

DATE TYPED: April 8, 2020
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IN RE: GREGORY LOTT, CCI #A198-547

**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: February 11, 2020

Minutes of the **SPECIAL MEETING** of the
Adult Parole Authority held at 4545 Fisher Road Suite D,
Columbus, Ohio 43228 on the above date.

IN RE: Gregory Lott, CCI #A198-547

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder, Aggravated Burglary, Aggravated Robbery

DATE, PLACE OF CRIME: July 14, 1986 in East Cleveland, Ohio

COUNTY: Cuyahoga

CASE NUMBER: CR211002

VICTIM: John McGrath (age 80)—Deceased

INDICTMENT:

- Count 1: Aggravated Burglary w/specifications (victim Rosa Augustine)
- Count 2: Aggravated Robbery w/specifications (victim Rosa Augustine)
- Count 3: Felonious Assault w/specifications (victim Rosa Augustine)
- Count 4: Kidnapping w/specifications (victim Rosa Augustine)
- Count 5: Aggravated Murder w/specifications (victim John McGrath)
- Count 6: Aggravated Burglary w/specifications (victim John McGrath)
- Count 7: Aggravated Robbery w/specifications (victim John McGrath)
- Count 8: Kidnapping w/specifications (victim John McGrath)
- Count 9: Aggravated Arson w/specifications (victim John McGrath)

TRIAL: Found guilty by a three-judge panel of Aggravated Murder w/specifications (count 5), Aggravated Burglary w/specifications (count 6), and Aggravated Robbery w/specifications (count 7).

On recommendation of the Prosecutor's Office, counts one (1) through four (4) were severed. Rule 29 motion granted on count 8. Count 9 was nulled.

DATE OF SENTENCE: July 29, 1987 (count 5)
July 31, 1987 (counts 6 and 7)

SENTENCE: Count 5: Death
Count 6: 15 to 25 years
Count 7: 15 to 25 years

ADMITTED TO INSTITUTION: August 19, 1986

JAIL TIME CREDIT: 553 days

TIME SERVED: 402 months (does not include jail time credit)

AGE AT ADMISSION: 25 years old

CURRENT AGE: 58 years old

DATE OF BIRTH: June 25, 1961

THREE-JUDGE PANEL: James J. McGrath, James F. Kilcoyne, James J. McMonagle

PROSECUTING ATTORNEY: John T. Corrigan

FOREWORD:

A clemency proceeding in the case of Gregory Lott, A198-547, was initiated by the Ohio Parole Board pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On February 6, 2020, the Parole Board interviewed Lott, who appeared via videoconference from the Chillicothe Correctional Institution. A clemency hearing was held on February 11, 2020 with nine (9) members of the Parole Board participating. Both arguments in support of clemency and arguments in opposition to clemency were presented.

The Parole Board considered all the written submissions, arguments, and information disseminated by presenters at the hearing, as well as the judicial decisions. The Parole Board deliberated upon the propriety of clemency in this case. With eight (8) members participating, the Board voted six (6) to two (2), to provide a favorable recommendation for clemency to the Honorable Mike DeWine, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE:

The following account of the instant offense was obtained from the Supreme Court of Ohio opinion, decided on June 6, 1990, affirming Lott's convictions and death sentence¹:

In August 1983, a burglar broke into John McGrath's East Cleveland home three separate times. After each break-in, McGrath, the murder victim, then seventy-nine years old, called the East Cleveland Police Department. On August 24, 1983, detectives placed a clean drinking glass upside down over a quarter on McGrath's dining room table. In September of 1983, McGrath called the police after another break-in. As proven by fingerprints, a burglar had moved the glass and taken the quarter. Three years later, police identified the appellant, Gregory Lott, by his fingerprints, as having burgled McGrath's home on September 7, 1983 and stolen that quarter.

On July 12, 1986, McGrath, driving his 1982 Ford Escort, stopped and cashed a check for \$21 at a savings and loan. Patricia Hill, the head teller, described McGrath as chipper and in fine spirits and good health that Saturday morning.

Two days later, around 9:15 a.m. on Monday morning, July 14, 1986, a Cleveland housewife, Diedrea Coleman, noticed that same Ford Escort parked in her neighborhood. The driver, a young male, remained sitting in the car almost two hours, though he moved it once. Her suspicions aroused, Coleman walked by the car, looked closely at the driver, noted the license plate number, and called the police twice that morning from a pay phone a block away. The car left around 11:20 a.m. and came back thirty minutes later. Coleman watched the driver walk over to the yard of her elderly neighbors, the Turks. Coleman later noticed the driver running from the Turks' house carrying a brown bag under his arm. Shortly afterwards, she and Mr. Turk found Mrs. Turk bruised and shaking with her blouse undone. Coleman, a trained artist, drew a sketch of the driver for the police. Two weeks later on July 28, 1986, after the police showed her various photos several times, Coleman identified Lott, from a photo array, as the suspicious Ford Escort driver.

City of Cleveland detectives traced the Escort's license number given to them by Mrs. Coleman, discovered it belonged to McGrath, and stopped by McGrath's home. Unable to get a response, they asked the East Cleveland police to check on McGrath's welfare. On July 15, 1986, uniformed officers stopped by McGrath's house. Also unable to get a response, they entered through an unsecured kitchen door. Inside, they found the house in shambles and ransacked, with drawers pulled open and their contents dumped on the floor.

Police found McGrath lying on the floor in a downstairs bedroom. Conscious and moaning, McGrath complained of pain and suffering from burns. It appeared from the scene that McGrath had been doused with flammable lamp oil and then set on fire. His face also had dried blood on it. Paramedics rushed McGrath to a hospital.

Treating physicians described the burns as causing greenish ooze and having the odor of rotting flesh. When first seen by treating physicians, McGrath was severely dehydrated to a degree consistent with having received burns more than twelve hours old. The second degree burns, estimated as covering twelve percent to eighteen percent of his body, extended over his right back, right side, lower and upper left side, both arms and both knees. His initial treating physician, Dr. Bruce Oppenheimer, noted a bruised left eye, apparently caused by a blunt

¹ *State v. Lott* (1990), 51 Ohio St.3d 160, 555 N.E.2d 293

impact injury resulting in swelling and bleeding. That physician believed, with reasonable medical certainty, that because of McGrath's age, and judging by the appearance and odor of the burns, that McGrath would not survive these injuries.

McGrath died in the hospital of acute bilateral bronchopneumonia on July 23, 1986. Dr. Jay P. Logeman, one of McGrath's treating physicians, noted that the pneumonia was caused by the burn injuries, the lack of early medical treatment for those burns, and the patient's age. The deputy coroner noted crusted abrasions on McGrath's wrist, knee and ankle. He ruled the death a homicide.

McGrath's home revealed compelling circumstantial evidence of what occurred. When found, McGrath wore a blue shirt which covered his burns, but was not scorched itself. Dried fluids were present on the shirt, and a strong odor emanated from the burns. The trousers he wore were burned. Within a foot of McGrath's body, police found a telephone cord that had a plug on one end and was frayed on the other. On a nearby cabinet, police found a quart bottle of flammable lamp oil with the cap missing. The cap was later found on the bed. Only one third of the oil remained. Charred drapes and a sheet were found on the floor, but police did not see other evidence of a fire.

A burglar had forcibly entered McGrath's home by removing a rear basement window from its frame, leaving a gaping hole. The burglar had forcibly pried loose an entire panel on the door leading from the basement to the kitchen, splintering the panel into pieces. Evidence of theft or attempted theft abounded, with drawers in the bedroom and kitchen open and their contents dumped. The bed's mattress was askew on the box springs. Police recovered McGrath's Ford Escort in the early morning of July 16.

According to a police reports, various items of evidence linked Lott to this crime. A shoeprint in the dust in McGrath's bedroom generally matched the pattern found on Lott's tennis shoes. Police recovered those shoes from the trunk of Lott's automobile when they arrested him. Police found Lott's fingerprints on a church contribution envelope in McGrath's home. Police also found Lott's fingerprint on a dresser in McGrath's bedroom. Lott had driven McGrath's stolen automobile more than twenty-eight hours before police found McGrath. Police arrested Lott on July 30, 1986 based on Coleman's identification.

Lott was indicted on three different occasions. On August 8, 1986, the grand jury indicted Lott on two counts of aggravated burglary, two counts of aggravated robbery, felonious assault, two counts of kidnapping, aggravated murder with a felony murder specification, and aggravated arson. On August 12, 1986 the grand jury indicted Lott on four counts of aggravated burglary, felonious assault, four counts of aggravated robbery, kidnapping, gross sexual imposition, and petty theft. Finally, on October 17, 1986, Lott was re-indicted for aggravated arson. The indictments alleged crimes against six victims, including McGrath, and contained prior felony and violence specifications. After arraignment on each indictment, Lott pled not guilty. Because Lott was indigent, the court appointed counsel to represent him. On June 23, 1987, Lott waived a jury trial. Additionally, at the request of the state, the court severed all counts except those relating to McGrath. The court then ordered the trial to proceed, without Lott's objection, for all offenses committed against McGrath: aggravated murder; two counts of aggravated burglary, one for the 1983 and one for the 1986 break-in; aggravated robbery; kidnapping; aggravated arson; and petty theft for the 1983 break-in.

On July 13, 1987, a panel of judges tried Lott for all the offenses relating to McGrath. On July 16, 1987, at the close of the prosecution's case, the court dismissed the kidnapping charge. The

prosecution also was permitted to amend the aggravated murder charge and the felony murder specification in order to delete the references to kidnapping. On July 17, 1987, the court panel found Lott guilty of the aggravated murder of McGrath, two counts of aggravated burglary, aggravated robbery, aggravated arson, and petty theft. Lott was also found guilty of the death specification of murder during robbery and burglary, and of specifications alleging a prior felony conviction in all charges but the petty theft and one aggravated burglary charge.

Following a sentencing hearing, the trial panel determined, beyond a reasonable doubt, that the aggravating circumstance outweighed any mitigating factors. Thereafter, the trial court sentenced Lott to death for the aggravated murder, fined him \$ 41,000 and imposed maximum terms of consecutive imprisonment for the other offenses. On March 27, 1989, the court of appeals affirmed the convictions and death sentence, modified the sentence for one of the aggravated burglary convictions, and disapproved the fines due to Lott's indigence.

PRIOR RECORD:

The following information was obtained from the Post-Sentence Investigation completed on October 19, 1987:

Juvenile Offenses: According to the Cuyahoga County Juvenile Court, Gregory Lott has no known juvenile criminal history.

Adult Offenses: Gregory Lott has the following known adult arrest record:

| <u>Arrest Date</u> | <u>Offense</u> | <u>Location</u> | <u>Disposition</u> |
|---------------------------|---|------------------------|--|
| 09/07/1983 | Aggravated Burglary Petty Theft (A198-547) (CR211261) | East Cleveland, OH | 07/31/1987: 15-25 years* 09/01/1987: Admitted to prison 04/19/1989: Sentence modified & corrected to 10-25 years |

*On April 19, 1989 the court's sentence of July 31, 1987 (of 15-25 years) was modified and corrected by the order of the journal entry and mandate issued by the Eighth District Court of Appeals on March 27, 1989 to read that Gregory Lott was sentenced on count one (1) for a term of ten (10) to twenty-five (25) years.

| | | | |
|------------|---|--------------------|---|
| 10/12/1983 | Aggravated Burglary Aggravated Robbery Gross Sexual Imposition (R138-016) (CR186888) | East Cleveland, OH | 04/04/1984: 5-25 years cc/w 6 months ISS; Placed on 3 years probation. 08/11/1986: Probation revoked and original sentence |
|------------|---|--------------------|---|

| | | | |
|------------------------|--|--------------------|---|
| | | | imposed. |
| | | 08/19/1986: | Admitted to prison |
| 08/29/1985 | Drug Law (Possession of Marijuana, less than bulk) (R138-016) (CR203178) Cleveland, OH | 04/29/1986: | 6 months OSR ISS; Placed on 2 years probation. |
| | | 09/11/1986: | Probation revoked And original sentence Imposed. |
| | | 08/19/1986: | Admitted to prison |
| 07/14/1986 | Aggravated Arson (A198-547) (CR212720) | East Cleveland, OH | 07/17/1987: 15-25 years 09/01/1987: Admitted to prison |
| 07/14/1986 (Age 25) | Aggravated Murder Aggravated Burglary Aggravated Robbery (A198-547)) (CR211002) | East Cleveland, OH | INSTANT OFFENSE |

Lott was admitted to prison on August 19, 1986 under inmate # R138-016. On September 1, 1987, he was turned over to inmate # A198-547 as a result of his death sentence.

Institutional Adjustment:

Lott was admitted to the Ohio Department of Rehabilitation and Correction on August 19, 1986. His work assignments while incarcerated at the Southern Ohio Correctional Facility (SOCF) included food service worker, recreation worker, and porter. While at the Mansfield Correctional Institution (MANCI), Lott's work assignments included porter, student, and laundry attendant. His work assignments while incarcerated at the Ohio State Penitentiary (OSP) included laundry attendant, porter, and environmental servicer. Presently, Lott is a material handler at the Chillicothe Correctional Institution.

Lott was enrolled in school while at SOCF from 1988 to 1989. He enrolled in GED classes while at MANCI from April 1999 to December 2002. Lott completed a film group project through Mental Health in March 2010.

Since his admission, Lott has accumulated no disciplinary infractions resulting in his being placed in disciplinary control, local control, or restrictive housing. However, Lott has received the following 3 conduct reports that did not result in placement in disciplinary control, local control, or restrictive housing. Those rule infractions include:

- Disobedience of a direct order and refusal to carry out work or other institutional assignment(s) in 1989. Lott was not supposed to leave his school classroom but did so

anyway and was found to be out of place. Lott received a verbal reprimand for this rule infraction.

- Possession of contraband in 1997. Lott was found to be in possession of a mattress and food items from the kitchen. The items were destroyed, and Lott was re-classed to a different job as a result of this rule infraction.
- Possession of contraband in 2000. Lott was found to be in possession of contraband headphones. The headphones were returned.

APPLICANT'S STATEMENT:

On February 6, 2020, members of the Ohio Parole Board conducted an interview with Lott via videoconference from the Chillicothe Correctional Institution.

The following individuals observed the interview via videoconference but did not participate: Sarah Ackman, Deputy Legal Counsel, Office of Governor Mike DeWine; Steve Gray, DRC Chief Legal Counsel; Brenda Leikala, Assistant Ohio Attorney General; Margaret (Meggan) Moore, Assistant Ohio Attorney General; Stephen Ferrell, Attorney for Lott; Dana Hansen Chavis, Attorney for Lott; Christopher Schroeder, Assistant Prosecutor, Office of the Cuyahoga County Prosecuting Attorney; and Katherine Mullin, Assistant Prosecutor, Office of the Cuyahoga County Prosecuting Attorney.

Parole Board Chair Trayce Thalheimer introduced herself and the other members of the Parole Board to Lott and then identified the individuals who were observing the interview but were not participating. She explained the purpose of the clemency interview to Lott and noted that Lott's clemency hearing was scheduled for February 11, 2020.

Chair Thalheimer gave Lott a brief overview of the process for the offender and noted that although he had been granted a reprieve by the governor, the Parole Board would still conduct a clemency hearing. Lott indicated that was indeed his understanding.

Upon being asked by Chair Thalheimer what he would like the Board to consider in determining whether to make a favorable or unfavorable recommendation for clemency in his case, Lott indicated he would prefer commutation to life with parole eligibility but would accept life without parole.

Chair Thalheimer then asked Lott to make a statement regarding his offenses of conviction. He stated that due to drugs, and so forth, he is unaware of exactly what he did, but "from what he has seen" he is responsible for the death of the victim. It should be noted that Lott maintained this narrative throughout the entire interview.

Lott acknowledged that he was on probation at the time of the offense, and that he cannot deny that he committed the other burglaries that he was accused of at the time. Lott said that he wasn't always breaking the law—that just started after he started getting high.

Lott then spoke about his youth. He lived with his mother, five brothers and sister. He was the youngest of the family. His mother was a single mother who worked outside of the home,

cleaning houses. He was going to school, but he said that he wasn't doing too well in school. Lott was in special education classes and he began skipping school around age 15 or 16 when he started using drugs. He said that he started with marijuana and alcohol and then progressed to cocaine. Lott said that some of his siblings were drug users and that two of his brothers had legal problems that resulted in prison sentences. He said that when he and his siblings got into trouble, they would get a whipping, but not a full-on beating, by their mother. Lott denied being punished with any frequency. Later, when they got into trouble, they would be grounded.

Lott stated that, at first, when he was using drugs, he didn't get into trouble. Then, in 1983 at about age 22, he broke into a home when a lady was present; he took some money from the lady and then made her disrobe. He initially received probation for this offense, and during his intake interview with a probation officer, he denied being intoxicated. While on this probation, he received a conviction for a drug law violation. He states that while he was on probation, he was using marijuana, cocaine and alcohol daily. He was living at home with his mother at the time. He managed to conceal the seriousness of his problems from his mother in the beginning. Although he was urine tested regularly, he did not do any substance abuse treatment at that time.

When asked if he had any idea how many places he broke into, Lott said no. He made it sound as though he would just see a house and break into it. Acknowledging that he didn't really care whether the homes he broke into were occupied at the time or not, he said that he was mostly looking for quick money for drugs. Lott said that the only time he ever had a weapon was when he would find one at the scene; he couldn't recall whether he ever took a weapon with him. Since all his victims were elderly, Lott was asked whether he specifically targeted this vulnerable population. He responded that while it might appear that he specifically preyed on the elderly, this wasn't the case. He stated again that he was not that kind of person, that it was the drugs. When it was pointed out that drugs don't cause people to commit crimes, they only lower a person's inhibitions to do things they might not otherwise do, he vigorously disputed this and said it was all the drugs. Lott was also asked whether he comprehended the inherent cruelty in dousing not one, but two victims in accelerants, and he responded yes.

Chair Thalheimer next turned to the instant offense. She pointed out that according to the parole board's records, he broke into the victim's house three (3) times. Lott denied that he broke into the victim's home three (3) times, but admitted that he broke in twice.

Chair Thalheimer then asked Lott what memories if any, he had of that entire day. He denied any memory of any activity that day. He said that his understanding of the offense is that he took lamp oil to the house, poured it on the victim, and set the victim on fire. When questioned further about the lamp oil, he stated it was *said* that he brought it with him, but that turned out to not be true. He also acknowledges that he stole some items and the victim's car. When asked why he stole the car in this burglary when he hadn't in any other burglary, he said he had no idea. He acknowledged that he used the car when he was burglarizing another house. He denied previously knowing the victim and said he just picked the house at random.

Lott stated that he couldn't control himself at all at that time, and that he is not the same person. When asked why his behavior escalated, he stated that drugs "make" people hurt people. He reiterated that what he did was not something he would normally do. He continued to maintain that everything hinged completely on his drug use. When pressed on various board members

regarding his spotty recall of events, Lott said he just knows the facts as presented in the court case. When he was asked whether it was possible that he actually remembered events but simply couldn't accept it, he said no, he would admit everything if he remembered.

Lott claimed that while he was in jail, he was interviewed by an East Cleveland police detective, who completely fabricated a statement that he denies making. He denies testifying at his own trial. Lott also stated that he does not believe he had a fair trial because he claimed the prosecutor lied to the judges when he said that there was nothing in the house that burned lamp oil. Lott said he feels horrible about what happened. Lott said he is responsible but was vague regarding what his responsibility includes. When pressed for more explanation, he said he can't describe the way he feels. He does appear to have some limited empathy for the victims of his crime.

Lott said that his primary contact with the outside world is a church from Columbus and that he receives regular visits from church members. He also has pen pals from overseas. He denied any contact with his siblings after his mother's death in 2016. Aside from email correspondence with a niece, it appears that his mother was his sole conduit to the family.

As a porter for Death Row, Lott cleans up after meals. He reads and watches sports. His reading materials include sporting magazines, books and newspapers. He said that he has limited access to community service at CCI. He said that he gets along well with his fellow inmates. He states that he has only had two or three infractions, all minor. He has attended a Kairos weekend and said that if you really pay attention you can get something out of it. He said that if he was to be placed into general population, he would still be the same guy, and that he tries to counsel the younger inmates to stay away from the "nonsense". He said that being incarcerated probably saved his life.

In conclusion, Lott apologized for putting the parole board through the interview. He stated that he is a different guy, who spends most of his time trying to help others, both staff and inmates.

ARGUMENTS IN SUPPORT OF CLEMENCY:

At the hearing held on February 11, 2020, arguments in support of clemency supplementing the written application previously received were presented to the Board by Lott's attorney, Stephen Ferrell.

Ferrell opened his presentation with a brief overview of the issues to be presented on Lott's behalf:

- Victim John McGrath's family supports clemency for Lott.
- Lott is intellectually disabled.
- Lott's case was tainted by prosecutorial misconduct and his defense counsel's dishonesty.
- The Ohio Supreme Court Joint Task Force recommended that Ohio eliminate the felony murder aggravator.

Attorney Ferrell first discussed the parole board's February 6, 2020 interview with Lott, stating that the inmate obviously did not express himself well during his interview. He suggested that Lott's falling back on "stock answers" was a demonstration of his intellectual disability rather than evasiveness on Lott's part. He admitted that Lott's lack of detail regarding the instant offense is frustrating, but he does not know the source. Attorney Ferrell said Lott is obviously remorseful and that he would only have committed the crimes under the influence of drugs and alcohol. He said that he believes that the strongest demonstration of Lott's remorse is his successful adaptation to prison rules. Attorney Ferrell expressed his belief that Lott's expression of remorse is not artful, but it is indeed sincere.

Victim's family supports clemency

Attorney Ferrell presented a brief history of the McGrath family. They do not know why John McGrath left his family. He simply did, and they were unable to locate him once he left, although his ex-wife frequently asked his brother if he was aware of McGrath's whereabouts. The family only learned of his death when their mother began receiving augmented Social Security checks. At that time, the family contacted the East Cleveland police department and were aware that he had been murdered, but they feel that they were excluded from his prosecution. Due to their strong Catholic faith, the family is opposed to the death penalty in general, and they are specifically opposed in this case. The defense submitted affidavits obtained from one of the victim's surviving daughters and several grandchildren in 2014. Attorney Ferrell acknowledged that they did not speak to the entire surviving family, only those who represented themselves as speaking for the entire family. His daughter has expressed her opinion that the state is being dismissive of the family's input in this case.

Attorney Ferrell noted that Lott has written the McGrath family expressing his regret and sorrow and asking for their forgiveness.

Attorney Ferrell presented a video of Father Luigi Miola, whose church McGrath regularly attended. Father Miola stated he has been in contact with McGrath's family and confirms their opposition to Lott's execution in this case, but said that the family wants him to serve the rest of his life in prison to contemplate the seriousness of his actions. Father Miola also described the victim as a regular attendee at mass and a daily communicant. He believes that the victim was a reconciler, and that one should reach out to the marginalized, of which Lott is one. Based upon the victim's devout faith, Father Miola believes that McGrath would oppose the death penalty for his killer.

Also, in support of the family's wishes regarding the execution of Lott, Attorney Ferrell referenced the letter submitted by Archbishop Christophe Pierre, Apostolic Nuncio for the United States of America.

Attorney Ferrell went on to reference Lott's 2014 evaluation by Dr. Jeffrey Smalldon, a neuropsychologist which describes Lott as having "some degree of underlying brain impairment, relatively mild in nature but certainly not insignificant for being "mild". Regarding Dr. Smalldon's diagnosis of a frontal lobe injury, he acknowledges that there have been no brain scans, but contends that there is no possibility of confirmation of the diagnosis of frontal lobe injury through current brain scans. There is also no known traumatic injury, but it is possible that the injury took place prior to Lott's birth.

He discussed *State v. Ford*, stating that it expressly overruled *State v. Lott*, opening the door to the conclusion that Lott is intellectually disabled under the new ruling. He laid out the *Ford* holding's three (3) key elements for determining intellectual disability in the context of eligibility for the death penalty

1. Intellectual functioning deficits (indicated by an IQ score approximately two standard deviations below the mean, i.e., a score of roughly 70 or lower when adjusted for the standard error of measurement)
2. Significant adaptive deficits in any of the three adaptive skill sets (conceptual, social and practical)
3. The onset of these deficits while the defendant was a minor.

Attorney Ferrell also noted that *Ford* indicated that the Flynn effect should at least be considered in an evaluation of intellectual disability. He stated that *Ford* notes that the focus should be on an individual's deficits rather than their strengths, so if the individual demonstrates some skills or ability to adapt "some" to their environment, it does not preclude a finding of intellectual disability. Attorney Ferrell stated that they have refiled based upon *Ford*, but they are unsure whether the case will be accepted. Attorney Ferrell also acknowledged the probability of an appeal if the filing was not accepted.

Attorney Ferrell concluded his presentation with a video of Lott's niece, D'jenara Carlisle requesting clemency for her uncle. She said that he is loved. She remembered him taking her to the store and hanging out on the porch with his friends. She said that he was always there.

Lott is intellectually disabled

Dr. Bob Stinson, a board-certified forensic psychologist and attorney expressed his opinion on Lott's intellectual disability based on a review of Lott's records, evolving standards in the field and recent case law, specifically *State v. Ford*.

Dr. Stinson summarized the three core elements in *State v. Ford* for determining intellectual disability as it regards eligibility for the death penalty:

- Intellectual-functioning deficits as indicated by an IQ score
- Significant adaptive deficits in any of the three adaptive skill sets: conceptual, social and practical. Deficits in one of the three areas is sufficient
- Onset of these deficits while still a minor

As applied to Lott, Stinson contends that when correctly adjusted, Lott's IQ score is roughly 70 or lower, thus meeting the first threshold for intellectual disability.

He next outlined Lott's adaptive deficits or the second threshold, thusly:

- Deficits in the conceptual domain demonstrated by his generally poor performance in school
- Deficits in the social domain demonstrated by his lack of social skills, difficulty controlling anger, few friends and impaired problem-solving ability
- Deficits in the practical domain demonstrated by his school absenteeism and dropout, inability to maintain employment and drug and alcohol abuse

Finally, Stinson pointed out that evidence that Lott meets the third threshold, onset of adaptive deficits while a minor, is demonstrated throughout his school records.

Dan Kobil, professor of the Capital University Law school next argued that clemency is appropriate in Lott's case for several reasons.

- The victim's family supports commutation.
- The Supreme Court has overturned Lott's previous case regarding his mental disability or lack thereof.
- The prosecutor in the case misrepresented the issue of Lott's intent in his closing statement.
- Lott's federal habeas attorney was disciplined for misrepresentations he made to the district court in 2002.
- Lott's case used the felony murder aggravator, which has been criticized as producing racial disparity in the application of the death penalty.

Lott's attorney concluded his presentation by asking the Parole Board to grant Lott's request that his sentence be commuted to life without parole.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Christopher Schroeder, Assistant Cuyahoga County Prosecutor, presented arguments in opposition to clemency.

Attorney Schroeder stated that at the request of the NAACP, the Cuyahoga County Prosecutor's office met with the inmate's attorneys for an hour to discuss the issues presented at the clemency hearing. The county prosecutor's death penalty review committee has reviewed this case twice under two different prosecutors. In both instances, the committee unanimously rejected the option to not oppose the execution of the inmate based upon the circumstances of the case.

Attorney Schroeder said there are no words to describe the suffering John McGrath was subjected to by Lott, and that is the reason that Lott is on death row. Attorney Schroeder then went on to describe the residents of the homes Lott broke into; they were all 70 years or older. Attorney Schroeder stated that Lott was obviously profiling and targeting his victims for their vulnerability.

Attorney Schroeder noted that he was present for Lott's interview. He felt it was very noticeable that the details that Lott conveniently forgot about were details that would reflect poorly on him. He pointed out that Lott said, "That doesn't seem like something I would do" but was exactly something he would do. Lott also poured turpentine on victim Poole.

Attorney Schroeder then moved on to address the issue of McGrath's family's opposition. He stated that the victim appears to have simply left his family behind, that there was no contact, and that none of his grandchildren ever met him. He contended that the board also has to look

at the opinions of the people who knew the victim best. Two friends who were close to the victim in his later years support execution for Lott. Attorney Schroeder pointed out that while the victim's family should always be given deference, given the schism in the family, the opinion of this particular victim's family should perhaps not be weighed as heavily as it normally would. Attorney Schroeder agreed that there was no contact with the victim's children, however, as the prosecutor's office **was** in contact with the victim's brother, Edward Lenza, they are assuming that Mr. Lenza was keeping the rest of the family up to date with the progress of the case.

Attorney Schroeder stated that the aggravating specification is intended to include the worst of the worst cases and questioned how anyone could say that Lott's actions were not the worst of the worst from a moral perspective. This was not just a robbery, it was also a burglary, a kidnapping and a felonious assault. Ohio is not an outlier in having this specification, and the United States Supreme Court has upheld it.

Attorney Schroeder next addressed the issues of prosecutorial and defense misconduct by pointing out that both issues have been litigated with the courts finding that neither issue would have impacted the outcome of the case.

Attorney Schroeder discussed the issue of Lott's claim of intellectual disability by stating that to date there has been no compelling evidence of intellectual disability. None of the evaluations have pointed to intellectual disability. In fact, both of his experts found him not to be intellectually disabled. Attorney Schroeder went on to describe several cases with defendants having IQs similar to Lott's where the Supreme Court determined there was no intellectual disability. Attorney Schroeder expressed strong doubts that Lott would be found to have an intellectual disability, even if reviewed under *Ford* standards, and he pointed out that if the board granted clemency to Lott, it would bar the state from ever having its day in court to rebut the evidence presented at the clemency hearing.

Assistant Attorney General Steve Maher next argued that Lott's self-directed behavior removed him from the realm of the intellectually disabled as determined by the United States Supreme Court in *Atkins v. Virginia*. He stated that *Atkins* was decided on the premise that the intellectually disabled tend to be followers and are led down a path by bad actors. He contended that Lott's solo actions, committing daytime burglaries against vulnerable victims, remove him from consideration as intellectually disabled.

Assistant Attorney General Maher also pointed out that Randall Porter, the public defender in Lott's appellate case, did not lie to the court. He refused to answer a question from the court that he should have answered on the grounds that answering it would harm his client's case.

Attorney Schroeder concluded the presentation by stating the state opposes any consideration for clemency in this case.

The Cuyahoga County Prosecutor's Office was given the opportunity to rebut the argument regarding Lott's intellectual disability under the new standard through their own assessment, but they submitted a letter indicating they would be unable to do so in a timely manner due to Lott declining to be assessed by their expert and the advent of the COVID-19 emergency. In their letter, the Cuyahoga County Prosecutor's Office reiterated its belief that the courts rather

than the Parole Board are the appropriate venue to resolve the issue of Lott's intellectual disability.

VICTIMS' REPRESENTATIVES:

An affidavit submitted by the victim's grandson, who represents the family, states that the family is opposed to death penalty for Lott.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Ohio Parole Board conducted an exhaustive review of the documentary submissions and carefully considered the information presented at the clemency hearing. The Board reached a decision to provide a favorable recommendation regarding clemency based upon the following:

- Several Parole Board members cited the victim's family's opposition to the death penalty as well as Father Miola's video testimony regarding the victim's own views on the death penalty as being very persuasive and sufficient reason to overturn the death penalty in this case.
- One Parole Board member felt that Lott had effectively demonstrated intellectual disability enough to overturn the death penalty in this case.
- Another Parole Board member noted concern with the disproportionate application of the death penalty to low income and minorities as impacting his decision as well.

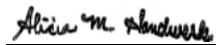
The Parole Board members who voted to deny clemency did so based upon the following:

- Lott did not present conclusive evidence of intellectual disability on the part of Lott enough to overturn the death penalty. They were concerned that the expert that presented to the Parole Board had not actually met with Lott in person, and that the State has not had the opportunity to evaluate Lott based upon *State v. Ford*.
- During his criminal career, Lott was self-directed and was not led into this crime or any other crimes by another individual, belying the assertion that he had significant adaptive deficits.

RECOMMENDATION:

The Ohio Parole Board with eight (8) members participating, by a vote of six (6) to two (2), recommends to the Honorable Mike DeWine, Governor of the State of Ohio, that Executive clemency in the form of commutation to life without eligibility for parole be granted in the case of Gregory Lott.

Adult Parole Authority
Ohio Parole Board Members
Voting **Favorable**



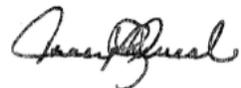
Alicia Handwerk, Chair



Scott Widmer



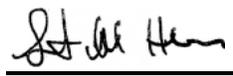
Kathleen Kovach



Tracy Reveal



Glenn Holmes

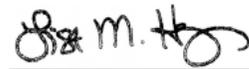


Steve Herron

Adult Parole Authority
Ohio Parole Board Members
Voting **Unfavorable**



Marc Houk



Lisa Hoying
