



# McGARRY LAW OFFICE

*Kathleen McGarry*

---

P.O. Box 310  
Glorieta, New Mexico 87535  
Phone: (505) 757-3989  
Fax: 888-470-6313  
E-Mail: [kate@kmcgarrylaw.com](mailto:kate@kmcgarrylaw.com)

August 6, 2009

RE: Clemency for Darryl Durr

We are writing on behalf of our client, Darryl Durr, an Ohio Death Row Inmate who is scheduled to be executed on November 10, 2009. Mr. Durr's last chance to avoid execution will be a clemency hearing scheduled for September 30, 2009. We are asking you to write a letter of support for Darryl. Please address the letter to:

Governor Ted Strickland  
Governor's Office  
Riffe Center, 30th Floor  
77 South High Street  
Columbus, OH 43215-6108

However, **I would like you to send the letter to me (Kathleen McGarry) at the address on my letterhead.** The reason I am having you send it to me is that I am creating a handout of materials that will go to the Ohio Adult Parole Authority and the Governor. The Board will actually hold the hearing, and make a recommendation to the Governor, the final decision maker on clemency. In order to have all the materials I need, the letters of support must be in my hands **NO LATER THAN SEPTEMBER 17, 2009.**

There is no magic formula or magic words to say to the Governor. If you know Darryl, then simply tell him why you do not think Darryl should be executed. Use your personal knowledge or relationship with Darryl to ask the Governor for clemency. If you do not know Darryl, but still would like to write on his behalf, let me tell you the things we will be focusing on in his clemency hearing. Please do not copy the below list, receiving a form letter from many people saying the same thing will not assist in the process. Write your own letter.

- I. Inadequacies in Darryl's Legal Proceedings (Facts of the Case are attached)
  - A. The State's Case rested on the testimony of Deborah Mullins. If Ms. Mullins was telling the truth, she had ample opportunity to go to the police the night Angel Vincent disappeared. Instead she waited over nine months to come forward with her story, at a time where her relationship with Darryl seemed to be breaking apart.

- B. The funding for investigative and expert witness assistance was so meager (\$500.00) that defense counsel could not obtain the assistance that was needed to find and talk to witnesses and to assist in the mitigation phase of the case.
  - C. The State failed to turn over reports that included information that would have assisted the defense. These included statements:
    - a. That the deputy coroner's initial findings concerning the date of death indicated the body had been dead "from days to a couple of weeks". Angel Vincent disappeared on January 31, 1988 and the decomposed body that was later identified as hers was found on April 30, 1988, three months later.
    - b. An expert opinion that the body was that of a 20-30 year old female. Angel Vincent was 16 years old when she disappeared.
    - c. Police reports that identified other reasons for Angel Vincent's disappearance. The week prior to her disappearance, Angel Vincent had telephoned her father in Texas and expressed her desire to visit him. The authorities had previously charged the decedent with being habitually truant from school. The police treated her January 1988 disappearance as if she had run away.
  - D. The trial court rushed the case forward to trial. The trial began 53 days after counsel was appointed.
  - E. The trial court severely limited defense counsel's questioning of potential jurors, and seated a jury in four hours. Voir dire in a capital case usually takes anywhere from three to five days.
  - F. The racial overtones in the case overshadowed the trial. Darryl Durr is African American. The victim was a young Caucasian female. Deborah Mullins was a white female as was Darryl's common-law wife Janice Jackson Durr. During a break in the trial proceedings, the judge stated that he "wanted to see Darryl's nigger ass in the chair for messing with white women". A police officer told Darryl's stepfather that he did not like him "because I was like Martin Luther King".
  - G. Trial counsel failed to investigate Darryl's family life and background in anticipation for the penalty phase of the case as is required by the ABA Guidelines for Capital Counsel in the Representation of those charged with an offense punishable by death. After Darryl was convicted, the case proceeded quickly to the penalty phase. The defense called Darryl's mother and his common law wife. Defense counsel failed to present a cohesive mitigation case and to explain to the jury information to give Darryl less than a defense sentence.
- II. Defense Counsel were ineffective in the Penalty Phase
- A. Counsel representing the capitally charged must meet minimum standards of proficiency -- both in defending against the state's charges and in convincing the sentencer that death is not the appropriate sentence.
  - B. Counsel failed to investigate and conduct a thorough review of Darryl's background

- C. Counsel failed to present the following information to the jury, because they failed to investigate:
- a. Tammy Jackson was a friend of Darryl's and a former girlfriend. She stated in her affidavit that Darryl was a nice person and he was never physically or verbally abusive to her and was never disrespectful.
  - b. Charles Johnson was Darryl's step-father. Mr. Johnson could have testified concerning some of the attitudes and experiences of a black man. He also could have discussed incidents from Darryl's childhood that would have humanized Darryl in the jury's eye.
  - c. Michael Durr was Darryl's older brother. Michael could have related what Darryl's childhood was like and his perceptions of Darryl's childhood.
  - d. Denise Durr was Darryl's older sister. She indicated that her father used to beat her mother. She spent time watching Darryl while her mother worked. Darryl found out as an older child that he had a different father (Eddie Wright) than the one who lived in the house. Darryl was very proud of his son and daughter and was a good father.
- D. Counsel failed to obtain the assistance of experts
- a. A social worker or mitigation specialist: This person is responsible for the gathering of records relating to the client's life including education and employment records. They also locate and interview persons who are familiar with the client, be it family, friends, employers, teachers, etc. The mitigation specialist then creates a social history or overview of the client's life to aid defense counsel in creating a strategy for the penalty phase. No such person was retained, documents located, or social history created.
  - b. An independent psychologist: This person could have done psychological interviews and testing of Darryl. In state post-conviction, Dr. James Eisenberg examined Darryl and obtained the following information.
    - i. Darryl Durr is a 28 year old, single African-American male. He describes himself as an extremely private person who was quite naive about racism. Mr. Durr has shown a preference for white women beginning in his late adolescent years and had little or no understanding of the intolerance that he might experience from both the black and white communities. He grew up in a family with inconsistent discipline and little supervision. He never knew his biological father and lacked appropriate male role models through much of his childhood. He was mostly supervised by his siblings. During his early teens he spent much time away from home without any serious consequences upon his return. His family seemed somewhat "unconcerned" about his absences and would give him a bath upon his return. It appears that everyone within Darryl's immediate family were isolated emotionally from each other, though they loved each other.
    - ii. As a result of his emotional isolation from his family, Darryl grew up with strong feelings of ambivalence concerning relationships. Ambivalence, in this sense, is a psychological state noted by the

existence of mutually conflicting feelings or thoughts, such as hate or love together, about the same person, object, or idea. Without adequate understanding of emotions, feelings, or even sexual tensions, Darryl responds to the external world often with opposing forces.

- iii. The Minnesota Multiphasic Personality Inventory - 2 (MMPI-2) is a standardized questionnaire which elicits a wide range of self-descriptions that are scored to give a quantitative measurement of an individual's level of emotional adjustment. Mr. Durr responded to the test with sincerity and a normal degree of expressiveness. The profile is likely to be valid. Individuals obtaining similar profiles have difficulties around the issue of impulse control and setting limits. They tend to be impulsive and overactive. Individuals with similar profiles experience repeated failures in interpersonal relationships. Although dependent and having strong needs for affection, they are anxious much of the time, feel easily threatened, and are overly suspicious of others. They have difficulty expressing emotions in a modulated fashion. There is also an extraverted, active, and outgoing quality to the overall MMPI-2 profile. There are no indications of any underlying thought disorder. There are no indications of any involvement with drugs or alcohol.
- iv. Records reveal little in the way of any singularly traumatic event. His family pretty much let him do what he wanted. In his early schooling, Darryl had a rather optimistic attitude towards the world as reflected in his own statement written for the Diocese of Cleveland. In my opinion, this optimism ended when he began dating white women. He was then confronted with racial issues from both the black and white communities and had little ability to cope with those reactions and his own feelings. His family is not one to talk about these kinds of things. As such, Darryl's developing ambivalence towards these relationships resulted in confusion and a lack of identity, with the accompanying psychological defense mechanisms of denial and projection. These are defense mechanisms used to ward off the feelings of anxiety, isolation, and rejection.
- v. Defense Counsel's presentation of mitigation excluded a psychological explanation of Mr. Durr and gave the jury no professional understanding of his life history and the developmental consequences he experienced as a result of his immediate family environment. Without such an explanation, the jury had no understanding of Mr. Durr's life, his particular family background, his strengths, his weaknesses, or of any underlying psychological issues. All the jury heard at mitigation were the testimony of his mother and ex-wife and an unsworn statement by the defendant which rarely sheds light on psychological issues.

- vi. It is my opinion, with reasonable scientific certainty, that a psychologist's testimony at mitigation would have provided the jury additional and necessary information upon which to deliberate as to whether or not the aggravating factors outweighed the mitigation factors. At a minimum, a psychologist's input into mitigation was necessary for the attorneys to develop a meaningful and coherent strategy. At the time of this mitigation, December 12, 1988, psychologists were available for the specific evaluation of capital defendants for purposes of providing testimony at mitigation. Without such testimony, the jury had no understanding of the defendant, his personal development history, his strengths and weaknesses, his psychological functioning, and the way in which these possible mitigating factors related to the crime and the aggravating factors.
  - vii. It is my opinion, with reasonable scientific certainty, that Mr. Durr's lack of appropriate role models, absence of a biological father, emotionally isolated family, and his early environment should have been presented to the triers of fact and would have been considered as a mitigating factor under Section (B) (7) of the O.R.C. 2929.04.
- c. An expert on cross-cultural racial issues: Dr. Judith Skillings, a clinical psychologist with a specialty in cross-cultural racial issues also provided an affidavit for Durr's post conviction petition. Dr Skillings lengthy affidavit shed light on issue present in Darryl's case, which involved his relationships with three white women. She could have explained to the jury some of the reasons that Darryl seemed to be drawn to white women, other than his own attorneys explanation that he had to either be a drug dealer or a pimp. She could have also testified concerning racial issues that are not well known or understood by white people.
- E. Counsel failed to act as an advocate on Darryl's behalf in the penalty phase:
- a. trial counsel gave a one (1) page opening statement in which they never discussed any of the legal aspects of mitigation, the burden of proof, or offered any defense theory of the case.
  - b. trial counsel called only two witnesses, Darryl's mother and his common law wife (whose testimony had already been rejected by the jury in the trial phase of Darryl's case), because they had not interviewed other members of Darryl's family or other significant others in his life.
  - c. trial attorneys developed no theory of mitigation and had no organized method for examining the mitigation witnesses.
  - d. counsel gave a three (3) page closing argument in which they improperly discussed all mitigating factors, including those not raised by the Darryl.
  - e. counsel went through the first six mitigating factors listed in R.C. 2929.04(B)(1)-(6) and told the jury that none of them applied, implying he had no mitigating evidence
  - f. In regard to the final mitigating factor listed in R.C. 2929.04(B)(7), counsel told the jury that he did not know what this mitigating factor meant, but if

it had "any applicability at all," it might include residual doubt about Darryl's guilt.

- g. counsel limited the jury's consideration of mitigation to one factor only, and then further limited this final factor to residual doubt. Then counsel further conceded that residual doubt may not even be a "legally" appropriate matter to consider under R.C. 2929.04(B)(7). In so doing defense counsel once again made the State's argument for the State.
- h. trial counsel also failed to provide the jury with any plausible explanation as to why Darryl would be involved in a relationship with two white women at the same time, conceding instead that this was a "very unusual relationships."
- i. Trial counsel failed to make appropriate objections to the prosecuting attorney's closing argument
- j. Trail counsel failed to make appropriate objections to the jury instructions

### III. Darryl has make productive use of his time on Ohio's Death Row

In the 20 years that Darryl has been on Ohio's Death Row, he has made the following contributions and enhancements to other lives:

- A. He developed a ongoing friendship and "marriage" with Gina Vincente, a woman in the Philippines.
- B. He became a legal clerk and tutor to other inmates. He has studied civil law to be able to assist incarcerated fathers to get contact and/or custody of their children and to preserve their parental rights. Darryl, on his own, filed many legal documents concerning his own child Angel Durr. Angel's mother, Deborah Mullins, lost custody of Angel in 1991 because of drug abuse and neglect.
- C. In his early years on death row he staged a hunger strike to get the cells of the inmates painted since they were dirty.
- D. He regularly donates what he can to the international charity "Toy Box" that sells children's handicrafts that are then sold with the money going to the children.
- E. He helped Filipino burn victims May and Myla Santiago to get medicine and school supplies. Along with Gina, he tried to help them come to the United States for treatment at the Shriner's Hospital.
- F. He is assisting another Filipino woman to prepare to go to college for nursing school by assisting them through the paperwork maize and application process
- G. He has developed a close relationship with a Filipino family that considers Darryl a father and grandfather and tries to help them with school supplies.
- H. He mentors prisoners by helping them join the African Methodist Episcopal Church, and the African Hebrew Israelites.
- I. He writes letters to "at-risk" youth at the African Methodist Episcopal Church to help them stay on the right path.
- J. He helps fellow inmates to get things they need or want like books and to draft the paperwork necessary to get medical help.
- K. He helps fellow inmates with their legal proceedings.

- L. He helped to prevent a possible assault-murder of CO Propst by encouraging prisoners to go to OSP psychologist Dr. Ceremiele. The psychologist was then able to talk to the administration and to stop CO Propst from further harassing prisoners and destroying their property which was creating a hostile and dangerous environment. CO Propst was eventually fired for this and assaulting another guard.
- M. He has filed many grievances to try to improve the conditions of all inmates on death row.

Finally, if you would like to just speak out against the death penalty that is fine too. All letters are welcome.

Sincerely,

*Kathleen McGarry*  
Kathleen McGarry

AND

*Dennis Sipe*  
Dennis Sipe  
Buell & Sipe  
322 Third Street  
Marietta, OH 45750

Attorneys for Darryl Durr

*(Attorney Note: These facts were the facts as set forth by the Ohio Supreme Court in its opinion affirming Darryl Durr's conviction and death sentence. State v. Durr, 58 Ohio St.3d 86 (1991). The appellant is Darryl Durr. The Parole Board typically relies on these facts in its report. There was no physical evidence to tie Darryl to this crime, the State's case rested on the testimony of Deborah Mullins.)*

On January 31, 1988, at approximately 10:50 p.m., Norma Jean O'Nan and her husband returned to their home in Elyria and discovered the front door unlocked, the lights and television on, and their sixteen-year-old daughter, Angel Vincent, missing. Only twenty minutes earlier, Mrs. O'Nan had spoken with her daughter by telephone to learn that Angel's girlfriend, Deborah Mullins, was at her home and that Deborah's boyfriend, appellant Darryl Durr, was expected to arrive later in the evening. That was the last chance Mrs. O'Nan would have to speak to her daughter alive.

Mrs. O'Nan testified that Angel was wearing a hot pink sweater, a light pink and white checkered blouse, hot pink pants, and white tennis shoes when she and her husband left Angel home alone on the evening of January 31, 1988. After notifying the Elyria Police of Angel's disappearance, Mrs. O'Nan searched her home to determine if any of Angel's belongings were missing. Although Angel's pink pants were found, Mrs. O'Nan's search revealed the following items missing: an old lavender blanket with a hole in the center, a pair of black acid-washed denim jeans, Angel's pink and white checkered blouse, light blue eyeglasses that Angel wore only in her home, a jean jacket that Angel had borrowed from a friend, an Avon necklace with an "A" charm attached, a small chain bracelet, an Avon slip-on bracelet, an inexpensive rhinestone ring and a dog chain that hung from her mirror. Mrs. O'Nan also discovered Angel's handbag stuffed under her bed.

Three or four days later, Mrs. O'Nan confronted Deborah Mullins and the appellant regarding the disappearance of her daughter, and was told by the appellant that "you know how kids are, she probably ran away."

On April 30, 1988, three boys noticed a foul odor coming from two orange traffic barrels while playing in Brookside Park. The barrels had been placed open end to open end, and were underneath a railroad tie. Upon separating the barrels, the boys discovered a severely decomposed female body that had been wrapped in a dirty old blanket. A portion of a leg was visible through a large hole in the blanket.

A deputy coroner testified that the only clothing found on the victim was a pink sweater and a pair of white tennis shoes. The pink sweater had been pushed up well above the victim's breast area. An initial external examination determined the body to be that of a young white female, who was in an advanced state of decomposition. The body was heavily infested with maggots and the body's eyes and ears had been lost. There was also prominent evidence of animal activity about the inguinal and vulval regions of the body, and in and about the thighs. According to the deputy coroner, the decomposition was consistent with three months' exposure.

After examining the body, the deputy coroner concluded that the cause of death was homicidal violence. Since the body was so badly decomposed, the deputy coroner could not determine

whether ligature marks, scrapes or tears indicating strangulation were present. There was no damage noted to the internal cartilaginous structures of the neck. The deputy coroner declined, however, to rule out strangulation as a cause of death since damage to these structures is not always present in young strangulation victims due to the flexibility of these structures. In addition, because the body was so severely infested with bacteria, testing for the presence of acid phosphates and spermatozoa was inconclusive.

In September 1988, after appellant was arrested for two unrelated rapes<sup>1</sup>, Deborah Mullins revealed her knowledge of Angel's disappearance to the Cleveland Police Department. As the result of her information, an ankle X-ray obtained from Elyria Memorial Hospital, and dental records, the body discovered in Brookside Park was determined to be that of Angel Vincent.

At trial, Deborah Mullins testified that on the evening Angel disappeared Deborah had asked the appellant to drive to the house of one of Angel's friends to retrieve a package of cigarettes for Angel. Appellant agreed and left. Shortly thereafter, appellant returned to Deborah's house and, instead of entering through the front door, began throwing stones at her upstairs bedroom window and blew his car horn for her to come out. Deborah and her baby, who had been fathered by the appellant, left the house and entered the appellant's car where the appellant brandished a knife toward both of them.

As the appellant was driving, Deborah heard noises from the back seat and after turning around discovered Angel bound on the rear floorboard.

According to Deborah's testimony, Angel was wearing black acid-washed denim jeans, a jean jacket, and tennis shoes when she was last seen in the back of appellant's car.

When Deborah asked the appellant why Angel was bound in his car, the appellant responded that he intended to "waste" her because "she would tell." He never revealed just what Angel was going to tell.

After threatening the life of both Deborah and his baby, the appellant let Deborah out of his car. He returned to her home three or four hours later. Upon returning, appellant told Deborah that he had "wasted" Angel and that she should pack her things because they were leaving.

Appellant drove Deborah and their baby to his wife's, Janice Durr's, Cleveland apartment. After dropping Deborah and the baby off, the appellant left with a duffle bag containing two shovels.

When appellant returned, he was wet and covered with snow. Upon entering the room, appellant placed a ring and bracelet that belonged to Angel on a coffee table. As he was falling asleep, appellant told Deborah that he had strangled Angel with a dog chain until she "pissed, pooped and shit and made a few gurgling sounds," took her body to a park, wrapped it in a blanket, placed it between two construction cones, and left her by some railroad tracks.

Later that day or the next day, appellant burned a bag of clothing in the basement of Janice Durr's apartment building and asked Deborah to model the black acid-washed jeans that Angel

---

<sup>1</sup> Attorney Note: Durr plead guilty to these unrelated rapes upon the advice of a different set of attorneys and has maintained his innocence as to these rapes.

had worn on the evening of her abduction.

The appellant then drove Deborah, Janice Durr and his children to the west side of Cleveland where he burned another bag of items, and while driving from Cleveland toward Elyria, the appellant threw Angel's jean jacket out the car window.

After arriving at Deborah's home in Elyria, Deborah's mother informed her that Mrs. O'Nan had come over and inquired about Deborah's knowledge of Angel's disappearance. Deborah testified that appellant threatened her and their baby's life and instructed her to tell Mrs. O'Nan that Angel had been talking about running away. Deborah also testified that the appellant took her and their baby to Edgewater Park where the appellant threw Angel's glasses over a cliff into the lake. A month or so later, while driving past the Cleveland Zoo, appellant pointed to a location near a bridge and said, "Over there." When Deborah questioned his statement, the appellant replied, "You know what I am talking about."

Following a jury trial appellant was convicted of one count of aggravated murder, R.C. 2903.01, with specifications, pursuant to R.C. 2929.04(A)(7), that the murder was committed while the appellant was committing, attempting to commit, or fleeing after committing aggravated robbery, rape, and kidnapping, (2) kidnapping, R.C. 2905.01, with a violence specification, (3) aggravated robbery, R.C. 2911.01, with a violence specification, and (4) rape, R.C. 2907.02, with a violence specification.

(Attorney Note: The question of whether there was a rape has always been the subject of dissent on the appellate courts that have reviewed this case. On direct appeal, Judge John V. Corrigan of the Cuyahoga County Court of Appeals filed a concurring and dissenting opinion in which he determined that the evidence "was insufficient for the jury to infer beyond a reasonable doubt that the victim was raped. Chief Justice Thomas Moyer and Justice Herbert Brown of the Ohio Supreme Court dissented with respect to the sufficiency of the evidence as to the rape. They concluded that they did "not believe the evidence is sufficient to support a conviction for rape." In the Sixth Circuit, Judge R. Guy Cole concurred, stating: "I disagree with the Ohio Supreme Court's view that the circumstantial evidence in this case was 'highly probative' of rape.")