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BEFORE THE BOARD OF PARDONS AND PAROLE
STATE OF UTAH

In re. the death sentence of RALPH LEROY MENZIES Offender Number: 113858	RESPONSE IN OPPOSITION TO PETITION FOR COMMUTATION AND FOR A COMMUTATION HEARING

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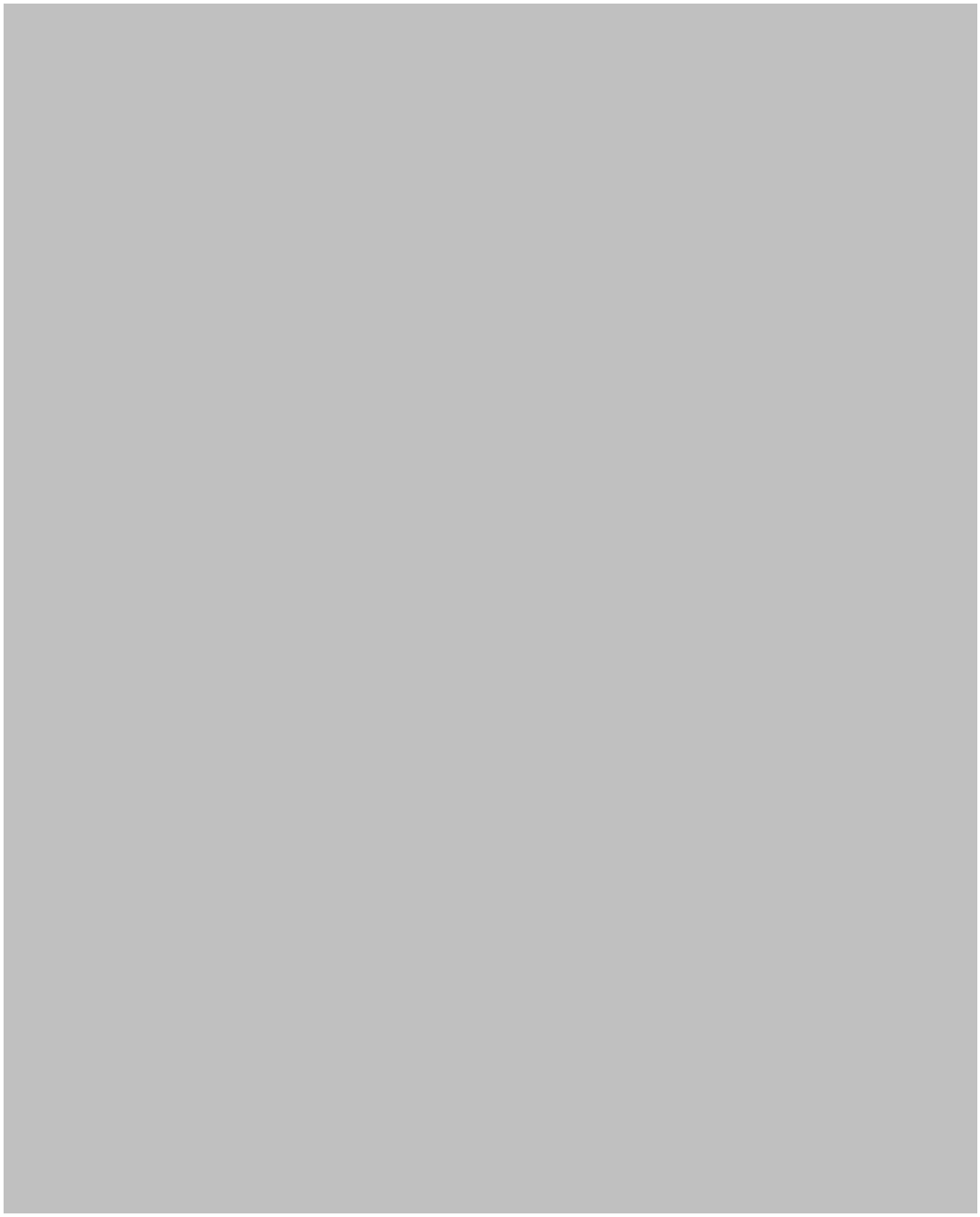
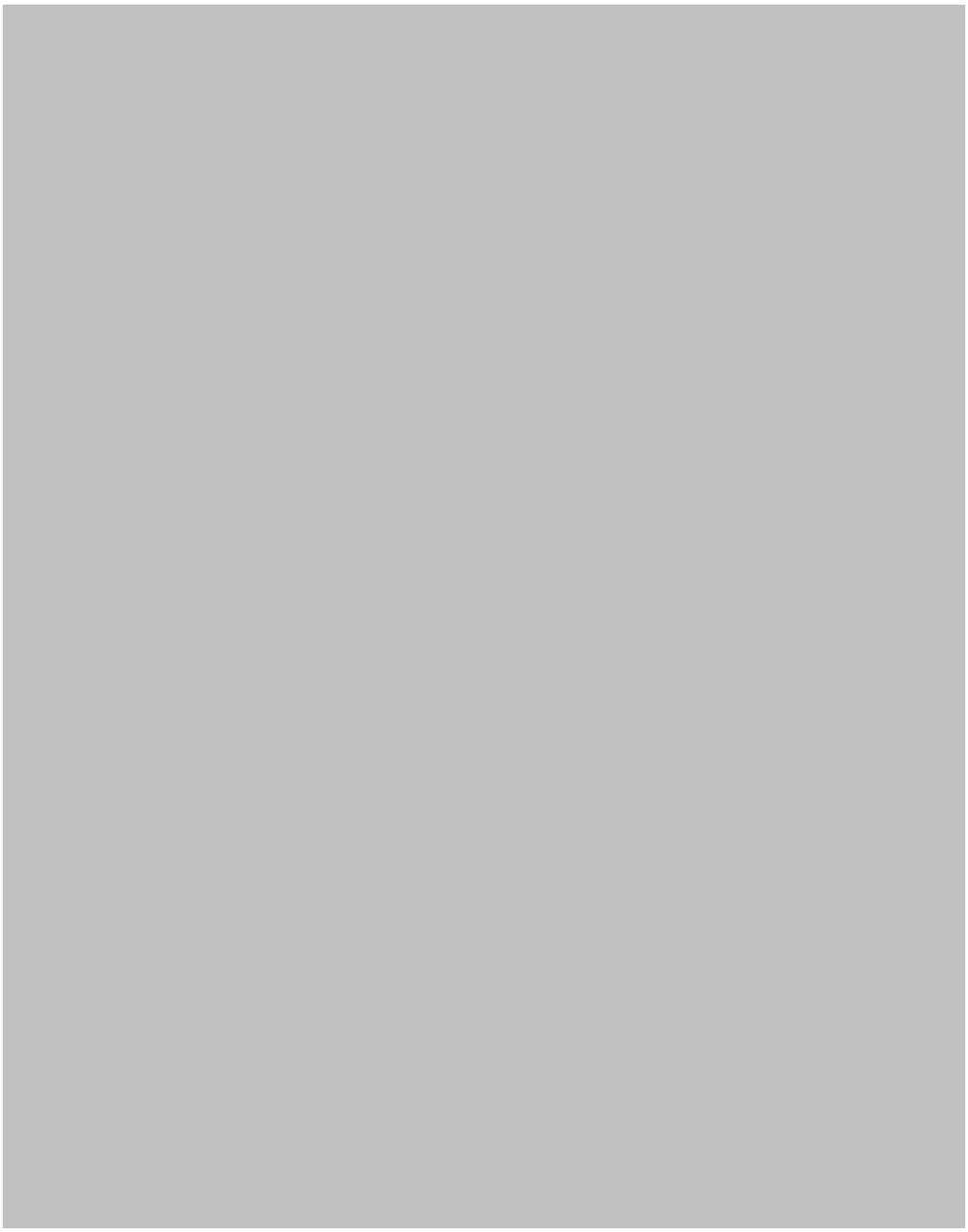
INTRODUCTION

Menzies asks the Board to undo his death sentence. He opens by imagining the mechanics of his coming execution. He calls this tableau "jarring" and says that it "will not be justice," but rather "a needless display of violence." Petition at 1. This is an ironic description given that Menzies utterly ignores the reality of his conduct that brings him to the execution chamber in the first place.

Nearly 40 years ago, Menzies robbed and kidnapped Maurine Hunsaker, a twenty-six-year-old mother working nights at a Utah gas station. Menzies made Mrs. Hunsaker call her husband to say that she would be released later that night. Instead, in a real "needless display of violence," Menzies took her to a canyon site, handcuffed her to a tree, strangled her, and nearly decapitated her. All this to get $115 from the gas station till.





Bad as this is, these were not Menzies's only crimes. In fact, what little time Menzies has spent outside of prison has been marked by relentless criminality—most significantly multiple armed robberies and multiple kidnappings, in addition to the robbery, kidnapping,

[1]Additional autopsy and crime-scene photographs are attached in exhibit 1.

and capital homicide of Maurine Hunsaker. He secured one period of freedom through a prison escape, during which he robbed a cab driver of his fare and the single dollar he had in his wallet then nearly blew the victim's arm off. And he was on parole—granted by this body—when he robbed, kidnapped, and murdered Maurine Hunsaker.

This is the horrifying reality that justified Menzies's much-reviewed and affirmed death sentence and justifies his pending execution.

Menzies has not shown otherwise. Broadly, Menzies raises two arguments. First, Menzies says that he is so mentally and physically diminished that executing him would merely be a "tragic and pointless act." Petition at 9. But he has not shown that he exhibits the attributes that he describes, and, more to the point, the evidence shows that he understands what will happen to him and that he is competent.

Next, Menzies's remaining arguments essentially attack the original or continued validity of his conviction and sentence. But relitigating the conviction and sentence is a legal matter that is beyond the Board's reach. And the arguments are not adequately supported in any event.

The Board should deny the petition.

CASE SUMMARY

Maurine Hunsaker's murder.

On February 23, 1986, Maurine Hunsaker's husband, Jim, called the Gas-A-Mat where she worked. He could not reach her. He went to the station at about 10:10 p.m. He did not see Maurine's purse in the cashier's booth. He saw Maurine's reading glasses,

cigarette lighter, and new down coat. The radio was playing. A cigarette had burned "to nothing" in the ashtray. Exh. 2 at 983, 985, 1010, 1012, 1031-32.

By this time, police had been called, and they accompanied Jim home, arriving there at 11:00 p.m.. Five minutes later, Maurine telephoned. She said, "They told me to tell you they robbed me and got me and that I am fine and they are going to let me go sometime tonight." She sounded very upset and scared. *Id*. at 986, 1022-24.

An officer took the telephone and asked whether Maurine had been robbed. She responded, "Yes." She told the officer "they" would release her in the morning or sometime that night. The officer returned the telephone to Jim. Maurine asked Jim what she should do, then the line went dead. *Id.* at 987, 1047.

Two days later, on February 25, 1986, a hiker discovered Maurine's body at Storm Mountain. She had a gaping hole in her neck—she was almost decapitated. She had marks on her wrists consistent with handcuffs. Something hard had scuffed off the bark on a tree by Maurine's body. One investigator opined that someone had tethered Maurine to the tree. *Id.* at 1305, 1319-26, 1617, 1751-52.

The medical examiner concluded that ligature strangulation caused Maurine's death, but having her throat slashed contributed. Anything from a standard pocketknife to a hunting knife could have caused the wounds, including knives later identified as Menzies's. *Id*. at 1610-15, 1637-38.

Police found a cigarette butt near Maurine. Testing identified an enzyme common to Menzies, Maurine, and thirty-six percent of the population. *Id*. at 1991-93. In September 2004, the State moved to have the butt inspected to determine whether DNA testing would

be possible. Menzies opposed the motion, and the district court denied it. Exh. 3 at 4138, 4144, 4148, 4158. Menzies has never requested DNA testing on the butt.

Police discovered no money, purse, or wallet with Maurine's body. Exh. 2 at 1382.

Menzies lived three or four blocks from the Gas-A-Mat and had been there before the murder. *Id.* at 1403.

At about 8:00 p.m. the night Maurine disappeared, Troy Denter loaned Menzies his car. Menzies asked to keep it until about 10:00 p.m.. Menzies wore a maroon and grey parka when he picked up the car. *Id*. at 1397-98, 1409.

When Menzies did not return the car by 10:00 p.m., Denter called Menzies's apartment. Menzies's girlfriend, Nicole, told Denter that Menzies was not there. Denter called back at 11:00 p.m. and still could not reach Menzies. Denter called a third time at about 1:00 a.m. and finally reached Menzies. Menzies asked Denter if he could keep Denter's car until the next morning "because…he just had one more order of business to take care of." *Id*. at 1398-1400.

Menzies returned the car at noon the next day after using about twelve and one-half gallons of gas. The car got about ten miles per gallon. *Id*. at 1398, 1401-1403.

When Denter later cleaned out his car, he found a box labeled "handcuffs" under the driver's seat. Denter had seen handcuffs in Menzies's apartment. *Id*. at 1404-18.

At about 9:00 the morning after Maurine disappeared, February 24, 1986 (the day before the hiker found her body), Tim Larrabee and his girlfriend, Beth Brown, arrived at Storm Mountain. Larrabee saw one other car parked in the lot when he arrived; he later

identified a photograph of Denter's car as similar to the one he saw parked at Storm Mountain. *Id*. at 1193-95, 1394.

Later, Larrabee twice saw a man and a woman walking together. Both times, they were walking away from him. They walked within arm's reach of each other. The man had his coat draped over his right shoulder, concealing his right hand. Larrabee did not see the man's or woman's hands or whether their hands "were linked together." *Id*. at 1201-1209, 1221-22, 1229-31.

About ten minutes later, Larrabee heard a scream. About fifteen to twenty minutes later, he saw the man walking alone toward the parking lot. *Id*. at 1197-98, 1201-1209.

When Larrabee first contacted police, he described the man he saw to be within one inch in height and ten pounds in weight of Menzies. He accurately described Menzies's hair, facial hair, and glasses. He helped create a composite drawing so similar to Menzies that detectives selected Menzies's photograph as one of five from among two hundred jail inmates. *State v. Menzies*, 889 P.2d 393, 397 (Utah 1994), *cert. denied*, 513 U.S. 1115 (1995). Police had not yet identified Menzies as a suspect. Exh. 2 at 1738.

Police prepared a photo line-up designed to make it as difficult as possible to make an identification. Police showed the array to Larrabee shortly after the murder. Larrabee initially identified no one. He asked to see the array a second time and selected Menzies's picture as looking most like the man he saw at Storm Mountain. *Id*. at 1213, 1270, 1332-38, 1685.

In a live line-up three months later, Larrabee failed to identify Menzies as the man he saw at Storm Mountain. On the way back to the prosecutor's office, Larrabee felt he

made a mistake and asked if number six (Menzies) were the defendant. At trial, Larrabee explained that he picked another man during the line-up because the other man was heavier than Menzies at the time of the line-up, and that, at the line-up, Menzies appeared better groomed and in "better shape" than when Larrabee saw him at Storm Mountain. He also explained that Menzies had a full beard at the line-up, but not at Storm Mountain, and that Menzies did not wear glasses at the line-up, but did at Storm Mountain and in the photo array. *Id*. at 1270, 1284-86. Larrabee testified that Menzies's parka was similar to the one he saw the man wearing at Storm Mountain *Id*. at 1203-1204.

Larrabee never saw the woman's face. He testified that the clothing found on Maurine's body appeared to match the clothing he saw the woman wearing. *Id*. at 1207.

The evening after Maurine disappeared and before the hiker found her body, police arrested Menzies on an unrelated burglary. When a booking officer asked Menzies for his belongings, Menzies's eyes widened, he straightened up, and he stepped back "very quickly." Menzies looked down a hallway, spun around, and ran or quickly walked down the hallway. When a jail officer yelled to Menzies to stop, he ducked into a changing room. *Id*. at 1519-22, 1548-50.

A pursuing officer found Menzies in the changing room. Although handcuffed, Menzies could move his arms, and he was "reaching around" to "pull on" his pants. Menzies said he was looking for a bathroom, but he never asked to use a bathroom during the rest of the one-and-a-half-hour booking process. *Id*. at 1551-52.

A jail clothing officer found four identification cards in a clothing hamper in the changing room Menzies ran to. The cards were on a pair of pants with some other clothes lying on top. The officer put them in a desk drawer. *Id*. at 1551-52, 1561-63, 1566, 1572.

The evening after the hiker found Maurine's body, a different officer found the identification cards in the desk. He recognized Maurine's driver's license picture from a news report. *Id*. at 1572-74, 1731-32.

About $116 was missing from the Gas-A-Mat. After his arrest, Menzies telephoned Denter from jail. He asked Denter to retrieve $115 from Menzies's apartment and buy some things for Arnold. Denter spent about $25. Nicole's mother later found about $90 hidden in an umbrella at Menzies's apartment. *Id.* at 1178, 1423-24, 1477 1482-84, 1746.

Her mother also found handcuffs in Menzies's maroon and grey parka. *Id*. at 1482.

Police had fibers from the green shag carpet in Menzies's apartment compared with green fibers found on Maurine's clothing. Chemical analysis and microscopic examination demonstrated the fibers were similar in color, diameter, cross-sectional shape, trilobal shape, and content (nylon); and they all had a delustrant present. *Id*. at 1688-90, 1892, 1965-74.

Police seized from Menzies's apartment a brown suede woman's purse that Jim testified was Maurine's. Police also seized a buck knife. *Id*. at 989-90, 1743-47.

Approximately six months after Menzies's arrest, Nicole's stepfather found Maurine's social security card in Nicole's belongings. *Id*. at 498, 1506-1508.

Police found Maurine's thumb print on the passenger window of Denter's car. *Id*. at 1779, 1787-88.

Walter Britton, who had been housed with Menzies at the jail, testified that Menzies admitted killing Maurine. Menzies said he murdered Maurine because he had robbed her and he did not want to leave a witness. Menzies also said that slitting Maurine's throat was one of the biggest thrills of his life. Menzies also told him that he kept Maurine's identification cards, and that his girlfriend had Maurine's purse. *Id*. at 2080-2126; Exh. 4 at 150-187. *Id*. at 2080-2126; Exh. 4 at 150-187.[2]

A jury convicted Menzies of capital murder.

Evidence at sentencing.

Menzies waived a sentencing jury, so Judge Raymond Uno decided Menzies's sentence.

To support its case for a death sentence, the State relied on the evidence produced during the guilt phase. The State also relied on Menzies's other crimes to argue that he posed a continuing threat and could not be rehabilitated. Exh. 5 at 2719-24.

Carl McBrayer detailed the two times Menzies and a partner robbed him at the 7-11 where he worked. At about midnight on December 21, 1975, McBrayer was putting money into a bag with his back turned. Menzies's partner asked McBrayer how much money he had in the bag. Menzies said, "It better be full." When McBrayer turned, he saw Menzies pointing a revolver at him. *Id*. at 2730-32.

Menzies told McBrayer to empty the registers into the bag. He also told McBrayer to act normally and to pretend to sell Menzies cigarettes. Menzies then ordered McBrayer

[2] The State addresses Menzies's arguments about Britton recanting this testimony in the relevant argument section.

into a back room and warned him that if he came out, he might be shot. After McBrayer thought a safe period had passed, he came out and called police. *Id*. at 2732-34.

Five days later, Menzies and his partner ran into the store again and told McBrayer, "You know what to do." Menzies decided McBrayer had to go with them this time. Menzies drove McBrayer out of town. When he stopped, Menzies ordered McBrayer into a ditch. Menzies told McBrayer that, if he stuck his head out of the ditch, Menzies would blow his head off. After Menzies and his partner left, McBrayer found his way back to the road and called police from a service station. *Id*. at 2734-39.

After his arrest, Menzies reported that, before the first robbery, he stole a truck from a dealership, picked up his partner, and decided to rob "some guy" for marijuana. When they could not find their target, they decided to rob the 7-11 for money to buy marijuana. Menzies admitted pointing the gun at McBrayer and demanding money. *Id*. at 2759-63.

As to the second robbery, Menzies said he and his partner stole another truck from a different dealership and decided to rob the same 7-11. Menzies said that McBrayer saw them coming and had the money in the bag when they got into the store. Menzies admitted he put McBrayer into the truck, drove to 5600 West north of 2100 South, and ordered McBrayer out of the truck and to start running. He admitted McBrayer was too scared to run. *Id*. at 2764-70.

Menzies said he became angry during the second robbery because his partner referred to him as "Ralph" in front of McBrayer. Menzies told his partner something like, "After I do you, after he's dead, how are you going to feel." *Id*. at 2769-70.

Menzies laughed and joked about the robberies while recounting them to police. *Id*. at 2773-74.

In 1978, while serving time for the robberies, Menzies escaped from prison. *Id*. at 2844-56.

While on escape, Menzies robbed cab driver V.S. Lelaetafea. Menzies pointed a shotgun at Lelaetafea's head, threw a paper sack at him, and demanded his money. Lelaetafea gave Menzies all his fare money – about $76.00. Menzies asked if Lelaetafea had more; Lelaetafea responded he had a dollar in his wallet. Menzies took that too. *Id*. at 2786-90, 2844-56.

Because Lelaetafea believed Menzies planned to shoot him, he moved to grab the gun. Menzies turned the gun to Lelaetafea and fired, hitting Lelaetafea in the right arm. The gunshot wound put Lelaetafea in traction for five weeks, required five surgeries, and even at the time of trial ten years later, forced him to write with his left hand. *Id*. at 2791-96.

While awaiting trial, Menzies was under evaluation at the Utah State Hospital. Nicole smuggled a screwdriver into the hospital for Menzies. The blocks securing the hospital windows were screwed in. A subsequent search uncovered a sharpened metal dustpan handle under Menzies's mattress. *Id*. at 2808-38.

While in the Salt Lake County Jail on the murder charges, Menzies told a jail officer he did not know the problems Menzies could cause. Menzies also threatened to "take out" a guard or another inmate. This and other information resulted in Menzies being transferred to the behavior modification unit. *Id*. at 2867, 2873, 2878.

The State also presented Menzies's entire prison file to Judge Uno.

In response, defense counsel called Menzies's aunt and sister to detail his family history. Among other things, they testified that (1) both Menzies's stepfathers beat him, one almost daily; (2) one stepfather held Menzies's hand over an open flame; (3) one stepfather raped Menzies's mother in front of Menzies and his sister; (4) one beat Menzies and belittled him when Menzies could not slaughter a rabbit; (5) Menzies and his siblings had to hide in a neighbor's apartment from one stepfather's motorcycle gang; (6) one stepfather beat Menzies's pregnant mother so severely that her child was born "black and blue" and died five to ten minutes after birth; (7) one stepfather burned the family car when Menzies's mother tried to leave with the children; (8) Menzies's mother would drop her children off with a relative, then disappear for three to four days at a time; (9) Menzies's mother suffered from leukemia and diabetes and died when Menzies was fourteen; (10) after their mother's death, their stepfather took everything and did not provide for Menzies and his siblings; and (11) no other relatives provided for Menzies. *Id*. at 2905-52. Menzies's sister also testified that she and Menzies suffered many other things too humiliating for her to repeat. *Id*. at 2912.

Menzies's relatives described him as a giving and compassionate person whom they loved and would support if the court imposed a life sentence. His sister also testified that a death sentence would leave a tremendous void in her life. *Id*. at 2924-26, 2948-49.

Menzies's sister provided the court with several documents, including Menzies's certificate from Alcoholics Anonymous and his high school diploma. She also produced poems and letters Menzies had written. In one letter, Menzies explained that he felt his

family rejected him, that the feeling caused him to commit the 1975 robberies, and that he blamed only himself. *Id*. at 2927-33.

An educational psychologist testified that Menzies suffered from mental deficits that prevented him from responding to his surroundings appropriately. He also testified that, with appropriate treatment, Menzies could overcome his deficits and function normally. *Id*. at 2972-81.

A psychologist also testified on Menzies's behalf. His testimony repeated and amplified Menzies's life history. He spoke of Menzies's "turbulent" family history, which included two "extremely" abusive stepfathers who hit Menzies with their fists and belt buckles. One stepfather confined Menzies and his sister to a room large enough to only hold a twin bed, and she and Menzies lived on that bed for three or four years. Their punishments included being denied dinner and being kept home from school. Menzies had a history of substance abuse that the psychologist explained resulted from Menzies trying to alter his consciousness to make the world a better place for himself. Menzies's sister told the psychologist that she had significant responsibility to care for Menzies and their younger brother, but because the younger brother was sickly and required the most attention, Menzies was "left out." Menzies's sister described him as a forgotten child. The psychologist concluded that Menzies had no caretaker while he was growing up. *Id*. at 3024-29.

Based on his testing and the background information, the psychologist diagnosed Menzies with three personality disorders: schizotypal, borderline personality, and anti-social personality. *Id.* at 3037-38, 3092-93.

The psychologist opined that Menzies's prior criminal behavior resulted both from an abusive childhood that prevented him from developing a normal conscience, and from the lack of treatment for his various disorders even though a mental health professional recognized Menzies needed treatment when he was thirteen. *Id*. at 3041-42, 3095-96.

He also testified about factors suggesting Menzies's behavior could change. He testified that antisocial behavior tends to decline at age thirty; Menzies was twenty-nine at the time of trial. Menzies still wanted a positive relationship with the world and hoped that someone would care about him. His testing demonstrated that Menzies suffered from depression, anxiety, and low self-esteem, which he considered strong motivators for Menzies to change. He also concluded Menzies had a potential college-student functioning level. *Id*. at 3032-36, 3040, 3051.

A prison social worker testified that Menzies's prior escape was from the "farm"—a minimum security facility that accounted for most of the prison's escapes. He posited that Menzies, if sentenced to life, would likely end up in 23-hour lockdown. And he testified that he had seen inmates serving long sentences change, and that nothing would prevent Menzies from making similar changes. *Id*. at 2984-86, 2290-95, 2998-99, 3225.

The social worker also testified he had seen positive things about Menzies and Menzies's work in prison during his prior incarceration. He noted that Menzies took pride in his janitor job—a position of trust that Menzies would not have been given without being discipline free. He also testified that Menzies took pride in his family. *Id*. at 2999, 3003.

The social worker testified that Menzies did not try to escape and did not fight during the time he worked with Menzies. He testified that Menzies had no discipline record for twenty-two months before his parole release prior to the murder. *Id*. at 3005-3009.

Defense counsel called a Utah Board of Pardons administrator. He testified that the factors the Board considered in determining whether to grant parole to inmates serving capital life-sentences included: 1) the number of persons killed, and the victims' suffering and vulnerability; 2) how the murder affected the victim's family, including children growing up without a parent; 3) whether the murderer killed his victim to cover up another crime or while committing another crime; 4) whether the murderer killed his victim under duress or under the influence of alcohol or drugs; 5) whether the murderer suffered from a mental illness or had received past treatment for drug abuse or mental illness; 6) the murderer's history of crimes or violence and his prognosis for change; 7) the murderer's prison behavior and history, including education, employment therapy, disciplinary actions, and interactions with family; 8) the murderer's childhood and adult history; 9) the murderer's education and employment history outside prison; and 10) the murderer's current family situation. *Id*. at 3114-15.

The administrator testified that, of the twenty-five capital-murder life sentences the Board had reviewed since 1983, it had given natural life in six. The remaining nineteen got rehearing dates ranging from ten to thirty-years. The rehearing entitled them only to a personal appearance to reapply for parole. At that point, the Board could grant parole or set another rehearing date. *Id*. at 3117-18.

The administrator testified that capital murderers who received parole dates served an average term of twenty years. He testified that the person who served the shortest term – thirteen years – had no history of prior violence and had never escaped. The Board also considered her unlikely to reoffend. *Id*. at 3127.

The administrator opined that the Board would likely impose natural life for a capital defendant whose criminal history began as a juvenile, and whose adult convictions included violence, escape from prison, violent crimes while on escape, capital homicide while on parole, and capital homicide committed while committing another felony. He opined that a bad childhood and good institutional behavior probably would not mitigate that decision. He opined that any prognosis for change might mitigate, but that the magnitude of the crime could overcome that factor. He concluded that Menzies would likely receive a natural life sentence. *Id*. at 3119-20, 3127.

Menzies read a letter. Among other things, he told the trial court, "I am truly innocent of the charges, even though the jury found me guilty." *Id*. at 3247-48.

The trial court extensively reviewed the penalty-phase evidence during its oral sentencing, identifying what it considered mitigating and aggravating, and what evidence had attributes of both. The court noted Menzies's extensive criminal history, which included thirty-eight juvenile referrals after an initial petition for parental neglect, the robberies, his escape and attempted escape, and his crimes while on escape. The court discounted testimony about the likelihood Menzies would change. *Id*. at 3249-53.

As to the continuing threat Menzies posed, the court noted that the parole board once found Menzies "much improv[ed]" and released him. Thirteen months later, Menzies

committed thefts, and eighteen months later, he murdered Maurine. The court noted the screwdriver smuggled to Menzies, the sharpened dustpan handle found in his cell, and his threats at the jail. *Id*. at 3253-54.

The trial court reasoned that a life-in-prison sentence provided no guarantee because the parole board could release Menzies regardless of recommendations not to, and because Menzies might escape. *Id*. at 3254.

The trial court considered Menzies's substance abuse. It recognized Menzies had done odd jobs but had never held down a formal job and had supported himself through criminal activity. *Id*. at 3253-54.

As to the murder circumstances, the trial court found Menzies's activities were cold and calculated: (1) Maurine endured eleven to twelve hours of fear and anxiety with a promise to free her; (2) Maurine waited handcuffed without knowing what would happen; (3) Menzies used a ligature and, although Maurine managed one scream, there was no help; and (4) Menzies watched Maurine die, removed the handcuffs, and walked away. *Id*. at 3254-55.

The trial court noted that Menzies had scarred the lives of Maurine's family and friends, and of his two prior robbery victims. *Id*. at 3254-55.

The court recognized that Menzies's childhood consisted of abuse, death, no parenting, and instability, and that Menzies had never received the treatment or intervention he needed. *Id*. at 3255-65.

The trial court also considered psychological, pre-sentence, and prison records and summarized their contents. It noted that those records showed Menzies had several

personality disorders, described him as manipulative, demonstrated his persistent failures at rehabilitation, recognized his prior conduct demonstrated risk for future violence, and pointed out his poor prognosis for change. The court noted that Menzies had not changed for the judges who had handled his prior criminal and juvenile cases. But it also recognized that prison, prison psychological, and Board of Pardons records reported improved prognosis, described Menzies as a good worker making an honest effort, reported he had succeeded in work and education in prison, and noted he had mediated disputes between staff and inmates. *Id*. at 3255-65, 3268.

The trial court noted there were periods when Maurine was unrestrained. It said that her death was quick and without torture. The evidence supporting the underlying felonies was circumstantial. Menzies committed his crimes while suffering from schizotypal personality disorder, borderline personality disorder, and anti-social personality disorder, and while under extreme mental or emotional disturbance or dysfunction. Menzies did not harm the 7-11 robbery victim, but he did use a weapon both times, and he showed no remorse. Although Menzies did not intend to injure the cab driver, he committed that robbery while on escape and almost shot the cab driver's arm off. As to remorse for the murder, Menzies boasted that cutting Maurine's throat was the greatest thrill of his life. *Id*. at 3264-65.

The trial court concluded that the aggravating circumstances outweighed the mitigating circumstances. *Id*. at 3268.

As to whether death was appropriate under the circumstances, the trial court concluded:

> [Menzies'] pattern of living has constantly and continually exposed many people to fear and harm. Regardless of where [Menzies] resides, it is unlikely the pattern will ever change. Consequently, this court, with the heaviest of hearts, makes the more difficult and trying decision that under the circumstances and beyond a reasonable doubt, the death penalty is the appropriate penalty, and the court so orders.

Id. at 3268-70.

Decades of judicial review.

After penalty-phase proceedings concluded, Menzies moved for a new trial. The trial court rejected his motion and Menzies appealed. The Utah Supreme Court affirmed the district court's denial. *State v. Menzies*, 845 P.2d 220 (Utah 1992) (Menzies I) (*See* Exh.18).

Menzies then challenged his conviction and sentence on direct appeal. The Utah Supreme Court found Menzies's claims to be "without merit" and affirmed his conviction and sentence. *State v. Menzies*, 889 P.2d 393, 406 (Utah 1994) (Menzies II) (Exh.19). The United States Supreme Court denied cert. *Menzies v. Utah*, 513 U.S. 1115 (1995) (Exh.20).

Menzies then sought post-conviction relief. His petition was eventually dismissed through default judgment. Menzies's appealed. The Utah Supreme Court held that Menzies's post-conviction counsel was ineffective and ordered that Mr. Menzies be given the opportunity to investigate his claims and file another amended post-conviction petition. *State v. Menzies,* 2006 UT 81, ¶¶ 3–48, 150 P.3d 480 (Menzies III) (Exh.21).

Menzies again sought postconviction relief. The district court granted the State's motion for summary judgment and denied his amended petition. Menzies appealed and the Utah Supreme Court affirmed the district court's denial of relief. *Menzies v. State*, 2014 UT

40, 344 P.3d 581 (Menzies IV) (Exh.22). The United State Supreme Court denied cert. *Menzies v. Utah*, 577 U.S. 834 (2015) (Exh.23).

Menzies then sought federal habeas relief. The federal district court denied relief. *See* Memorandum Decision and Order, *Menzies v. Crowther*, No. 03-CV-0902-CVE-FHM, 2019 WL 181359 (D. Utah Jan. 11, 2019) (Exh.24). Menzies's appealed to the Tenth Circuit, which affirmed the district court's order. *Menzies v. Powell*, 52 F.4th 1178 (10th Cir. 2022) (Exh.25). The United States Supreme Court denied cert. *Menzies v. Powell*, 144 S.Ct. 122 (2023) (Exh.26).

The execution warrant and competency proceedings.

With all legal challenges exhausted, the State applied for an execution warrant on January 17, 2024. Menzies responded, in part, with a petition for an evaluation into his competency to be executed. With the State's concurrence, the trial court granted the petition. Exh. 6. It also stayed all proceedings advancing toward execution pending resolution of Menzies's petition. *Id*.

Seven mental health experts evaluated Menzies—three hired by Menzies, two hired by the State, and two Department of Health and Human Services (DHHS) evaluators appointed by the trial court. Only the three hired by Menzies found him incompetent to be executed. The remainder—including the two appointed by the court—found him competent. Exh. 7-10.

The trial court held a six-day evidentiary hearing. Exh. 11. *See also* Petitioner Exh. 51. Six of the seven experts testified. The reports of all seven were admitted. Exh. 11 at 1-10. The parties also introduced several exhibits, including several medical records and

forty-three recorded telephone calls between Menzies and various family members made during 2022 and 2024. *Id*. at 10.

On June 6, 2025, the trial court found that Menzies is competent to be executed. The court extensively surveyed the expert testimony and reports, and drew conclusions about which he believed were more credible. The court concluded that Menzies has a "mental condition," described as a "neurocognitive disorder due to vascular factors." *Id*. at 16-22. But the court concluded that was Menzies competent to be executed because he understands the link between his conviction and his death sentence. *Id.* The court described Menzies's understanding as "sophisticated." *Id*. at 18. The court fully credited the State's and the court-appointed experts. *Id.* at 4-5,7-10. It credited Menzies's retained experts on their diagnoses but discredited their conclusions that Menzies was incompetent. *Id*. at 2-4,5-7.

The court also relied on Menzies's telephone calls with friends and family to support its finding that Menzies was competent. It pointed to the recorded calls as evidence of Menzies's understanding of the link between his conviction and sentence, the legal system in general, and on his general functioning. The court divided the calls between those recorded in 2022, before a June 2023 MRI and initial evaluations by Menzies's experts, and those recorded in 2024, after the MRI and initial evaluations. As to the 2022 calls, the court noted that Menzies told his family members that "his brain did not function the way it used to," and that he was "forgetful." *Id.* at 10-12,18,21.

But the court also noted that Menzies discussed his medical bills, talked about needing money, and "suggested starting a gofundme or starting a fundraiser on Facebook."

Menzies also "laughed at jokes and used colorful and sophisticated vocabulary." "He was very interested in his family, their welfare and daily life. He gave advice and asked questions to follow up on information they provided in earlier conversations. He responded appropriately to questions that he was asked and did not appear to be confused by anything anyone said to him." "He spoke with a few different family members, and he remembered which family member he told which story." *Id*.

As he has always done, Menzies insisted to his family members that he is innocent, "but explained that he has 'done a lot of stuff–lot of evil stuff. Not evil no more though.'" *Id*. at 11.

The court summarized: Menzies "spoke with a normal cadence and speed, and, more often than not, was in control of the conversations with his family members. He was able to articulate his feelings and narrate events in his life coherently. He was able to generate ideas to solve his money problems. He exhibited an ability to use reason and logic. And Menzies's conversations were rooted in reality, even though he denied that he was guilty." *Id*.

As to the 2024 calls—those that came after the MRI and initial evaluations—the court again noted that Menzies complained about mental problems, including Menzies describing increased confusion, not having his head "'screwed on straight,' being 'mentally gone,' 'spacing out,' and 'going crazy.'" Menzies "repeatedly mentioned that he ha[d] been forgetting things" and "twice stated that he [was] having 'problems with [his] words.'" Menzies repeatedly told a story about playing Uno and not being able "to say the correct colors of the cards." He "was confused about the age of a family member, and he believed

that it was March when it was actually February." And he "expressed frustration with how complex his tablet had become." *Id*. at 11-12.

But again, the court noted that "Menzies joked with his family and told stories with, for the most part, the same speed, articulation, and coherence as in his prior set of phone calls. He engaged in active listening by completing sentences when a family member forgot a word and asking follow-up questions. He appeared to remember the names of family and friends." *Id*.

Menzies also discussed the competency proceedings with his sister. He told her that he had been diagnosed him with vascular dementia and asserted that "'technically if I do have…dementia, if I do have that, they can't kill me legally.'"[3] Menzies said he disapproved of challenging competency. He said "he would rather 'win on the board of pardons…. This board is giving everybody love.'" *Id*.

"Menzies said that he doesn't know why the State is executing him. 'I'm not guilty. When anyone asks, I say because they want to murder somebody. I ain't done nothing wrong.'" "He told a family member, 'I wish that I was a murdering, raping fool. At least then they'd have a reason to kill me." *Id*.

As to the last calls, recorded in September 2024, the court noted that Menzies "remarked that he is only able to remember half the things he is supposed to remember." Be he "again was able to joke and make sarcastic remarks," "spoke with a normal cadence

[3] This was not technically accurate. A dementia diagnosis alone would not prevent his execution under the United States Supreme Court's competency-to-be-executed jurisprudence.

and speed, and "responded appropriately during the conversations." In the final recording, Menzies spoke about an inmate who was executed in a different state. He expressed his view that an execution is murder: "Killing somebody is killing somebody." *Id*.

The court found that the calls, "considered in their totality," constituted "concrete evidence of Menzies's ability to recall information, reason and deliberate, and engage in abstract thought. They demonstrate that Menzies understands that murder is wrong and that people who murder may get sentenced to death. They further show that his vascular dementia does not impair or distort his understanding of those concepts." *Id*. at 12.

On July 7, 2025, about one month after the court found Menzies competent to be executed, Menzies filed a successive petition for evaluation into his competency. He claimed that his mental state had declined further since his last evaluation in October 2024, including reports from two of his retained experts who testified at his competency hearing. Petitioner Exh. 45-50. The State has filed its response to that successive petition. Exh. 14. The successive petition is pending as of the filing of this response to the commutation petition.

After Menzies filed his commutation petition with this Board, including the same recent reports from his retained experts, the State emailed the Utah Department of Corrections (UDC) and Menzies's counsel, requesting that State's expert Dr. David Thompson be allowed to evaluate Menzies again. Exh.15. The State explained in the email thread that the purpose of Dr. Thompson's evaluation would be to "address[] Mr. Menzies's claims of mental incompetency and deterioration in commutation proceedings." *Id.* The State further clarified that the purpose would be to "develop evidence in response to

evidence [Mr. Menzies had] given to the Board; in particular, the two most recent evaluations by [his] retained experts." *Id.*

Menzies's counsel objected to the evaluation, did not respond to the State's two requests for his consent to the evaluation, and accused State's counsel of attempting to violate the rules of professional conduct by evaluating Mr. Menzies without their consent. He also accused UDC—if it allowed the evaluation—of colluding with the State and assisting the State's attorneys in violating the rules of professional conduct. *Id.*

Menzies has not responded to the State's request for the raw data on which his expert, Dr. Lynette Abrams-Silva, relied in forming her recent opinion that Menzies has declined. Exh.16.

DISCUSSION

I. Menzies's petition raises no substantial issue warranting a commutation hearing.

The United States Supreme Court has held that "an inmate has 'no constitutional or inherent right' to commutation of his sentence." *Connecticut Bd of Pardons v. Dumschat,* 452 U.S. 458, 464, 101 S.Ct. 2460 (1981). A "petition for commutation, like an appeal for clemency, 'is simply a unilateral hope.'" *Ohio Adult Parole Authority v. Woodard,* 523 U.S. 272, 280, 118 S.Ct. 1244 (1998), *citing Dumschat,* 452 U.S. at 465. Nor does Menzies's have a right to hearing on his petition. The administrative rules governing Menzies's petition specifically acknowledge this: "No person has a right, privilege, or entitlement to commutation or clemency; nor to the scheduling of a commutation hearing…. The decision to schedule a commutation hearing is within the exclusive power

and authority of the Board." Utah Admin. Code R671-312-1(2).

Utah law allows this Board to "consider the commutation of a death sentence only to life without parole." Utah Code § 75-27-5.5. The statute states that the "board shall review the petition and determine whether the petition presents a substantial issue which has not been reviewed in the judicial process." *Id*. § 77-27-5.5(5). But it puts beyond the Board's reach in deciding whether to commute a sentence all legal and constitutional issues that have been reviewed by the courts, should have been raised during judicial review, or may still be subject to judicial review. *Id.* § 77-27-5.5(6). The statute mandates that "[i]f the board does not find a substantial issue the board shall deny the hearing to the petitioner." *Id*. § 77-27-5.5(7)(a). This includes relitigating Menzies's guilt, sentence, and competency to be executed under the Eighth Amendment, a legal issue that has already been decided against him by the district court.

That the petition must raise new and substantial issues is a "necessary prerequisite[] for the grant of a commutation hearing." *Andrews v. Utah Bd. of Pardons*, 836 P.2d 790, 793 (Utah 1992). The term "substantial" means something "[i]mportant, essential, and material; of real worth and importance … [c]onsiderable in extent, amount, or value; large in volume or number." Black's Law Dictionary (11th ed. 2019).

Menzies has not met the new-and-substantial-issue threshold for a hearing. As detailed below, his claims about dementia are either bound up in legal issues of competency to be executed that the Board may not consider or unsupported by the totality of the evidence. Also as detailed below, his challenges to the conviction and sentence are legal questions that have been decided against him by every reviewing court and are also

unsupported by the evidence.

II. Menzies's petition does not raise any issue that could warrant undoing a sentence rendered under exacting judicial scrutiny and upheld as constitutionally fair by every subsequent reviewing court.

Other than specifying that it has to be a substantial issue not reviewed or capable of review in the judicial process, the commutation statute provides no guidance on what justifies commuting a death sentence. Therefore, in determining whether to commute Menzies's death sentence, the Board should be guided by what commutation is, its traditional role in the penal process, and what it would mean to commute Menzie's death sentence.

Commutation is the power to substitute a lesser sentence for a death sentence imposed in judicial proceedings. Utah Code § 75-27-5.5. In *Herrera v. Collins,* 506 U.S. 390, 411-414 (1993), the United States Supreme Court recognized that commutation's quintessential role is to correct injustices where there is evidence that raises a substantial doubt about the condemned's guilt. "Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for presenting miscarriages of justice where judicial process has been exhausted." *Id.* at 411-412. In another context, "miscarriage of justice" has been limited to cases of actual innocence. *See Sawyer v. Whitley*, 505 U.S. 333, 339-40 (1992). Menzies has not established actual innocence or undue harshness.

The State recognizes that commutation also allows the Board to show mercy where intervening events establish that mercy is deserved. "The defendant in effect accepts the *finality* of the death sentence for purposes of *adjudication,* and appeals for clemency as a

matter of *grace.*" *Woodward,* 523 U.S. at 282 (emphasis in original). But Menzies has not provided a "substantial issue" that mercy is deserved.

There is no question about Menzies's guilt. The evidence of it is overwhelming.

Nor is there a question about the brutality of his crime. Menzies robbed and kidnapped Maurine Hunsaker. He held her for 12 to 13 hours before taking her to Storm Mountain, handcuffing her to a tree, strangling her, and slashing her throat. Maurine's son will address the Board about how learning of his mother's murder when he was only ten years old has marred his life.

There is also no question about Menzies's unflagging criminality during his brief periods of freedom.

And in deciding whether to grant Menzies mercy from his sentence, the Board should bear in mind that Menzies asks the Board to vacate a sentence lawfully imposed following a detailed sentencing hearing in front of a judge. The Board should also bear in mind the exacting standards that had to be met before he was sentenced to death. The totality of the aggravating circumstances had to outweigh the totality of the mitigating circumstances beyond a reasonable doubt. In addition, Menzies's death sentence had to be found justified and appropriate beyond a reasonable doubt. Utah Code § 76-3-207(4)(a)-(d). Exh. 12.

And the Board should bear in mind that these standards the sentencing judge had to follow far exceed what the United States Constitution requires. Menzies had no federal constitutional right to: 1) imposition of a life sentence unless the State met the beyond-a-reasonable-doubt standard, which is the highest standard of proof the law requires;

2) a finding that the aggravating circumstances outweighed the mitigating circumstances; and 3) the additional step of determining whether death was appropriate and justified even when the aggravating circumstances outweighed the mitigating circumstances.

Finally, the Board should bear in mind that Menzies asks the Board to commute a sentence that the Utah Supreme Court has twice affirmed, the federal district court has affirmed, the Tenth Circuit has affirmed, and the United States Supreme Court has declined to review. Commuting Menzies's sentence would mean vitiating a sentence, and a penalty-phase case, that every reviewing state and federal court has found to be constitutionally fair.

Executing Menzies will exact from him the punishment that the people of the State of Utah demanded for the brutal capital murder he committed. The Board should not undo that determination.

A. Menzies has not proved that his neurocognitive disorder justifies undoing a sentence found constitutionally sound by every reviewing state and federal court.

Menzies argues that executing a person with dementia is "a tragic and pointless act," "cruelty disguised as punishment." Petition at 9. He reasons that dementia "strips a person of memory, personality, dignity, and the ability to understand the world around them." *Id*. He continues that "people with dementia forget names, faces, and how to take care of themselves"; and "are confused, vulnerable, and often scared."[4] *Id.* He says that executing

[4] Menzies points to no source to support his description of dementia.

someone with these attributes "is a hollow, inhumane spectacle devoid of moral or societal value," that "does not deter future crime," "bring closure grounded in justice," or "uphold the dignity of the law." *Id*.

Regardless of whether it would be tragic and pointless to execute someone who has these general attributes of dementia because Menzies has not shown that he is that person. Menzies catalogues a list of his attributes that he alleges have been observed by others over the last two years. He includes the conclusions of his retained mental health experts (at the same time ignoring those of the court-appointed and the State's experts whom the district court fully credited). *Id*. at 2-8.[5]

Even so, the "observations" do not show that he has been stripped of his ability to understand the world around him; that he has forgotten names and how to take care of himself; or that he is confused, vulnerable, and often scared.[6]

Importantly, it is beyond dispute here that he understands that he will be executed and why. The district court determined this when it found him competent to be executed. *See generally* Exh. 11. In fact, the district court found that Menzies had a "sophisticated understanding" of the reasons for his execution. *Id*. at 18. And as a consequence of that finding, the court found that executing Menzies will not undermine the policy reasons for the death penalty—retribution and deterrence. *Id*. at 14-16. The court reached that

[5] For some of these, he as provided no citation. For example, he says without citation that persons close to him report that he often sits and stares into space, but he includes no citation. *Id.* at 8. The Board should ignore these bald, unsupported assertions.

[6] Menzies points to one incident where he allegedly failed to recognize another death-row inmate he has known for thirty years, but he includes no citation or any detail. Petition at 8.

conclusion even after finding that Menzies has a neurocognitive disorder with vascular factors. *Id*. at 16-17. The district court's finding that Menzies is competent because he understands that he will be executed for capital murder is a legal issue beyond the Board's review. Utah Code § 77-27-5.5(6).

Menzies proffers new evidence from his retained experts who opine that he has cognitively declined since the evaluations on which the court relied. According to them, Menzies can no longer understand the link between his conviction and sentence, nor understand the concept and process of commutation. But these new reports do not justify commutation.

First, Menzies submitted these same reports to the district court in support of his request for a second evaluation into his competency to be executed. The Board cannot consider issues based on new evidence that are subject to judicial review.

Second, the Board should give the reports little, if any, weight. They are authored by two of the experts the district court already discredited on the competency conclusion. Moreover, the presentation is *entirely* one-sided in Menzies's favor. He has refused to be re-evaluated by one of the experts the court credited regarding Menzies's understanding of his execution. Exh. 15.

The reports also lack detail. They often exclude the quotes of the questions asked of Menzies or his answers or both. And they exclude the data on which they rely. Exh. 14. And again, Menzies has refused the State access to the raw data on Dr. Abrams-Silva relied for her new assertions of Menzies's alleged precipitous mental decline. Exh. 16. This alone should forbear this Board's reliance on or consideration of Menzies's new assertions to

justify the Board's exercise of its discretion in favor of mercy.

And some of Menzies's new evidence conflicts with his assertions of recent serious cognitive decline.

Menzies's recent telephone calls also contradict his claims of serious cognitive decline since the district court found him competent to be executed. Exh. 17. As detailed above, the district court summarized the calls from 2022 and 2024 as showing that Menzies could problem-solve; was "very interested in his family, their welfare and daily life; and gave advice and asked questions to follow up on information they provided in earlier conversations. *Id*. at 10-12. Menzies responded appropriately to questions that he was asked and did not appear to be confused by anything anyone said to him. *Id*. at 10. Menzies "spoke with a normal cadence and speed." *Id*. at 11-12. His conversations were rooted in reality. *Id*. at 11. Menzies discussed the competency proceedings with his sister. He told her that "he would rather 'win on the board of pardons…. This board is giving everybody love.'" *Id*. at 11.[7]

Moreover, Menzies's more recent telephone calls from May 7, 2025, to July 7, 2025—which are roughly contemporaneous with the new proffer and conclusions from Menzies's experts—do not materially differ from those the district court relied on to find

[7] The State cannot provide to the Board the recorded calls on which the district court relied. The existing protective order precludes it, and Menzies has steadfastly refused to consent to modifying the order so that the calls may be submitted to the Board. Exh. 13.

that Menzies was competent.

Exh. 17

Id.

Id.

Id.

Id.

[redacted]

In short, there is little difference between the 2022 and 2024 calls relied on to find Menzies competent, and the 2025 calls that are contemporaneous with his claim that he has

suffered material additional decline. In other words, Menzies's mental acuity has not declined, he remains constitutionally competent to be executed, and his assertions to the contrary to this Board in hopes of leniency are unfounded and unsupported in reality.

Menzies also claims that he has lost much of his ability to care for himself, which has resulted in having an aide appointed to help him. But the scope of and limits on that assistance are telling. Petitioner Exh.50 at FPD14150. So while Menzies needs some assistance, he has not forgotten how to, nor lost the ability to, care for himself. *See* Petition at 9.

In short, the reasons Menzies posits why dementia may justify commuting a death sentence do not apply here. Menzies still has his long- and short-term memory. His personality is evidenced by his sense of humor and continued concern for his family. He understands the world. He is not confused. While he needs help with some things, he has not forgotten how to care for himself. If he is scared, it's not an irrational fear caused by dementia; it is instead a rational fear of his impending death. He understands the steps left to him before all barriers to his execution are surmounted. Even under his formula, Menzies's execution will not equate to "a hollow, inhumane spectacle devoid of moral or societal value," that "does not deter future crime," "bring closure grounded in justice," or "uphold the dignity of the law." *See* Petition at 9.

Menzies also suggests that his execution is unjustified as it will not hold him

accountable or "deter future crime." *Id.* None of that is true. There is actually a "significant body of recent evidence that capital punishment may well have a deterrent effect, possibly a quite powerful one." Sunstein & Vermeule, *Is Capital Punishment Morally Required? Acts, Omissions, and Life-Life Tradeoffs*, 58 Stan.L.Rev.703, 706 (2005). According to a "leading national study," "each execution prevents some eighteen murders, on average." *Id.* "If the current evidence is even roughly correct . . . then a refusal to impose capital punishment will effectively condemn numerous innocent people to death." *Id.* Put another way, it is the excessive delay in carrying out Menzies's lawful sentence that erodes closure, justice, and the dignity of the law. The United States Supreme Court has acknowledged that, "[i]n part, capital punishment is an expression of society's moral outrage at particularly offensive conduct." *Gregg v. Georgia*, 428 U.S. 154 (1976).

B. Commutation is not a place to relitigate or second-guess a constitutionally valid death sentence and capital murder conviction.

Menzies argues that the Board should commute his sentence for several reasons: (1) the trial judge and one of five appellate justices no longer stand by his death sentence; (2) the basis for the sentence, he says, no longer exists or was based on perjured testimony; (3) some evidence admitted at his guilt and penalty phases would likely not be relied on today; and (4) evidence developed long after his trial supports finding that he never should have been sentenced to death. None supports commuting Menzies's sentence.

1. These arguments attack the legal validity of Menzies's conviction and sentence or ask the Board to second-guess their wisdom; they cannot be the basis for commuting Menzies's death sentence.

Section 77-27-5.5(6) prohibits the Board from considering legal and constitutional issues that were, could have been, or still could be raised in the judicial process. Many of Menzies's remaining arguments mainly attack the evidentiary and legal validity of his sentence and, to some extent, his conviction. Menzies has litigated and lost those issues in decades of legal review. They cannot be a proper basis for commutation.

And to the extent the arguments raise issues that would not be cognizable in judicial proceedings, they ask the Board to second-guess what has been found to be constitutionally sound. Menzies cites nothing to justify that as a basis for a lesser sentence.

2. The Board may not consider jurists' extra-judicial opinions about the validity of Menzies's death sentence that has been affirmed in all judicial proceedings. And those opinions do not support commuting his sentence.

Menzies asks for commutation because the trial judge who sentenced him, and an appellate justice who twice voted to affirm, now think he should have a sentence less than death. Petition at 10-13. Their extra-judicial opinions about what Menzies's sentence should now be do not justify commuting Menzies's death sentence.

About 22 years after Judge Raymond Uno sentenced Menzies to death, he signed an affidavit offering his legal opinion that he had erred. Petitioner Exh. 21. Both the post-conviction court and the Utah Supreme Court concluded that Judge Uno's opinion was immaterial. *Menzies v. State*, 2014 UT 40, ¶167, 344 P.3d 581. Whether Judge Uno's extra-judicial opinion, even assuming its appropriateness, justifies a sentence reduction is therefore an issue that has been litigated and lost in judicial proceedings. As such, it is beyond the Board's reach.

Menzies nevertheless argues that because the courts did not consider the affidavit due to legal limitations on considering such evidence, the Board can consider it. First, the supreme court did not disregard the affidavit based on evidentiary limitations. It disregarded it because it was immaterial. And as discussed below, it rejected one of the assertions in the affidavit on the merits.

Second, Menzies cites nothing to support his proposition that the Board may reconsider his sentence based on evidence that the courts have rejected.

In any event, Judge Uno's opinion that he erred or that his error justified a lower sentence is itself legally incorrect. Judge Uno first concludes that he misapplied the heinousness factor in the penalty phase, and that error requires a sentence reduction. Petitioner Exh. 21 at ¶¶6-9. But the Utah Supreme Court already addressed this issue and affirmed the death sentence, stating that it doubted that any error occurred, and that if it did, it was harmless. *Menzies*, 889 P.2d at 405 (Utah 1994). And on post-conviction appeal—while directly addressing Judge Uno's affidavit—the supreme court held that even if it accepted the judge's argument that he erroneously applied the heinousness factor, the aggravating factors still would have supported the death sentence. *Menzies v. State*, 2014 UT 40, ¶206, 344 P.3d 581. Neither Judge Uno nor the Board may overrule these decisions.

Second, Judge Uno opined that he erroneously sentenced Menzies to death because Menzies presented unrebutted evidence of mental illness at the penalty phase. This, he said, required sentencing Menzies to the next lowest sentence from death. Petitioner Exh. 21 at ¶10. That is not the law. Evidence of mental disorders or mental illness may provide mitigation evidence at sentencing. However, evidence of mental disorders or mental illness

does not prohibit imposing a death sentence. *See State v. Lafferty*, 2001 UT 19, 20 P.3d 342, *cert. denied*, *Lafferty v. Utah*, 534 U.S. 1018 (2001).

Next, Menzies says that the Board should reduce his sentence because former Chief Justice Durham—who twice voted to affirm his sentence—has now concluded that it should be reduced. Again, this is an attack on the legality of the sentence that is beyond this Board's reach.

Further, Justice Durham was only one of four justices who affirmed Menzies's sentence on direct appeal, and only one of five who affirmed it on post-conviction appeal. Even if she could retroactively switch her vote, it would not change the outcome.

Finally, Justice Durham's recommendation was part of the Salt Lake District Attorney's Conviction Integrity Unit's recommendation to reduce sentence. But the CIU based the recommendation on a wholly one-sided presentation by Menzies's counsel. Had she been sitting as a judge or justice, she never would (or legally could) have made any determination about the sentence without hearing from the State. And when she did review Menzies's sentence as a judge, she did hear from both sides and voted to affirm. *See Menzies I*, 889 P.2d 393.

Former Judge Uno's and former Justice Durham's late, extra-judicial recommendations to reduce Menzies's sentence cannot support commutation.

3. Menzies's assertion that the bases for his death sentence have been refuted is, again, an attack on the validity of the sentence that the Board cannot consider. It does not support commutation in any event.

Menzies next argues that the original bases for his death sentence have been refuted over the decades. This is so, he says, because (1) the sentencing judge's concerns about his

future dangerous have proven false, and (2) the testimony on which the judge relied to find lack of remorse has been recanted. Neither justifies commutation.

Again, Menzies's argument is an attack on the sufficiency of the evidence to support his sentence based on later developments. As such, it is an attack on the legality of the sentence that cannot support commutation. §77-27-5.5(6).

Further, future dangerousness considerations always require prediction. Menzies cites nothing for the proposition that when any part of the prediction proves untrue, the sentence must be reduced.

In any event, neither argument supports commuting his sentence. The sentencing judge certainly relied heavily on his concerns about Menzies posing a future threat both inside and outside of prison. He stated that his "greatest concern" was "protecting innocent future victims." Exh.4 at 3689.

But Menzies's subsequent good behavior in prison does not, as Menzies argues, refute the judge's broad future dangerousness concerns. The judge did state his concern that Menzies posed a threat in prison. And he had good reason: he pointed out that Menzies had threatened guards, helped a dangerous inmate escape, made a shank while at the Utah State Hospital, and had his girlfriend smuggle a screwdriver into the state hospital for him. *Id*. at 3254, 3257, 3260, 3689.

But the judge's future-dangerousness concern also focused on the threat Menzies posed to the community because the basis of the judge's future dangerousness comments were grounded in another, strong aggravating factor—Menzies's significant and unrelenting criminal history.

The judge knew and pointed out that any time Menzies was free, he committed violent crimes. He knew that Menzies had escaped and that, while on escape, he robbed a cab driver and nearly shot the driver's arm off in the process. He knew that Menzies was on parole when he murdered Maurine Hunsaker. And he knew that a life sentence could not guarantee that Menzies would stay in prison. Menzies's relentless criminality—including while he had been paroled on prior crimes—gave the judge good reason to believe that a life sentence was inadequate to protect the public. *Id*. at 3254, 3256, 3269-70. By sentencing Menzies to death, the judge successfully kept the community safe from him for 37 years. This confirms rather than refutes the judge's basis for the sentence.

And good behavior should not be a reason for commutation. For one thing, good behavior is simply the minimum society can reasonably expect from everyone; it is no great achievement. And granting commutation on a good prison record would undercut the Legislature's decision to reserve for the worst of crimes a punishment that depends on factors known at the time of sentencing, not on a prisoner's subsequent conduct while incarcerated. Setting such precedent would further incentivize death-row inmates to delay their sentences so they could build a record of good behavior. "Delay" is already the "name of the game in death penalty cases." *Burris v. Parke*, 95 F.3d 465, 471 (7th Cir. 1996) (Manion, J., concurring). Giving Utah's death-row inmates further incentive to delay would further erode the People's interest in finality of judgment.

Next, Menzies argues that Walter Britton's purportedly perjured testimony refutes the judge's basis for a death sentence because it was the only evidence the judge relied on to find that Menzies had no remorse for killing Maurine. The sentencing record refutes that

this was a material consideration in the sentence. The judge mentioned it only once in his entire oral sentencing ruling. Exh. 4 at 3265. Moreover, Menzies has never otherwise expressed any remorse for his brutal murder of Maurine.

And whether Britton's original testimony was perjured is up for debate. Britton testified that Menzies told him he had been charged with murdering the woman abducted from the gas station. Britton assumed that Maurine had been shot and asked Menzies why he shot her. Menzies responded that he did not shoot her; he cut her throat. He added that it was one of the biggest thrills he had ever had. (This is the statement the judge relied on to find that Menzies had no remorse for killing Maurine.) Exh. 1 at 2082-84, 2098.

Britton continued that Menzies told him he had the victim's identification with him when he was arrested, in case she had any money in the bank he could get access to. And Menzies told Britton that Menzies's girlfriend had the victim's purse. *Id.* at 2084-85.

Britton signed an affidavit in 2010. In it he said that the "biggest thrill" testimony was not true. He also said that it was "possible" that Menzies "may not" have admitted killing the victim, and that he "believe[d] that he may have told the police and the court that because [he] was scared, and facing a lot of prison time on the federal charges." Petitioner Exh. 29 ¶¶3, 6.

Britton signed a declaration in 2014. In it, he said that the "biggest thrill" testimony or the testimony that Menzies murdered the victim by slashing her throat was not true. He continued that he could not remember Menzies admitting to the murder, and that "as far as he knew," the comments he attributed to Menzies were "never uttered." Petitioner Exh.30 ¶¶2, 4-5.

It is clear that Britton has perjured himself. The question is when. And as to whether Menzies admitted killing someone, Britton says it was "possible" Menzies did not or he doesn't remember Menzies doing so. Further, Britton never explains how he could have gotten details from some source other than Menzies that Maurine's throat was cut, that Menzies had her identification, or that his girlfriend had Maurine's purse.[8]

4. Challenges to the evidence supporting guilt and the death sentence are legal issues that have been litigated and lost; the Board may not consider them.

In his final arguments, Menzies argues that his conviction and sentence were based on evidence that was "problematic" and would not be relied on today. And he argues that the sentencing judge never heard a few additional details about his background or his purported organic brain damage because his counsel did not find them. He also argues that the trial transcripts had errors. Petition at 20-28.

These evidentiary and ineffective-assistance-of-counsel challenges have been litigated and lost. *See generally State v. Menzies*, 889 P.2d 393; *Menzies v. State,* 2014 UT 40. So too was his challenge to the trial transcripts. *State v. Menzies*, 845 P.2d 220 (Utah 1992). Menzies complains that the reviewing courts declined to consider some of his later-developed evidence on procedural grounds. But that was part of disposing of the legal

[8] Menzies points out that the CIU found that the reliance on perjured testimony warranted a sentence reduction, but that the District Attorney declined to seek one because he believed he was "legally powerless" to do so. Petition at 13. He says that the Board is not similarly constrained. But he cites nothing for the proposition that the Board is an appeal-de-novo body for denied CIU petitions. And again, the CIU's decision was based on a one-sided presentation by Menzies's counsel.

issues in the courts. It doesn't make any of these prior judicial decisions any less binding here.

Further, Menzies has not shown that any purported defect made any difference to his conviction or sentence. Even excluding all the evidence Menzies says would not be relied on today, the evidence of his guilt is overwhelming. As summarized above, Maurine's thumbprint was found in the car Menzies was driving the night she disappeared. Maurine appeared to have been tethered to a tree, possibly with handcuffs. When Denter cleaned out his car after Menzies returned it, he found a box labeled "handcuffs." Handcuffs were later found in Menzies's parka. Maurine's purse was found in Menzies's apartment, as well as the approximate amount of money that had been taken from the gas station (less the amount spent on Menzies's girlfriend). Maurine's social security card was later found in his girlfriend's belongings. Police found green shag carpet fibers on Maurine's pants that bore several similarities to carpet that had been in Menzies's apartment at the time Maurine was kidnapped.

Even if the Board could consider the validity of the conviction, there is still no question about Menzies's guilt based on the unchallenged evidence.

So too for his sentence. As detailed in the background section, the judge heard extensive evidence about Menzies's background. Menzies has not argued, let alone shown, that the few additional details would have changed his sentence.

As to Britton's recantation, the State has already shown that the sentencing judge referred to it only once and to lack of remorse only once. And there was other evidence of Menzies's remorselessness. He laughed when he told police about his robberies and

kidnappings of the 7-11 clerk. And despite overwhelming evidence of his guilt, he still insisted at sentencing that he was innocent of Maurine's murder. As such, this evidence is more than lack of remorse, it shows a callous relishing of his criminal behavior. Remorse "must be the act of a morally free person who accepts responsibility for his behavior and its consequences." Bruce Ledewitz & Scott Staples, The Role of Executive Clemency in Modern Death Penalty Cases, 27 U. Rich. L. Rev. 227, 237 (1993). Menzies did not at the time he was sentenced, and he does not now.

Finally, presenting the sentencing judge with organic brain damage evidence would have been counterproductive. As shown, the judge's chief concern was Menzies's extensive criminal past and likelihood of continuing his long history of violent crimes. Telling the judge that Menzies had brain damage that made him more susceptible to acting on impulse would have increased the probability that he will be dangerous in the future. *See Penry v. Lynaugh*, 492 U.S. 302, 324 (1989) (organic brain damage is a two-edged sword: "it may diminish his blameworthiness for his crime," but also show "a probability that he will be dangerous in the future"), *overturned on other grounds*, *Atkins v. Virginia* 536 U.S. 304 (2002). In fact, the post-conviction court reached this very conclusion. Exh. 27 at 15458 ("If OBD [were] established, for example, and impulse control forever and always impaired as a result of that OBD, that is an indication that such dangerous acts as were presented would likely continue unabated in the future.")

Menzies's counsel chose the smarter course. They presented evidence of a non-organic-based mental illness that was susceptible to treatment and likely to abate within a year or two from the date of the sentencing hearing.

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In short, the Board may not consider Menzies's challenges to the evidence supporting his conviction and sentence as a reason for commutation. And Menzies's challenges are insufficient on their merits in any event.

CONCLUSION

Nearly 40 years ago, Menzies capped off a long history of violent crimes by robbing, kidnapping, and murdering twenty-six-year-old Maurine Hunsaker, all to get $115 from the gas station till. While he has had 40 years to visit with his family by phone and in person, he robbed Maurine and her family of the same comfort. She never got to see her children grow to adults or cherish her grandchildren and great grandchild. And those multiple generations were likewise deprived of being with her.

Whatever Menzies's present deficits may be, executing him will not mean executing someone who does not know what is happening to him or why.

Menzies's sentence was and is justice. It should be carried out without any further delay.

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Exhibit 1: Crime Scene and Autopsy Photographs (Non-Public)

Exhibit 2: Guilt Phase Transcripts

Exhibit 3: Post-Conviction Record 4138-4158

Exhibit 4: Preliminary Hearing Transcript 150-187

Exhibit 5: Penalty Phase Transcripts

Exhibit 6: Findings and Conclusions on Competency

Exhibit 7: David Thompson Evaluations (Non-Public)

Exhibit 8: Ryan Green Evaluations (Non-Public)

Exhibit 9: Michael P. Brooks Evaluation (Non-Public)

Exhibit 10: Paul M. Silvasi Evaluation (Non-Public)

Exhibit 11: Competency Findings and Conclusions

Exhibit 12: Utah Code § 76-3-207(4)(a)-(d)

Exhibit 13: July 15, 2025, email from Eric Zuckerman to Thomas Brunker

Exhibit 14: Opposition to Petition to Reevaluate Menzies (Non-Public)

Exhibit 15: July 18, 2025, State's counsel emails with UDC and Eric Zuckerman

Exhibit 16: July 17, 2025, Daniel Boyer email to Eric Zuckerman

Exhibit 17: Recorded Telephone Calls from May 7, 2025, to July 7, 2025 (Non-Public)

Exhibit 18: *State v. Menzies*, 845 P.2d 220 (1992) (Menzies I)

Exhibit 19: *State v. Menzies*, 889 P.2d 393, 406 (Utah 1994) (Menzies II)

Exhibit 20: *Menzies v. Utah*, 513 U.S. 1115 (1995)

Exhibit 21: *State v. Menzies,* 2006 UT 81, 150 P.3d 480 (Menzies III)

Exhibit 22: *Menzies v. State*, 2014 UT 40, 344 P.3d 581 (Menzies IV)

Exhibit 23: *Menzies v. Utah*, 577 U.S. 834 (2015)

Exhibit 24: *Menzies v. Crowther*, No. 03-CV-0902-CVE-FHM, 2019 WL 181359 (D. Utah Jan. 11, 2019)

Exhibit 25: *Menzies v. Powell*, 52 F.4th 1178 (10th Cir. 2022)

Exhibit 26: *Menzies v. Powell*, 144 S.Ct. 122 (2023)

Exhibit 27: Ruling and Order, March 13, 2012, Case no. 030106629

STATE'S WITNESSES

Should the Board hold a hearing, the State intends to call the following witnesses:

1. Matthew Hunsaker: Mr. Hunsaker is Maurine Hunsaker's son and representative. He will represent the family before the Board.

2. Dr. Ryan Green: Dr. Green will address the mental health evidence Menzies has presented to the Board.

3. Dr. David Thompson: Dr. Thompson will address the mental health evidence Menzies has presented to the Board. He will also discuss follow up interviews he has done with corrections officers.

4. Sgt. Joseph Torrence: Sgt. Torrence is a corrections sergeant who will address his interactions with and observations of Menzies at the prison.

5. Sgt. Ray Eberly: Sgt. Eberly is a corrections sergeant who will address his interactions with and observations of Menzies at the prison.

6. Sgt. Jeff Orton: Sgt. Orton is a corrections sergeant who will address his interactions with and observations of Menzies at the prison.

7. Officer Hayden Kay is a corrections officer who will address his interactions with and observations of Menzies at the prison.

8. Skyler Munson: Ms. Munson is a Correctional Health Care employee who will address her interactions with and observations of Menzies at the prison.

DATED this 23rd day of July 2025.

DEREK E. BROWN
Utah Attorney General

/s/ Thomas Brunker

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Special Assistant Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2025, I electronically filed the foregoing RESPONSE TO PETITION FOR COMMUTATION OF DEATH SENTENCE with the Utah Board of Pardons and Parole by email and served a copy of the same to the following by email and overnight mail of a flash drive containing the response and exhibits:

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