

Michael and Kathy were by this time having serious marital problems. They separated at Kathy's insistence shortly after the wreck. Michael began staying with his oldest sister, Debra. Debra and others describe Michael as being despondent during this period.

He not only was deprived of Kathy's presence, without which he was somewhat dysfunctional, but he was unable to see Niki. Debra tried to make Michael eat and kept an eye out for pills with which Michael planned to overdose. At least one suicide attempt was made by Michael while he stayed with his sister. His dependence on drugs and alcohol increased markedly as well.

Also during this period, Michael often went to the grave of Kathy's father. He would sit and talk with the dead man, feeling that Mr. Jones understood what Michael was experiencing.

Kathy and Michael reconciled and moved to a trailer park in Lakeland. Michael found work at a phosphate mine, and Kathy became pregnant with Daniel Brian, who was born on July 14, 1980. By the end of the summer, Kathy was illegally writing checks on a family trust account. She was arrested for this in the Fall, and was incarcerated until early 1981. Michael was arrested at the same time on some outstanding traffic tickets; he was released the following month. One of Kathy's sisters took in the Lambrix children while both parents were in detention, but Michael resumed the caretaking of Niki when he was freed. Kathy's sister ultimately adopted Daniel Brian.

During Kathy's incarceration, Michael relocated to Labelle, Florida, where he had found employment at a gas station. When Kathy was released in early February, Michael was dismayed to learn that she did not intend to reunite with him. She had apparently been involved with another man and wanted to marry him; Michael was unable to persuade her otherwise, so Kathy filed for divorce.

Michael was himself arrested on bad check charges in late March. He was detained in county jail through the middle of April, plead guilty and was placed on probation. During this

detention, Kathy finalized the divorce. This was a tremendously disabling event for Michael, and increased drug and alcohol dependence followed the loss of his wife and young daughter.

During this period, Michael became involved with Kitty Harden, the sister of an old friend. He and Kitty traveled to Chicago where Michael again found work with a carnival. Upon returning to Florida approximately a month later, Michael reconciled with Kathy, who had remarried.

Following an argument between Kitty and Kathy which resulted in a car chase and accident, Michael was arrested for aggravated assault. These charges were ultimately dropped, but Michael was detained in the county jail from August until December, 1981. When he was released he learned that Kathy had been beaten and raped a few days earlier. He attempted to see her at Tampa General Hospital, but members of Kathy's family prevented him from doing so.

In late December of 1981, Michael traveled to Utah to visit his birth mother, with whom he had re-established contact during his time in county jail. Michael found employment at a fast food restaurant there, and lived with his mother and step-father. Mrs. Yeafoli reports that Michael drank heavily and continuously while at her home. She also reports several instances of fighting on Michael's part; these were incidents in which Michael intervened on behalf of women who were being harassed and bothered by males. Defense of women at other points in his life has also been reported by others.

Michael remembers beginning to experience health-related problems from alcohol consumption by this time, but received no treatment or other intervention.

In March of 1982, Michael was arrested back in Florida for violation of probation for going to Utah to be with his mother. For the first time, he was sentenced to prison, ending up at Baker Correctional Institution. While incarcerated at Baker, Michael was jumped,

beaten and gang-raped by three or four other inmates. This event was extremely traumatizing to Michael, particularly in light of his own prior sexual abuse and that of his sisters and his wife. Michael was placed in lock-up for his own protection after the assault.

In November of 1982, Michael was transferred to a work release program. While intoxicated and in fear of being forcibly returned to prison for this, Michael walked away from the release center roughly two months before his release date.

In January of 1983, Michael met a woman named Frances Smith. Ms. Smith was ten years his senior, a heavy drinker, married, and the mother of three children. She abandoned her children to live with Michael. They moved to Labelle, Florida, and Michael found work as a mechanic. The couple drank continually -- from morning until evening -- and had tremendous financial and other stressors. By this time, Michael had begun having alcoholic blackouts.

Proffer of Dr. Sharon Maxwell, Appendix 18.

On the night of February 5, 1983, a confused, damaged and highly intoxicated Cary met Clarence Moore, Jr., aka Lawrence Lamberson, and Aleisha Bryant. Frances Smith made it a foursome, and they all proceeded to drink heavily and to party. What was knowable at that time about Moore was that he had a criminal history, including a history of assaulting women (see Dade County Court Records of Clarence Moore, Jr., Appendix 33); Cary did not have a history of violence, and had in fact been protective of women exposed to such abuse. What was knowable at that time about Frances Smith was that she was mentally ill and had been medicated for this condition. As discussed in Claim I, what actually happened that night was far different than what Cary's jury heard; Cary's mental state, as recognized by a

uniformed law enforcement officer, was also not accurately disclosed to the people who decided Cary's fate:

My name is Ronald A. Council, and I am currently employed by the Palm Beach Gardens police department. I testified for the state in the case against Cary Michael Lambrix.

I first came in contact with a person I later learned to be Cary Lambrix on February 5, 1983 at around 10:40 pm at Squeaky's Lounge (also known as the County Line Bar), in Labelle, Florida. I was a deputy sheriff at that time with the Glades County Sheriff's Department, and went to the bar on a routine check. Mr. Lambrix was there with three other people. They were all drinking together, and it appeared that they were having a good time. I later learned that two of the people he was with ended up as murder victims.

When I entered the bar, Mr. Lambrix made a loud comment, to the effect of "here comes the big lawman with his big gun and his badge." I just ignored him and walked back to talk to the owner of the bar.

When I was leaving the bar Mr. Lambrix stepped in front of me blocking my path and said, "Hey c'mere I want to tell you a joke. I said something like "you're a joke" and walked on past him. Mr. Lambrix was intoxicated and I did not to want hear his joke.

About ten days later, I went to the site where the bodies of the victims were exhumed. I was the first police officer on the site, and waited at the trailer for the others to arrive. The trailer was in bad condtion, but I did not observe anything unusual inside of it.

The next contact I had with Mr. Lambrix was when I went to Orlando, Florida to transport him back to Glades county after his arrest for the two murders.

Affidavit of Ronald A. Council, Appendix 4.

Another critical truth absent from jury consideration involved the reality of his mental impairments, and the manner in which they

related to the crime for which he stood trial. As will be presented through mental health testimony at an evidentiary hearing, Cary suffered from multiple substance dependencies, which were of long-standing, and concomitant organic mental disorders. In addition, he suffered the effects of severe and extreme childhood deprivation in all important areas, from battered child syndrome, and from a personality disorder characterized primarily by followership or dependency traits. These real and significant disabilities rendered him unable to form specific intent, and gave rise to myriad statutory and nonstatutory mitigating factors. In addition to his life history, these factors were present, easily accessed, and would have made a critical difference.

CLAIM VI

MR. LAMBRIX WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL BY TRIAL COUNSEL'S FAILURE TO OBJECT TO INSTRUCTIONS THAT ALLOWED THE JURY TO WEIGH UNCONSTITUTIONALLY VAGUE AGGRAVATING CIRCUMSTANCES

The following facts support this claim:

1. All other allegations contained in this motion are fully incorporated herein by specific reference.
2. Mr. Lambrix's death sentence resulted from a combination of errors in instructing his jury concerning the proper eighth amendment weighing of aggravating and mitigating circumstances. That there was fundamental constitutional error in the instructions to the jury is a matter which is now not open to debate. Espinosa v. Florida, 112 S. Ct. 2926, 120 L.Ed.2d 854 (1992); Jackson v. State, 19 Fla. L. Weekly S215 (Fla. April 21, 1994). Nor is there any