
Accepting or transferring property from another inmate	3	3.20%
Other	2	2.10%
Trying to destroy property	2	2.10%
Involving work	2	2.10%
Pressed call light not an emergency	1	1.10%

Table 2 depicts the types of behaviors which resulted in a major infraction. Noteworthy in this chart is that 56% of his major infractions resulted from behaviors that at other times were noted as being a minor infraction. Less than 10% of his major infractions were for violence toward others. In 1999, he received an infraction for allegedly forcing another inmate to have sexual contact with him. However, DCI investigated this allegation and did not file charges against Paul. In 2002, Paul had two major infractions for fighting and in 2007 he acquired a major infraction for fighting and another one for threatening bodily harm against an inmate.

TABLE 2: TYPES OF MAJOR INFRACTIONS (TOTAL 31)

Description	Number	Percent of Major
Sleeping during count	9	29.03%
Had items that were not his or not authorized	5	16.12%
Cursing at or not following C/O's directions	4	12.9%

Threatened or assaulted another person	4	12.9%
Attempted suicide	2	6.45%
Hunger strike	2	6.45%
Rattling door	1	3.22%
Struck an item	1	3.22%
Refusing housing	1	3.22%
Gang activities, possessed gang materials	1	3.22%
Pressed call light not an emergency	1	3.22%

Mental Health Contacts

Paul's mental health records through February 7, 2014 were reviewed. On average, he had 8.7 contacts per year. However, this average is skewed because, as the chart below indicates he had 43 and 37 contacts in 2009 and 2010, respectively. In 2009, Paul twice attempted suicide by hanging, the first time in September. He did not inform mental health staff of his desire to kill himself. On December 2, 2009, he notified mental health staff that he was again having suicidal ideations and was developing a plan. Twenty-nine days later, on December 30, he was found hanging in his cell.

Paul had extensive mental health contacts in 2010. Mental health staff noted he needed to work on his cognitive distortions, increased anxiety, impulsivity, and restlessness. Over the course of his incarceration, his contact with mental health staff focused very little on his offense. However, a note from January 12, 2010 indicated Paul "says he has a lot of unhappy thoughts about his crime." During 2010, notes indicated Paul began to come to terms with the fact that he was serving a life sentence. Christopher Davidson, MD, wrote, "The patient is gaining some better insight. A lot of these things he is going through are situational and many people who have life terms have come to some type of acceptance with them. I believe many times, people come to accept earlier than he has, although his situation is a little atypical. A lot of people have been adults before they were given their life sentence."

By 2002, Paul was started on psychotropic medications to treat a variety of symptoms, including depression, increased anger and irritability, as well as increased anxiety, hyperactivity, and decreased ability to concentrate. Over the years, his medications were changed for a variety of reasons, including his reporting side effects such as a rash or tiredness and at other times, because he was not experiencing symptom relief.

Paul's diagnostic picture has been some combination of ADHD, major depressive disorder, bipolar disorder, impulse control disorder, as well as anxiety disorder and at times, he has

shown symptoms of mania, including impulsivity, decreased sleep, “extreme” agitation (see note from November 14, 2003).

Over time, Paul has been able to see the connection between his mental state and his behavior. For example, in the note from January 30, 2004, the psychiatrist noted that Paul “is very agitated. He is fighting with everybody and feels irritable and he is beginning to get more in trouble with the institutional staff.” Also, the following year (see note from February 1, 2005), he complained of being restless and that it was interfering with his ability to interact appropriately with others. Staff also referred him because of their awareness of how his mental health issues impacted his behavior. For example, in October of 2005, staff referred him to mental health services because “he is getting frustrated over little things and acting out on impulse.” Finally, in June of 2007, a note indicated he was referred to the staff because he was “withdrawing” and Paul indicated “time is getting to him. He has been here nearly 11 years and is doing life.”

In 2007, the year he went on hunger strikes, staff referred him to mental health services because he was having difficulty “doing life” (see note from July 24, 2007). The notes from 2009 reflected the increased irritability and anger and at one point, Paul refused to talk to the mental health staff (see note from October 23, 2009). Three days later, the mental health staff noted that “Paul presents with increased anger, defiance, and this usually covers some type of pain or hurt,” and they had concerns that he may be becoming suicidal. Much of 2008 and 2009 was also spent developing behavioral strategies to help Paul cope with his increased impulsivity and restlessness. Ultimately, it was decided he would engage in activities such as “double library” time and “increased rec.” Finally, the notes from 2012 and 2013 noted he experienced increased anxiety related to the *Miller* decision and the possibility he would not die in prison.

Work

Including school, Paul has worked in a variety of capacities since 1996. He has worked in the kitchen, as an orderly, in the commissary, as a shoveler, and as part of the yard crew.

COLLATERAL INTERVIEWS

Mr. Atkinson

Mr. Don Atkinson was the shift supervisor at the detention center when Paul was a resident. Mr. Atkinson indicated that he remembered Paul “because of his age and the nature of the crime.” Mr. Atkinson recalled an evening when Paul’s cellmate, Frankie Y., tried to hang himself. In describing this incident, Mr. Atkinson said, “Paul started yelling from his cell that he needed help, that Frankie Y. was trying to hang himself and he needed help and when the pod officer got there, he noticed that Paul was holding Frankie up.” Mr. Atkinson said that he never talked to Paul to find out why Paul decided to prevent his

cellmate from killing himself. When asked, Mr. Atkinson explained it was likely Paul did not know Frankie was trying to kill himself because it was after lockdown time and Paul was probably sleeping while Frankie was attempting to hang himself.

Warden Young

Mr. Young has worked at the prison for over for 21 years and for the past 18 months, he has been the warden. The warden indicated he did not have Paul’s file in front of him at the time of the interview and suggested I review Paul’s file, including the progress reports. In Warden Young’s opinion, Paul has “made a good adjustment over the years.” When I shared with the warden my impression that in the years in which Paul had his most disciplinary reports were the same or in close proximity to those years in which he had the most mental health contacts; and based upon my review of the records, I hypothesized his disciplinary infractions may be related to his mental health needs, Warden Young responded, “Based on what you’re saying, to me it sounds possible.”

The warden indicated in the past, the facility has had a 13-year-old inmate and inmates who are 15, 16, or 17 years old. However, currently inmates younger than 18 are held in another facility. In describing how these young inmates fared in the facility, Warden Young explained it depended upon many factors, including whether or not the inmate was serving a set number of years or a life sentence, as well as the inmate’s background. When asked, Warden Young explained those inmates who are parole-eligible are given higher priority in program assignments than those who are serving a life sentence. Also, there are some programs, such as chemical dependency programs, which are not available to those serving a life sentence. Finally, Warden Young indicated that there are no programs which are only available to those serving a life sentence, such as a lifer’s group.

I asked the warden to explain why the same behavior could at a certain time be a minor infraction yet at other times be a major infraction. He explained that if an inmate repeatedly committed the same behavior which earned the minor infraction, at some point, he would begin to earn a major infraction for that behavior.

TESTING AND INSTRUMENT DATA

Abuse/Trauma Instrument

The Childhood Trauma Questionnaire (CTQ)

The CTQ is a reliable and valid self-report inventory used to screen for a history of emotional, physical, and sexual abuse as well as emotional and physical neglect. The CTQ has a validity scale to assess response style. Paul’s profile was valid. The chart below provides a breakdown of his score on each scale.

CTQ Scale ¹	Paul’s Score	Classification per the manual
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Emotional Abuse	20	Severe (to Extreme)
Physical Abuse	11	Moderate (to Severe)
Sexual Abuse	5	None (or Minimal)
Emotional Neglect	12	Low (to Moderate)
Physical Neglect	10	Moderate (to Severe)

¹CTQ scores can range from 5-25.

According to the CTQ manual, “*emotional abuse* refers to verbal assaults on a child’s sense of worth or well-being, or any humiliating, demeaning, or threatening behavior toward a child by an older person.”

Paul’s score on Sexual Abuse subscale was also in the “none to minimal” range. According to the CTQ manual, this subscale “refers to sexual contact or conduct between a child and older person; explicit coercion is a frequent but not essential feature of these experiences.”

His score on the Physical Abuse subscale also fell in the “moderate to severe” range. The CTQ manual indicates physical abuse “refers to bodily assaults on a child by an older person that pose a risk of, or result in, injury.” In describing his responses to this subscale, Paul referenced the beatings his sister gave him.

According to the CTQ manual, “*Emotional neglect* refers to the failure of caretakers to provide a child’s basic psychological and emotional needs, such as love, encouragement, belonging, and support. While *physical neglect* refers to the failure of caregivers to provide a child’s basic physical needs, including food shelter, safety, and supervision, and health.”

Correctional Tests

Inventory of Offender Risk, Needs, and Strengths (IORNS)

The IORNS is a 130-item, self-report measure used to assist the clinician in making decisions related to treatment and management of a person who is under some form of correctional supervision. The IORNS has two validity scales designed to assess an examinee’s response style and/or attempt at impression management. Paul produced a valid profile. His score on the Impression Management scale was not indicative of someone trying to present himself in a good light. His score in the Inconsistent Response Style fell in the “acceptable” range and indicated that he was responding consistently and not in a random fashion.

Paul’s scores were compared to male offenders ages 30-39 years old. Per the IORNS manual, “It is recommended that an IRONS score that places the respondent at or above the 75th percentile be considered clinically significant, as this score determines whether

the respondent has greater risk and need and fewer strengths than three-quarters of the normative comparison group.” (p. 19). Paul’s score on this scale was at the 86th percentile and was clinically significant.

His score on the Static Risk Index (SRI) was at the 88th percentile. This index taps into historical and static factors, that is, factors that will not change. His elevated score on this index was due in large part to his history of behavior problems and criminal activities. Although, compared to inmates in his age group, Paul has higher levels of hostility, he has average levels of manipulateness and lower levels of impulsivity.

The Dynamic Needs Index (DNI) assesses global treatment and supervision needs. Paul scored at the 72th percentile. This score suggested he has higher than average treatment and supervision needs. This is not surprising given that Paul has spent more of his life in a locked facility than he has spent in the community.

Finally, compared to other inmates, Paul scored in the “average” range on the Protective Strength Index. This scale reflects the level of resources a person has to decrease the likelihood that they will recidivate. Compared to other inmates in his age group, Paul has lower education and training, which is not surprising considering he has been incarcerated since he was fourteen years old. Also, he has lower ability to regulate his anger compared to other prisoners his age. In contrast, his ability to regulate his other emotions and behavior is on par with other inmates.

Clinical/Personality Instruments

The Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF)

The MMPI-2-RF is a 330-item, self-report measure designed to assist the clinician in assessing a person’s mental health and treatment issues.

The MMPI-2-RF contains validity scales to assess a test taker’s response style. The validity scales assess if a person is endorsing items in an inconsistent or defensive manner or is trying to magnify or exaggerate their problems. Paul produced a valid profile suggesting that he responded in an open and forthright manner.

Compared to over 2,000 people in the community, Paul’s profile was elevated on only the following four scales: behavioral/externalizing dysfunction scale (T=68), antisocial behavioral scale (T=78), juvenile conduct problem scale (T=84), and disconstraint revised scale (T=66). Taken together, this suggests that compared to most people in the community, Paul was engaging in more delinquent and criminal behavior as a juvenile and he tends to act impulsively and act out when bored. When Paul’s profile is compared to nearly 35,000 male prison inmates, it becomes clear that at this time, he is more like other

inmates than he is different from them. For example, his score on the behavioral/externalizing dysfunction and disconstraint revised scales was in the average range compared to other male inmates. In contrast, his level of juvenile conduct problems was elevated compared to these men.

Psychopathic Personality Inventory-Revised (PPI-R)

According to the manual, this is a “construct-valid and time-efficient means of detecting both global psychopathology and the component traits of psychopathology...”

PPI-R T scores of 65 or greater are considered clinically significant and indicate that compared to the normative sample, a person possesses characteristics associated with psychopathy at a significant level.

Paul’s response to the inconsistent response scale was an acceptable range, which indicated he was not responding in a random manner. Similarly, his score on the virtuous response and deviant response scales were not clinically significant, suggesting he was not trying to present himself as if he was overly virtuous or, on the other hand, as if he was trying to respond in a manner that would make him appear bizarre. Instead, his response profile suggested he was responding in an honest and forthright manner.

The PPI-R assesses key components of psychopathology. These components are reflected in the instrument scales which are: Coldheartedness – the absence of guilt or impulse; Social Influence – the ability to influence and charm others; Carefree Nonplanfulness – the tendency to act before thinking, general attitude of indifference; Machiavellian Egocentricity – the ability and willingness to manipulate others for one’s own gain; Rebellious Nonconformity –an assessment of anti-authority attitudes; Blame Externalization – a tendency to see one’s self as innocent and blame others and/or the environment; Fearlessness – a tendency not to have anticipatory stress related to dangerous activities; and Stress Immunity – a lack of stress in stressful situations. Additionally, the PPI-R provides a total score which is an indicator of the global level of psychopathology.

An important feature of this instrument is that it allows the examinee to compare a person’s score to a community-based sample, as well as to a prison sample. When compared to the profiles of correctional inmates ages 18-57, Paul’s profile did not rise to a clinically significant level on any of the scales or in the total score. In fact, on all of the scales and total score, his T score was less than 50. A T score of 50 is at the mean or average level. Similarly, when compared to a group of males in the community ages 30-39 years old, none of his scales or his total score was at the clinically significant level. In sum, at the present time, Paul did not show more psychopathic traits than the average person in the community or average inmate.

RELEVANT INTERVIEW INFORMATION

Paul, his mother, Ms. Jensen, and his sister, LaRean Skogen, were the informants for this section. The information they provided was fairly consistent and relevant inconsistencies will be noted.

Paul's mother, Ms. Jensen, is the youngest in a sibship of twelve and her oldest sibling is 23 years her senior. Her mother had her when she was 45 years old. There is some uncertainty as to who Ms. Jensen's father was. As Ms. Jensen explained it, growing up her mother would not tell her who her father was because when he got her mother pregnant, he was also dating her mother's mother (Ms. Jensen's 70-year-old grandmother). Ms. Jensen now believes she has learned the name of her father and explained she had frequent contact with him growing up and he was 70 years old when she was born.

Ms. Jensen's upbringing and family history is plagued by sexual abuse. She reported that growing up, she was repeatedly sexually abused, on different occasions, by her family members, two of her six brothers sexually abused her, as well as by people in the community, including her brother's friends. According to Ms. Jensen, some members of her family had a "moral breakdown" and were sexually abusive. Three of her brothers have been arrested and convicted on sexual abuse charges. The victims of the abuse ranged from being family members, such as daughter or niece, to members of the community. Ms. Jensen grew up in impoverished conditions. Her mother, who was a single mother, relied on food stamps and welfare to provide for her family. She augmented these resources by, according to Ms. Jensen, doing "laundry and housekeeping to earn money." Ms. Jensen explained, "We were white but we were poverty."

Many of her siblings are illiterate but some, and Ms. Jensen was not certain who, graduated high school. Ms. Jensen did not graduate high school herself but went on to earn her GED and then some time later, she earned a certificate needed to be a truck driver. At the time of Paul's arrest, Ms. Jensen had two children, LaRean and Paul. LaRean is 22 months older than Paul. (Since Paul's arrest she has had other children.) Ms. Jensen had her daughter when she was 13 years old. LaRean's father was 19 years old at the time. The relationship was short-lived. Ms. Jensen began dating Paul's father, who was eight years her senior, when she was 14 years old. They married about 9 to 10 months later. Soon after they were married, Ms. Jensen realized that Mr. Jensen had a "drinking problem," which impaired his ability to obtain and maintain employment. Sometime after their marriage, she got pregnant with Paul and approximately a month shy of their first wedding anniversary, while she was still pregnant, Paul's father died. In explaining the circumstances of his death, Ms. Jensen said, "The courts say and the paperwork says that he was drinking in a motel and hung himself... I think it was murder."*xiii Paul said, "When I was young, I don't remember when, I would ask my mom why he [Paul's father] killed himself and she told me he did it because he couldn't handle or stand the thought of

having another child and I was that child." When I asked Ms. Jensen about this she claimed she never said this and insisted Paul was "confused."

Following her husband's suicide, Ms. Jensen was beset with bouts of depression. She indicated she often felt overwhelmed and functioned like a "zombie." She recalled a time in 1983 when Paul was about two years old when she was "in bed for six months." She explained she "didn't know how to deal with things" and would sleep most of the day during that time. Ms. Jensen denied having been psychiatrically hospitalized. She sought mental health treatment after her husband's death, when she was 16 years old. However, as she was forced to go to a free clinic, the therapist told her she could not help her because, according to her, the clinic was geared "toward war-related therapy." Since then, Ms. Jensen has tried individual and group therapy "a couple" of times but did not find it helpful. She denied a significant substance use history but acknowledged she drinks alcohol occasionally.

Prior to Paul's incarceration, Ms. Jensen has supported her family by working a variety of manual jobs, often more than one job at a time. She estimated since Paul was born, her highest annual income was about \$18,000 a year and that only lasted a year, while she was the manager at a 7-11. This position lasted approximately a year and a half.

Relationship Between Ms. Jensen and Her Children

Shedding tears, Ms. Jensen explained as far as parenting was concerned, her goal was to care for her children's basic needs, such as food and shelter. She explained, "I didn't have a lot of needs on my list. I was not feeling, I was not open. I was just functioning... I loved and cared the only way I could. The only way I can explain is that I was a robot. I was doing what needed to be done like a robot... I was a lot more emotionally attached to LaRean than Paul." She explained that without a problem, she would let LaRean as a child sleep in her bed but if Paul was in the bed, it was "scarier." She went on to say, "I could love him and hold him but the emotional breakdown, I didn't know how to have an emotional relationship that wasn't sexual. I didn't know how to have a love with a male without being sexual [she was crying]. I love him and care about him. So LaRean did know his needs because she could connect to him and I couldn't." In turn, Ms. Jensen relied upon LaRean to help parent Paul and to act as a go-between, between Paul and herself.

In describing how her mother was as a parent, LaRean said, "She is really robotic and not nurturing. She is not all there emotionally. That's just my opinion. I still see it. She's not abusive, she's absent, but she's there. She would go through the bath, the laundry, and working but she is not hugging and kissing."

Paul has lived in at least four communities. Sometimes, he lived in a community on more than one occasion and often he and his family moved frequently and lived in more than

one dwelling. In explaining why his family moved around so much, Paul said, "My mom runs from problems. When problems start happening, we always move." At times, Ms. Jensen's paramour also lived with them. She had a seven-year relationship with a man named Steve. This relationship ended when Paul was in elementary school. Although Steve was not physically abusive, he was frequently verbally abusive and very strict. For example, Paul described an incident when he was pretending to smoke a cigarette and Steve got "upset about it and made me sit in a closet and smoke cigars until they were all gone... It made me sick. He wouldn't stop until I smoked them all." The other long-term boyfriend Ms. Jensen had was Brent. Ms. Jensen described him as a grown-up child. Paul described Brent as a "big kid, irresponsible, he was a joker. He didn't really work."

The amount of supervision Paul and his sister had was consistently lackluster. For example, Paul and his mother described an incident in which LaRean took Paul to the park without his mother's knowledge and the police brought them home. Paul and his mother agreed that Paul was approximately two years old when this occurred. Ms. Jensen indicated she did not know her children were missing at the time. Paul and his mother described two other incidents that occurred when Paul was young that were indicative of poor supervision. Each of these incidents occurred before Paul completed the third grade.

The first incident occurred when Paul was in kindergarten. He was playing outside by himself and trying to light a sparkler but the wind prevented him from doing so, so he decided to sit in a car and light the sparkler. Once lit, he got out of the car and went outside and played with the sparkler, then went inside his house. After a while, a neighbor called and said that the car was on fire.

The other incident that involved a car was when Paul was playing in his mother's paramour's new car, pretending he was in a spaceship. Paul explained he saw this "big handle with a red button on it," and he pressed the button. Unbeknownst to him at the time, it was the emergency brake and since the car was parked on a hill, it rolled down and crashed into a neighbor's car. Paul ran into his house and got in bed. Soon thereafter, Steve came in and "screamed and yelled" and said, among other things, that Paul was a "piece of sh-t." Ms. Jensen recalled this incident. As she recalled it, at the time she and Paul had a "conversation" about what occurred. When I informed her of Paul's description of Steve's reaction, she said, "I can see him responding [that way]. He is aggressive when it comes to money and the car was a new car."

Ms. Jensen indicated her children always had inadequate supervision. In large part, she attributed this to the fact that she worked two jobs. She described her children as "latchkey kids." Similarly, Ms. Jensen did not provide a lot of structure for her children. For example, she explained, "I wasn't involved in their homework... I wasn't involved in their

days. It was my responsibility to make supper, I have dishes, and I have to work.” Similarly, the children did not have a set bedtime. Ms. Jensen explained, “I would tell them to go to bed and sometimes, but I didn’t monitor if they did. I didn’t oversee it. I wasn’t like, ‘You go to bed and get ready for school.’ It was just, ‘Go to bed.’ And if they did, they did and if they didn’t, they didn’t. It wasn’t monitored.”

Consistent with this, Paul explained he rarely had supervision in the home and this dated back to early elementary school. He explained, “I didn’t have a lot of supervision at nighttime. I would do whatever and I would go to sleep and get up early in the morning and go to school. Then I would be tired and I would sleep [in school]... I never had a set period of time to go to bed, we did our own thing.”

Prior to his current incarceration, Paul did not think that the lack of supervision and structure was unusual. However, since being incarcerated, he has learned this is not appropriate. When asked, he explained, “If I had a kid, I would make sure I knew what they were doing and I was involved in their life and what they were good at. I would get them involved and give them opportunities to do what they are good at... This is what you need; it develops character, self-worth, and all these things.” He went on to explain, “I read about social contracts. I didn’t know nothing about that. What you have to give up to live in a society and everyone has to be involved because if someone is failing, that affects you as a community and your life. You have to take an active involvement in your life and in the lives of other kids in the community. You want the next generation to be greater than yours. To have your children have it better than you. And the only way to do that is to be involved.”

Paul and LaRean’s Relationship

Paul and LaRean were always friends. In part, this is attributed to how close in age they are, the fact that LaRean often played the role of Paul’s parent/confidant. LaRean explained, “It was like she [Ms. Jensen] was the sister and I was the mom. They loved each other but they didn’t have a real connection.”

LaRean often tried to intervene on her brother’s behalf when he was teased or physically assaulted at home or in the community. Paul was teased because of his weight and the clothes he wore. LaRean recalled that Paul was frequently called “gay” or “poor.” She also recalled a time when she was in the fifth grade [and approximately twelve years old] and Paul was approximately ten years old when they got “new bikes and we got rocks thrown at us and chased and they said, ‘Where did you steal those bikes from?’” LaRean explained the kids in the community were the same kids they went to school with, so Paul did not find a reprieve from the bullying and taunts when he went to school. Paul acknowledged that he was frequently teased by his peers in the community and at school. He explained

that at first, "I kept it to myself and then [told my sister]. He acknowledged that he rarely told his mother about being teased and could not explain why this was so.

Over time, LaRean tried to teach Paul to defend himself, however he never did. LaRean explained, "I started going through hormones and stuff... We had situations that would get me angry. It wasn't him... I had no one to take it out on, so I would take it out on him." She also explained that she would hit him and drag him out of a room by his hair but Paul would not fight back.

Paul and his mother gave similar descriptions of Paul's relationship with his sister and how she frequently assaulted him. Also, Paul said his sister would call him derogatory names, like "fat a-s." Ms. Jensen explained that LaRean had "anger issues." When she tried to prevent LaRean from hitting Paul, LaRean would start hitting her mother. Soon thereafter, LaRean was sent to a residential program. When she returned, she engaged in outpatient therapy.

In describing their relationship around the time of the offense, LaRean said, "He just wanted to fit in so bad. He didn't have a dad. He wanted to be included and he wanted to have friends that wanted him around. He was very eager to please and needed attention. Very needy. I just didn't want him to be around and I would be mean to him."

Vocation and Academics

Prior to his incarceration, Paul never had a job, as he was 14 years old when the crime occurred and was then incarcerated.

Paul did well academically and behaviorally in school until his family moved to Pierre the first time. In Pierre, he attended third through sixth grade and failed the sixth grade. He attended Buchannan and Jefferson School, respectively. Paul explained his life in Pierre as "I didn't fit in. The kids made fun of me and I couldn't communicate with my teacher." He said that he was teased for a variety of reasons, such as "I didn't have nice clothes. We were poor. I was a new kid. I slept in class." He slept in class because "I stayed up and did whatever."

Paul explained that his behavior at school escalated during the fifth and sixth grade. By the time he was in sixth grade, he was earning "F's and zeroes." In describing the evolution of his behavior at school, Paul said at first, he would skip school and just walk around town and go "down by the river... throw rocks, skip them, and walk around the riverbank or go to the cemetery. There's woods between the house and the cemetery and have little adventures in the woods or camp or sometimes go walking around." However, not going to school resulted in his getting CHINS cases. Paul explained, "Once I found out that I can make it so I didn't have to show up, that I would get suspended and my

behavior would escalate until I got suspended, because I didn't want to be there." Paul said he would do "whatever it took" to get suspended, including shooting rubber bands at kids, throwing erasers at teachers, and slamming his desk around. He explained how he and his teachers would get into "power struggles." For example, this dynamic played out with a particular teacher, Paul explained, "I would try to be disruptive and talk to other kids and then she [the teacher] would start to yell at me and I would yell at her and she would try to grab me, to get me to go to the principal's office, and I would yell at her to 'get your fucking hands off of me.'"

The cycle continued and Paul explained, "They started sending me to the principal's office. I would sit in there and the secretary wanted me to be quiet and not get up to get water. They wanted to put limits on me and I had to move around but they wanted me to sit there and look at books and be productive but I couldn't do it. I would be tapping my pencil and the secretary would yell at me and I would go hide out near the bathroom and she would have to come and find me."

When asked how his mother would respond to his behavior, Paul said, "She had given up responding to it... She yelled at me and after she tried to understand why and tried to talk to the school and nothing else happened, it was a battle between her and the school and the school was saying that it was all me and she was saying, 'You've got to help him.'" Because things were not going well for her family in Pierre, Ms. Jensen moved them to Marshall, Minnesota, where they lived for approximately one year.

While in Marshall, Paul did not attend school regularly and when he did attend, he fought with students or was aggressive with teachers. When he did not go to school, his mother would call home and tell him he had to go to school and he would try to explain what was going on and why he did not want to go to school and "she was like, 'I don't care, you need to.' I was like, 'Okay,' and hung up the phone... In my head, I was thinking 'she is not going to leave work and deal with this now,'" so Paul continued to stay at home. He explained that at times when he did not go to school, he would go to the high school to hang out with his sister and her friends. He did this because since they moved, "I only had one or two friends of my own, so I hung out with her friends, because she had a bunch." In describing Paul's friends in Minnesota, Ms. Jensen said, "Most were older, a lot of kids. That is probably the first time I ever dealt with some of them. Pretty much all of Marshall kids drank and used drugs."

Ms. Jensen wanted to move her family out of Marshall because, according to her, "There was a lot of drugs, teenage activity, and me working long hours. It wasn't going to work." They were supposed to move to Nebraska to live with her brother. However, before they could make this move, Ms. Jensen moved to Pierre to help with a friend whose son killed himself. Ms. Jensen explained that when she moved back to Pierre, she had an "emotional

breakdown.” As she tried to help the person whose son killed himself, “It was like when I was with my husband. That’s when I realized I hadn’t dealt with Paul’s [Mr. Jensen’s] death. It was like déjà vu. I broke down... I was crying, having a hard time processing.”

Illegal Activities

Paul acknowledged engaging in a variety of delinquent activities prior to the instant case. For the most part, his accounts of the various events were consistent with the records reviewed, even in the instance when the arrest did not result in adjudication. For example, he described setting the detention slip on fire while he was in school. However, he adamantly denied being involved in the allegation he sexually abused a young boy.

Mental Health History

Prior to his arrest and subsequent incarceration, Paul had two mental health history interventions. As a result of his interaction with the courts, Paul was sent to Yankton. Paul could not recall how long he stayed in the program and estimated that it was six to nine months. In describing his time at Yankton, Paul said, “I loved it there. That was one of the best times of my life... I developed a relationship with that but like they cared, they tried. I had a lot of one-on-one time.” However, Paul admitted around the residents, he made statements that were not true or exaggerated so he would fit in. His sister also went to Yankton for a variety of reasons, including anger problems and not attending school regularly, stealing cars, running away from home, and fighting.

The other therapeutic intervention Paul had was with Larry Ling. Paul explained, “It was mainly for my sister” and only “a couple of times when it dealt specifically with me.” Paul said he did not have enough one-to-one interaction with the therapist.

Paul reported prior to being incarcerated, he attempted suicide on one occasion. As Paul remembered it, around the time in which he attended Buchanan or Jefferson School, he tried to hang himself because “I didn’t fit in and nothing I could do could fix the situation.” He explained he tied a rope to the ceiling and around his neck and he stood on a sofa, with the plan of stepping off of the sofa so he could hang himself. However, as he stood on the sofa crying, he thought about how sad his mother was because of his father’s death and he didn’t want to do that to her.

Substance Use History

Paul stated that he started drinking alcohol when he was in the fourth grade. At the time, he would “drink some alcohol because my mom kept it. It was hard alcohol under the sink in the kitchen. She kept rum and whiskey and vodka and wine coolers in the fridge and I tried all that stuff.” By the time his family moved to Minnesota, he was drinking alcohol and using drugs “whenever [he] could get it.” Paul recalled drinking with Brent when they

lived in Minnesota. He explained that in Marshall, he associated with older kids and young adults and they would get a “case of beer” and “party” at his house while his mom and Brent were away.

PAUL’S LIFE AROUND THE TIME OF THE OFFENSE AND HIS ACCOUNT OF THE OFFENSE

(Paul and his mother were the informants for this section of the report.)

Before the offense, Paul’s mother moved back to Pierre and Paul was supposed to stay in Minnesota, living with his uncle. Instead, he stayed with his sister’s friends. He recalled that he stayed with Pete Hogan and his friends. Paul explained that Pete did not want him there. Paul explained, “He [Pete] didn’t like the fact that I was a little kid, hanging out with him and tagging along.” Paul recalled he stayed with Pete for a few days and during that time, we “just hung out and drank, smoked marijuana, and got teased a lot...” Paul explained how they teased him frequently and on one occasion, they even locked him out of the apartment.⁴ Despite how they treated him, Paul explained, “I wanted to be friends with them. I wanted them to like me. I wanted to hang out with them.” When asked why this was important to him, Paul said, “I don’t know, I guess when I was younger, I always gauged my worth how others felt about me. I really had low self-esteem and I didn’t know who I was, so everybody else’s opinion mattered more to me than my own opinion of myself. It took me a while before I got over that.” Paul recalled thinking “if I hung out with them long enough, they will like me.” As he recalled it, even at the time he was aware these “friends” were not treating him well but he stayed because “I wanted them to like me. I thought highly of them and less of myself.”

Ms. Jensen said, “My brother called me and said I needed to come and get him... because he was hanging out all night with those people.” She had her paramour go and pick Paul up and bring him to Pierre. Ms. Jensen explained that she stayed at her mother’s small apartment in Pierre while Paul and LaRean stayed at LaRean’s friend’s house. At the time, Paul had just turned 14 years old, while his sister’s friends, as his mother recalled it, ranged in age from 18 to 20. When asked why she was not concerned about a 14-year-old boy associating with youth as old as 20, she responded, “It’s not unusual for older kids to be with younger kids playing.” Ms. Jensen estimated at most, she was in Pierre for a month prior to the offense and during that time, she saw Paul three to four times and each time, he was “never” without Shawn. Paul indicated he met Shawn, the co-defendant, through his sister because they were boyfriend and girlfriend and as such, he wanted to be Shawn’s

⁴ Peter Haugen was interviewed by DCI and he recalled in January of 1996, Paul stayed with him in Sioux Falls while LaRean and Shawn went to Pierre. While Paul was with him in Sioux Falls, Paul “got drunk and passed out. Some guys that were there at the time urinated on JENSEN while he was passed out.”⁴

friend. Paul explained although Shawn teased him, Shawn “would stand up for me” when others teased Paul.

In describing the robbery, Paul said he takes responsibility “for all of it.” Although the idea to rob the cab driver was Shawn’s but Paul is the one who shot him. Paul remembers “during the entire crime, I didn’t want to do it but I didn’t want Shawn to not like me. I didn’t want to look like I was a pussy. I couldn’t just leave because then he would tease me and not like me.” Once the cab arrived, Paul recalled they drove around. They told the cab driver they were looking for a party. At one time, Paul got out because they were in a driveway and the cab driver asked them if this was the location and “Shawn looked at me and I said, ‘I don’t know.’” Paul recalled in that look, he thought “Shawn was prodding me to commit the robbery.”

Ultimately, they pulled on a gravel road. Once there, Paul got out of the car. At first, when the victim saw the gun, he asked if this was a “joke.” Paul pointed the gun at the victim and told him to get out of the car and Shawn got in the driver’s seat. Paul told the victim to empty his pockets. They had a conversation in which Paul told him to strip to his underwear because it was Paul’s intention to leave the driver there so he would have to walk home. At some point, however, Shawn flashed the lights and honked the horn and told Paul to “hurry the fuck up.” Again, Paul told the victim to “take your clothes off, man. I’m gonna make you walk home. And he’s like, ‘Don’t leave me out here with nothing.’” Instead of listening, the victim kept moving toward Paul and Paul repeatedly told him to back up and take off his clothes. Paul explained that by this point, he was “mad and scared.” Paul remembered feeling his hand squeezing the gun as he shot the victim, then he got in the car and Shawn drove away. Soon thereafter, the police apprehended them.

Paul said looking back on this, he believes he was involved because “I was a punk kid. I was a stupid kid. I just didn’t have a lot of my own friends and I thought too much of what other people thought about me. As strange as it is, that’s when other peoples’ opinion mattered to me more than what I saw in myself, because I only saw myself as they did. I didn’t have my own identity as Paul in my own mind.” When asked about how he feels about what he did, without hesitation Paul said, “I regret the whole thing... I completely wish it didn’t happen.”

Paul acknowledged they wore bandanas during the crime. When asked why they did so if they intended to kill the victim, Paul reiterated, “I didn’t plan on killing him, I only planned on robbing him. That is why I stripped him down. He would have to walk. Nobody would pick him up and that would give us time to get back.”

AFTER THE ARREST

(Paul was the informant for this section.)

Paul described life after the offense. Paul described an incident he remembered which occurred when he was in the detention center. Specifically, Paul's cellmate tried to hang himself and Paul prevented him from committing suicide by alerting authorities. Paul indicated that this young man Frankie, has since written him and thanked him for "saving his life."

South Dakota State Penitentiary

Paul described how prison was "scary" for him when he arrived and how there was so much about life he did not know. For example, he did not have a Social Security number and the guards thought he was pretending not to know this identification and called him "punk kid." Paul recalled within days of being at the facility, he was sexually assaulted. Paul described difficulty he had adjusting to the rules and structure of the facility. He felt the rules were arbitrary because no one explained them to him, instead they just expected him to follow the rules without question.

Paul has had a variety of jobs in the facility. He explained he likes to keep busy. However, initially he was not able to take the GED test because he was too young, so he simply enrolled in the course and kept enrolling until he reached the age where he could take the test. He has since earned his GED. Paul has taken a writing class and a keyboarding class. He tried to take another class in 2009/2010 but was not allowed to do so. He has wanted to take a paralegal course, but he did not have the funds and prison inmates are not eligible for grants.

Paul explained over time, he has learned to deal with his attention deficit, anxiety, and depression. He has learned cognitive strategies to help him cope with these issues, as well as strategies to increase his ability to communicate with others without engaging in power struggles or appearing oppositional. Paul openly acknowledged he has struggled with thoughts of suicide. Consistent with the records, he described the two instances in which he tried to hang himself.

When asked to explain his history of infractions, Paul said, "I didn't care about write ups. They didn't have an effect on me. I felt like my purpose here was doing a life sentence. It wasn't for rehabilitation because they don't offer that for lifers and since I was never supposed to get out, I was just here until I died..." In retrospect, Paul realizes that he was testing boundaries and at other times, he felt disrespected so "I got mouthy." I asked Paul to explain why he had so many write ups for loitering and being in the wrong area. According to him, he needed to spend time outside his cell, as it helped him cope. According to Paul, the previous warden customized a job for him so regardless of the

season, he could spend prolonged periods of time outside his cell. Paul proudly explained, "I have had it [the job] for four years. I do better when I'm out and I can work and stay active and have things to do and when I don't, I end up getting pent up, down on myself, and get into trouble."

CLINICAL OPINION

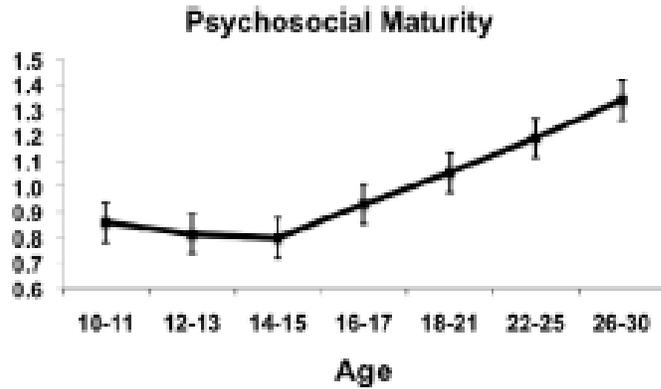
Social science has demonstrated, and the Supreme Court has accepted, the many ways in which adolescents and adults differ (see *Miller v. Alabama*; *Graham v. Florida* and the briefs that were submitted for these cases as well as *JDB*). From a scientific perspective, a key component of these normal adolescent changes is that adolescents do not use their frontal lobe, the part of the brain that is credited for things such as the ability to anticipate conflict and to think abstractly and sequentially in the same manner as adults (see: Blakemore, 2012; Blakemore & Choudhury, 2006; Lenroot, Rhoshel & Giedd, J. 2006; Luna, Padmanabhan, et al 2010; and Weinberger, et al 2005).

Normal Adolescent Development

According to the National Institute of Mental Health, the adolescent brain "does not begin to resemble that of an adult until the early 20s." These changes in the brain influence the manner in which adolescents and adults go about a task. Hence, "adolescents and adults seem to engage different parts of the brain to different extents during tests requiring calculations and impulse control, or in reaction to emotional content." (National Institute of Mental Health)

Two major brain systems undergo changes during adolescence. These systems develop at different rates and on different timelines. One system, the reward system (or socio-emotional network), impacts impulsivity, sensation seeking, ability to resist peer pressure, and future orientation. (These are aspects of psychosocial maturity.) This system "turns on" quickly at the onset of puberty and involves the limbic areas of the brain. The figures that follow depict the results of a variety of studies, which examined if psychosocial maturity changes as a function of age. Each aspect of psychosocial maturity is not as developed when a person is 17 years old as it is when they are in their 20s.

Figure 1
Psychosocial Maturity (Standardized Composite Scores) as a Function of Age (in Years)



From: Steinberg (2009)

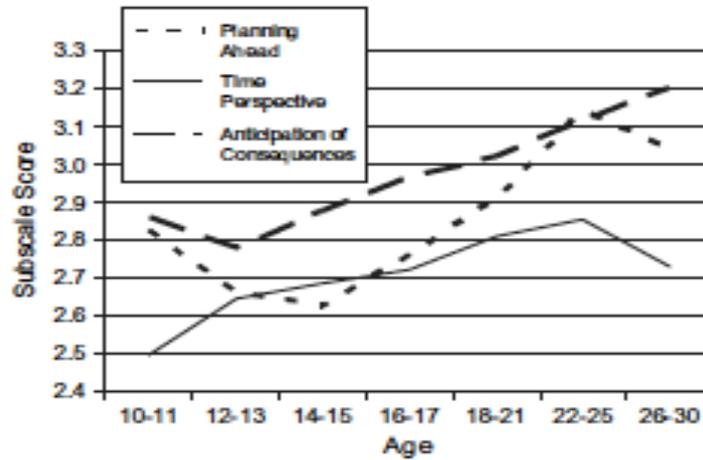


Figure 2. Age differences in planning ahead, time perspective, and anticipation of future consequences.

From: Steinberg (2009)

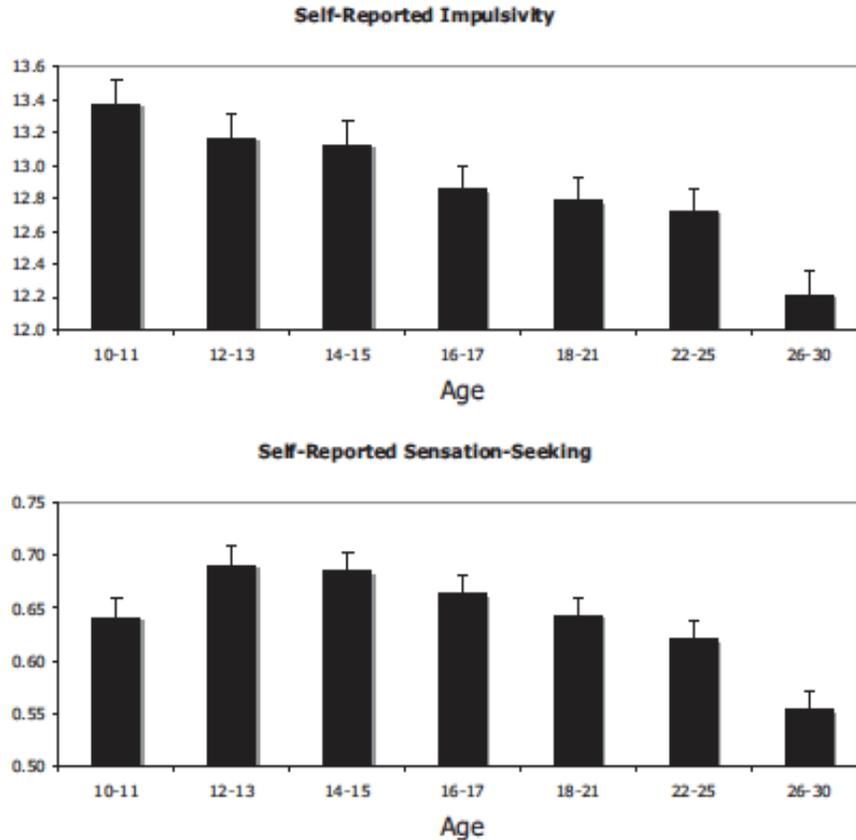


Figure 1. Age differences in self-reported impulsivity and sensation seeking. Impulsivity scores can range from 6 to 24. Sensation-seeking scores can range from 0 to 1. The linear trend for impulsivity is significant at $p < .001$; the linear and quadratic trends for sensation seeking are significant at $p < .001$ and $p < .005$, respectively. Error bars represent the standard errors.

From: Steinberg (2008)

The other system is often referred to as the cognitive-control system, which involves the prefrontal cortex (PFC). This is the last area of the brain to fully mature and its maturation process, unlike the socio-emotional network, is a gradual one. The PFC, often referred to as the CEO of the brain, is tasked with functions such as controlling impulsivity, forming strategies, planning, anticipating and weighing consequences, empathy and insight.

Consequently, according to Weinberger et al. (2005), “Impulse control, planning, and decision-making are largely prefrontal cortex functions that are still maturing during adolescence.” Additionally, “the ability for the brain to plan, adapt to the social environment, and to imagine possible future consequences of action or to appropriately gauge their emotional significance, is still developing throughout adolescence.”

Shulman and Cauffman (2013) demonstrated that compared to adults, adolescents perceive more rewards than risk when facing a dangerous situation and coined the term “reward bias” to describe this phenomena. In a sample of non-court involved subjects,

reward bias increased during adolescence (peaking for 16-17 year olds), and decreased with age. The impact of age on reward bias was robust, and held, even when they only looked at subjects who were involved in the criminal system and pled guilty or had been found guilty.

The differences in the way the brain functions can also explain why adults and adolescents have different abilities to resist peer pressure and respond differently when their peers are around. Adolescents are not as able as their adult counterparts to resist peer pressure.

As the figure below demonstrates, Steinberg and Monahan (2007) conducted a study involving nearly 4,000 males and females ages 10-30 to examine if the ability to resist peer pressure changes with age. The figure below depicts their results:

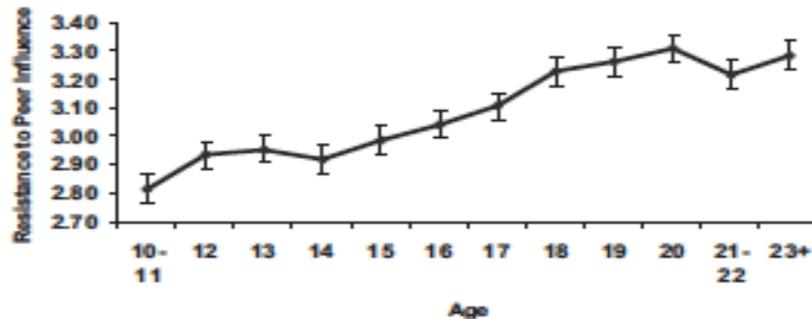
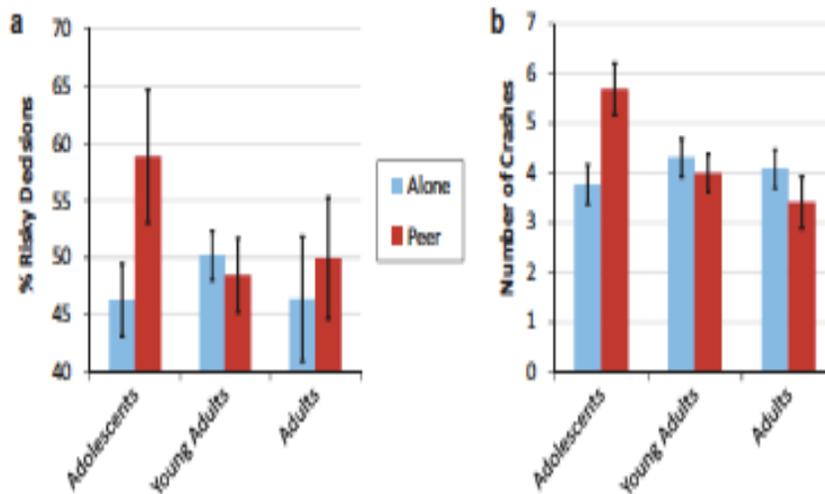


Figure 1. Age differences in resistance to peer influence. Higher scores on the Resistance to Peer Influence measure indicate greater resistance to peer influence.

From: Steinberg and Monahan (2007)

Research has shown that unlike adults, adolescents are more likely to change their behavior when they are in the presence of their peers. For example, using a standard video game paradigm, Chein (2011) and his colleagues demonstrated that adolescents, but not adults, took more risks, which resulted in more disastrous outcomes when their peers were watching. These results are depicted in the figure that follows.



From: *Chein et al. (2011)*

While they performed the tasks, subjects were connected to a machine that measured which parts of the brain were being engaged. Chein et al. (2011) demonstrated that the reward system was more active in adolescents compared to adults when their peers were watching. Additionally, adults engaged the prefrontal cortex more, regardless of whether they were in the presence of their peers or not.

In explaining how these two systems of the brain operate, Larry Steinberg, a leading national expert in adolescent psychology explained, “Indeed when the socio-emotional network is not highly activated (for example, when individuals are not emotionally excited or are alone), the cognitive-control network is strong enough to impose regulatory control over impulsive and risky behavior, even in early adolescence. In the presence of peers or under conditions of emotional arousal, however, the socio-emotional network becomes sufficiently activated to diminish the regulatory effectiveness of the cognitive-control network. Over the course of adolescence, the cognitive-control network matures, so that by adulthood, even under conditions of heightened arousal in the socio-emotional network, inclinations toward risk taking can be modulated.” (Steinberg, 2007, p 2) Thus, like adults, adolescents can demonstrate less risky behavior when alone. However, unlike adults, adolescents are more likely to display impulsive and risky behavior when they are with their peers or are emotionally excited.

The changes in the brain described thus far are a part of normal adolescent development. Normal adolescent development also involves other changes that distinguish teens from adults. Adolescence is a time of change in cognitive development (how one thinks, reasons and understands). Along with normal changes in cognitive development come exploration of their identity in terms of what they believe and how they feel about themselves. As their

sense of autonomy grows, their identity should become less fragmented and changing. Until that point, it is normal for adolescents to “try on different identities.” (APA, 2002) Identity development, as is the case with other aspects of development, is influenced by the environment and the adults and peers in a young person’s life. Although family is still important to adolescents, peers and adults outside the home become increasingly important in an adolescent’s development and autonomy.

The American Psychological Association offers a concise overview on the various aspects of adolescent development, *Developing Adolescents, A Reference for Professionals* (APA, 2002). This reference concisely describes the different domains of development that are normative during adolescent. The domains are: physical, cognitive, emotional, social and behavioral. These domains will be briefly discussed because Paul had to maneuver them while he was in incarcerated.

Regarding the physical domain, the resource warns that adults working with or adolescents need to prepare the adolescent for the changes that they are about to experience. Furthermore, the timing of sexual maturation impact boys and girls differently. Boys who sexual maturation occurs later, and it is likely that this was the case for Paul given his obesity, “places[s] boys at greater risk for depression, conflict with parents and school problems” (p. 8).

Adolescence is also period of cognitive development. Along with these changes it is normal for adolescents to “argue for the sake of arguing...jump to conclusions...be self-centered... constantly find fault in the adults’ position... [and] be overly dramatic” p. 11. Given these normative adolescent characteristics, it is not surprising that Paul would acquire many disciplinary reports as an adult prison is not designed to respond to these normative changes.

Emotional development refers to the process by which an adolescent learns to regulate their emotions and develop empathy and a sense of identity. Social identity development has to do with the role peers play and how they influence an adolescent. Adolescence is a time when “preoccupation with how their peers see them can become all-consuming. The intense desire to belong to a particular group can influence a young adolescent to go along with activities in which they would otherwise not engage.” p. 21 Finally, the domain of adolescent behavior has to do with many factors, in part the risk taking that has already been discussed.

Lastly, it seems important to offer the Court some information on adolescence and delinquency. First, research has consistently demonstrated the prevalence of offending changes across the life span. This principle is often referred to as the “age-crime curve.”

Offending increases from childhood to late adolescence when it peaks, and then decreases into adulthood. Additionally, the Office of Juvenile Justice and Delinquency Prevention (Mulvey, 2011) recognizes most adolescent offenders, even those who commit felony offenses, do not continue offending as adults.

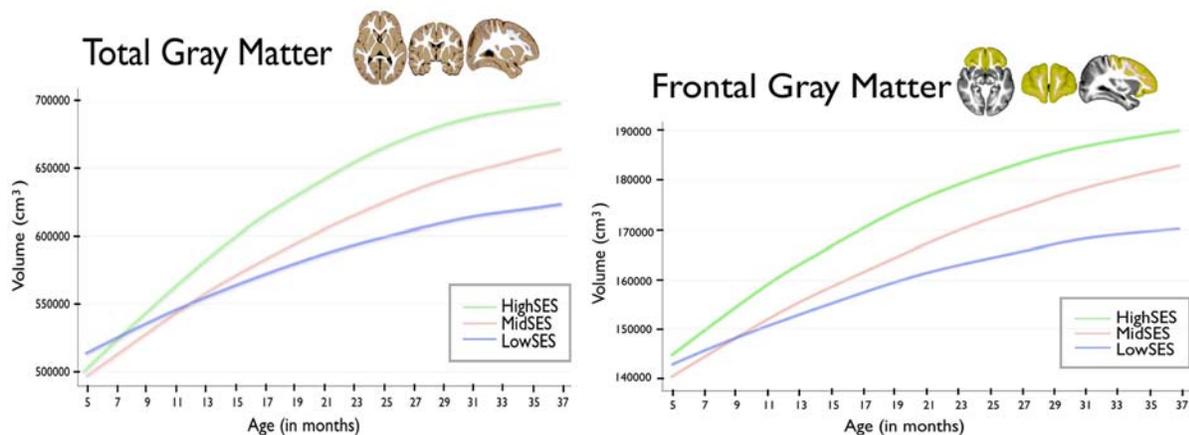
The following factors have been explicitly cited in *Miller* as factors that the Court should consider in resentencing:

Paul's Family and Home Environment

Paul's home environment and family had many factors that increased his risk for delinquent activities and/or poor mental health outcomes. These factors included: poverty/housing instability, maternal depression, and sibling victimization.

Poverty/Housing Instability

Paul was raised in poverty. A study completed by Hanson and colleagues last year looked at the impact of poverty on infant brain development. The subjects in these studies were healthy male infants whose brains were scanned using an MRI repeatedly over a set period of time. The authors wanted to see if differences existed in the gray matter of the brain as well as in the frontal lobes. As the graphs below demonstrate, the scientists found that poverty does, in fact, impact the overall volume of gray matter as well as the volume of gray matter in the frontal lobe.



From: Hanson, et al (2013)

Paul was inadequately supervised and this lack of consistent and appropriate supervision was, in part related to poverty as well as Ms. Jensen's being the sole breadwinner and the need for her to work. However, the lack of adequate supervision contributed to his contacts with social services and the justice system and contributed to his academic difficulties. The impact of housing instability and poor quality housing has been extensively and empirically examined. School age children who do not have residential stability have more

behavioral and emotional problems than their counterparts with stable housing (See Jellyman and Spencer, 2007 for a review of the literature.) Paul's history is noteworthy for the level of housing instability he experienced.

Sibling Victimization

It is clear Paul's sister repeatedly assaulted him. Paul described this aspect of their relationship prior to his involvement in the current case (see HSC records). In fact, prior to this case he told his treatment providers he was afraid of his sister. Research has shown that sibling violence is not a rare phenomenon and increases the likelihood that the victim will engage in high-risk behaviors such as delinquency, aggression and substance use and have poorer mental health outcomes (Button, & Gealt, 2010, and Tucker et al, 2013). Furthermore, Tucker and colleagues (2014) found the odds of being the victim of peer victimization was greater when the child or adolescent was also the victim of sibling victimization.

Paul experienced both sibling and peer victimization (in early 1994 Paul indicated that among his concerns were the fact "kids pick on me."). Yet these issues were not sufficiently addressed. In my clinical opinion, Paul's victimization played a key role in this offense. In his case the person who psychically assaulted him, was also the person who, at times, stood up for him and protected him. As this was a fundamental aspect of one of his primary relationships, this paved the way, in my clinical opinion for Paul to become involved in subsequent abusive relations. Furthermore, the nature of his relationship with his sister left him ill-equipped to gauge if subsequent relationships were in his best interest and made him particularly vulnerable to peer victimization or being victimized by those whom he called "friends." In my clinical opinion, based on the records reviewed and my clinical evaluation, this dynamic was at play in Paul's relationship with his co-defendant.

Maternal Depression

Paul's father committed suicide when Paul's mother was pregnant with Paul. This left Ms. Johnson grieving while she was pregnant and then after Paul's birth, she was plagued with periods of depression. By her report and that of her daughter, Ms. Jensen's depression left her unable to care for Paul's emotional needs.

Empirically the impact of maternal depression on children and adolescents is clear. Research has demonstrated the association between maternal depression during pregnancy and subsequent adolescent behavior. For example, Hay et al. (2101) found that "mothers' depression in pregnancy placed their children at a twofold risk for antisocial outcomes [by age 16}, and at a fourfold risk for violent behavior." p. 160 This same study demonstrated that "adolescents who were violent had been exposed to maternal depression in a greater number of time periods." p. 158. Thus, a child whose mother experiences repeated bouts of depression is at risk for demonstrating violence during adolescence. Furthermore,

research has demonstrated an association between maternal depression and parenting styles. Depressed mothers are more likely to be neglectful and emotionally unavailable (Kohl et al, 2011) (Another factor that contribute to Ms. Jensen's inability to care for Paul's emotional needs was her own history of being sexual abused.)

In an extensive review of the literature, Goodman and colleagues (2011) highlight the correlation between mental depression and poor behavioral outcomes for the children of those depressed mothers. Also, maternal depression is associated with higher levels of aggression in adolescents (Pugh & Farrell, 2012). In my clinical opinion, Ms. Jensen's history of depression and role that her depression played in contributing to Paul's behavior prior to the offense is germane to the issue at hand.

His Characteristics

Paul's history of delinquency is a relevant factor for the Court to consider. Paul's history is problematic for many reasons, one of which is the age at which it started. Unfortunately, youth who engage in delinquency at a younger age are more likely to continue to engage in delinquent activities during adolescence, but it does not necessarily mean they will continue to engage in antisocial or illegal activities as an adult.

Another relevant characteristic is Paul's mental health needs. The documents reviewed indicate that prior to this offense, Paul's mental health issues were identified but it is not clear if they were properly treated. For example, as part of his evaluation to determine if he was eligible for special education services he underwent a psychological evaluation. The evaluator determined that Paul suffered from depression. Similarly, by February of 1995 Paul's previous mental health counselor recommended him for inpatient adolescent treatment and wrote, "Certainly, his behavior is indicative of a depressed adolescent and his current conduct problems may very well be related to the fact that he is depressed and extremely unhappy."

Another factor to be considered by the Court is out-of-home placements. Paul has had one out-of-home placement and it was related to his mental health needs. He was a patient at HSC and upon discharge was to be in outpatient treatment but he and his mother did not follow through with this recommendation as she moved her family yet again. In addition to suffering from a mood disorder, by the time of the offense, Paul was actively abusing substances. Yet, he had never received treatment for this problem.

From a psychological perspective Paul was a complex adolescent. On the one hand he was impulsive, had difficult regulating his emotions, often engaged in power struggles, and could be intimidating. On the other hand, he was needy and desperate for friends. His desire to

have friends was so great that he surrounded himself with people who were as likely to belittle him as they were to be friendly toward him.

The Circumstances of the Offense

Paul recognizes the heinous nature of the crime and regrets participating in the offense. As he described it, the crime was supposed to be limited to robbery. Although this may seem to be an excuse, the fact that they wore bandanas suggests their intent was simply to rob the victim and not kill him. Consistent with this, Paul explained, "I didn't plan on killing him, I only planned on robbing him. That is why I stripped him down. He would have to walk. Nobody would pick him up and that would give us time to get back." From an adult perspective the likelihood that the encounter would end well is very slim but from a development perspective it is understandable why an adolescent would fail to recognize the risk involved.

In my clinical opinion, Paul's relationship with his co-defendant is relevant. By all accounts Paul looked up to his co-defendant. Hence, he represents a person of authority and person who could offer guidance. As Shawn was dating Paul's sister, Paul also saw the co-defendant as a friend. Unfortunately, Paul did not have many friends and those he did have belittled and teased him frequently. This was the case for the co-defendant.

The robbery was the co-defendant's idea. Paul contends he did not want to participate. One could argue that the co-defendant did not use physical force to get Paul to participate and Paul was free to leave at any time. However, from a developmental perspective, it is clear that force is not needed to get adolescent to engage in behavior they would not engage in otherwise or that poses a great risk (this literature has been reviewed). Thus, as a part of normal adolescent development, peer influence is great enough to get an adolescent to engage in behavior that might require force to enlist the participation of an adult. In my clinical opinion, the influence of peers was greater for Paul because he was so "hungry" for friends. Finally, another relevant aspect of the crime is that the co-defendant had an extensive criminal background and was on probation at the time the crime was committed.

The Possibility for Rehabilitation

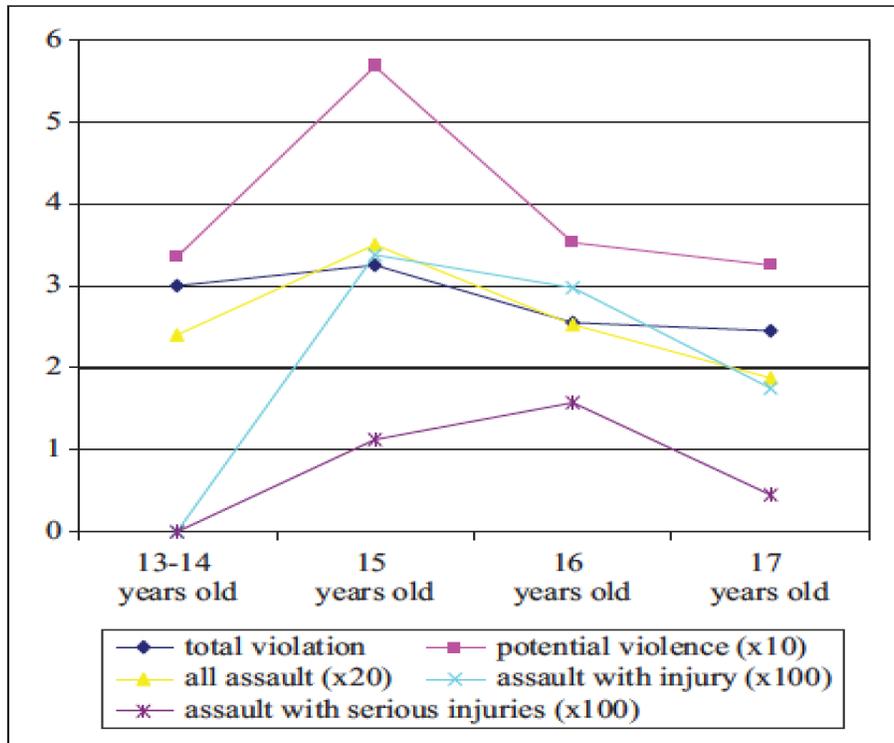
In this case many factors point to the possibility for rehabilitation. First and foremost is Paul's capacity for empathy and goodwill. This was evident when his roommate in the detention center attempted to commit suicide. Paul intervened to prevent this from occurring. Although the records are no longer available (per his legal team), a Staff Supervisor at the time confirmed Paul intervened and saved his cellmate's life.

Paul's behavior within the SDSP is also a relevant factor to be considered. However, in addressing this factor, it is important to note the Department of Justice (2000) advised, for a myriad of reasons, against housing adolescents in adult facilities. Some of these

reasons include the differences in which adult and juvenile facilities respond to residents' behavior that is not consistent with expectations. Typically, juvenile facilities operate on a point system as this system reflects a fundamental understanding of the manner in which the brains of adults and youths function differently. Thus, a point or level system is more developmentally appropriate for youths. A point system rewards a youth for displaying the behaviors worked on in therapy or that are consistent with the rules and expectations of the system.

In contrast, the adult system punishes "bad" or "inappropriate" behavior and does not reinforce "positive" behavior. In fact, the Department of Justice (2000) noted in the adult system "staff would benefit from the development of methods to provide incentives for good behavior and for increasing the level of engagement of the youthful offender populations with the available programming. Here again, most juvenile correctional systems have implemented a variety of positive management programs that allow youth to receive increasing levels of privileges based on good behavior. Such initiatives have proved to be effective methods for managing juvenile populations. Yet, adult correctional systems rarely use or have any experience with such systems." p. 86 Furthermore, the Department of Justice (2000) also recognized how ill-fitted programming is for the juvenile detainee housed in adult facilities. Specifically, the Department of Justice (2000) recognized within the adult system, "existing programming was designed to respond to these issues as manifested in the typical adult offender and lacked a more developmentally responsive adaptation of the curricula. Although this situation may be driven by the relatively small number of juveniles in most adult facilities, the lack of appropriate programming for youth in adult facilities remains a major shortcoming in the management of these offenders." p. 67

Since the Department of Justice (2000) has recognized that the behavior management "system" in an adult prison is not developmentally appropriate for an adolescent, it is important to put Paul's infractions in perspective. Literature has shown there are developmental trends in the number of infractions among adolescents who are housed in adult facilities. The following charts depict the results from Kuanliang et al (2008) which looked at the level of infractions in the Florida Penitentiary over multiple years. Ultimately the sample consisted of 703 juvenile inmates and over thirty-three thousand adult male inmates. The chart on the following page depicts annual infraction rates for juvenile inmates by age and clearly demonstrates a development trend in infraction rates.



Kuanliang et al (2008) also demonstrated for adult inmates, infractions decrease as the inmates age. They found the “rate of these most serious assaults was 7.86 per 1,000 among the juvenile prisoners; 2.69 per 1,000 among youthful adult prisoners [age 18-20 years old] and 1.38 per 1,000 among all adult prisoners.” (Kuanliang et al, 2008 p. 1197)

In addition to the developmental trend in the acquisitions of infractions among adolescents placed in adult facilities, I also think it is important to examine Paul’s infractions within the context of his mental health needs. In my clinical opinion, his infractions were often related to his unmet mental health needs. As these needs were successfully managed, the number of his infractions decreased.

Other factors indicative of Paul’s possibility for rehabilitation are his scores on the tests administered as part of this assessment. Currently, Paul does not display, per the MMPI-2-RF, any clinical needs, thereby increasing the possibility of rehabilitation. However, it should be noted that at the time of the evaluation Paul was taking psychotropic medication to address symptoms of ADHD, and anxiety and depression. Paul’s performance on the PPI-R indicated he does not have more psychopathic traits than the average person in the community and has fewer traits than the average male inmate. This is not what one would expect if the heinous crime represented a stable part of his character.

On the other hand, his performance on the IORNS suggests Paul does have higher than average supervision and treatment needs but this is not surprising given Paul has spent more of his life in a locked facility than he has spent in the community. His performance on the IORNS suggests he will need assistance adjusting if he were to return to the community.

A review of SDSP records indicated he has successfully utilized the mental health services while in SDSP and when his symptoms are not managed, he has increased behavioral issues. Consequently, it is my clinical opinion it's imperative mental health services are a fundamental part of Paul's supervision plan.

Another factor relevant to the issue of rehabilitation is victim empathy, remorse and regret. Currently and since committing the offense, Paul has expressed remorse and regret for this serious crime. This is evident in testimony offered on prior court dates and in how he currently describes the offense. For example, Dr. Snell, a minister, testified, "Paul displayed remorse and discussed the impact of his actions and concern for the family of the victim he had murdered." Similarly, Dr. Brendtro told the Court Paul said he is "haunted" by what he did and "I think all the time about if he had a family, how they feel." Consistent with this, in the current evaluation, Paul stated, "I regret the whole thing... I completely wish it didn't happen."

Respectfully submitted,



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**APPENDIX A:
RECORDS REVIEWED AND RELIED UPON FOR THIS REPORT**

- I. Department of Social Service Records
 - A. DSS records on Sherilyn Jensen, PDF
 - B. DSS records on Paul Jensen, PDF

- II. Records Predating the Offense
 - A. Office of the Attorney General, Police, and Court Records
 - i. Timeline from Office of Attorney General
 - ii. SAO PDF document, 10 pages
 - iii. Sixth Circuit Court Services, 83 page PDF
 - iv. Pierre Police Department records, 94 pages
 - v. Court record-task juvey, 49 page PDF
 - vi. Cody, Wyoming police reports, 4 page PDF
 - vii. Marshall, Minnesota police reports, 28 page PDF
 - viii. Hughes County Court Services juvenile prehearing social case study, various juvenile police records, 106 page PDF
 - B. Academic records
 - i. Attendance sixth grade, 2 page PDF
 - ii. Jefferson Elementary School, 154 page PDF
 - iii. Marshall Junior High School records, 15 page PDF
 - iv. Pierre School, 1 page PDF
 - v. Buchannan Elementary School records, 121 page PDF
 - vi. HSC Alternative School, 36 page PDF
 - C. Other treatment records
 - i. Capital Area Counseling documents, two PDFs, one 103 pages and the other 77 pages (most of these records were duplications)
 - D. Mental health records
 - i. HSC records

- III. Police and Court Records Related to the Current Offense
 - A. Autopsy of Mr. Hare
 - B. DCI reports, PDF document totaling 102 pages
 - C. Lac Qui Parle court report regarding Springer.PDF
 - D. Judgment of conviction for Paul Jensen, dated 11/26/1996
 - E. Transcript from State of South Dakota v. Shawn Springer, change of plea and arraignment hearing, 08/19/1996

- IV. South Dakota State Penitentiary Records

- A. Disciplinary reports from 1996-present
 - B. Major disciplinary report timeline
 - C. Minor disciplinary report timeline
 - D. Special security records
 - E. Mental health history documents from 1994-July 2014
 - F. Work history records
- V. State of South Dakota Department of Health certificate of death for Paul Jensen

ⁱ Lac Qui Parle court report regarding Springer.PDF, probation department records Lyon and Lincoln Counties of Minnesota, as well as the State of Minnesota Lyon and Lincoln Counties juvenile probation agreement

ⁱⁱ Transcript from State of South Dakota v. Shawn Springer, change of plea and arraignment hearing, 08/19/1996

ⁱⁱⁱ Judgment of conviction for Paul Jensen, dated 11/26/1996

^{iv} <http://www.apa.org/ed/graduate/specialize/forensic.aspx>

^v Timeline from Office of Attorney General

^{vi} Timeline from Office of Attorney General

^{vii} Pierre School, 1 page PDF

^{viii} Buchanan Elementary School records, 121 page PDF

^{ix} Jefferson Elementary School, 154 page PDF

^x HSC Alternative School, Yankton, 36 page PDF

^{xi} DSS, Paul Jensen's PDF

^{xii} HSC admission, history, and physical examination

^{xiii} This is consistent with the State of South Dakota Department of Health death certificate for Paul Dean Jensen, which lists the cause of death as strangulation and the manner of death suicide