



Testimony of

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**Before the Senate Judiciary Committee
Hearing on Felony Murder**

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Good Morning Chairmen Greenleaf and Leach and members of the Senate Judiciary Committee. My name is John Adams, and I am the Berks County District Attorney and President of the Pennsylvania District Attorneys Association. I am also a former criminal defense attorney. I have represented violent individuals, including some who are in state prison right now, for having been convicted of second degree murder.

Under Pennsylvania law, criminal homicide constitutes second degree murder when it is committed while the defendant was engaged as a principal or an accomplice in the perpetration of a felony. Not just any felony, but a violent felony: robbery, forcible rape or involuntary deviate sexual intercourse, arson, robbery, burglary, and kidnapping. As this list demonstrates, only killings committed during these heinous and brutal crimes can subject a defendant to conviction for murder of the second degree. These offenses are all appropriate predicate felonies for felony murder because those engaged in these violent offenses know or should know that they involve a substantial risk of death. Indeed, engaging in these dangerous offenses necessarily places a low value on the lives of other individuals.

Additionally, Pennsylvania law provides that both a principal and an accomplice can be convicted of second degree murder. But this does not mean that merely being present when one of these dangerous felonies and accompanying homicides occurs is sufficient to convict someone of felony murder. Consider that to be an accomplice, the Commonwealth must prove the following two elements to the factfinder beyond a reasonable doubt: 1) that the person had the intent of promoting or facilitating the commission of the violent felony; and 2) that the person solicited, encouraged, or requested the other person to commit the felony, or aided, agreed to aid, or attempted to aid the other person in planning or committing the felony. These acts represent affirmative and significant acts in committing the felony.

Those who have committed these offenses must not be deified. They are criminals. They engaged in specific and intentional acts which ultimately caused or significantly contributed to someone else's death. This does not mean that we cannot talk about reform, however. But we cannot ignore the cold reality is that any reform is reform about murderers.

I'd like to go through a few examples of individuals who were convicted of second degree murder and sentenced to life sentences without the possibility of parole in an effort to illustrate the type of conduct we are discussing here:

Murder of Robert Chae

In a case prosecuted personally by my colleague Montgomery County District Attorney Kevin Steele and State Representative Todd Stephens, on January 8, 2010, a jury found Joseph Page and Amatadi Latham guilty of Second Degree Murder for brutally causing the death of Robert Chae on January 9, 2009, during a home-invasion burglary at Mr. Chae's home in North Wales, Montgomery County. The defendants tied up Mr. Chae and wrapped his face in duct tape, which led to his suffocation and ultimate death after they viciously beat him and left him in a pool of his own blood to die in his garage.

Page, Latham, and another individual confronted Mr. Chae and his wife in their driveway as he and his wife were preparing to leave for work early that morning. They tied up Mr. & Mrs. Chae and their two children, pointed guns in their faces, and held them captive while demanding that the family provide the men with money. These defendants violently assaulted Mr. Chae – his arms were bound behind his back, virtually his entire face and head were covered with duct tape, leaving only a small portion of his nose uncovered, which was clogged with blood stemming from the vicious beating by these intruders. Mr. Chae died of asphyxia as a result of these men

covering his head and face with duct tape, and beating him so aggressively that he was bleeding profusely, blocking the small air hole they left under his nose leaving him unable to breathe.

Not only was the Chae family put through a horrible ordeal in having their own home broken into, their personal dignity stripped as they were bound and forced to turn over possessions at gunpoint, but they endured the unthinkable: the loss of their husband and father at the hands of these men. The Chae family's one chance at feeling some semblance of security is knowing that these men are in jail for the rest of their lives without the possibility of parole. To allow these defendants a chance at parole would open up the wounds that the Chae family closed up and have been trying to forget for nearly a decade.

Murder of Richard Barbour

On April 24, 1992, a jury convicted Yerodeen Williams of second degree murder for shooting and killing a New Jersey State prosecutor who was taking money out of an ATM in Penn's Landing, Philadelphia, on April 28, 1991. Williams and his co-conspirator had planned to commit a robbery that night, and they were scouting out potential victims in Head House Square, which is a popular destination for tourists and residents, lined with bars and restaurants in Philadelphia. Williams ultimately set his sights on Richard Barbour, who happened to be a New Jersey prosecutor, whom Williams saw withdraw cash from an ATM on Pine Street. While pointing a gun at Barbour's head, Williams demanded Barbour's money, but Barbour hesitated. Williams pulled the trigger, firing into Barbour's skull. Williams grabbed the victim's wallet and fled as the victim lay on his back, bleeding profusely from his head, nose, mouth, and ears – dying.

Richard Barbour's family endured a devastating loss, especially for its loved one to be murdered in such a brutal way – by execution. It was able to move forward from this tragic event knowing the man who took its loved one away would be behind bars for the rest of his life, unable to hurt anyone else. Opening up the possibility of parole for Yerodeen Williams will open up wounds for Mr. Barbour's family that have had the opportunity to heal, which is unfair to the family and will most certainly diminish its faith in the justice system.

Murder of S.D., an Eleven-Year-Old Boy

On September 24, 2000, the victim, an 11 year-old-boy, left his grandmother's home to go outside and ride his bike down East Ohio Street on the North Side of Pittsburgh. While on this bike ride, the victim encountered a homeless man, Joseph Cornelius, who convinced the boy to accompany him into a field along the 800 block of East Ohio Street. Once there, Cornelius proceeded to perform oral sex on the victim. After this sexual encounter, the victim reached for Cornelius' Walkman cassette player. Upon determining that the victim was attempting to steal his Walkman, Cornelius grabbed the boy, placed him on his back, climbed on top of his stomach and chest and choked him to death. Cornelius then left the crime scene and went to a nearby tavern. After having some beers at the tavern, he returned to the crime scene and proceeded to use a broken beer bottle to remove the victim's genitals, make an incision down the abdominal area of the victim, and pull some of the intestines from the abdominal cavity, in what Cornelius described as an effort to make the murder look like a pedophile committed the crime rather than a homeless person. Cornelius subsequently threw the victim's genitals, as well as other evidence of the murder, from the 9th Street Bridge into the river. The victim's body was found on September 25, 2000 at approximately 9:44 p.m. Cornelius proceeded to trial before a jury and

was convicted on October 6, 2001 of second degree murder (and other charges) for the heinous acts he forced the 11 year-old-boy to endure in September of 2000.

Murder of Andre Parker

On January 4, 2016, Nasheem Greenslade and Eiane McCullum brutally murdered Andre Parker, shooting him eleven times, in the face, neck, and chest in the 300 block of Burchfield Street in Harrisburg. Two girls, who believed that only a robbery was going to occur, lured Andre Parker and John Cooksey to Burchfield Street for sex at Greenslade and McCullum's direction. When Parker and Cooksey got out of the cab, expecting to meet these two girls, they were ambushed with gunfire. Multiple firearms were used and a total of eighteen fired cartridge casings were recovered. A jury convicted both Greenslade and McCullum of second degree murder and they were sentenced to life in prison.

Murder of James William., Jr.

On July 7, 2009, Douglas Stephenson and Travis Hawkins murdered James William, Jr., a 53 year old jitney driver, in the Sheridan area of the city of Pittsburgh. Hawkins and Stephenson had planned to rob the victim – Stephenson provided Hawkins with a gun to use, while Stephenson went into the passenger side and started punching the victim in the head. When Hawkins pointed the gun at the victim, he tried to pull the gun out of Hawkins' hand, and Hawkins pulled the trigger, shooting the victim in the chest. Each defendant was convicted of second degree murder and sentenced to life imprisonment for their involvement in the killing of James William, Jr.

Murder of Kareem Borowy

On May 5, 2013, Omar Miller, Andre Collier, Rasheed Teel, and Charles Freeman devised a plan to rob nineteen-year-old Kareem Borowy. Freeman drove the group to Borowy's house in Pottstown, Pennsylvania, and waited in the car while Miller, Teel, and Collier entered the residence. Once inside, Collier, armed with a .45 caliber Glock pistol, demanded that Borowy hand over a large quantity of marijuana and \$3,000.00 in cash. Borowy pleaded with the robbers, insisting that there was no money in the home. Sensing that the trio was growing impatient, Borowy falsely told them that he kept his money in a "stash house" at a different location. The men then took Borowy outside and forced him into the getaway car. Freeman drove away from the residence, presumably intending to travel to Borowy's contrived stash house. When the vehicle slowed down on a rural roadway in Lower Pottsgrove Township, Borowy managed to escape from the vehicle. Collier chased after Borowy and shot him twice. When he returned to the vehicle, Collier told the others that he saw Borowy fall to the ground, and instructed Freeman to drive away. Although severely injured, Borowy managed to crawl on his hands and knees to the main roadway. A passing motorist spotted Borowy laying beside the road a short time later and called 911. When the police arrived, Borowy was unresponsive. He was pronounced dead at the scene. On April 21, 2014, following a five-day jury trial, Miller and Freeman were convicted of second-degree murder, robbery, kidnapping, conspiracy to commit kidnapping, and conspiracy to commit robbery. (Collier was convicted of first degree murder and Teel pled and testified against the co-defendants). Both were sentenced to a life sentence because of their role in the murder of Kareem Borowy.

There is an avenue for relief for some of those convicted of second degree murder. Current Pennsylvania law does permit murderers serving these sentences to prove that they are rehabilitated and seek release through the commutation process. The commutation process is available to all inmates. Article 4, Section 9 of the Pennsylvania Constitution vests in our Governor the power to order a commutation on unanimous recommendation of the Board of Pardons. When an inmate files a petition for commutation, the Board of Pardons considers a number of pertinent factors. The Board looks at whether an appropriate period of incarceration has been served based on the circumstances of the offense. The Board also considers whether the inmate maintained an appropriate prison conduct record, examining both serious and minor prison misconducts as a reliable indicator of the rehabilitation of the applicant. The inmate's success in a prison work program and other self-improvement programs in the correctional facility are also relevant. The Board also considers the impact on the victim(s) and their families. Board regulations require that victims or next of kin be notified and given the opportunity to appear at the hearing or make a confidential submission in writing.

Therefore, if an inmate can convince the Board of Pardons that he or she is worthy of a commutation based on these reasonable, common-sense factors, the Board will send a favorable commutation recommendation to the Governor. If the Governor agrees with the Board, the inmate can obtain a release from custody. Therefore, there is a remedy in place now under current law. The Board of Pardons can examine factors such as whether the convicted individual was a "mere look-out" or instead played a meaningful role in the commission or planning of the crime.

I also believe that once the Clean Slate Bill is enacted into law, we will see fewer requests for pardons for misdemeanors, thus reducing the workload of the Board of Pardons such that it will have time to consider more serious and complicated cases.

One of the most critical issues here relates to victims' rights. Families of murder victims rely on the finality of judgments. It is especially difficult and trying when the family member of a murder victim who expected a life sentence is faced with the very real possibility that the person convicted of the murder of his or her family member could be paroled, notwithstanding an original life sentence. When this happens, they often are retraumatized, wounds are reopened, and a sense of hopeless and despair develops. We have seen these reactions following the decision by our Supreme Court in *Miller v. Alabama*, which held that mandatory life sentences for juvenile murderers are unconstitutional, and that decision applied retroactively. If there were ever to be a change in law, therefore, applying it retroactively would be devastating and cruel.

And it would be unconstitutional. In *Commonwealth v. Sutley*, 474 Pa. 256 (Pa. 1977), our Supreme Court examined whether a statute that directed individuals previously convicted of marijuana possession should be resentenced under a new statute that reduced penalties. The Court held that such a statute fatally interfered with the final judgments of the judiciary. In doing so the Court noted that it is "elementary that the legislature may not, under the guise of an act affecting remedies, destroy or impair final judgments obtained before the passage of the act, and this principle prohibits not only a statutory re-opening of cases previously decided by the court but also legislation affecting the inherent attributes of judgments . . ." Therefore, the Court concluded that judicial judgments and decrees entered "may not be affected by subsequent legislative changes after those judgments and decrees have become final."

I want to again thank you. I am happy to answer any of your questions.