

IN THE SUPREME COURT OF OHIO

STATE OF OHIO :
 :
 Appellee, : Case No. 2018-0968
 :
 -vs- : *Death Penalty Case*
 :
 SHAWN M. GRATE, :
 :
 Appellant :

*On Appeal from the Ashland County
Court of Common Pleas
Case No. 16C-CRI-187*

MERIT BRIEF OF APPELLEE STATE OF OHIO

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STATEMENT OF THE CASE AND FACTS

Evidence presented to the jury conclusively showed Grate was, without any doubt or ambiguity, guilty of each and every crime and each and every capital specification. This evidence consisted of more than three hundred eighty exhibits, eyewitness testimony from the surviving victim, Lori Svihlik, and many hours of detailed admissions from Grate which he made during more than a dozen interrogations between September 13, 2016, and October 17, 2016, all of which were audio recorded and transcribed.

The evidence showed that Grate presented himself as an ordinary citizen who was friendly and polite, never in public acting in a threatening or aggressive manner. Although Grate was in Ashland County from the beginning of June 2016 until his arrest on September 13, 2016, interacting with other people on a daily basis, Grate successfully avoided any attention from law enforcement.

The evidence also showed that, as a serial killer, Grate was not predatory. Grate did not stalk his victims, but rather killed Elizabeth Griffith and Stacey Stanley Hicks simply because he was presented with the opportunity to do so. Grate himself told police he was “opportunistic” as a killer, using that word himself with Ashland Police Detective Kim Mager. Detective Mager skillfully directed Grate into complete and detailed admissions to every criminal act—minor to major—that he committed as an adult up until his arrest on September 13, 2016.

The evidence showed Grate was in full control of his faculties and his actions at all times, even during the commission of his crimes. This was especially evident where Grate abducted and sexually assaulted victim Lori, but purposefully did not

kill her because he saw Lori as a worthwhile person, in contrast to the two murder victims whom Grate told police he saw as good-for-nothing.

Grate presented extensive evidence during the mitigation case, highlighted by testimony from the nationally prominent board-certified neuropsychologist, Dr. John Fabian. Dr. Fabian was supported in this endeavor by mitigation specialist Jim Crites, who is a two-decade veteran of capital mitigation investigation with unparalleled stature in Ohio's capital defense community. The scope and depth of the mitigation investigation is best seen in an eighty-one-page mitigation report from Dr. Fabian that is under seal with this Court.

In general, the mitigation evidence showed that Grate was raised in a stable home environment, albeit without compassion or support from either parent. Although Grate lacked motivation, he did not show aberrant or threatening behavior. Once in the adult world, Grate engaged in low-level criminal behavior, landing a short stint in state prison. Although Dr. Fabian was of the opinion that Grate had various personality disorders, he noted that Grate never had a major mental illness.

The jury recommended death, which was imposed by the trial judge pursuant to a detailed and thorough sentencing opinion. The matter is now before this Court for independent reweighing under R.C. 2929.05.

1. During June 2016, Grate squatted in Charles Mill Lake State Park, avoiding any contact with law enforcement.

During the month of June 2016, Grate squatted in Charles Mill Lake State Park in two camper trailers that were located in a cluster of camper trailers which remained in the park on a full-time basis. Posing as an ordinary camper, Grate

routinely interacted on a friendly basis with the park rangers, as well as the other campers. Despite numerous interactions with park rangers and other campers, Grate maintained an ordinary demeanor and did nothing to draw attention to himself. Although the camper trailer burglaries were discovered by June 30, 2016, and Grate moved on to squat in an area outside of Charles Mill Lake, Grate was not at that time identified as a wrongdoer and remained unknown to law enforcement.

Following his arrest on September 13, 2016, Grate would tell police that during the month of June 2016, he “stayed in people’s trailers” at Charles Mill Lake State Park, which is located in Ashland County approximately eight miles west of the city of Ashland. Grate told police he stayed at Charles Mill Lake State Park for “about three or four weeks” and that the time period was “before July.” St. Ex. 286, Grate interview transcript dated September 13, 2016, pgs. 20-22; Appx. B to the State’s Merit Brief, pgs. 71-73.

Grate told police he visited with other campers, posing as a regular park visitor. Grate would wave to the park rangers and carry on conversations with them. Grate said he would “wave[] to [the park rangers] all the time” and that “I was friends with [the park rangers], I’d sit and talk with [the park rangers] sometimes.” Grate told police that he befriended an older man named Freddy, and that along with Freddy’s wife, they would sing gospel songs around the campfire at night. St. Ex. 295, Grate interview transcript dated September 15, 2016, pgs. 82-84; Appx. B, pgs. 90-91; St. Ex. 309, Grate interview transcript dated September 21, 2016, pgs. 3-4; Appx. B to the State’s Merit Brief, pgs. 125-126. During the time he stayed at Charles Mill

Lake State Park, Grate told police that “I had a blast....” St. Ex. 309, Grate interview transcript dated September 21, 2016, pgs. 3-4; Appx. B to the State’s Merit Brief, pg. 125.

Although in the middle of June 2016, when the burglary of one of the camper trailers was reported, Grate continued to squat at Charles Mill Lake State Park, having relocated to a different trailer. As to the first camper trailer in which Grate squatted, on June 18, 2016 (Father’s Day weekend), camper-owner Pamela Miley reported to Charles Mill Lake park rangers that her camper at lot 306 had been burglarized and that food and electronics had been taken. Camper-owner Miley had last been to the camper the previous weekend; it was intact plus was fully stocked with food items. Photos identified, St. Ex. 216-220; Tr. 2515-2525.

Charles Mill Lake Park Ranger Donovan Linder confirmed that on June 23, 2016, he took a break-in report from Pamela Miley regarding her camper at lot 306. Photos identified, St. Ex. 216-220; Tr. 2526-2531.

Another two weeks went by with Grate continuing to pose as an ordinary camper. During the last part of June 2016, Grate squatted in a different trailer at Charles Mill Lake State Park. At the end of June 2016, Thomas Molyneaux reported to Charles Mill Lake park rangers that his camper at lot 307 had been burglarized. Molyneaux reported that his camper trailer appeared to have been lived-in, showing debris of beer, cigarettes and food residue. Photos identified, St. Ex. 220-230; Tr. 2533-2548.

Charles Mill Lake Park Ranger Mark Boggs confirmed that on June 30, 2016, he took a break-in report from Thomas Molyneaux regarding Molyneaux's camper at lot 307. Items that might identify the burglar were seized. Photos identified, St. Ex. 220-231; Tangible items identified St. Ex. 332, knife, and St. Ex. 386, pair of black cut-off track pants, that were recovered from the inside of the camper at lot 307; Tr. 2549-2562.

Charles Mill Lake Park Ranger and evidence custodian, Michael Bittinger, identified St. Ex. 232 (a knife), St. Ex. 233 (a pair of socks and a black T-shirt), and St. Ex. 386 (a pair of cut-off black track pants) that were recovered from the camper at lot 307 following the break-in report. Tr. 2564-2574. Ranger Matthew Brown took the items to BCI Richfield for testing and returned the items to the Charles Mill evidence locker after testing. Tr. 2574-2576.

Following his arrest on September 13, 2016, Grate told police he "got lucky" and saw from afar the Charles Mill Lake State Park rangers taking a report about the break-in of a trailer in which Grate had been staying. Grate was referring to the Molyneaux camper trailer at lot 307. St. Ex. 286, Grate interview transcript dated September 13, 2016, pg. 22; Appx. B to the State's Merit Brief, pg. 72

The camper trailer burglaries and the tangible evidence items related to Charles Mill Lake State Park did not have any direct connection with the crimes committed by Grate in the city of Ashland. Instead, the significance of the Charles Mill Lake State Park evidence was to show that Grate had sufficient rational thought,

as well as psychological stability, to maintain his own well-being by posing as an ordinary camper while concealing his true identity as a criminal squatter.

2. During July 2016, Grate squatted in the woods outside of the city of Ashland, avoiding any contact with law enforcement.

The report on June 30, 2016, by camper-owner Molyneaux, of the break-in of his camper trailer was the event that caused Grate to leave Charles Mill Lake State Park at the end of June 2016.

Following his arrest on September 13, 2016, Grate told police he left Charles Mill Lake State Park and stayed at a make-shift campsite at a wooded area about seven miles west of the city of Ashland. Grate told police he watched the fireworks on July 4th from this location. Grate called this location his “fort.” St. Ex. 264, Grate interview transcript dated September 13, 2016, pg. 7; Appx. B to the State’s Merit Brief, pg. 2; St. Ex. 286, Grate interview transcript dated September 13, 2016, pgs. 20-22; Appx. B to the State’s Merit Brief, pgs. 71-73; St. Ex. 295, Grate interview transcript dated September 15, 2016, pg. 85; Appx. B to the State’s Merit Brief, pg. 92.

Following Grate’s arrest on September 13, 2016, police conducted a search of Grate’s fort/campsite, which was located in Ashland County on County Road 1908 at the intersection of County Road 1095. The fort/campsite was in a wooded area a couple hundred yards off the road. See St. Ex. 239-242, photos of the fort/campsite, and St. Ex. 243, an evidence log from the fort/campsite scene; Testimony of Ashland County Sheriff Lt. Scott Smart, Tr. 2591-2599.

Following Grate's arrest on September 13, 2016, Grate told police he burglarized a carry-out nearby to Charles Mill Lake State Park to obtain provisions for his new fort/campsite squatting area outside of the state park. St. Ex. 284, Grate interview transcript dated September 13, 2016, pg. 18; Appx. B to the State's Merit Brief, pg. 64.

Evidence of this burglary was presented by Curtis Conner, the owner of the of the Mifflin Flea Market and Bait Store, which is located nearby to Charles Mill Lake State Park. Connor testified that he reported a burglary which occurred on July 8, 2016. Connor identified St. Ex. 234-237 (photos of the burglary scene), St. Ex. 144 (a taser), St. Ex. 148 (a taser), St. Ex. 158 (brass knuckles), and St. Ex. 238 (a blue cooler). All of these items were taken from his store and were recovered by police at the fort/campsite area as well as the interior of 363 Covert Court, the residence in the city of Ashland in which Grate squatted. Tr. 2580-2589.

Lt. Scott Smart of the Ashland County Sheriff's Office, testified that his office, through Sgt. Kitts, now deceased, took a report from Curt Connor regarding the store burglary. Tr. 2589-2591.

The carry-out burglary and the tangible evidence items stolen by Grate from the Mifflin Flea Market and Bait Store did not have any direct connection with the crimes committed by Grate in the city of Ashland. Instead, the significance of the Mifflin Flea Market and Bait Store evidence is to provide context for Grate's successful efforts at self-sufficiency at the fort/campsite and at the residence at 363 Covert Court in the city of Ashland in the weeks before the killing of the first victim,

Elizabeth Griffith, on August 16, 2016. Furthermore, the fort/campsite evidence showed Grate to be resourceful and enterprising, while at the same time being skilled at avoiding attention by law enforcement.

3. During late July 2016, Grate squatted in the woods and at an abandoned warehouse within the city of Ashland, avoiding any contact with law enforcement.

Following his arrest on September 13, 2016, Grate told police about his activities in the city of Ashland during July 2016. Grate told police he left his “fort” that was west of town and camped out for three days in a wooded area by railroad tracks behind the Circle K convenience store on Cottage Street in the city of Ashland. After that, Grate told police he spent about a week in an abandoned warehouse building in Ashland, known as the Hess & Clark building. St. Ex. 264, Grate interview transcript dated September 13, 2016, pgs. 9-10; Appx. B to the State’s Merit Brief, pgs. 3-4; St. Ex. 280, Grate interview transcript dated September 13, 2016, Tr. 30-32; Appx. B to the State’s Merit Brief, pgs. 28-30.

The significance of the evidence of Grate’s activities in the city of Ashland during July 2016 is to show that Grate conducted himself in a low-key manner and did nothing to bring himself to the attention of law enforcement during this period of time.

4. During late July through early August 2016, Grate begins squatting at 363 Covert Court, Ashland, and befriends future victims Lori and Elizabeth.

Following his arrest on September 13, 2016, Grate told police about his activities in the city of Ashland during the last two weeks of July through the first two weeks of August 2016. Grate explained to police that he left the warehouse and

began living in an abandoned house located at 363 Covert Court, Ashland, which was across the street from a laundromat. Grate told police he went “three or four times like within a half hour” to the laundromat to fill gallon jugs with water. The electric in the Covert Court house was activated. St. Ex. 264, Grate interview transcript dated September 13, 2016, pgs. 8-9; Appx. B to the State’s Merit Brief, pg. 3; St. Ex. 332, Grate interview transcript dated October 5, 2016, pgs. 24-25; Appx. B to the State’s Merit Brief, pgs. 145-146.

The surviving victim, Lori Svihlik, met Shawn Grate and began to have lunches with him at the Kroc Center. At that time, Grate was working at the Save-a-Lot grocery store. Testimony of Lori Svihlik, Tr. Pgs. 2687-2688; St. Ex. 264, Grate interview transcript dated September 13, 2016, pgs. 13-14; Appx. B to the State’s Merit Brief, pg. 7; Kroc Center sign-in sheet, St. Ex. 349, pgs. 73-75 (showing Grate and Lori signed in for lunch on July 27, 2016, and July 28, 2016).

Grate told police he met surviving victim Lori at the Kroc Center in July 2016, and that they had met for lunch and companionship every day since. See St. Ex. 264, Transcript of audio interview conducted before 10 AM on September 13, 2016, between Ashland Police Officer Curt Dorsey and Shawn Grate, Tr. Pgs. 11-14; Appx. B to the State’s Merit Brief, pgs. 5-7; Tr. Pgs. 18-21; Appx. B to the State’s Merit Brief pgs. 13-15; St. Ex. 280, Transcript of audio interview conducted before 10 AM on September 13, 2016, between Ashland Police Captain David Lay and Shawn Grate, Tr. Pgs. 4-5; Appx. B to the State’s Merit Brief, pgs. 16-17.

During an interrogation at 10:53 AM on September 13, 2016, Grate told Ashland Police Detective Kim Mager that he met Lori at the Kroc center “maybe two months ago.” St. Ex. 282, transcript of audio interview between Grate and Ashland Police Detective Kim Mager conducted at 10:53 AM on September 13, 2016, Tr. Pgs. 18-19; Appx. B to the State’s Merit Brief, pg. 43.

Grate and Lori spent considerable time together on a daily basis during the first two weeks of August 2016. They regularly ate lunch together at the Kroc Center. Testimony of Lori Svihlik, Tr. Pgs. 2685-2687, 2735-2736; St. Ex. 349, Kroc Center sign-in sheet, showing lunch dates for Grate and Lori on August 2 (pg. 78), August 3 (pg. 80), August 11 (pg. 89), and August 12, 2016 (pg. 90); St. Ex. 264, Grate interview transcript dated September 13, 2016, pgs.11-14; Appx. B to the State’s Merit Brief, pgs. 5-7; St. Ex. 280, Grate interview transcript dated September 13, 2016, pgs. 4-5; St. Ex. 282, Grate interview transcript dated September 13, 2016, pgs. 18-19; Appx. B to the State’s Merit Brief, pg. 43.

During this late July to early August 2016 time period, Grate and Lori played games of tennis. See Testimony of Lori Svihlik, Tr. Pgs. 2689-2690, 2736; St. Ex. 264, Grate interview transcript dated September 13, 2016, pg. 14; Appx. B to the State’s Merit Brief, pg. 7.

Lori testified that she considered her relationship with Grate like that of an “older brother,” but that Grate “would be interested in more.” Testimony of Lori Svihlik, Tr. Pgs. 2688, 2690-2691, 2637, 2742. Lori testified that during their friendship period, Grate had an “easy going” personality and that Grate respected

her boundaries. Lori and Grate discussed Bible passages. Testimony of Lori Svihlik, Tr. Pgs. 2738-2740.

Grate told police he had romantic feelings for Lori and that, according to Grate, he and surviving victim Lori talked openly about getting married to each other. St. Ex. 264, Grate interview transcript dated September 13, 2016, pgs. 11-14, pgs. 18-21; Appx. B to the State's Merit Brief, pgs. 13-15.

Grate and Lori were playing badminton in the courtyard of the Stoney Creek apartments where Lori lived when an acquaintance of Lori's, Elizabeth Griffith, made conversation with Grate and Lori. Griffith had her own apartment in the building next to Lori's apartment building. According to Lori, Elizabeth Griffith was excessively talkative and revealed too much about her mental health struggles. Testimony of Lori Svihlik, Tr. Pgs. 2698-2700; St. Ex. 280, Grate interview transcript dated September 13, 2016, pgs. 16-20; Appx. B to the State's Merit Brief, pgs. 22-25; St. Ex. 303, Grate interview with police dated September 21, 2016, pgs. 15-16; Appx. B to the State's Merit Brief, pgs. 114-115.

The significance of the evidence from the time frame from July through the first two weeks of August 2016, is to show that Grate maintained an ordinary demeanor and did nothing to draw attention to himself. Moreover, Grate displayed sufficient rational thought, as well as psychological stability, to maintain his own well-being by posing as an ordinary resident of the city of Ashland. Grate was able to display an ordinary psychological profile to the surviving victim Lori as well as to the subsequently deceased victim Elizabeth Griffith.

5. Grate kills Elizabeth Griffith on August 16, 2016, and conceals Griffith's body in a second-floor closet at 363 Covert Court.

Elizabeth Griffith was on disability for paranoid schizophrenia with mania, and was a regular client with the local Ashland mental health service agencies. Griffith was a frequent caller to the local mental health hotline. Griffith had ongoing and regular contact with the local mental health agency. Griffith was on multiple medications for mental health issues. Testimony of Tina Schwartz, Tr. Pgs. 2375-2379.

The morning of August 16, 2016, was the last day Elizabeth Griffith was seen alive. Testimony of Ashland Police Officer Kody Hying. Tr. 2392, 2400-2402. Elizabeth Griffith was a special needs client and had privileges to ride special public transit for a nominal fee. The morning of August 16, 2016, Griffith scheduled a bus to go shopping. Rebecca Taylor, Ashland Public Transit Driver, testified that she knew Elizabeth Griffith as a regular client. Taylor identified Griffith by photo. St. Ex. 203; Tr. 2399. Taylor testified that early on the morning of August 16, 2016, Griffith rode the special needs bus from the Stoney Creek Apartments to the Aldi grocery store. See St. Ex. 204, being a bus schedule for trips by Griffith on August 16, 2016. After Griffith completed her shopping at Aldi, special needs bus driver Taylor picked Griffith up at Aldi's grocery store at 9:50 AM and took Griffith to a nearby restaurant called Dorlo's Pizza. Tr. Pg. 2401; See State's Ex. 268, shopping receipts dated August 16, 2016, recovered from Griffith's apartment.

Police would later learn that while she was at Dorlo's Pizza, Griffith called her friend, Cindy Swanger, who lived nearby to Dorlo's Pizza. Swanger was a volunteer

mental health counselor who had a seven-year long relationship with Griffith. Although not professionally licensed, Swanger functioned as a friendly ear for Griffith. Swanger testified that she spoke with Griffith on the phone on August 16, 2016. Griffith asked to visit Swanger at Swanger's home that morning, but Swanger could not meet with Griffith at that time. Tr. Pgs. 2406-2411.

Around 1:00 PM on August 16, 2016, while still driving the special needs bus, Taylor saw Griffith walking by herself on Main Street in the city of Ashland. This sighting was the last time Griffith was seen alive. Tr. Pgs. 2401, 2404.

Although the true events were unknown at the time, the disappearance of Elizabeth Griffith was known to Griffith's friends. After missing regular appointments with caseworkers, Elizabeth Griffith was reported missing by her mental health supervising counselor, Tina Schwartz. Tr. Pgs. 2382-2383. Ashland Police Officer Kody Hying took the missing person report on September 7, 2016. Ofc. Hying reported that Griffith lived at 249 apartment H, Stoney Creek Apartments in Ashland. Tr. Pg. 2391. Ofc. Hying determined that Griffith was last seen on August 16, 2016. Tr. Pgs. 2392-2393.

Police did not learn of Griffith's fate as one of Grate's murder victims until after Grate's arrest on September 13, 2016.

Following his arrest on September 13, 2016, Grate repeatedly denied any involvement in Griffith's disappearance. By later that afternoon, and after police had obtained a search warrant and found Griffith's body, Grate admitted to police that he killed Griffith. After admitting to Griffith's murder, Grate explained—in detail—all

of his crimes, including murders that pre-dated his residence in Ashland County and the city of Ashland. Grate's admissions to his pre-Ashland crimes were redacted so that all of the pre-Ashland crimes evidence was completely excluded from the evidence presented to the jury. See generally Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included.

Following his arrest on September 13, 2016, Grate told police about the events of the afternoon and evening of August 16, 2016, which culminated in his murder of Elizabeth Griffith. Grate told police he first met Griffith a few weeks before while he and surviving victim Lori were playing badminton in the common area of the Stoney Creek Apartments where both Lori and Griffith lived. Grate told police Griffith was excessively talkative, and that he had no intention of developing a relationship with Griffith. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included.

Grate told police that on August 16, 2016, he went to Lori's apartment to accompany Lori to the Salvation Army Kroc Center for lunch, as had been the custom between Grate and Lori for the past couple of weeks. Lori was not around, so as Grate was leaving, he was approached by Elizabeth Griffith, who also lived at the Stoney Creek Apartments. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included.

Griffith invited Grate into her own apartment to play the board game Yahtzee. Grate told police he accepted Griffith's invitation. As part of the regular rules of the game, Grate printed his name "Shawn" on the paper scoresheet that comes with the

Yahtzee game. Grate was alone with Griffith inside Griffith's apartment while they played.

Grate told police that he told Griffith that he was going to leave Griffith's apartment to go to his own home—the 363 Covert Court address in which Grate was squatting—to eat some chicken he had cooking in the crockpot. According to Grate, Griffith invited herself to Grate's house to eat the crockpot chicken. Grate accepted Griffith's self-invitation.

Grate told police he and Griffith walked together from the Stoney Creek Apartments to 363 Covert Court. He and Griffith ate the crockpot chicken, where nothing happened that was unusual or out-of-the-ordinary. Grate walked Griffith back to the Stoney Creek Apartments. During this second encounter, Grate was alone with Griffith in the 363 Covert Court location. Griffith got back to her home at the Stoney Creek Apartments without incident. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included.

Grate told police that later that same night of August 16, 2016, Griffith called Grate to say that she could not sleep and that she wanted to come back to 363 Covert Court. Griffith would bring the card game Skip-Bo so that she and Grate could play the card game and continue their visit. Grate accepted, and Griffith came back to 363 Covert Court. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included. When he talked to police, Grate could not remember the name of the card game. Later, when Grate met with mitigation neuropsychologist Dr.

John Fabian, Grate remembered the name of the card game as Skip-Bo. See R. _____, Dr. Fabian Mitigation Report, pg. 44 (document under seal).

Grate told police that he and Griffith played the card game at the kitchen table of 363 Covert Court. It became late, and Grate told Griffith he was going to turn in, but that she would be welcome to sleep on the couch that night. Griffith did so, and laid on the couch for about ten minutes, until she became talkative again.

Grate told police that after rising from the couch, Griffith continued to talk about her various problems and spoke generally about ending her own life. Grate told police he then cajoled Griffith to go to the second-floor bedroom of 363 Covert Court. Grate told police that while in the second-floor bedroom, he lightly choked Griffith and then let go. After Grate let go, he told Griffith she really did not intend to kill herself because she was fighting against his choke hold. Grate told police he said this to Griffith to calm her, who was acting emotionally upset because Grate had lightly choked her.

Grate told police that Griffith would not calm down. Grate told police he then placed Griffith in a choke hold and maintained pressure until she was dead. Grate told police that, in case she revived from the choke hold, he tied Griffith's hands behind her back, but that Griffith never moved again. Grate told police he put Griffith's body in the bedroom closet and shut the door. Grate also told police he later sealed up the closet with duct tape to reduce the odor and flies which were prevalent due to the ongoing decomposition of Griffith's body. See St. Ex. 90, photo of black duct tape on the closet door frame area. Grate denied any sexual assault of Griffith, and

there was no evidence that Griffith had been sexually assaulted. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included. See also, St. Ex. 359, Griffith autopsy report; testimony of Dr. Todd Barr, Tr. Pgs. 3068-3070.

Grate told police that in the next few days following the murder of Griffith, he used Griffith's apartment key to get inside. Grate told police he retrieved the scoresheet from the Yahtzee game on which he printed his name "Shawn," and that he destroyed and disposed of it. The Yahtzee score sheet was never recovered. See St. Ex. 265, photo of the interior of Griffith's apartment showing the Yahtzee game; St. Ex. 270 is the tangible object Yahtzee game. Grate told police he took Griffith's medication pills as well as a couple of bottles of hair care products. See St. Ex. 266, photo of the interior of a desk drawer in Griffith's apartment showing eighteen empty prescription bottles. The hair products were recovered from Grate's residence at 363 Covert Court. St. Ex. 271.

Grate told police he disposed of Griffith's cellphone and apartment key, which police found using location information provided by Grate. See St. Ex. 198, Griffith apartment key. Griffith's cellphone was never found. See generally Appx. A to the State's Merit Brief, showing a list of State's exhibits as well as the places in the trial record where those exhibits are identified and discussed. Both to police and to mitigation neuropsychologist Dr. John Fabian, Grate denied any sexual component to the Griffith murder. Grate denied he was sexually attracted to Griffith. Grate explained that his reason for killing Griffith was to save her from the despair of a

worthless life. See R. ____, Dr. Fabian Mitigation Report, pgs. 44-46 (document under seal); see also Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included.

6. A few hours after a chance encounter because of a flat tire that happened on September 8, 2016, Grate kills Stacey Stanley Hicks and conceals her body in the basement of 363 Covert Court.

Although by the early morning hours of August 17, 2016, the corpse of Elizabeth Griffith had been secreted by Grate in the upstairs bedroom closet of his residence at 363 Covert Court, Grate continued on with his daily activities without drawing any attention to himself. For the next 23 days Grate continued to hang out in the city of Ashland and continued his daily contact with Lori. It was not until a completely random and chance encounter on September 8, 2016 between Grate and a middle-aged woman named Stacey Stanley Hicks that Grate would kill again.

Stacey Stanley Hicks had come to Ashland on September 8, 2016 for shopping and to have her fingernails done. Between 6:29 PM and 7:01 PM on September 8, 2016, Stacey Hicks was recorded by the Ashland Walmart security system purchasing home garden items, paver stone and mulch. See St. Ex. 213, video clips; Walmart store receipt, St. Ex. 214; Testimony of Walmart Security Agent Josh Smith, Tr. Pgs. 2479-2493.

Sonny Phan, owner of a fingernail salon located adjacent to the Ashland Walmart called "Nails 2," reported that at 7:15 PM on September 8, 2016 Stacey Stanley Hicks had her nails done, leaving the store around 8:15 PM. Testimony of Sonny Phan, Tr. Pgs. 2494- 2499.

Right after she left the nail salon, Stacy Stanley Hicks was at the BP/Duke-Duchess gas station in Ashland around 8:30 PM. Stacey was unable to go any further because of a flat tire. Through telephone and text messages with her son, Kory Stanley, arrangements were made to have family friend Wayne Bright help Stacey change the tire. Testimony of Kory Stanley, Tr. Pgs. 2423-2424. Once arrangements were made and communicated to Stacey by Kory, Stacey told Kory that she was with a helper. Testimony of Kory Stanley, Tr. Pg. 2424.

Following his arrest on September 13, 2016, Grate told police that he was hanging out at the BP/Duke-Duchess gas station in Ashland. Grate saw a lady, who was Stacey Stanley Hicks, with a flat tire and offered to help fix it. Stacey accepted. Grate told police that Stacey's tire would not hold air and that he was planning to put on the spare donut tire. While Grate was working with the tire, Stacey was talking on her cellphone. Grate told police that Stacey told him a family friend named Wayne Bright was coming to the BP/Duke-Duchess gas station to change the tire. Grate told police he stayed at the BP station with Stacey until Wayne Bright arrived. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included; Appx. B to the State's Merit Brief, pgs. 59, 69.

Wayne Bright was a farmer in Ashland County, who had been contacted by his friend Chad Murr around 8:30 PM on the evening of September 8, 2016 about helping mutual friend Stacey Hicks change her tire, which Bright agreed to do. Testimony of Wayne Bright, Tr. Pgs. 2439-2440. When Bright arrived at the BP/Duke-Duchess gas station in Ashland, he was introduced to Stacey's helper, Shawn, whom Bright

identified in court as the defendant, Shawn Grate. Grate helped Bright change the tire. Tr. Pgs. 2440-2442. Bright identified a screen-shot of his phone showing three calls he had with Stacey around 10:19 PM the night of September 8, 2016. St. Ex. 211; Tr. Pg. 2444. After her tire was fixed, Stacey told Bright she was going inside the BP to get coffee, and Bright left. Testimony of Wayne Bright, Tr. Pgs. 2445-2446.

Around 10:15 PM on September 8, 2016, Stacey's son, Kory, spoke to Stacey by cellphone. Stacey told Kory that her tire was fixed and that she was going into the gas station to get coffee. Testimony of Kory Stanley, Tr. Pg. 2425.

Nathaniel Keck was a counter clerk at the BP/Duke and Duchess gas station on Main Street at Union in Ashland on September 8, 2016. Around 10 PM, Keck saw Stacey Stanley Hicks inside the store having conversations on her cellphone. After about 15 minutes, Stacey came to the counter with Shawn Grate. Keck testified that Stacey bought Grate a cup of coffee in appreciation for Grate helping her with her car. Keck saw Stacey and Grate leave the store together. Testimony of Nathaniel Keck, Tr. Pgs. 2464-2469.

Following his arrest on September 13, 2016, Grate told police that he and Stacey were on friendly terms while they were at the BP/Duke station in Ashland. Grate told police that Stacey offered to drive him home, which was just a couple of blocks away from the BP/Duke station. Grate told police that Stacey voluntarily came inside 363 Covert Court and that they engaged in friendly conversation. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included.

Grate told police that he found Stacey attractive, and thought that she could be a possible prospect for a new girlfriend who could possibly take him in as a new resident of her home in the country outside of the city of Ashland. Once inside 363 Covert Court, Grate told police that he and Stacey were kissing.

Grate told police that during this friendly period, he scolded Stacey for flirting with Wayne Bright at the BP/Duke station, where Grate thought Stacey was making Wayne Bright think he would have a chance for intimacy with Stacey. Grate told police that Stacey emphatically denied flirting with Bright. That denial, according to what Grate told police, was what caused him to become angry with Stacey for being deceptive with men. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included.

In exploring Grate's motive in killing Stacey, Ashland police detectives had the following dialogue with Grate:

Q. [Ashland Police Detective Kim Mager] Okay. Because I think you called yourself an opportunist once to me, I'm going to paraphrase this, correct me when I'm wrong, okay? So, I'm going to use, so, let's take, um, Stacey, she didn't come in there wanting, wanting to die, right?

A. [Shawn Grate] Hmm.

Q. Because you had plans that night, she didn't, she didn't come in there for that, so, when she's in there, it has to be inside you already that this, this is heading that way, this is going to end bad –

A. Enthralled.

Q. -- and it just is a wait for you, it's just a wait for her to make the mistake or tell me the, going from it might happen, to it's going to happen, what's in your mind, like what has to happen for her, what happens there for the switch to happen?

A. She might be honest with me, I mentioned, I mentioned that she had sugar daddies, I call it like, in a way, I brought that up and she was, straight up lied to me, just like she's playing it off like she's all innocent. I just seen, I just seen how she just played this dude about changing her tire and, you know, call me sometime and all this, do you know what I mean, because she was waiting on this guy to come and change the tire, which I wanted to change the tire with his tools and stuff when she was talking to him, do you know what I mean, it's like whatever, do you know what I mean, I'm used to that type of lie.

Q. So, did you feel like she had already sealed her fate when you watched her be manipulative to that man?

A. No, when she lied to me.

Q. About, when you called her, when you call her out on it?

A. Yeah.

Q. So, --

A. Like different guys and she just took defense already like, yeah, he's just a friend, I mean, and then it's like, no, I mean I had to argue with her because I know whatever --

Q. Okay.

A. -- I said, you don't got, I said, just like everyone else, all the other women they, they do not know that, the more honest they are to me, the better we get along, do you know what I mean, no matter what the situation, just be honest, do you know what I mean?

Q. So, her fate was sealed when she lied?

A. Well, she had a chance to leave, I don't know, she could have fought, she just, she, she was closer to the door than me. She had her, I don't know, her keys were sitting here and her mace were on her keys. I walked over here, right, she could have ran out, instead she just grabs her mace and the keys, she, she could have left and she maced me, she

already knew that she was getting ready to leave, but she wanted to mace me, she's angry.

Q. She what?

A. She was angry I'm sure.

Q. Yeah.

A. She maced me.

St. Ex. 327, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland FBI Agent John Minnichello, September 27, 2016; Tr. 72-74; also excerpted in Appx. B to the State's Merit Brief, pgs. 142-144.

Grate later explained to mitigation neuropsychologist Dr. John Fabian that things turned sour with Stacey after she began asking Grate for \$50.00 to help her pay an electric bill. Grate told Dr. Fabian that he saw Stacey's request for money as a "con job" that made him angry. R. ____, Dr. Fabian Mitigation Report, pg. 46-47 (document under seal). Dr. Fabian testified that Grate had a "disdain towards his mother" that was "interwoven" into this offence. Testimony of mitigation neuropsychologist Dr. John Fabian, Tr. pg. 3673.

Grate told police that after becoming angry with Stacey, he recorded on his cell phone an audio/video of forcing Stacey to engage in oral sex with him. See St. Ex. 385, a CD video of video files extracted from the Microsoft Nokia smart cell phone numbered as St. Ex. 151 showing the assault of deceased victim Stacey Stanley Hicks; Testimony of Ashland evidence technician Joel Icenhour, Tr. Pg. 3228.

Grate told police that after the sexual assault, Stacey sprayed him directly in the eyes with mace that she had with her in a small pink spray bottle. Grate told police that

set him off and he choked Stacey until she was dead. Grate told police that he right away put Stacey's body in the basement of 363 Covert Court, concealing the body under trash and other debris that was already in the basement. See Appx. B to the State's Merit Brief, excerpts from Grate's statements to police, index included

Grate told police that after Stacey was dead, he drove Stacey's car to go buy marijuana in the city of Mansfield. After that, Grate abandoned Stacey's car on a residential street in Ashland that was a few-minutes-walk from 363 Covert Court.

Around 10 PM on September 10, 1986, neighbor Joanna Smith looked out her window on E. 9th Street in Ashland to see a car pull up and park outside her home with the engine running and lights on. After about 15 minutes, Smith saw the car shut off and saw a man exit. She later learned the man was Shawn Grate, whom she had seen before around the Save-a-Lot grocery store in Ashland. Testimony of Joanna Smith, Tr. Pgs. 2500-2506.

7. Three days after killing Stacey Stanley Hicks, Grate abducts and sexually assaults Lori, who escaped from Grate following two days of confinement.

Following his arrest on September 13, 2016, Grate told police that his planning to abduct and sexually assault Lori began right after he killed Elizabeth Griffith on August 16, 2016. Police learned this when asking Grate about restraints on the second-floor bedroom mattress. See St. Ex. 125 to St. Ex. 131, showing restraints pre-tied, marked with yellow placards numbered 4, 5, 6, 7, 8 and 9.

In explaining why he put the restraints on the second-floor mattress, Grate began by telling police that, although Lori was conservative about proper conduct between a man and a woman, Lori was burdened with lustful desires. Grate told

police that because of her conservative views, Lori would not willingly have sex, even though Grate was of the opinion that Lori would benefit in general by having sexual relations. See Appx. B to the State's Merit Brief, pgs. 108-113.

Grate told police that once he killed Elizabeth Griffith and secreted her body inside 363 Covert Court, he knew he would soon have to leave the city of Ashland, and that his friendly relationship with Lori would soon be over. Now on a short time frame, Grate explained to police that before he left town, he intended to abduct Lori and attempt to impregnate her so that she would have his child and then live on with her life caring for his child. Grate explained that he knew Lori would not willingly go along with this plan, so he prepared restraints that would already be in place and ready to be used when he would put the plan to abduct Lori into action. See Appx. B to the State's Merit Brief, pgs. 108-113.

Although Grate carried out the abduction of Lori, Grate explained to police that he scratched the plan of using the second-floor bedroom as the location for the planned sexual assault of Lori. Instead, Grate sexually assaulted Lori in the first-floor bedroom, and Grate told police he did not use the second-floor bedroom restraints at any time during his abduction and assault of Lori. Grate also insisted to police that the restraints on the second-floor bedroom mattress were not used at all on anyone at any time for any reason. See Appx. B to the State's Merit Brief, pgs. 108-113.

As to the events of September 11, 2016, that immediately preceded Lori's abduction and sexual assault, the day began as usual with Grate meeting up with

Lori to spend the day together. See Testimony of Lori Svihlik, Tr. Pgs. 2685-2701 (explaining the daily routine of meeting up with Grate and spending the day together).

Lori testified that as she and Grate had finished shopping at Walmart and were walking together back to her place at the Stoney Creek Apartments, her friend Tamara Whelan drove by and stopped to give Lori and Grate a ride back to Lori's apartment. Lori had no recollection of any conversations during the car ride with Tamara Whelan, but the ride was uneventful from Lori's perspective. See Testimony of Lori Svihlik, Tr. Pgs. 2701-2703.

Tamara Whelan testified that she was friends with Lori, but had never met Grate. Whelan was also friends with Elizabeth Griffith and knew Griffith was missing. Whelan testified that she got off work from Walmart at 3:00 PM on September 11, 2016, and was driving home when she saw Lori walking with a man. Whelan stopped, with Lori and Grate getting into Whelan's car. Whelan then gave them a ride to Lori's apartment. See Testimony of Tamara Whelan, Tr. Pgs. 2751-2756.

Whelan testified that during the car ride, Whelan and Lori were conversing about the disappearance of Elizabeth Griffith. Whelan testified that Grate did not participate in this conversation. However, Whelan and Grate had a conversation about Grate helping Whelan build a garden shed. Whelan testified that when she let Lori and Grate out of her car, it seemed odd to her that Grate got out of the car and

hurriedly walked away by himself without any further exchange of pleasantries, and without Grate waiting for Lori. See Testimony of Tamara Whelan, Tr. Pgs. 2751-2756.

Lori testified that after the car ride with Whelan, Grate told Lori that he had some hand-me-down clothes from his mother for her at his house. Lori agreed to go with Grate to his house to get the hand-me-down clothes. Lori testified that even though she and Grate had spent considerable time together for the past few weeks, other than momentarily, she had never been inside his house. This reticence was due to her conservative views on how relationships between men and women should be conducted. See Testimony of Lori Svihlik, Tr. Pgs. 2702-2709.

Lori testified that all seemed normal as she went inside 363 Covert Court with Grate. After a few minutes of conversation about the hand-me-down clothes, Lori told Grate that she was leaving to go back to her apartment. Although Grate had never before treated her disrespectfully, Lori testified that Grate oddly said: "You're not going anywhere." Lori testified that at this point Grate sought to be physically romantic with her, but that she resisted his advances. Unexpectedly, Grate reacted to being rebuffed by hitting her hard in her face with his closed fist. Lori testified that she briefly fought with Grate, but she stopped fighting after realizing she did not have the physical strength to keep Grate away. See Testimony of Lori Svihlik, Tr. Pgs. 2708-2713.

Lori testified that Grate sexually assaulted her for an extended period of time in the first-floor bedroom of 363 Covert Court. Later that first night, Grate tied her to the mattress and Grate dozed off. Lori testified that Grate would briefly awaken,

see that Lori was still tied up, and then doze back off. See Testimony of Lori Svihlik, Tr. Pgs. 2712-2716.

Lori testified that at some point Grate placed duct tape over her mouth to keep her quiet. Lori testified that at some point Grate recorded on his cell phone one of the sexual assaults. See St. Ex. 384, cell phone video of a sexual assault of Lori; testimony of Ashland police evidence technician Joel Icenhour, Tr. Pgs. 3223-3233; see also St. Ex. 280, Grate interview transcript pg.60 (where Grate agreed with Captain Lay that Lori was correct in saying that he had shot cellphone video of her sexual assault), excerpted in Appx. B to the State's Merit Brief, pg. 39.

Lori testified that, at some point, Grate had given her some pills supposedly to help her relax, and that Grate applied make-up to her face, but that she did not know why he did so. Lori testified that, at some point, Grate tied her to the mattress and then left the house for a couple of hours. After he got back, Grate smoked marijuana and resumed his sexual assault. See Testimony of Lori Svihlik, Tr. Pgs. 2715-2726.

Lori testified that early during the second night, Grate was pacing around and seemed agitated. Grate again tied Lori to the mattress and Grate fell sound asleep next to her. Later, Lori awoke while Grate was still sound asleep. Lori realized that her restraints were loose, so she quietly freed herself, and quietly called 911 on Grate's cellphone. Lori testified that the 911 dispatcher stayed on the line with her until a few minutes later when Ashland Police Officer Curtis Dorsey, Sergeant James Cox, and Lieutenant Tim Shreffler rescued her and arrested Grate. This took place around 7:00 AM on September 13, 2016. The duration of the 911 call was 19 minutes.

See St. Ex. 1, 911 call audio; testimony of 911 dispatcher Sara Miller; testimony of Lori Svihlik, Tr. Pgs. 2725-2732; Testimony of Ashland Police Sergeant James Cox, Tr. Pgs. 2151-2170 (arrest of Grate and description of the exterior and interior of 363 Covert Court); Testimony of Ashland Police Officer Curtis Dorsey, Tr. Pgs. 2756-2763; Testimony of Ashland Police Lieutenant Timothy Shreffler, Tr. Pgs. 3023-3028.

Lori testified that after her release, she realized the money she kept in a green wallet on a bookshelf in her apartment was missing. Lori knew there was money in her wallet after returning from the shopping trip with Grate on September 11, 2016. See Testimony of Lori Svihlik, Tr. Pgs. 2732-2733.

Grate was arrested and questioned at the scene by Ashland Police Officer Curtis Dorsey inside of Officer Dorsey's marked police car parked outside of 363 Covert Court. Grate told Officer Dorsey that he and Lori were in a romantic relationship and things got out of hand. Grate told Officer Dorsey about living in the city of Ashland for the past couple of months, that he and Lori had a friendly relationship, and that they had spent considerable time together. Officer Dorsey maintained a friendly demeanor during the questioning, and acted as if he was sympathetic to Grate's explanation for what had taken place with Lori. See Appx. B to the State's Merit Brief, interview excerpts with Ashland Police Officer Curtis Dorsey, pgs. 1-15.

Once Grate was at the police station, Grate consented to an interview with Ashland Police Captain David Lay. Captain Lay took a firm tone with Grate, but without being aggressive or threatening. Focusing on the sexual assault with Lori,

Captain Lay followed a question-and-answer format that caused Grate to admit to felonious criminal behavior with Lori. During that same interview, Grate also spoke about the car ride with Tamara Whelan that had taken place the afternoon just before his abduction of Lori. Grate told Ashland police Captain David Lay that one of Lori's friends had "picked us up and gave us a ride yesterday" See Appx. B to the State's Merit Brief, interview excerpts with Ashland Police Captain David Lay, pgs. 16-40.

8. Following his arrest, Grate talks to police extensively and repeatedly, admitting to all the crimes.

After the interview with Captain Lay, Grate consented to an interview with Ashland Police Detective Kim Mager, whose area of expertise was child sexual assault. Detective Mager adopted a compassionate and sympathetic tone with Grate, never being aggressive or confrontational. Beginning with an interrogation that commenced at 10:53 AM on September 13, 2016, Detective Mager questioned Grate during 15 sessions, most of which were convened at the express request of Grate. See Testimony of Ashland County Sheriff's Deputy Michael Freelon, Tr. Pgs. 2611-2613; testimony of Ashland County Sheriff's Deputy Robert Ross, Tr. Pgs. 2602-2605; testimony of Ashland County Sheriff's Deputy Cody Mager, Tr. Pgs. 2599-2601 (Grate's self-initiated requests to talk again and again with Ashland Police Detective Kim Mager).

During the many meetings with Detective Mager, Grate admitted to the crimes against Elizabeth Griffith, Stacey Stanley Hicks, and Lori Svihlik. While Detective Mager allowed Grate to be talkative, during interviews in the succeeding months with Court psychologist Dr. O'Reilly, Dr. O'Reilly reported that he had to expressly ask

Grate to stop talking. Specifically, Dr. O'Reilly reported that "[Grate] freely provided more information about the acts charged than was requested for the scope of this [competency] evaluation and this examiner at times had to interrupt and stop him." R. ___, Dr. O'Reilly competency report, pg. 9 (document under seal).

Grate explained to Detective Mager that in the weeks before the murder of Elizabeth Griffith on August 16, 2016, he presented himself as an ordinary citizen. Grate got a job at the Save-a-Lot grocery store but quit after a short stint. Grate repeatedly went to the laundromat that was across the street from 363 Covert Court to fill up plastic water jugs to use at his home. Grate routinely had lunch at the Salvation Army Kroc Center, having lunch there many times with Lori. See St. Ex. 349, Kroc Center lunch sign-in sheet, showing that Grate and Lori signed in together for lunch on July 27, July 28, August 2, August 2, August 11, August 12, and August 15, 2016; testimony of Sarah Fairchild, Salvation Army Kroc Center social services case manager, Tr. Pgs. 2989-2990.

Grate told Detective Mager that he had a friendly interaction with a lady named Tracy, giving Tracy a back rub at 363 Covert Court, explaining to police that he did not harm Tracy because "she didn't flip out or anything, I guess it went smooth." Grate told Detective Mager he had a friendly interaction with a teenage girl from the laundromat, where Grate helped the teenage girl carry her laundry back home. See Appx. B to the State's Merit Brief, where page citations as to the pertinent subjects are listed in the index at the front of the appendix.

In respect to Grate's awareness of his wrongdoing, Grate initially denied knowing anything about Elizabeth Griffith, other than that she was missing.

During the morning hours of September 13, 2016, police were waiting on a search warrant for 363 Covert Court. Because of the obvious smell of human decomposition in that house, and being aware that Elizabeth Griffith and Stacey Stanley Hicks were missing without explanation from Ashland, police were suspicious that Grate might be involved with their disappearance. Once the search warrant was executed and police found the bodies, Detective Mager told this to Grate.

Grate then retracted his denials and proceeded to explain in detail how and why he killed Elizabeth Griffith and Stacey Stanley Hicks, and explained in detail how and why he abducted and sexually assaulted Lori. See Appx. B to the State's Merit Brief, where page citations as to the pertinent subjects are listed in the index at the front of the appendix.

Grate also took numerous steps to conceal the deaths of Elizabeth Griffith and Stacey Stanley Hicks, all of which he explained to the police. See Appx. B to the State's Merit Brief, where page citations as to the pertinent subjects are listed in the index at the front of the appendix.

Grate explained to Detective Mager that he used a special strangulation method that efficiently brought about death. Once the autopsies were completed, police learned that both Elizabeth Griffith and Stacey Stanley Hicks were killed by manual strangulation, but in each case the windpipe area was not damaged. Armed with this knowledge, Detective Mager asked Grate if he had a particular manner of

strangulation. Grate explained that he used a “sleeper hold” to cut off blood flow to the brain. This technique would not cut off airflow from the windpipe, but rather would constrict the carotid arteries, thus cutting off blood flow to the brain. Grate explained that he would maintain this hold for an extended period to ensure death. Using a video with audio, Detective Mager had Grate demonstrate the stranglehold on Ashland Police Detective Brian Evans. Grate did so and narrated step-by-step how he killed Elizabeth Griffith and Stacey Stanley Hicks. See St. Ex. 296, Video with audio of Grate demonstrating his strangulation technique on Ashland Police Detective Brian Evans; see also testimony of deputy coroner Dr. Todd Barr, Tr. Pgs. 3064-3071 (Elizabeth Griffith), Tr. Pgs. 3076-3077 (no damage to the hyoid bone in either victim); St. Ex. 359, Griffith Autopsy Report; St. Ex. 365, Stacey Stanley Hicks Autopsy Report.

Even though he left Lori tied up in his house, Grate was able to maintain a calm and ordinary demeanor when he bought cigarettes and soda pop from the nearby Circle K carry-out. Grate told Detective Mager that on the second day of the abduction he planned to go out and get cigarettes. Grate told Detective Mager that he tied Lori up and put duct tape over her mouth to immobilize her while he was gone. Grate used the key to Lori’s apartment to get inside and take \$34.00 out of her green wallet. Grate took that \$34.00 and went to the Circle K and bought cigarettes and soda pop. See Appx. B to the State’s Merit Brief, noting in the index the pages where Grate talks about the trip to Circle K for cigarettes.

Grate's trip to the Circle K was corroborated by Circle K manager Debra Steinhour, who testified that the store video showed Grate buying cigarettes and soda pop at 8:02 PM on September 12, 2016. Even though Grate was holding Lori captive, Grate did not act anxious and did not conduct himself in a manner that would draw attention to himself. See Testimony of Debra Steinhour, Tr. Pgs. 2925-2929; St. Ex. 341, store video of Grate's purchase.

In response to numerous questions from Detective Mager, Grate insisted that he never intended to kill Lori. Grate insisted he had romantic feelings for Lori and that he saw her as a worthwhile person who could make a positive contribution to society. Grate told Detective Mager that in contrast, he saw Elizabeth Griffith as not having a worthwhile life such that he saw his killing of Griffith as a type of compassionate act. As to Stacey Stanley Hicks, Grate explained he saw Hicks as not making a positive contribution to society and that his killing of Hicks was triggered by anger because she maced him. However, as to Lori, Grate consistently and repeatedly insisted he never intended to kill her. See Appx B to the State's Merit Brief, noting in the index the pages where Grate talks about his decision to limit the assault on Lori as well as his intention to release Lori without further harm to her.

As an additional example of Grate's awareness of his wrongdoing, Grate explained to Detective Mager that his plan had been to burn 363 Covert Court to further cover-up the murders of Griffith and Hicks, whose bodies were secreted inside the house. Grate told Detective Mager that at various times before Lori's abduction, he gathered trash in the basement of 363 Covert Court to serve as fuel for an arson

fire that he would ignite. Grate told detective Mager that he stocked up provisions behind the Eagle Marathon on the far south side of Ashland as that was his intended safe spot to flee to after he would set 363 Covert Court on fire.

Grate told Detective Mager that during the abduction he asked Lori that if he let her go, would she give him a two-hour head start before contacting police so that he would have a chance to burn 363 Covert Court and get out of town. Grate implied that he put makeup on Lori's face so as to make her look more presentable when he would let her go. Grate also told Detective Mager that he might have loosely tied Lori during the second night so she could escape and bring an end to his life on the run. See Appx. B to the State's Merit Brief, noting in the index the pages where Grate talks about planning to release Lori and planning to burn 363 Covert Court.

9. Following determinations of competency and sanity, the case proceeded to trial with voluminous evidence presented by the State.

At the outset of the case, a competency determination was ordered by the trial judge and conducted by court psychologist Dr. O'Reilly, who concluded that Grate was competent to stand trial. See R. ____, Dr. O'Reilly competency report (document under seal).

Pursuant to an NGRI plea, a sanity evaluation was ordered by the trial judge, where Dr. O'Reilly was appointed for the court and Dr. John Fabian was appointed for the defense. Dr. O'Reilly concluded that Grate was not insane. See R. ____, Dr. O'Reilly sanity report (document under seal). Dr. Fabian declined to write a sanity evaluation, stating: "The [trial defense counsel] Whitneys' wanted me to examine sanity issues as well as mitigation at sentencing. They requested I not write a report

of sanity if I did not believe [Grate] would qualify for a not guilty by reason of insanity (NGRI) defense (I did not believe [Grate] qualified for a NGRI defense).” R. _____, Dr. Fabian mitigation report, pg. 1 (document under seal).

The evidence presented by the State was voluminous and comprehensive, consisting of almost four hundred exhibits. Hours of audio interviews with Grate were presented, each session supported with word-for-word transcripts of the interrogations. The evidence included cellphone audio/video recordings of Grate sexually assaulting deceased victim Stacey Stanley Hicks and surviving victim Lori Svihlik.

10. Following extensive testimony by defense mitigation neuropsychologist Dr. John Fabian, the jury recommended a sentence of death that was imposed by the trial judge.

The defense mitigation witnesses were board-certified neuropsychologist Dr. John Fabian and Grate’s sister, Barbara Charter. The absence of additional mitigation witnesses from Grate’s family was not due to lack of trying by the defense team. Rather, Grate’s mother flat-out refused to get involved. Following his own face-to-face interview with Grate’s mother, Dr. Fabian wrote: “She said she did not want to have her picture plastered for the world to see. She said that she did not want to be involved with the sentencing.” R. _____, Dr. Fabian mitigation report, pg. 16. (document under seal). Even in respect to Grate’s sister, Barbara Charter, following his own face-to-face interview with her, Dr. Fabian noted that sister Barbara had last had contact with Grate in 2004, which was twelve years before the Ashland County crimes. Quoting from that face-to-face interview, Dr. Fabian wrote that Grate’s sister

Barbara said: “The last time I had contact with him was Christmas of 2004.” R. ____,
Dr. Fabian mitigation report, pgs. 7-13, quotation on pg. 13 (document under seal).

The jury recommended death, which was imposed by the trial judge. See R.
449, Sentencing Opinion.

LAW AND ARGUMENT

Response to Proposition of Law 1: Where Grate has failed to show bias in Juror 3, Juror 6, or Juror 52, and the trial record shows a cooperative effort between the trial judge and defense counsel to screen all prospective jurors for bias due to pretrial publicity, Grate has failed to show ineffective assistance of counsel.

Grate falls far short of demonstrating ineffective assistance of counsel for alleged failure to seek a change of venue due to pre-trial publicity.

The initial deficiency to a viable claim of counsel ineffectiveness is Grate's failure to show any bias by the three jurors—Juror 3, Juror 6, and Juror 52—whom Grate says were tainted due pretrial publicity and should have been challenged by trial defense counsel. To the contrary, these three jurors merely expressed foreknowledge of the case due to pretrial publicity. None expressed rigid or inflexible beliefs due to that foreknowledge. Moreover, during the voir dire colloquy, Juror 3, Juror 6, and Juror 52, all disavowed any inability to be fair due to pretrial publicity. See Tr. Pgs. 1011-1014 (Juror 3), Tr. Pgs. 1035-1042 (Juror 6), Tr. Pgs. 1260-1263.

Furthermore, none of these three jurors were shrill or strident as to Grate's culpability. To the contrary, the voir dire records shows each of these three jurors were restrained and subdued in their sparse and scant references to what they knew of the case prior to the *voir dire* process. Under these circumstances, where none of the three jurors identified by Grate demonstrated bias, Proposition of Law 1 lacks a viable legal foundation. See *State v. Ford*, 2019 Ohio 4539, ¶401 (2019) (quoting *State v. Gross*, 97 Ohio St. 3d 121, ¶29 (2002)) (“[A] ‘defendant claiming that pretrial publicity has denied him a fair trial must show that one or more jurors were actually biased.’”).

By the end of the voir dire process, a total of forty-seven persons had been qualified to sit as prospective jurors. Each prospective juror had been screened for bias due to pretrial publicity. See. Tr. Pg. 2023. The ample number of prospective jurors who passed the screening process suggests that the jury pool as a whole was not indelibly tainted by pre-trial publicity. *Cf. State v. Beasley*, 153 Ohio St. 3d 497, 515, ¶115 (2018) (“Beasley presented no evidence of the amount or quality of pretrial media or social-media coverage of the case. He essentially asks us to presume that the coverage was prejudicial to him. Beasley has not satisfied his high burden of proof to show that the trial judge abused her discretion.”); *State v. Martin*, 151 Ohio St. 3d 470, ¶47 (2017) (“The record does not show that any juror in this case was biased by pretrial publicity. Since Martin has ‘failed to establish [either] that a presumption of prejudice arose or that actual bias infected the jury that tried him,’ *Skilling [v. United States]*, 561 U.S. [358 (2010)] at 398, we overrule his first proposition of law.”).

Where the record in this case fails to show extraordinary or unusual impact of pretrial publicity on the attitudes of the jury pool, and the three jurors to whom Grate refers did not exhibit hostility or intractability regarding willingness to evaluate the case based solely upon the evidence, Grate has failed to carry his burden to show ineffectiveness under the deferential standard established by *Strickland v. Washington*, 466 U.S. 668 (1984). See *Ford*, 2019 Ohio 4539, ¶405 (Ford fails to explain what additional information defense counsel should have obtained from these prospective jurors or how defense counsel could have challenged these jurors. As discussed earlier, all the jurors who knew something about the case assured the court

that they could be fair and impartial. Thus, this claim lacks merit.”); *Beasley*, 153 Ohio St. 3d at 514-515, ¶114 (“Beasley has not identified any particular juror(s) who might have been biased by exposure to pretrial publicity, nor has he cited any specific section of the voir dire transcript as evidence that a fair trial was impossible.”); *State v. Mammone*, 139 Ohio St. 3d 467, ¶155 (2014) (“...[E]very potential juror completed a publicity questionnaire and was questioned about exposure to publicity during voir dire. Thus, counsel’s failure to ask additional questions was not objectively unreasonable. Moreover, the trial court, which was in the best ‘position to judge each juror’s demeanor and fairness,’ concluded that every juror and alternate selected—including the four Mammone specifically expresses concern about—could be fair and impartial.”).

Defense counsel had no professional obligation to engage in voir dire differently than they did especially when the judge-led voir dire revealed no intractable hostility or obstinate bias in the jury pool caused by pretrial publicity.

At all times during voir dire questioning, the trial judge solicited views of prospective jurors who felt compromised in their ability to be fair and impartial due to pretrial publicity or due to the nature of the charges. Those prospective jurors who expressed consternation were allowed to do so without being demeaned or belittled. See, e.g., Tr. Pgs. 29-36. Following this identification process initiated by the trial judge, defense counsel followed through with appropriate questioning. See, e.g., Tr. Pgs. 96-106. And, where a prospective juror expressed uncompromising beliefs, trial defense counsel moved to excuse for cause. See, e.g., Tr. Pgs. 1237-1239.

The record shows a fair voir dire process where the trial court and the defense counsel worked together in a cooperative mode to identify and remove prospective jurors who could not be fair and impartial. *Cf. State v. Clinton*, 153 Ohio St. 3d 422, ¶66 (2017) (“Clinton argues that the extensive pretrial publicity surrounding the murders of Jackson and her children made it impossible for him to obtain a fair trial in Erie County. But the trial court was very conscious of pretrial publicity in Clinton’s case. Each potential juror completed an extensive publicity questionnaire, and the court permitted thorough questioning about pretrial publicity during individual voir dire. Although most prospective jurors had heard or read something about the facts of the case, knowing something about media accounts of the crimes is not dispositive.”).

Where the voir dire process screened prospective jurors for bias due to pretrial publicity, and Grate has failed to show bias in the three jurors he identified, Grate’s Proposition of Law 1 should be rejected.

Response to Proposition of Law 2: Where the consent gag order issued by the trial judge is fully consistent with the provisions of Ohio Professional Conduct Rule 3.6 regarding prohibitions against extrajudicial public commentary by litigants in a pending criminal case, Grate fails to show deficient performance by this trial counsel in agreeing to be bound by the consent gag order.

Grate’s Proposition of Law 2 lacks viability where it is a long-accepted practice for the trial judge to restrict the litigants themselves from making partisan statements to the media while the case is being tried. R. 26, Judgment Entry (Gag Order); R. 25, Joint Motion for a Gag Order. There is no body of law to say that the trial judge acted inappropriately in restricting the public statements of the litigants,

and no body of law that would suggest defense counsel were professionally obligated to object to the gag order. *Cf.* Ohio Prof. Cond. Rule 3.6, Trial Publicity; see also *Burt v. Dodge*, 65 Ohio St. 3d 34, 36 (1992) (“However, Burt is a litigant in the common pleas court. Therefore, the court could issue orders preventing Burt from interfering with a fair adjudication of the case, and a violation of those orders would be contemptuous no matter where it was done.”).

In contradiction to the bare-bones assertions in Grate’s Proposition of Law 2, the authority of the trial judge to restrict the extrajudicial public commentary by litigants in a pending criminal action is broad. In similar fashion, the grounds on which to lawfully and properly object to a gag order that restricts the extrajudicial public commentary by litigants in a pending criminal action would be exceedingly narrow.

Where Grate’s Proposition of Law 2 is framed as a claim of ineffective assistance of counsel, one issue for adjudication is the scope of defense counsel’s rights and responsibilities in respect to extrajudicial public commentary about a pending criminal action. These rights and responsibilities are discussed in Ohio Professional Conduct Rule 3.6, Trial Publicity. Rule 3.6 shows that trial counsel who are participating in any litigation are already prohibited from extrajudicial public commentary that “will have a substantial likelihood of materially prejudicing an adjudicative proceeding.” The Staff Comment to Rule 3.6 explains that the risk of material prejudice from extrajudicial public commentary is especially prevalent in criminal cases. *Id.*, Comment 5 and Comment 6.

It is evident that the restrictions in the consent gag order issued in this case are consistent with restrictions to extrajudicial public commentary already in place. R. 26, Judgment Entry (Gag Order). Therefore, Grate's defense counsel would have lacked good faith grounds to object to the terms of the gag order relating to extrajudicial public commentary.

Moreover, Grate fails to identify any objectional terms of the gag order. Instead, Grate's Proposition of Law 2 implies that the consent gag order was entirely unlawful, which is plainly wrong given the terms of Ohio Professional Conduct Rule 3.6, Trial Publicity. These deficiencies in the statement of Proposition of Law 2 are especially evident where Grate fails to acknowledge the existence of Rule 3.6, and where Grate fails to articulate how the provisions of Rule 3.6 relate to his bare-bones claim of ineffective assistance of counsel.

Under these circumstances, the Court should reject Grate's Proposition of Law 2.

Response to Proposition of Law 3: Where defense neuropsychologist Dr. Fabian was appointed seventeen months before commencement of the trial, and where one month before commencement of the mitigation case defense counsel represented they were ready to proceed, and where one week before commencement of the mitigation case defense neuropsychologist Dr. Fabian published (under seal) an eighty-one page single-spaced mitigation report, there is no error by either the trial judge or defense counsel in not delaying the trial for a second round of brain scanning that called for completely scrapping the first round of brain scanning that had been completed more than one month before commencement of the mitigation case.

There are seven primary facts that contradict Grate's Proposition of Law 3 that blame the trial judge and defense counsel for not delaying the mitigation case to

accommodate the determination whether a second round of brain scanning was necessary.

First, defense neuropsychologist Dr. Fabian had nearly a year and a half of time to prepare before he testified on Grate's behalf. The allowance of ample preparation time undermines any notion that the trial judge imposed unrealistic time constraints for adequate development of the mitigation case.

Second, a first round of brain scanning was conducted by defense neurologist Dr. Scharre using the MRI equipment at OSU Hospital. The first round of brain scanning was completed more than one month before commencement of the mitigation case. Defense records show that defense neuropsychologist Dr. John Fabian sent technical requirements and specifications for the brain scanning to OSU defense neurologist Dr. Scharre. Although the record is silent as to the results of the brain scanning with Dr. Scharre, there is nothing in the record to suggest Dr. Scharre bungled the first round of brain scanning. These facts undermine any notion that either the trial judge or trial defense counsel acted in a manner that unfairly restricted the development of mitigation evidence.

Third, more than one month before commencement of the mitigation case, Dr. Fabian testified at a motion hearing that, even if a second round of brain scanning through Mindset Consulting Group was not commenced, he "absolutely" could proceed with his mitigation testimony. Since the first round of brain scanning at OSU hospital by Dr. Scharre had already been completed, the trial judge, as well as defense counsel, could take Dr. Fabian at his word that he, Dr. Fabian, could deliver

professionally competent mitigation testimony even without a second round of brain scanning.

Fourth, the trial judge expressly authorized a second round of brain scanning, *provided* that Mindset Consulting Group would appear by video at a hearing and adequately explain why a second round of brain scanning was necessary. This fact shows the trial judge was willing to accommodate Grate's last-minute request for a second round of brain scanning, and undermines any notion that the trial judge was being unfairly restrictive of Grate's effort to completely scrap the first round of brain scanning.

Fifth, the trial judge rescinded the go-ahead for a second round of brain scanning only after Mindset Consulting Group failed to appear for the hearing to determine why a second round of brain scanning was necessary. The fact that Grate does not blame the trial judge or trial defense counsel for the no-show of Mindset Consulting Group contradicts the premise of Proposition of Law 3 that the trial judge and trial defense counsel ignored good cause to delay commencement of the mitigation case. The unexplained non-appearance of the prospective expert Mindset Consulting Group is the event that precluded further development of a second round of brain scanning, and thus, removed any plausible reason to delay the commencement the mitigation case.

Sixth, although Grate had at his disposal evidence and expert testimony from the first round of brain scanning by Dr. Scharre at OSU Hospital, Grate did not present that available evidence during his mitigation case. Again, Grate does not

blame either the trial judge or his defense counsel for not presenting available brain scanning evidence through Dr. Scharre. Where the record shows Grate had brain scanning evidence which was not presented, the absence of evidence to show the necessity of a second round of brain scanning is a fatal defect of Proposition of Law 3.

Seventh, despite not having a second round of brain scanning conducted by Mindset Consulting Group, Dr. Fabian nevertheless published an 81-page single-spaced mitigation report (under seal) one week before the commencement of the mitigation case. In that report, Dr. Fabian announced his assessment of supposed neurological deficits by Grate. During his mitigation case testimony, Dr. Fabian presented the evidence of Grate's supposed neurological deficits, and the jury evaluated that evidence during its penalty deliberations. Especially where Grate had the benefit of one complete round of brain scanning, the prolixity of Dr. Fabian's mitigation report and mitigation testimony undermines any notion that Grate's mitigation case was inadequate because a second round of brain scanning was not done.

The context in which these facts appear in the record before this Court are set forth below.

Within days of their appointment, Grate's trial defense counsel moved for the appointment of Dr. John Fabian as the defense neuropsychologist. See. R. 28, R. 29, Grate's motions for appointment of Dr. Fabian, filed October 28, 2016. The formal appointment of defense neuropsychologist Dr. Fabian was memorialized on November 21, 2016, seventeen months before the trial commencement date of April

23, 2018. See R. 45, Entry appointing Dr. Fabian, filed November 21, 2016. The formal appointment of Jim Crates as the defense mitigation specialist was made on May 10, 2017, eleven-and-a-half months before the trial commencement date of April 23, 2018. See R. 76, Entry appointing Jim Crates. See, generally, Appx. C to the State's Merit Brief (a listing of motions and entries pertinent to mitigation).

On August 14, 2017, seven months before commencement of the guilt phase trial, Grate moved for a continuance of the trial in order to have more time to prepare the mitigation case. See R. 94, Grate motion for continuance. Grate's motion for continuance of the trial was supported by letters from Crates and Dr. Fabian, each of whom reported that, while much work had already been done, much work had yet to be done. See R. 94, Grate motion for continuance. The trial court granted a five-month continuance of the trial from November 6, 2017, to April 9, 2018. See R. 99, Entry granting continuance.

Records from Crates show that the defense team was in contact with OSU neurologist Dr. Scharre on November 15, 2017, five months before commencement of the guilt phase trial. R. 112, Crates interim fee application.

By December 20, 2017, four months before the commencement of the guilt phase trial, Mr. Crates had spent 130 hours in mitigation investigation as enumerated in his fee applications. See R. 81, R. 105, and R. 112, Crates itemized fee applications.

By December 20, 2017, four months before the commencement of the guilt phase trial, Dr. Fabian expended 29.25 professional hours in testing and evaluation

of Grate, as noted on Dr. Fabian's interim fee application. See. R. 114, Dr. Fabian interim fee application.

On February 1, 2018, two-and-a-half months before commencement of the guilt phase trial, Grate moved for funds to conduct brain scanning through Ohio State University Hospital by defense neurologist Dr. Douglas Scharre. The motion was supported by a letter from Dr. Fabian to Dr. Scharre, dated December 5, 2017, *where Dr. Fabian explained to Dr. Scharre the technical settings at which the neuroimaging equipment should be set.* R. 123, Grate motion for brain scanning. The trial court granted the motion and ordered that the "testing is to be completed by March 5, 2018." R. 131, Entry, dated February 12, 2018.

The trial court convened a hearing on April 20, 2018, three days before commencement of the guilt phase trial, regarding the defense motion for additional expert funds. Dr. Fabian provided testimony on the status of brain scanning. *Dr. Fabian testified that the brain scanning by OSU neurologist Dr. Scharre had been completed.* R. 565, Transcript of April 20, 2018, motion hearing, Tr. pg. 4, line 16. Dr. Fabian testified that additional brain scanning might be needed as may be determined by a defense forensic evidence firm known as Mindset Consulting Group. R. 565, Transcript of April 20, 2018, motion hearing, Tr. pgs. 4-11.

During the motion hearing on April 20, 2018, Dr. Fabian also testified that while his primary diagnosis of Shawn Grate was grounded on his own personal assessment as a neuropsychologist, the brain scanning results are used to corroborate and support his existing diagnosis. In other words, Dr. Fabian made clear that the

assessment tools he utilized to diagnose Grate did not include brain scanning as a primary tool. Rather, Dr. Fabian explained that he would use the brain scanning data to **corroborate** his diagnosis which was founded on traditional assessment tools completely separate and apart from brain scanning. R. 565, Transcript of April 20, 2018, motion hearing, Tr. pg. 6-7.

When asked if he could provide testimony in mitigation on behalf of Mr. Grate if the trial judge denied funds for additional brain scanning, Dr. Fabian responded “absolutely.” R. 565, Transcript of April 20, 2018, motion hearing, Tr. pg. 10, line 9.

In response to questions from the trial judge, Dr. Fabian testified that Mindset Consulting Group had possession of the data from the OSU brain scanning. Dr. Fabian testified that, before determining whether additional brain scanning might be warranted, Mindset Consulting Group would first have to evaluate the OSU data. Dr. Fabian further testified that Mindset Consulting Group had not yet conducted the initial evaluation of the OSU data. Dr. Fabian explained during the motion hearing on April 20, 2018, that before determining whether additional brain scanning was warranted, Mindset Consulting Group would first have to evaluate the data from the brain scanning already completed by Dr. Scharre. The evaluation by Mindset Consulting Group of the completed brain scanning data from Dr. Scharre and OSU Hospital had not yet been done, and defense neuropsychologist Additionally, Dr. Fabian implied such evaluation would not be done unless Mindset Consulting Group

was assured its fees would be paid. R. 565, Transcript of April 20, 2018, motion hearing, Tr. pgs. 11-14.

At the conclusion of Dr. Fabian's testimony during the motion hearing, the trial judge stated that funds for a "preliminary analysis" of the OSU brain scanning data by Mindset Consulting Group would be authorized. Specifically, the trial judge said:

THE COURT: So, gentlemen, as a result of what I heard today and what I read in Motion 15, here is kind of where I stand, unless you want to make some argument, but I've already heard a lot of the argument already. I'm inclined to authorize the necessary expenditures to get the preliminary analysis done, followed by an authorization for the balance of the monies requested upon receipt from Mindset, on their stationery, signed by them. It could be attached to an e-mail, to get it to us quickly, that this is going to be worth pursuing. ***Because right now, I've got a letter from them [Mindset Consulting Group] saying it may or may not, depending upon the preliminary analysis.*** I would expect the preliminary analysis to be done next week. ***If they think there is something there, I would sign another judgment entry authorizing the balance of the funds and they could be given the get-go.*** Because the order I'm going to prepare tonight before I go home is going to say, basically, ***I'm authorizing everything under these conditions, but if these conditions aren't met, then the authorization doesn't apply and we'll get the thing going.***

R. 565, Transcript of April 20, 2018, motion hearing, Tr. pgs. 23-24 (emphasis added).

The parties anticipated, as of the hearing date of April 20, 2018, an end to the trial phase around May 7, 2018, where the mitigation phase would commence approximately two weeks following the conclusion of the guilt phase. Essentially, as of the hearing on April 20, 2018, the best guess of the parties and the trial judge was that the defense mitigation case would commence in about a month. As it turned out, the mitigation phase commenced on May 18, 2018.

In this temporal context, the trial judge said: “I don’t see where we need to delay the start of the trial phase of this case when we are arguing about a mitigation assessment.” Defense counsel Robert Whitney responded by saying: “I don’t see any reason not to start the way it’s scheduled right now.” Defense counsel Rolf Whitney responded by saying: “No, I would say, let’s start.” R. 565, Transcript of April 20, 2018, motion hearing, Tr. pg. 27.

Ten days after the hearing on April 20, 2018, Grate filed a motion for additional brain scanning. R. 361, Defense motion for additional funds, filed May 1, 2018. The motion was supported by a letter from attorney Jason Kerkmans of Mindset Consulting Group. Kerkmans explained that Mindset Consulting Group could not evaluate the brain scanning conducted and completed by OSU Dr. Scharre unless OSU Hospital authorized Mindset Consulting Group to conduct an analysis of the MRI machine itself. Kerkmans explained that since OSU Hospital denied the request by Mindset Consulting Group to analyze OSU Hospital’s MRI machine, Mindset Consulting Group could not conduct a “preliminary analysis” of the existing brain scanning data generated by Dr. Scharre using the OSU Hospital MRI machine. Kerkmans explained that further assistance by Mindset Consulting Group would require a completely new round of brain scanning. Kerkmans suggested that the completely new round of brain scanning be conducted at the Cleveland Clinic, which, according to Kerkmans, had brain scanning equipment that was compatible with data analysis tools used by Mindset Consulting Group. R. 361, Grate motion for additional expert funds, filed May 1, 2018.

By entry dated two days after the filing of Grate's R. 361 motion, the trial court granted the expenditure of \$2,000.00 for Mindset Consulting Group to participate in an evidence admissibility hearing to be convened three days hence on May 7, 2018. R. 366, Entry granting expert funds and setting an evidence admissibility hearing.

Mindset Consulting Group was a no-show at the evidence admissibility hearing convened on May 7, 2018. As to this matter, the trial judge noted as follows:

This matter came before the Court for a hearing on Monday, May 7, 2018, to determine the admissibility of evidence pursuant to Evid. R. 702 and Evid. R. 403. The hearing related to proposed testing by Mindset Consulting Group, as requested in Defense Motions 15 and 17. The Court conducted the May 7, 2018, hearing by Skype for Business video, to facilitate participation by representatives of Mindset Consulting Group without incurring significant cost. The Court previously authorized an expenditure not exceeding \$2,000.00 to compensate Mindset Consulting Group for their representative's appearance via video. A link to join the meeting was, as well, provided to Mindset Consulting Group.

Although counsel for Defendant, counsel for the State of Ohio, and the Defendant appeared and participated in the video hearing, no representative from Mindset Consulting Group appeared. Counsel for Defendant did not have any additional evidence to support the scientific reliability of the proposed testing and analysis by Mindset Consulting Group, did not proffer any information to support the assertion that such testing would lead to a useable result, nor offer any further information that such testing would facilitate the work of Dr. Fabian, the Defendant's, mitigation expert. The State therefore moved to for an order prohibiting the admission of any testing information provided by Mindset Consulting Group during the sentencing phase of this case. The Court finds that there is no evidence supporting the scientific reliability of the proposed testing and analysis by Mindset Consulting Group. The Court further finds that no information or evidence has been presented to establish the relevance of any such testing and its analysis to any statutory or other mitigating factors, or to otherwise facilitate the findings, opinion and testimony of Dr. Fabian. The Court therefore finds the State's motion well taken and grants the same. Information from Mindset Group shall not be admitted during the sentencing phase of the

trial in this case. The Court therefore vacates any prior authorization of funds for any services to be rendered by Mindset Consulting Group, and to the extent Defense Motions 15 and 17 remain unresolved, denies any further relief pursuant to Defense Motions 15 and 17.

R. 388, Entry, filed May 9, 2018. (Emphasis added.)

The mitigation case convened on May 18, 2018. Dr. Fabian testified extensively. Mitigation testimony of Dr. Fabian, Tr. pgs. 3652-3766. The defense did not call Dr. Scharre to the witness stand.

Under the facts as shown in the record before this Court, Grate has fallen far short in showing error by either the trial judge or trial defense counsel in not accommodating Dr. Fabian's last-minute request for a new round of brain scanning through Mindset Consulting Group.

First, neither the trial judge nor defense counsel are at fault for the no-show of Mindset Consulting Group for testimony at the May 7, 2018, hearing. The trial judge had afforded Grate's trial defense attorneys, as well as Dr. Fabian, ample opportunity to explain why the brain scanning by Dr. Scharre at OSU needed to be completely scrapped in favor of a brand-new round of brain scanning through Mindset Consulting Group.

The trial judge gave the preliminary authorization to conduct a second round of brain scanning through Mindset Consulting Group under a time-table that would accommodate timely commencement of the mitigation phase. It was Mindset Consulting Group's failure to appear at the hearing convened to hear the reasons why the first round of brain scanning by OSU Hospital needed to be completely scrapped that prevented any additional scans. Under these circumstances, there is no evidence

in the record to blame either the trial judge or defense counsel for the no-show of Mindset Consulting Group.

Second, where Dr. Fabian explained in his sealed mitigation report that his neuropsychological diagnosis was based on analytical tools that did not include brain scanning, and that any brain scanning results would merely confirm or refute his diagnosis, both the trial judge and defense counsel were entitled to conclude that Dr. Fabian could fairly proceed with his mitigation testimony even if there was no second round of brain scanning through Mindset Consulting Group. Dr. Fabian said so himself, saying that he could “absolutely” proceed with his mitigation testimony even if there was no second round of brain scanning through Mindset Consulting Group. Under these circumstances, the evidence in the record shows that the trial judge, as well as defense counsel, were entitled to take Dr. Fabian at his word when defense neuropsychologist Dr. Fabian said he could “absolutely” proceed with his mitigation testimony even without a second round of brain scanning through Mindset Consulting Group.

Third, although Grate had completed one round of brain scanning by Dr. Scharre through OSU Hospital, neither the brain scanning evidence nor Dr. Scharre were presented during Grate’s mitigation case. As such, Grate had brain scanning evidence and a brain scanning expert that he could have presented during mitigation, but chose not to do so. Since Grate in Proposition of Law 3 does not fault his defense counsel for not presenting the evidence and expert connected with the first round of

brain scanning, it is fair to infer that evidence from the first round of brain scanning would not have benefitted the defense.

Under these circumstances, what appears in the record to be a tactical choice by trial defense counsel to not present brain scanning evidence and testimony through Dr. Scharre means that Grate has failed to show error in not delaying the mitigation case to accommodate a second round of brain scanning that would completely negate the first round of brain scanning.

For the reasons expressed, the Court should reject Grate's Proposition of Law 3.

Response to Proposition of Law 4: Since Grate has failed to show any error at all, not even “harmless error,” the “doctrine of cumulative error,” recognized in *Stone v. Powell*, 132 Ohio St. 3d 233, ¶223 (2012), has no application here.

The “doctrine of cumulative error,” recognized in *Stone v. Powell*, 132 Ohio St. 3d 233, ¶223 (2012), has no application in this case where Grate has failed to show any error, not even “harmless error,” in respect to his first three Propositions of Law.

The *Powell* Court made clear that some number of “harmless errors” must be present before a viable claim of “cumulative error” could arguably be present. *Id.* This formulation is consistent with the “doctrine of cumulative error” as articulated by other courts. See, e.g., *United States v. Willis*, 826 F. 3d 1265, 1280 (10th Cir. 2016) (“A cumulative-error analysis aggregates all errors found to be harmless and ‘analyzes whether their cumulative effect on the outcome of the trial is such that collectively they can no longer be determined to be harmless.’ [citations omitted.] There must be at least two errors before we may find cumulative error.”).

As explained in the response to Grate's first three propositions of law, Grate has failed to show any error, harmless or otherwise. Under these circumstances, the "doctrine of cumulative error" simply does not apply.

In what should be seen as a concession that his claims of ineffective assistance of counsel lack merit, Grate proceeds to argue twelve additional instances of alleged ineffective assistance of counsel. By advancing these additional claims of ineffective assistance of counsel under the "doctrine of cumulative error," Grate impliedly concedes the best he could hope for relative to any of the twelve instances of alleged ineffective assistance of counsel are findings of "harmless error."

1. Guilty plea subclaim.

On the eighth day of the trial, defense counsel notified the trial judge that Grate intended to plead guilty to a number of non-capital charges. Grate does not contend the guilty plea colloquies were flawed. Nor does he contend there was impropriety with the guilty pleas themselves. In fact, Grate concedes that his counsel advised the trial judge at sidebar that Grate himself made the decision to plead guilty to the enumerated non-capital charges to spare the families and victims additional embarrassment. In addition, Grate concedes that the trial court "engaged in a lengthy Criminal Rule 11 colloquy" before accepting his guilty plea to fifteen non-capital charges. Grate also concedes that the trial judge then engaged in "lengthy discussions" with counsel relative to the impact of the guilty pleas on the proposed jury instructions. See Grate Merit Brief, pgs. 30-34.

Grate does not explain how his guilty pleas to the non-capital charges were the result of deficient performance by counsel. Instead, Grate implies that defense counsel should have prevented him from taking this action, which is plainly wrong where the ultimate decision to plead guilty belongs to the client. Defense counsel are not professionally obligated to prevent their client from proceeding with a guilty plea. *Cf. McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) (“Trial management is the lawyer’s province: Counsel provides his or her assistance by making decisions such as ‘what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence.’ *Gonzalez v. United States*, 553 U. S. 242, 248, (2008) (internal quotation marks and citations omitted). Some decisions, however, are reserved for the client—notably, ***whether to plead guilty***, waive the right to a jury trial, testify in one’s own behalf, and forgo an appeal.”) (emphasis added).

Grate concedes the regularity of the record as to the guilty plea colloquies. Grate is wrong to imply that trial defense counsel had a professional obligation to stop him from pleading guilty. Accordingly, the Court should conclude that the guilty plea subclaim lacks merit.

2. Bad acts evidence subclaim.

Grate is correct that prior to the commencement of the trial, the prosecutor filed a notice to present other bad acts evidence under Evid. R. 404(B) in respect to *de minimus* acts of criminal behavior revealed by Grate during his statements to police. To the extent this *de minimus* evidence was introduced during the trial, it was

done so through Grate's own extensive statements to police. Because Grate's statements to police were extensive and included admissions to kidnapping, assault, and murder, the few minor offenses that were the subject of the state's notice are modest and insignificant. Under these circumstances, the 404(B) evidence at issue would have received scant attention from the jury, if noticed at all. See R. 296, State's Notice of 404(B) Evidence.

Grate wrongly faults defense counsel for not challenging the prosecutor's notice that enumerated 404(B) evidence would be presented through Grate's statements to police. Grate fails to explain why the so-called improper 404(B) evidence should have been excluded from the trial. And Grate fails to explain how supposedly-competent counsel could have prevailed on the trial court to exclude the unidentified evidence. See Grate Merit Brief, pgs. 35-37.

Grate's failure to articulate grounds for error warrants denial of the subclaim. See *Strickland v. Washington*, 466 U.S. 668, 694 (1984). ("***The defendant must show*** that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.") (emphasis added).

Beyond Grate's failure to explain how trial defense counsel were supposedly ineffective, admissibility of the evidence was well within the bounds Evid. R. 404(B). The source of the Evid. Rule 404(B) evidence was Grate himself, where, through the course of hours and hours of statements to Ashland police detective Kim Mager, Grate made passing and abbreviated references to a few low-level criminal infractions like buying marijuana for personal use, stealing clothes from an outdoor receptacle for

charity drop-offs of used household items, and squatting in an abandoned factory building. See R. 296, State's Notice of 404(B) Evidence.

In context of the principal charges, Grate's admissions to low-level criminal behavior were *de minimus*. The state's 404(B) notice relative to this evidence was intended to maintain the context and flow of Grate's statements to police without additional redactions over brief and fleeting statements about low-level criminal behavior. Moreover, Grate's offer to Lori of hand-me-down clothing that was intended to lure her to his residence for his plan of abduction and sexual assault, as well as Grate's marijuana use during her captivity, makes the 404(B) evidence pertinent to those charges.

Especially where Grate fails to articulate how counsel's performance in respect to this matter was deficient, and where Grate fails to articulate how inclusion of his statements about his own *de minimis* criminal behavior were unfairly prejudicial, the bad acts evidence subclaim lacks merit.

3. Withdrawal of NGRI plea subclaim.

Where both the court psychologist and the trial defense psychologist Dr. John Fabian agreed that Grate was sane, Grate fails to show deficient performance by trial defense counsel for not presenting an NGRI defense. Moreover, Grate's concessions about the "insurmountable" evidence of his guilt means that Grate cannot show prejudice emanating from supposed deficient performance by trial defense counsel. See *Strickland*, 466 U.S. at 694. ("The defendant must show that there is a reasonable

probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”)

Relative to Grate’s inability to show “prejudice” under the *Strickland* rule, Grate forthrightly acknowledges to this Court:

- “The evidence that Grate committed the acts of homicide was insurmountable.” Grate Merit Brief, pg. 37.
- A “defense of not guilty” was “futile.” Grate Merit Brief, pg. 38.
- ... “[A] not guilty verdict was impossible to legally obtain.” Grate Merit Brief, pg. 40.
- “To avoid ambiguity, appellate counsel is neither challenging the underlying facts of the aggravated murders, nor that Grate is the person who committed these homicides; Grate repeatedly approached investigators to describe how he strangled his victims – and willingly acted out his killings for investigators. * * * Grate’s repeated confessions and waiver of any Fifth Amendment concerns rendered any trial tactic of seeking a not guilty verdict an act of futility.” Grate Merit Brief, pg. 71.
- “Throughout this brief, appellate counsel will argue that trial counsel was woefully ineffective and Grate did not receive a fair trial – not because effective counsel could have obtained a not guilty verdict, such an argument would be frivolous.” Grate Merit Brief, pg. 72.
- “Due to the overwhelming evidence that Grate committed these murders, counsel could have had only two logical goals: 1) an NGRI verdict, or 2) a sentence of life without the possibility of parole (LWOP). * * * When appellate counsel asserts plain error or deprivation of the Sixth Amendment right to counsel, it is to suggest that the outcome of the trial could have been an NGRI verdict or a sentence of LWOP. No reasonable attorney under this fact pattern could expect to obtain not guilty verdicts or a sentence of life without the possibility of parole.” Grate Merit Brief, pg. 76.

The reality that the evidence of Grate’s guilt was voluminous and conclusive means that a finding of “prejudice,” which is a prerequisite to a viable claim of

ineffective assistance, would not be appropriate. See *Strickland*, 466 U.S. at 694 (“Accordingly, the appropriate test for prejudice finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution, *United States v. Agurs*, 427 U.S. 97, 104, 112-113, (1976) and in the test for materiality of testimony made unavailable to the defense by Government deportation of a witness, *United States v. Valenzuela-Bernal*, 458 U.S. 858, 872-874 (1982). ***The defendant must show*** that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.”) (emphasis added).

Beyond voluminous and conclusive evidence of guilt, which as to a claim of ineffective assistance of counsel precludes a finding of “prejudice,” trial defense counsel were faced with the findings and conclusions by the court psychologist, Dr. O’Reilly that negated plausible grounds for a viable NGRI defense. More than a-year-and-a-half before commencement of the trial, defense counsel would have reviewed the competency report where Dr. O’Reilly observed, *inter alia*, that Grate “displayed no symptoms of acute mental illness, cognitive deficits, or intellectual deficiencies.” R. ___, Dr. O’Reilly Competency Report, December 21, 2016, pg. 3 (document under seal). Defense counsel would also have learned that following, a three-hour clinical interview with Grate, Dr. O’Reilly noted: “No problems with remote or recent memory were observed or reported. [Grate’s] judgment and insight are intact.” *Id.*, pg. 10. Defense counsel also would have learned that Dr. O’Reilly reported that “[a]lthough

[Grate] reported a history of treatment for depression, [Grate] has not received treatment for an extended period of time nor has [Grate] required any mental health treatment during his protracted detention in the jail in this matter. *Id.*, pg. 17.

Defense counsel had ample time to review Dr. O'Reilly's report relative to the NGRI plea since it was issued more than a year before the commencement of the trial.

R. ___, Dr. O'Reilly NGRI Report, March 3, 2017. In concluding that Grate did not meet the criteria for insanity, Dr. O'Reilly noted, *inter alia*:

It is also my opinion, based upon reasonable psychological certainty, that Mr. Grate was not experiencing a severe mental disease at the time of the acts charged. Although he reported a history of treatment for depression and anxiety, he has not sought or required mental health treatment for an extended period of time nor has he required any mental health treatment during his protracted detention in the jail in this matter. There is no indication in available information, including witness/victim statements, law enforcement reports, jail treatment records, and his own self report that he displayed any symptoms of acute mental illness before, during, or after the acts charged. During the prior competency evaluation and current evaluation, he presented without signs of acute mental illness or distress, but reported chronic depressed mood and anxiety and frustration and anger toward deputies due to what he perceives as mistreatment. On prior psychological testing, he overreported psychological dysfunction, but expressed feeling sad, unhappy, dissatisfaction with his current life circumstances, problems with antisocial behavior, conflictual interpersonal relationships, impulsivity, episodes of disconstrained behavior, family issues, and interpersonal aggression.

Although very extreme, there is no indication that his behavior was the product of a major mental illness, but rather the traditional criminal motives of material gain, satisfaction of his underlying violent and sexual impulses, and contempt for others. His behavior is consistent with well-documented history of antisocial behavior, extreme violence, and constellation of personality traits (e.g., callousness/lack of empathy, contempt for others, disinhibition, aggression and impulsivity).

* * *

Mr. Grate repeatedly told detectives throughout several interviews that he understood all of his behavior was wrong and illegal and that he expected harsh punishment, including life imprisonment or the death penalty (*i.e.* ‘lethal injection.’).

* * *

During this evaluation, Mr. Grate clearly stated that he understood all of his behavior was wrong and illegal and provided rational explanations why. There is no indication in available information suggesting that his mental status at the time of the acts charged was altered to such an extent he would have lacked understanding of the wrongfulness of his behavior.

R. ___, Dr. O’Reilly NGRI Report, March 3, 2017, pgs. 35-37 (sealed document).

In reference to the decision to drop the NGRI defense, defense counsel could properly consider Dr. O’Reilly’s findings and conclusions that strongly negated a plausible NGRI defense. That proper consideration would extend to the conclusions by Dr. Fabian, which were the same as Dr. O’Reilly.

Specifically, Dr. Fabian said “Mr. Whitney [trial defense counsel] wanted me to examine sanity issues as well as mitigation at sentencing. He requested that I not write a report of sanity as ***I do not believe [Grate] would qualify for a not guilty by reason of insanity (NGRI) defense.***” R. ___, Dr. Fabian Preliminary Report, March 13, 2018, pg. 1 (sealed document) (emphasis added).

Where the professional conclusions of both the court psychologist and the defense psychologist were that Grate “[w]ould not qualify for a not guilty by reason of insanity (NGRI) defense,” Grate’s current claim of ineffective assistance of counsel for dropping the NGRI defense is contradicted by the record and should be rejected by this Court. Where the court psychologist and the defense psychologist agreed that Grate lacked a viable NGRI defense, Grate’s defense counsel had no professional

obligation to pursue an unwinnable strategy. Moreover, the voluminous and conclusive evidence of guilt means that Grate cannot show prejudice. Accordingly, Grate's subclaim that takes issue with dropping the NGRI defense has no merit and should be rejected by this Court.

4. Disclosure of Dr. Fabian's supplemental report subclaim.

Where the terms of Crim. R. 16(K) require the disclosure of an expert witness report, Grate's subclaim that trial defense counsel were ineffective for agreeing to disclose the report of defense psychologist Dr. Fabian is plainly without merit. See Crim R. 16(K) ("An expert witness for either side shall prepare a written report summarizing the expert witness's testimony, findings, analysis, conclusions, or opinion, and shall include a summary of the expert's qualifications. The written report and summary of qualifications shall be subject to disclosure under this rule no later than twenty-one days prior to trial, which period may be modified by the court for good cause shown, which does not prejudice any other party. Failure to disclose the written report to opposing counsel shall preclude the expert's testimony at trial.")

In addition to defense counsel being obligated under Crim. R. 16(K) to disclose Dr. Fabian's report, Grate fails to explain how or why defense counsel were responsible for Dr. Fabian's report-writing delay.

Dr. Fabian had ample time to perform his duties. Pursuant to a motion filed by defense counsel, the trial judge appointed Dr. Fabian as the defense psychologist fifteen months before commencement of the trial. See R. 28, Defense motion for expert funds, filed October 28, 2016; R. 29, Defense motion for jail access by Dr. Fabian, filed

October 28, 2016; R. 31, defense motion for a mitigation specialist, filed October 28, 2016; R. 45 Entry granting expert assistance, filed November 21, 2016; see also, generally, Appx. C to the State's Merit Brief (a listing of motions and entries pertinent to mitigation).

Through the efforts of defense mitigation specialist Jim Crates, Dr. Fabian had ample support relative to mitigation document-collection and mitigation witness interviews. By the end of 2017, which was three-and-one-half months before the commencement of the trial, Crates had expended 130 hours conducting mitigation document collection and mitigation witness interviews. R. 81, R. 105, R. 112, mitigation specialist Jim Crates fee applications with itemized billing.

Where the record shows Dr. Fabian was afforded ample time and had ample support from the mitigation specialist, Grate's subclaim that trial defense counsel performed below professional standards lacks merit.

5. Lack of guilt-phase trial participation subclaim.

Grate's subclaim that defense counsel should have made opening statements, objected to the gag order, moved for judgment of acquittal under Crim. R. 29, and presented evidence in a defense case-in-chief, lacks any explanation for deficient performance. Where the defendant carries the burden to prove a claim of ineffective assistance of counsel, this deficiency is fatal to relief. *Cf. State v. Campbell*, 90 Ohio St. 3d 320, 340 (2000) ("Next, Campbell claims that the record does not show that counsel advised him to make an unsworn statement. But neither does it show that they failed to. *It is Campbell's burden to 'show that counsel's performance was*

deficient.’ *Strickland*, 466 U.S. at 687. Moreover, we cannot say that it is always best for a defendant to make an unsworn statement, ***and Campbell fails to explain why his counsel should have advised him to do so here.***”) (emphasis added); *State v. Bays*, 87 Ohio 3d 15, 27 (1999) (“Bays notes that the record does not reflect that counsel advised him of the consequences of waiving the jury. ***However, it is Bays’s burden to show that counsel rendered ineffective assistance.*** [citations omitted]. The fact that counsel did not advise Bays on the record hardly suggests that counsel failed to advise him at all. It is a normal practice for lawyers to advise their clients in private, rather than on the record. ***Bays has failed to affirmatively show that his lawyer did not advise him.***”) (emphasis added); *State v. Hutton*, 53 Ohio St. 3d 36, 48-49 (1990) (“First, [Hutton] complains that his counsel failed to investigate possible mitigating evidence. As we observed, however, ***the record does not show what investigations counsel did or did not make. Since it is Hutton’s burden to show that his counsel’s performance was deficient***, his claim lacks merit.”) (emphasis added).

Grate concedes that: ***“The evidence that Grate committed the acts of homicide was insurmountable”*** (Grate Merit Brief, pg. 37.), ***that a “defense of not guilty” was “futile,”*** (Grate Merit Brief, pg. 38), and that ***“[A] not guilty verdict was impossible to legally obtain,”*** (Grate Merit Brief, pg. 40). These concessions as to the strength of the state’s evidence against Grate, in conjunction with Grate’s lack of an explanation as to what competent counsel supposedly should

have done, means that Grate has failed to carry his burden to show deficient performance and consequential prejudice.

This deficiency in pleading, standing alone, warrants denial of the subclaim. See *Strickland v. Washington*, 466 U.S. 668, 694 (1984). (“***The defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.***”) (emphasis added); see also, *State v. Ketterer*, 111 Ohio St. 3d 70, ¶115 (2006) (“Moreover, compelling evidence of guilt left counsel no reasonable opportunity to contest guilt, other than by a motion to suppress, which counsel filed and vigorously pursued. As to mitigation, we find no particular deficiencies in counsel’s performance. In sum, counsel did the best they could with what they had.”).

6. Insufficient cross-examination subclaim

Grate concedes that “The evidence that Grate committed the acts of homicide was insurmountable” (Grate Merit Brief, pg. 37.), that a “defense of not guilty” was “futile,” (Grate Merit Brief, pg. 38), and that “[A] not guilty verdict was impossible to legally obtain,” (Grate Merit Brief, pg. 40.) In this context, Grate’s mere observation that defense counsel did not cross-examine most of the state’s witnesses lacks significance.

Grate’s full and comprehensive confession to the crimes, in conjunction with the scene of the primary crimes being a residence exclusively occupied by Grate, and the abundance of forensic evidence to corroborate most of the crimes to which Grate confessed, means that there were no plausible strategies to challenge the state’s

evidence of guilt. Moreover, the testimony of most of the state's witnesses addressed objective background facts that did not inculcate or exculpate Grate. Especially in context of Grate's full confession to all of the crimes, cross-examination of most of the state's witnesses would be an empty exercise in an unnecessary courtroom charade.

The same can be said about a hypothetical cross-examination of Wayne Bright, the friend of Stacey Stanley Hicks who helped Grate change the flat tire on Stacey's car. Bright's testimony related to objective and uncontested events that took place at the gas station. Although the effect of Bright's testimony would be to place Stacey Stanley Hicks and Grate together just before the crime, because of Grate's confession, that fact was not in contention. Since none of Bright's testimony directly implicated Grate in any wrongdoing, competent counsel would have no good reason to cross-examine Bright.

Similar analysis would apply to a hypothetical cross-examination of Lori's friend, Tamara Whelan. Whelan testified about giving Lori and Grate a car ride at a time which, unknown to Ms. Whelan, was mere hours before the commencement of Grate's abduction of Lori. Testimony of Tamara Whelan, Tr. pgs. 2752-2756; testimony of Lori Svihlik, Tr. pgs. 2700-2702. Whelan also testified that during the car ride, she informed Lori about the police investigation of the disappearance of Elizabeth Griffith. Whelan testified that nothing unusual was said or done by either Lori or Grate during this car ride. Because of Grate's confession, what Grate did or did not do relative to the car ride with Tamara was not in contention. Since none of

Whelan's testimony directly implicated Grate in any wrongdoing, competent counsel would have no good reason to cross-examine Whelan.

Applying similar analysis, there was no good reason to cross examine Ashland police officers who took audio-recorded statements from Grate. Grate's statements to Officer Curt Dorsey and Detective Kim Mager were audio recorded and transcribed. The jury heard the audio recordings and were provided with the transcripts of Grate's statements. Consequently, Officer Dorsey and Detective Mager merely provided context and background for Grate's statements as a foundation for admissibility. Under these circumstances, there would be no compelling reason for competent counsel to cross-examine either Officer Dorsey or Detective Mager, especially where any answers by them to hypothetical cross-examination questions would be either neutral or inculpatory as to Grate.

Especially where Grate fails to articulate any reasons why, when compared to his trial counsel, other competent counsel would have performed differently, the Court should reject this subclaim.

7. Merger and allied offense subclaim.

Grate fails to explain what trial counsel should or should not have done relative to the merger of non-capital charges. He fails to explain how competent counsel could supposedly argue a winning motion under Crim. R. 29, or what guilt-phase defense competent counsel should have presented. These pleading deficiencies mean that Grate has failed to show a viable claim of ineffective assistance of counsel. See *Strickland v. Washington*, 466 U.S. 668, 694 (1984). ("The defendant must show that

there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.”); see also *State v. Ketterer*, 111 Ohio St. 3d 70, ¶115 (2006) (“Moreover, compelling evidence of guilt left counsel no reasonable opportunity to contest guilt, other than by a motion to suppress, which counsel filed and vigorously pursued. As to mitigation, we find no particular deficiencies in counsel’s performance. In sum, counsel did the best they could with what they had.”).

8. Jury issues subclaim.

Grate fails to explain how or why the performance of trial counsel was deficient relative to Juror 23, Juror 6, and Juror 131. Instead, Grate merely recites on-the-record events involving these jurors, and leaves further elucidation of a *Strickland* claim to unarticulated implication. This deficiency in pleading is fatal to relief on the jury issues subclaim. *Cf. State v. Campbell*, 90 Ohio St. 3d 320, 340 (2000) (“Next, Campbell claims that the record does not show that counsel advised him to make an unsworn statement. But neither does it show that they failed to. ***It is Campbell’s burden to ‘show that counsel’s performance was deficient.’*** *Strickland*, 466 U.S. at 687. Moreover, we cannot say that it is always best for a defendant to make an unsworn statement, ***and Campbell fails to explain why his counsel should have advised him to do so here.***”) (emphasis added); *State v. Bays*, 87 Ohio 3d 15, 27 (1999) (“Bays notes that the record does not reflect that counsel advised him of the consequences of waiving the jury. ***However, it is Bays’s burden to show that counsel rendered ineffective assistance.*** [citations omitted]. The fact that counsel did not

advise Bays on the record hardly suggests that counsel failed to advise him at all. It is a normal practice for lawyers to advise their clients in private, rather than on the record. *Bays has failed to affirmatively show that his lawyer did not advise him.*) (emphasis added); *State v. Hutton*, 53 Ohio St. 3d 36, 48-49 (1990) (“First, [Hutton] complains that his counsel failed to investigate possible mitigating evidence. As we observed, however, *the record does not show what investigations counsel did or did not make. Since it is Hutton’s burden to show that his counsel’s performance was deficient*, his claim lacks merit.”) (emphasis added).

The ordinary and routine prior contacts between Juror 23 and Juror 6 with victims Lori and Stacey are commonplace occurrences in criminal trials. Consequently, such ordinary events would not call for competent counsel to take aggressive action. In similar fashion, the empaneling of an alternate juror, standing alone, would not call for competent counsel to take aggressive action. Under these circumstances, and especially where Grate fails to explain how or why trial defense counsel were supposedly ineffective as to these matters, the Court should deny relief.

9. Inadequate presentation of mitigation evidence subclaim.

Grate wrongly implies that the seemingly skimpy presentation of family members was due to poor performance defense counsel. To the contrary, the record shows Grate had little meaningful contact with his family in the years prior to the crimes. The absence of meaningful contact meant that Grate’s extended family were not invested in his well-being such that their absence as witnesses in his trial would

not automatically mean defense counsel hindered or squelched their participation as mitigation witnesses.

Grate's sister, Barbara Charter, who testified on Grate's behalf, told Dr. Fabian that her last contact with Grate was "Christmas of 2004," twelve-and-a-half years before the crime. See R. ___, Dr. Fabian mitigation report, page 13 of 81 (sealed document). Since Barbara testified on Grate's behalf, and accordingly could be seen as the family member most sympathetic to Grate, her twelve-year absence of contact with Grate suggests that apathy from less sympathetic family members was not due to poor performance by trial counsel. Where Grate was not involved with his family, and vice-versa, family apathy was already present long before the crimes and serves as an objective explanation for continuing family apathy after the crimes.

Relative to Grate's cousin, Lisa Cole, Dr. Fabian reported that "Lisa stated that Jim Crates, mitigation specialist, was in contact with her for an interview by telephone. She reported that she initially had a lot of people on board for the family to talk about Mr. Crates's mitigation issues for Shawn [Grate], but they all fell off the wagon." See R. ___, Dr. Fabian mitigation report, page 14 of 81 (sealed document). Although Dr. Fabian does not say why "a lot of people" fell off the mitigation wagon, Dr. Fabian does not fault defense counsel for the seemingly skimpy presentation of family members as mitigation witnesses.

As for Grate's mother, Dr. Fabian reported that "I talked to [Grate's mother] about her involvement with the mitigation investigation. She said she did not want to have her picture plastered for the world to see. ***She said that she did not want***

to be involved with the sentencing.” R. ___, Dr. Fabian mitigation report, page 16 of 81 (sealed document) (emphasis added). Dr. Fabian further reported that he “did not have much information about the biological father, Terry, although different family members essentially indicated that he favored his other son, Jason, and did not have much connection or need for Shawn [Grate.]” R. ___, Dr. Fabian mitigation report, page 66 of 81 (sealed document).

Discussing the family in general, Dr. Fabian reported: “As noted, the defense team was unable to adequately connect with the primary caregivers, including the mother and father of Mr. Grate. *Much of this failure was the unwillingness of the family members to participate in the much-needed mitigation investigation.*” R. ___, Dr. Fabian mitigation report, page 66 of 81 (sealed document) (emphasis added).

As stated earlier, Grate’s sister, Barbara Charter, testified on his behalf and explained similar family estrangement. In general, Barbara testified that “As far as family, we are not close.” About her efforts to line up family members for prospective testimony in the mitigation case, Barbara testified: “I could only get one person to cooperate. Other than that, I could not get anyone else. I thought that I had other people, but they fell out. Testimony of Barbara Charter, Tr. pgs. 3613-3615.

These observations by Dr. Fabian strongly suggests that the absence of family witnesses was not due to lack of investigation, but was rather due to the family’s unwillingness to get involved with Grate’s case. Especially in context of Grate’s failure to articulate how or why alleged inadequacies in mitigation presentation was

due to failure by trial counsel, the record-based evidence from Dr. Fabian that shows the family's unwillingness to get involved with Grate's case means that Grate's subclaim 9 lacks factual support. *Cf. State v. Campbell*, 90 Ohio St. 3d 320, 340 (2000) ("Next, Campbell claims that the record does not show that counsel advised him to make an unsworn statement. But neither does it show that they failed to. ***It is Campbell's burden to 'show that counsel's performance was deficient.'*** *Strickland*, 466 U.S. at 687. Moreover, we cannot say that it is always best for a defendant to make an unsworn statement, ***and Campbell fails to explain why his counsel should have advised him to do so here.***") (emphasis added); *State v. Bays*, 87 Ohio 3d 15, 27 (1999) ("Bays notes that the record does not reflect that counsel advised him of the consequences of waiving the jury. ***However, it is Bays's burden to show that counsel rendered ineffective assistance.*** [citations omitted]. The fact that counsel did not advise Bays on the record hardly suggests that counsel failed to advise him at all. It is a normal practice for lawyers to advise their clients in private, rather than on the record. ***Bays has failed to affirmatively show that his lawyer did not advise him.***") (emphasis added); *State v. Hutton*, 53 Ohio St. 3d 36, 48-49 (1990) ("First, [Hutton] complains that his counsel failed to investigate possible mitigating evidence. As we observed, however, ***the record does not show what investigations counsel did or did not make. Since it is Hutton's burden to show that his counsel's performance was deficient***, his claim lacks merit.") (emphasis added).

Moreover, Grate is legally inaccurate to say that the rules of evidence do not apply to courtroom mitigation testimony such that any hearsay objections by the

prosecution to Dr. Fabian's testimony were unjustifiable. Although pursuant to R.C. 2929.04(C) the trial court must give "great latitude" in the presentation of mitigation evidence, that does not mean the rules of evidence do not apply in death penalty mitigation cases. See R.C. 2929.04(C) ("The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.").

To the contrary, the terms of R.C. 2929.04(C) mean that evidence rules are to be enforced, albeit in a manner that also affords "great latitude" to the defendant's presentation of relevant mitigation evidence. *Cf. State v. Steffen*, 31 Ohio St. 3d 111, 129 (1987) ("We would remark at this juncture that while R.C. 2929.04(B)(7) evinces the legislature's intent that a defendant in a capital case be given wide latitude to introduce any evidence the defendant considers to be mitigating, this does not mean that the court is necessarily required to accept as mitigating everything offered by the defendant and admitted. The fact that an item of evidence is admissible under R.C. 2929.04(B)(7) does not automatically mean that it must be given any weight.")

10. Abbreviated closing argument subclaim.

Grate fails to articulate a viable claim of ineffective assistance due to an abbreviated closing argument where he fails to explain what supposedly competent counsel would have done under the same circumstances. Although hypothetical trial defense counsel could have engaged in an empty charade of aggressive argumentation, that does not mean Grate's trial defense counsel were constitutionally required to do so. The constitution prohibits incompetence. The

constitution does not mandate “best practices.” *Cf. In re A.G.*, 2019 Ohio 1786, ¶81 (5th Dist. 2019) (“The question is whether an attorney’s representation amounted to incompetence under ‘prevailing professional norms,’ not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S., at 690.”).

Grate acknowledges that, during the closing argument, his defense counsel pursued a theme of acceptance of responsibility. In context of Grate’s concessions that the evidence of guilt was conclusive, this Court should readily conclude that pursuit of the theme of acceptance of responsibility was not only prudent, but rather the only plausible strategy under the overall circumstance of the case. See Grate Merit Brief, pg. 37 (“The evidence that Grate committed the acts of homicide was insurmountable”; pg. 38 a “defense of not guilty” was “futile;” and pg. 40 “[A] not guilty verdict was impossible to legally obtain.”).

11. Improper closing argument theme subclaim.

Similar reasoning applies to Grate’s contention that trial counsel should have pursued a mitigation closing argument theme other than acceptance of responsibility. In context of Grate’s concessions that the evidence of guilt was conclusive, this Court should readily conclude that pursuit of the theme of acceptance of responsibility was not only prudent, but rather the only plausible strategy under the overall circumstance of the case. *Cf. State v. Martin*, 151 Ohio St. 3d 470, ¶166 (2017) (“The tepid expression of remorse in Martin’s unsworn statement deserves little weight. On the other hand, his cooperation with law enforcement is entitled to some weight.”);

State v. Bethel, 110 Ohio St.3d 416, ¶191 (2006) “A defendant’s confession and cooperation with law enforcement are mitigating factors.”).

12. No unsworn statement subclaim.

Although Grate contends his defense counsel were ineffective in respect to his decision not to make an unsworn statement, Grate fails to develop this allegation. Under these circumstances, the Court should reject this subclaim. See *State v. Campbell*, 90 Ohio St. 3d 320, 340 (2000) (“Next, Campbell claims that the record does not show that counsel advised him to make an unsworn statement. But neither does it show that they failed to. It is Campbell’s burden to ‘show that counsel’s performance was deficient.’ *Strickland*, 466 U.S. at 687. Moreover, we cannot say that it is always best for a defendant to make an unsworn statement, and Campbell fails to explain why his counsel should have advised him to do so here.”).

For the reasons expressed, the Court should reject Proposition of Law 4.

Response to Proposition of Law 5: Where the facts show prior planning for the physical restraint of the surviving victim, plus extended use of physical restraints during her three-day captivity, there was a separate animus for kidnapping and rape such that neither plain error nor ineffective assistance of counsel are present.

The facts readily show a separate animus as to the charges of kidnapping and rape of the surviving victim such that competent counsel would not have valid grounds to contend the charges should merge for sentencing purposes. In similar fashion, the separate animus relative to the charges of rape and kidnapping mean that there is no plain error in the imposition of separate sentences for the charges.

First, Grate readily admitted Ashland Police Detective Kim Mager that he had planned to sexually assault Lori for a three-day period, and knew that Lori would

have to be restrained to facilitate that pre-planned multi-day sexual assault. Grate told Detective Mager that right after he killed Elizabeth Griffith and hid her body in the closet of the second-floor bedroom, he made the decision to configure restraints in the second-floor bedroom to facilitate the pre-planned multi-day sexual assault of Lori. See St. Ex. 303, Grate's statement to police dated September 21, 2016; Appx. B, Grate statement excerpts, pg. 108-113; St. Exs. 121, 125, 126, Photos of second floor bedroom restraints.

The prior planning by Grate to configure restraints for the pre-planned multi-day sexual assault of Lori shows the abduction component was discrete and distinct conduct by Grate that was deliberately calculated to facilitate the crime of rape. Contrary to the contention in Grate's Proposition of Law 5, the clear delineation between the abduction component and the rape shows a separate animus that would preclude merger of sentences. See *State v. Adams*, 103 Ohio St. 3d 508, ¶90 (2004) ("In *State v. Logan* 60 Ohio St. 2d 126 (1979), we established guidelines to determine whether kidnapping and rape are committed with a separate animus so as to permit separate punishment under R.C. 2941.25(B). We held in *Logan* that 'where the restraint or movement of the victim is merely incidental to a separate underlying crime, there exists no separate animus sufficient to sustain separate convictions; however, where the restraint is prolonged, the confinement is secretive, or the movement is substantial so as to demonstrate a significance independent of the other offense, there exists a separate animus as to each offense sufficient to support separate convictions.'").

Second, Grate readily admitted Ashland Police Captain Lay that during the second day of Lori's confinement, he tied her to the mattress so that she would remain in the house while Grate left to get cigarettes. See St. Ex. 280, Grate's statement to police dated September 13, 2016; Appx. B, Grate Statement excerpts, pgs. 26, 32, 40. In addition, Grate told Ashland Police Detectives Evans and Mager that after he tied Lori to the mattress, he used the key to Lori's apartment to steal money. Grate told police he used the money stolen from Lori's apartment to buy cigarettes at the Circle K carry-out. Grate told police that after he returned from the trip to get cigarettes, he untied Lori. See St. Ex. 295, Grate's statement to police dated September 15, 2016; Appx. B, Grate statement excerpts, pg. 83-84, pg. 127-128.

Grate's cigarette trip was corroborated by the Circle K manager, and Grate's cigarette purchase—at 8:02 PM on Monday, September 12, 2016—was captured on store surveillance tape. See Testimony of Debra Steinhour, Circle K Manager, Tr. 2925-2929; see also St. Ex. 341, Video of Grate cigarette purchase.

The confinement of the surviving victim Lori so that Grate could leave the scene of the sexual assault, steal money from Lori's apartment, and then buy cigarettes is the type of "prolonged restraint" that evinces the separate animus to show that merger of the rape and kidnapping charges would not be appropriate. See *State v. Foust*, 105 Ohio St. 3d 137, ¶140 (2004) ("The test for determining whether kidnapping and rape were committed with a separate animus as to each is 'whether the restraint or movement of the victim is merely incidental to a separate underlying crime or, instead, whether it has a significance independent of the other offense.'

State v. Logan 60 Ohio St. 2d 126, 135 (1979).”); see also *State v. Craig*, 110 Ohio St. 3d 306, 325 (2006) (“In *Logan* and in subsequent cases, we have said that prolonged restraint, secretive confinement, or substantial movement of the victim apart from that involved in the other crime were factors establishing a separate animus for kidnapping.”).

These two significant facts—that the kidnapping component by use of restraints was pre-planned, and that during the cigarette trip the confinement was of extended duration—shows that competent counsel would not be professionally obligated to argue a merger of offenses. In similar fashion, these two significant facts strongly counsel against merger of the kidnapping and rape such that Grate has failed to show plain error. Accordingly, the Court should conclude that Proposition of Law 5 is not well taken.

Response to Propositions of Law 6 and 7: Grate is plainly wrong to allege that the rules of evidence do not apply in a capital mitigation proceeding.

The trial judge sustained a hearsay objection by the state in respect to testimony of Grate’s sister, Barbara Charter, about their mother, Theresa McFarland. Grate’s mother was not called as a mitigation witness. When asked to describe “a situation down in Kentucky” from which the mother wanted to get away, Barbara testified about the mother’s actions and the reasons why the mother took those actions. At the point when Barbara, referring to her mother, testified that “...she was sexually abused by...,” Prosecutor Tunnell objected, stating: “I will object for hearsay reasons.” Testimony of Barbara Charter, Tr. pgs. 3616-3617.

Grate's counsel contended Barbara's testimony about the mother's conduct was admissible because "[t]his is going to be included in the basis of the mitigation report, that is how it's relevant." Testimony of Barbara Charter, Tr. pgs. 3616-3617.

There was no showing that Grate's sister had firsthand knowledge with respect to the events that may or may not have taken place during the mother's youth. Testimony of Barbara Charter, Tr. pgs. 3617-3618. *Cf. State v. McKee*, 91 Ohio St. 3d 292, 297 (2001) ("We follow this line of cases and hold that the experience and knowledge of a drug user lay witness can establish his or her competence to express an opinion on the identity of a controlled substance if a foundation for this testimony is first established. This meets the requirements of Evid. R. 701. It is testimony rationally based on a person's perceptions and helpful to a clear understanding of a fact in issue.").

In sustaining the prosecutor's hearsay objection, the trial court drew a distinction between Barbara's hearsay testimony in contrast to the allowance of an expert to form opinions in part based on hearsay. This distinction is well-recognized. *Cf. State v. Solomon*, 59 Ohio St. 3d 124, 126 (1991) ("Accordingly, we find that where an expert bases his opinion, in whole or in major part, on facts or data perceived by him, the requirement of Evid. R. 703 has been satisfied. It is important to note that Evid. R. 703 is written in the disjunctive. Opinions may be based on perceptions *or* facts or data admitted in evidence."); *State v. Fread*, 2013 Ohio 5206, ¶18 (12th Dist. 2013) ("This court has previously held that statements made during the course of a psychological examination are admissible to the same extent as statements made to

a treating physician, provided that the purpose of the psychological examination is the diagnosis and treatment of the victim's psychological condition, rather than gathering evidence against the accused.”).

In the context of the difference between lay and expert opinion, the trial judge sustained the state's hearsay objection as to the testimony of Barbara Charter. Testimony of Barbara Charter, Tr. pgs. 3617-3618.

But, the trial court did not exclude testimony from Dr. Fabian. Instead, following an objection by the prosecution, the trial judge issued an instruction that the hearsay evidence upon which Dr. Fabian relied to form an expert opinion can be assessed to determine the weight to be afforded to the expert opinion. Specifically, the trial judge instructed the jury as follows:

Ladies and gentlemen, I need to advise you that any statements made to Dr. Fabian by other individuals is hearsay. They are not evidence in the case. They may be used by Dr. Fabian for the purposes of forming his opinions, but you don't need to -- I'll leave it at that, if that hearsay statement is made and it is just repeated to you, it is not evidence and you should not consider it. You should disregard it. You can weigh that to the extent that it's used to support the source of any opinion or expert opinion he would render in this matter.

Limiting Instruction, Tr. pg. 3684.

In context of this record, Grate erroneously contends that the rules of evidence do not apply to defense mitigation testimony. In other words, Grate does not assert error in the determination by the trial judge that the statements at issue constituted hearsay. Instead, Grate erroneously contends that hearsay rules do not apply at all to defense mitigation testimony such that any application of hearsay rules to defense mitigation testimony is *per se* error.

Grate's misunderstanding arises from a misreading of the terms of Evid. R. 101(C)(3), which states as follows:

(C) These rules [of evidence] (other than with respect to privileges) do not apply in the following situations:

(3) **Miscellaneous criminal proceedings.** Proceedings for extradition or rendition of fugitives; *sentencing*; granting or revoking probation; proceedings with respect to community control sanctions; issuance of warrants for arrest; criminal summonses and search warrants; and proceedings with respect to release on bail or otherwise.

(emphasis added).

Although Evid. R. 101(C)(3) undoubtedly applies to an ordinary and routine "sentencing" proceeding, no court has said that Evid. R. 101(C)(3) applies to a capital mitigation proceeding. In similar fashion, no court has said rules of evidence do not apply to a capital mitigation proceeding.

This absence of authority is understandable, where the inclusion of extradition and probation revocation hearings in Evid. R. 101(C)(3) suggests that the "sentencing" to which the rule refers is the ordinary and routine event of the trial judge imposing a sentence in a non-capital context. This is so since the other events referred to in Evid. R. 101(C) are ordinary and routine occurrences that are abbreviated and typically do not call for testimony of witnesses or extended evidentiary presentations.

In contrast, a capital mitigation proceeding is more analogous to a regular adversarial trial, where there are often extended evidentiary presentations with testimony from expert witnesses. Furthermore, practitioners do not refer to a capital mitigation proceeding as a "sentencing." Instead, practitioners refer to the judge-only

hearing where an allocution could be heard and the sentence is formally and finally imposed as the “sentencing” hearing in a capital case.

In view of the fundamental difference between a capital mitigation proceeding as contrasted to the judge-only “sentencing” hearing in a capital case, the terms of Evid. R. 101(C) would apply in a capital “sentencing” hearing, but not in a capital mitigation proceeding.

The fallacy of Grate’s contention that the rules of evidence do not apply in a capital mitigation proceeding can also be seen in the terms of R.C. 2929.04(C) that suggests exactly the opposite. R.C. 2929.04(C) says: “The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.” Although the defendant is afforded “great latitude in the presentation of evidence,” that allowance is fundamentally different from the terms of Evid. R. 101(C)(3) that expressly excepts application of the rules of evidence in a “sentencing.”

If the rules of evidence did not apply at all in a capital mitigation proceeding, there would be no reason for R.C. 2929.04(C) to allow the defendant to have “great latitude in the presentation of evidence.” In other words, the phrase suggests that the rules of evidence should not be applied strictly and to-the-letter, but rather applied with lenience that would favor admissibility over exclusion. In drawing a distinction between strict and lenient application of the rules of evidence in a capital mitigation proceeding, the commonality is that the rules of evidence do apply.

In contrast with Grate's erroneous contention that the rules of evidence do not apply to a capital mitigation proceeding, the United States Supreme Court says that the well-known rule limiting the admissibility of evidence to that which is "relevant" applies with full force in a capital mitigation proceeding. See *Lockett v. Ohio*, 438 U.S. 586, 604, n. 12 (1978) ("Nothing in this opinion limits the traditional authority of a court to exclude, as irrelevant, evidence not bearing on the defendant's character, prior record, or the circumstances of his offense."); *Tennard v. Dretke* 542 U.S. 274, 284 (2004) ("When we addressed directly the relevance standard applicable to mitigating evidence in capital cases in *McKoy v. North Carolina*, 494 U.S. 433, 440-441 (1990), we spoke in the most expansive terms. We established that the 'meaning of relevance is no different in the context of mitigating evidence introduced in a capital sentencing proceeding' than in any other context, and thus the general evidentiary standard - 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence'-- applies.").

Lockett v. Ohio and *Tennard v. Dretke* show, by limiting the presentation of evidence in a capital mitigation proceeding to that which is relevant, that Grate is plainly wrong in his contention that the rules of evidence do not apply at all. Cf. *Green v. Georgia*, 442 U.S. 95, 98 (1979) (Rehnquist, dissenting) ("The Georgia trial court refused to allow in evidence certain testimony at petitioner's sentencing trial on the ground that it constituted inadmissible hearsay under Ga. Code § 38-301 (1978). This Court does not, and could not, dispute the propriety of that ruling.").

Accordingly, the Court should conclude that Grate's Propositions of Law 6 and 7 are not well taken.

Response to Proposition 8: Where the terms of R.C. 2929.05 requires the appellate court, and not the trial court, to conduct a proportionality review, Grate's Proposition 8 that claims error by the trial court in not conducting a proportionality review lacks any legal support and should be rejected.

In the case of *State v. Spaulding*, 151 Ohio St. 3d 378, ¶¶181-185 (2016), this Court rejected the same claim Grate advances in his Proposition 8.

As explained by this Court in *Spaulding*, Grate is wrong to say that the trial court is obliged to conduct a proportionality review. Specifically, the *Spaulding* Court said "First, contrary to Spaulding's claims, R.C. 2929.05(A) does not require a *trial court* to engage in proportionality review. Instead, this provision requires an *appellate court* to review every death sentence for proportionality. By contrast, R.C. 2929.03(F) sets forth the requirements for a trial court's sentencing opinion in a capital case. This provision says nothing about the trial court conducting a proportionality analysis." *Id.* (emphasis supplied).

Moreover, Grate is wrong to allege that proportionality review is the subject of the federal constitution. To the contrary, the Ohio's proportionality review does not implicate the federal constitution. See, e.g., *Walker v. Georgia*, 555 U.S. 979, 987 (2008), ("There is nothing constitutionally defective about the Georgia Supreme Court's determination. Proportionality review is not constitutionally required in any form. Georgia simply has elected, as a matter of state law, to provide an additional protection for capital defendants. *Pulley [v. Harris]*, 465 U.S. at 45.") (Thomas, J., concurring).

Where Grate is plainly wrong in alleging deficiency in proportionality review by the trial court, this Court should reject Grate's Proposition 8.

Response to Proposition of Law 9: Where the Court's expert and the defense expert concluded that Grate was not insane, Grate has failed to show trial counsel were ineffective for not presenting an insanity defense.

Grate's effort to fault defense counsel for not presenting an insanity defense falls flat at the starting gate where both the trial court's expert and the defense expert agreed that Grate did not have a viable insanity defense.

1. Trial experts unanimously agreed that Grate was not insane.

The court's psychologist, Dr. O'Reilly, spelled out Grate's acts of deceptive manipulation designed to bring about, and then to conceal, his many acts of criminal conduct. In conjunction with Grate's unabashed acknowledgement during clinical interviews of his awareness of the wrongfulness of all of his criminal behavior, Dr. O'Reilly concluded, thirteen months before the commencement of the trial, that Grate did not meet the definition of insanity. See R. ___, Dr. O'Reilly NGRI Report issued March 3, 2017, (document under seal).

Grate's defense neuropsychologist, Dr. Fabian, reached the same conclusion as Dr. O'Reilly. Specifically, in a preliminary mitigation psychological report issued two months before the commencement of the mitigation case, Dr. Fabian wrote that: "Mr. [Rolf] Whitney [trial defense counsel] wanted me to examine sanity issues as well as mitigation at sentencing. [Trial defense counsel Mr. Rolf Whitney] requested I not write a report of sanity as I do not believe [Grate] would qualify for a not guilty by reason of insanity (NGRI) defense." R. ___, Dr. Fabian Preliminary Mitigation Report, page 1, dated March 13, 2018 (document under seal). Dr. Fabian repeated this

conclusion in the final mitigation report he issued two months later, on May 10, 2018. R. ___, Dr. Fabian Final Mitigation Report, page 1, dated May 10, 2018, (document under seal).

During his mitigation testimony, Dr. Fabian said "...[I] did an evaluation for insanity, and I told [Grate's] lawyers that I did not believe that he qualified for an insanity defense." Dr. Fabian Mitigation Testimony, Tr. pg. 3718. In response to the state's question: "...[I]n many places in your report you indicate that Shawn Grate knew what he was doing was illegal.," Dr. Fabian testified: "Yes, I don't doubt that." In repose to the state's follow-up question that "...[Grate] was aware of the wrongfulness in the behavior in many different ways", Dr. Fabian testified: "Yes, and [Ashland Police Detective] Ms. Mager certainly said it in her report, and I have some of that ditto, so to speak." Dr. Fabian Mitigation Testimony, Tr. pg. 3721-3722.

What this means is that the factual premise of Grate's Proposition of Law 9 is contradicted by the record that shows an unanimity of professional opinion that Grate did not have a viable NGRI defense. Where the psychological experts agreed that Grate did not have a viable NGRI defense, defense counsel cannot be said to have acted unprofessionally in not presenting a NGRI defense. To the contrary, where the psychological experts unanimously agreed that Grate did not have a viable NGRI defense, the record justifies the strategic decision by defense counsel to forego such a defense, since they lacked an expert opinion to support any presentation of a NGRI defense. *Cf. People v. Williams*, 44 Cal. 3d 883, 945-946 (1988) ("**Competent representation does not demand that counsel seek repetitive examinations of**

the defendant until an expert is found who will offer a supportive opinion.

Defendant's claim here is not unlike that made in *In re Grissom* 85 Cal. App. 3d 840 (1978), where the court admonished that *defense lawyers are not expected to practice the legal equivalent of defensive medicine by ordering multiple tests in the hope that one will produce useful information*, 'tests they forego at peril of being branded incompetent.' (*Id.*, at p. 849.)" (emphasis added).

In Proposition of Law 9, that faults trial defense counsel for not pursuing an NGRI defense, Grate fails to acknowledge that his own expert (Dr. Fabian), as well as the trial court's expert (Dr. O'Reilly) were in professional agreement that Grate did not have a viable NGRI defense. Grate's failure to explain how his counsel were supposedly professionally obligated to present an unsupportable NGRI is fatal to the viability of Proposition of Law 9. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) "A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, *the defendant must show* that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, *the defendant must show* that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Unless a defendant makes both showings*, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable." (emphasis added).

2. In convening a status conference to accept the signed document memorializing the withdrawal of the NGRI plea, the trial judge acted without objection from Grate.

Where the record shows psychological experts were unanimous that Grate did not have a viable NGRI defense, the remaining assertions of error in Proposition of Law 9 are rendered hollow. This is especially true where Grate faults the trial judge for accepting at a pre-trial status conference the signed withdrawal of the NGRI plea in Grate's absence, even though Grate's appearance was waived under Crim. R. 43(A)(3), which states: "The defendant may waive, in writing or on the record, the defendant's right to be physically present under these rules with leave of court."

Since the record does not show any objection by Grate to the conduct by the trial judge in reference to the acceptance of the withdrawal of the NGRI plea, review by this Court of Proposition of Law 9 is constrained by the "plain error" rule. See *State v. Ford*, 2019 Ohio 4539, at ¶124 ("Because Ford did not object to the trial court's comments, we review these claims only for plain error. To prevail, Ford must show that an error occurred, that the error was plain, and that but for the error the outcome of the trial clearly would have been otherwise.").

The record shows that Grate filed a notice of an NGRI defense sixteen months before commencement of the trial. See R. 47, NGRI plea, filed December 27, 2016. Following appointment of Dr. O'Reilly as the Court's expert and Dr. Fabian as the defense expert, Dr. O'Reilly issued a report concluding that Grate did not meet the test for insanity. See R. 52, Order for evaluation, filed January 6, 2017; R. ___, Dr. O'Reilly NGRI Report, submitted (under seal) on March 3, 2018.

Three days after Dr. O'Reilly issued a report concluding that Grate did not meet the definition of insanity, the trial judge convened by video a status conference to determine, in light of Dr. O'Reilly's report, the direction of the insanity defense. In Grate's presence, trial defense counsel advised the trial judge that they were in receipt of Dr. O'Reilly's report but that defense expert Dr. Fabian had yet to complete the defense NGRI evaluation, which was expected within thirty days. See R. 546, NGRI status conference, dated March 6, 2017, pgs. 3-7.

A month later, the trial judge convened another video status conference to determine, in light of Dr. O'Reilly's report, the direction of the insanity defense. Grate was not physically present. The issue of Grate's absence was addressed as follows:

THE COURT: It's written not guilty by reason of insanity plea. The record should reflect that we're conducting this hearing by video. Appearing on behalf of the State of Ohio is Ashland County Prosecuting Attorney Christopher Tunnell. Appearing on behalf of the Defendant, Shawn M. Grate, on camera is Attorney Robert Whitney, and also appearing off camera, but who is present before we went on the record is co-counsel, Attorney Rolf Whitney. We have at the jail where it should be the Defendant, one of the deputies. The Court was advised that Mr. Grate was refusing to appear for this hearing, and this hearing is only for the purpose of scheduling. Deputy, can you fill us in a little further?

DEPUTY MARTIN: Yes, this is Deputy Martin at the jail. Mr. Grate has refused to come out of his cell. He said it's just a competency hearing, he does not need to be here. His attorney can take care of it.

THE COURT: All right. Mr. Whitney, are you comfortable proceeding without your client participating?

MR. ROBERT WHITNEY: Yes, I am, Judge and I can tell the Court that I was over to have a conference with the Defendant, Shawn Grate, on Monday, April the 3rd. He has signed, along with Rolf and myself, a motion statement that we are withdrawing the plea of not guilty by reason of insanity. I explained that to him. He was able to read it and he also executed that form.

R. 547, NGRI status hearing conducted on April 7, 2017, pgs. 3-4.

Shortly thereafter, Grate's trial defense attorneys followed through and filed, on April 13, 2017, a single page document styled as a "Withdrawal of Plea," stating: "Now comes the defendant, through counsel, and hereby indicates to the Court that he is withdrawing his Not Guilty By Reason of Insanity Plea." The document bore original signatures of Grate and both trial defense counsel. R. 71, NGRI plea withdrawal form, filed April 13, 2017. Where the trial phase did not commence until April 23, 2018, the NGRI plea was withdrawn more than a year before commencement of the trial.

These record facts are pertinent to the legal analysis to reject Proposition of Law 9 in several important ways. First, the signed document to withdraw the NGRI plea was filed for record after the completion of the written opinion of the trial court's expert that Grate was not insane. It was also filed at a time where the record fairly implies that the defense expert, Dr. Fabian, had completed his NGRI evaluation that also reached the conclusion that Grate was not insane. Thus, at the time when the signed withdrawal of the NGRI plea was filed, the only expert evidence in the record showed that Grate lacked a viable NGRI defense. As such, Grate's grievances embodied in Proposition of Law 9 are insignificant and immaterial where all expert evidence showed Grate was not insane such that competent counsel would lack a good faith basis to proceed with an NGRI defense.

Second, Grate's physical absence at the NGRI status conference of April 7, 2017, was done as an accommodation to Grate's express request to be physically

absent from the NGRI status conference. In other words, the record shows that Grate's absence at the NGRI status conference was not due to action or inaction by either the trial judge or trial defense counsel, but rather was an acquiescence to Grate's own personal request to be absent. In this respect, Grate's absence at the NGRI status conference of April 7, 2017 was for the exclusive personal convenience of Grate. Therefore, Grate is unfairly blaming the trial judge for acceding to Grate's own personal request to be absent.

Third, the NGRI plea withdrawal document is in proper form, with hard-copy signatures from Grate and both defense counsel. Grate's attorneys referred to this document during the NGRI status conference of April 7, 2017, such that the trial judge could believe the representations of counsel that Grate understood what he was doing in respect to the withdrawal of the NGRI plea.

Fourth, where the guilt phase component of the trial would not commence for more than a year after the filing of the withdrawal of the NGRI plea, there was ample time to reassess, if appropriate, the NGRI defense and seek to reinstate it if the defense expert later changed his opinion about Grate's sanity. Despite the ample time the defense team had to reassess its strategy regarding the NGRI plea, there was never any request by Grate to reinstate the NGRI plea.

Based on these facts, Grate's Proposition of Law 9 fails, especially where the record before this Court shows that Grate did not have a viable NGRI defense, and that statement of deficiency being the expert opinion of defense expert Dr. Fabian.

3. Where in this case the acceptance of the signed withdrawal of the NGRI plea was done in a minutes-long status conference convened more than a year before commencement of the trial, no special formalities or procedures are required.

Since Grate's Proposition of Law 9 fails on its facts, the following discussion of the law is nothing more than a bare academic exercise. Even then, much of the authority cited by Grate addresses the different and distinct analytical issue of the defendant's entitlement to the physical presence of counsel, and accordingly is inapposite to the distinct and discrete issue before this Court whether the defendant himself must be physically present when a NGRI plea is withdrawn. The courts analyze issues involving the absence of counsel in a much different fashion than issues involving the absence of the defendant. Grate's failure to acknowledge the distinction between the absence of counsel and the absence of the defendant shows how his legal arguments claiming error by the trial judge due his personal physical absence suffers under a significant analytical deficiency.

For example, Grate cites to *United States v. Wade*, 388 U.S. 218 (1967), even though the *Wade* case addressed the absence of counsel, not the absence of the defendant. See Grate Merit Brief, pg. 76. Where the *Wade* defendant himself appeared in a post-indictment lineup conducted for investigative purposes without prior notice to the defense, the question before the *Wade* Court involved the physical absence of counsel. *Id.*, at 223-227. In this case, by contrast, defense counsel obviously were present in the status conference where the trial judge accepted the signed withdrawal of the former NGRI plea. Since the *Wade* Court did not examine the absence of the defendant, the *Wade* case has no application here.

The question before the Court in *Iowa v. Tovar*, 541 U.S. 77, 80-81 (2004), addressed “the extent to which a trial judge, before accepting a guilty plea from an uncounseled defendant must elaborate on the right to representation.” *Id.*, at 81. In this case, by contrast, the legalities surrounding the acceptance of a withdrawal of a NGRI plea is in no way implicated by the completely different issue examined in *Iowa v. Tovar* that involved the necessary topics in a guilty plea colloquy. See Grate Merit Brief, pg. 76.

The question before the Court in *United States v. Crowley*, 529 F.2d 1066, 1069 (3d Cir. 1976), examined whether a hearing on a motion to withdraw a guilty plea as to a counseled defendant could be conducted in the absence of counsel. See Grate Merit Brief, pg. 77. The facts before this Court show counsel’s presence and involvement in the acceptance by the trial judge of the withdrawal of the NGRI plea. Accordingly, the *Crowley* case has no application in this case.

The cases to which Grate cites that evaluate issues when proceedings are conducted in the absence of the defendant show that there is no error of law here. Although Grate cited to *Kentucky v. Stincer*, 482 U.S. 730 (1987), as authority to show the trial judge supposedly erred in accepting the NGRI plea withdrawal form in his absence, the *Stincer* Court ruled that the defendant had no right to be present for a competency hearing to determine whether two child witnesses were competent to testify. See Grate Merit Brief, pg. 77. Especially where the withdrawal of the NGRI plea in this case did not involve the Confrontation Clause, the case of *Kentucky v. Stincer* does not apply to Grate’s case.

In a similar example of inapposite citation, Grate incorrectly asserts that this Court's case of *State v. Schleiger*, 141 Ohio St. 3d 67 (2014), lends support to his contention that the trial judge should not have acceded to his request to be absent from this single status conference that was convened to accept the NGRI plea withdrawal. See Grate Merit Brief, pg. 76. In the *Schleiger* case, this Court addressed a question whether counsel should have been present during a resentencing proceeding. The *Schleiger* defendant was present at all pertinent times, so the *Schleiger* Court did not examine the question whether the presence of the defendant is or is not required. *Schleiger*, 141 Ohio St. 3d at ¶4 (“At the resentencing hearing, the trial court commented that from reading the appellate opinion it had the impression that Schleiger wanted to represent himself. In response, Schleiger indicated that he had filed a pro se brief. The trial court offered to appoint counsel and gave Schleiger the option of having an attorney who was present in the courtroom represent him or of representing himself with counsel standing by, available to answer questions. After conferring with the attorney, Schleiger told the court that he wanted to represent himself. The trial court then asked standby counsel to remain in the courtroom to answer any questions Schleiger might have.”). Under these circumstances, the *Schleiger* case, which addresses the absence of counsel and not the absence of the defendant, does not apply to Proposition of Law 9.

4. Relief on any hypothetical error arising from the acceptance of the signed document to withdraw the NGRI plea is precluded under the doctrine of invited error.

Beyond the ineptitude of Grate's legal arguments, the question whether Grate could voluntarily absent himself from a few minute-long status conference that took place more than a year before commencement of the trial is initially answered in the affirmative by application of the plain terms of Crim. R. 43(A)(3). According to Crim. R. 43, even though "the defendant must be physically present at every stage of the criminal proceeding and trial," the right to be physically present is subject to waiver since "[t]he defendant may waive, in writing or on the record, the defendant's right to be physically present under these rules with leave of court."

A waiver of physical presence, as expressly allowed in Crim. R. 43(A)(3), happened here where the trial judge granted Grate's request to waive his physical presence at the status conference convened to accept the withdrawal of his NGRI plea. It has long been recognized that the defendant's privilege to be physically present during a court proceeding can be waived by the consent of the defendant. See *Snyder v. Massachusetts*, 291 U.S. 97, 106 (1934) ("No doubt the privilege [of the defendant to be physically present] may be lost by consent or at times even by misconduct."); *Id.*, at 116 ("The Fourteenth Amendment has not said in so many words that [the defendant] must be present every second or minute or even every hour of the trial. If words so inflexible are to be taken as implied, it is only because they are put there by a court, and not because they are there already, in advance of the decision."); see also, *United States v. Henderson*, 626 F. 3d 326, 343 (6th Cir. 2010)

("Thus, [the defendant Henderson] must show not only that the trial court committed plain error by not insisting, over his attorney's waiver, that Henderson be brought into the courtroom so that the court could again instruct the jury to begin deliberating, but also that such error adversely affected his substantial rights and the fairness, integrity and public reputation of the trial.").

Where Grate's physical absence at the minutes-long status conference convened to accept the signed withdrawal of the NGRI defense was because the trial judge acceded to Grate's request to be physically absent, this event shows an ordinary and proper application of Crim. R. 43(A)(3). This would be so even if the mere acceptance of a signed withdrawal of an NGRI defense hypothetically was deemed a "critical stage of the litigation" where the defendant has a constitutional right to be present. If the mere act of accepting a signed withdrawal of the NGRI defense was not, under the facts of this case, a "critical stage of the litigation" then Grate's absence at the status conference would have no legal significance. *Cf. State v. Campbell*, 90 Ohio St. 3d 320, 346 (2000) (The mere act by the trial judge of sending a note to the jury room that contained an agreed answer to a question from the jury was not a "critical stage of the litigation" such that the physical absence of the defendant for this event had no legal significance).

The question whether the mere act of acceptance of a signed withdrawal of a NGRI plea is a "critical stage of the litigation" has been answered in the negative by the court in *State v. Smith*, 3 Ohio App. 3d 115, 119-120 (8th Dist. 1981) ("There is no requirement that a defendant personally withdraw a plea of not guilty by reason

of insanity.”). Courts from other states have reached similar conclusions. See *People v. Gaines*, 25 Cal. Rptr. 448, 450-452 (Cal. Sup. Ct., 1962) (“The [California State] code sections, however, relate only to the *making* of the plea; they do not require that a *withdrawal* of it be made by the defendant personally, and we should not read such a requirement into the statutes. In the absence of a statute requiring that the withdrawal of a plea of ‘not guilty by reason of insanity’ be made by a defendant himself, or the presence of some compelling circumstance not shown here, we should not depart from the customary practice by which an attorney acts for his client throughout the trial.”) (emphasis supplied); see also *White v. State*, 17 Md. App. 58, 61-62 (1972) (“Like any defense, the question of whether an insanity defense should be raised remains a matter of trial strategy to be determined by counsel after consultation with his client. Were it the law that a plea of insanity could only be withdrawn after searching, detailed, on-the-record interrogation by the trial court, it could be just as plausibly maintained that the same type of judicial inquiry is required before defense counsel might pursue, or curtail, a line of cross-examination, introduce, or object to the introduction of, exhibits, call, or not call, a certain witness, etc.”); *Weber v. Israel*, 730 F. 2d 499 (7th Cir. 1984) (“In light of the fact that defense counsel Murray, Weber, Judge Wedemeyer, and Assistant District Attorney Klinkowitz never referred to the insanity plea throughout the entire course of the trial and the sentencing hearing in Milwaukee Circuit Court, it is self-evident that the insanity plea was, in fact, withdrawn. Based upon the totality of the circumstances, including a judicial determination that Weber was competent to stand

trial, Weber's knowledge that his insanity plea had been withdrawn, and his failure to object to such withdrawal at trial or at the sentencing hearing, we hold that Weber's plea of 'not guilty by reason of mental disease or defect' was properly withdrawn.").

In summary, the primary reason why Proposition of Law 9 fails is that there is no evidence in the record that Grate could pursue a viable NGRI defense; therefore, Grate has failed to show defense counsel were ineffective in withdrawing the NGRI defense. To the contrary, the evidence in the record affirmatively shows that Grate never had a viable NGRI defense, especially where the defense expert, Dr. Fabian, agreed with the court psychologist, Dr. O'Reilly, that Grate was not insane. Next, where Crim. R. 43(A)(3) expressly permits the defendant to be absent, upon request and with leave of the court, there is no error where the trial judge merely acceded to Grate's request to proceed without his physical presence at the minutes-long status conference convened to accept the signed document that withdrew the NGRI defense. Finally, where other courts have concluded that acceptance of the withdrawal of an NGRI defense can be accomplished without formality, Grate's unsubstantiated assertions to the contrary lack significance.

Moreover, where the record shows that in acceptance of the signed document to withdraw the NGRI plea the trial judge acted in accordance with Grate's wishes and without any contemporaneous objection from Grate, relief on even a hypothetical error would be precluded by the doctrine of "invited error." See *Lester v. Leuck*, 142 Ohio St. 91, 92 (1943) ("It is a well-settled rule that a party will not be permitted to

take advantage of an error which he himself invited or induced the trial court to make.”); *accord*, *United States v. Sloman*, 909 F. 2d 176, 182 (6th Cir. 1990) (“An attorney cannot agree in open court with a judge’s proposed course of conduct and then charge the court with error in following that course.”).

For the reasons expressed, the Court should reject Proposition of Law 9.

Response to Proposition 10: Where the consecutive non-capital sentences were done in accordance with statutory requirements, this Court should reject Proposition of Law 10.

The record from the sentencing hearing as well as the sentencing entry shows that, relative to the consecutive sentences, the trial court made the necessary findings as required by the terms of O.R.C. 2929.14(C)(4), as interpreted by this Court in *State v. Bonnell*, 140 Ohio St. 209 (2014), and *State v. Beasley*, 153 Ohio St. 3d 497, ¶¶252-262 (2018). See Sentencing Hearing, Tr. Pgs. 3897-3899; R. 450, Sentencing Order, pg. 11.

In his Proposition 10, Grate does not contend that the trial judge omitted necessary findings like what occurred in *State v. Beasley*, ¶¶252-262. Instead, Grate’s contention is that it is “nonsensical” for the trial judge to find that consecutive sentences are “necessary to protect the public from future crimes” by a defendant who already has a death sentence. See Grate Merit Brief, Proposition 10, pg. 90.

In this respect, it appears that Grate is simply advancing a policy argument that consecutive sentences for non-capital offenses should be prohibited for a defendant who has already received a death sentence. In so doing, Grate does not argue that the terms of O.R.C. 2929.14(C)(4) are unconstitutional under state or

federal law. Moreover, Grate does not advance any arguments why a death-sentenced defendant should receive concurrent time for all non-capital offenses.

These pleading deficiencies render Grate's Proposition 10 nonjusticiable in that he merely suggests that O.R.C. 2929.14(C) should be changed to comport with his view that consecutive sentences for non-capital charges should not be imposed on a defendant who has received a death sentence on the capital charges. That contention may be suitable in a legislative context but remains a nonjusticiable argument not amenable to relief in this proceeding. *Hile v. City of Cleveland*, 107 Ohio St. 144, 151 (1923).

For the reasons expressed, this Court should reject Grate's Proposition 10.

Response to Proposition 11: Where this Court has unanimously concluded in *State v. Mason*, 153 Ohio St. 3d 476, ¶42 (2018), that Ohio's death penalty scheme passes constitutional muster under *Hurst v. Florida*, 136 S. Ct. 616 (2016), this Court should reject Proposition 11.

Grate's erroneous contention that the weighing process in Ohio's death penalty scheme amounts to "fact-finding" that must be performed by a jury has been squarely rejected by this Court, as well Ohio federal district courts. See *State v. Mason*, 153 Ohio St. 3d 476, ¶42 (2018); *Elmore v. Shoop*, 2019 U.S. Dist. LEXIS 180356, at *7, n.4 (S.D. Ohio Oct. 18, 2019) (Merz, M.J.) (collecting cases). Accordingly, Grate's Proposition 11 should be rejected.

Moreover, where the capital-specific guilt phase verdicts in this case were returned by a jury, as contemplated under this Court's decision in *State v. Mason*, Grate is wrong to argue that the replacement of Juror 94 by Juror 131 for the penalty phase deliberations; *i.e.* the weighing process, breaches the constitutional

requirement in *Hurst* that unless waived by the defendant, the determination of death-eligibility was way of capital specifications is a proper function of the jury. To the contrary, the capital-specific guilt phase verdicts in this case were rendered by a jury. That means the parameters of propriety under *Mason* and *Hurst* have been met.

Although Grate erroneously contends that the trial judge was too lenient in acceding to Juror 94's request to be excused from further jury service such that alternate Juror 131 was empaneled for the penalty phase deliberations, Grate is plainly wrong in his contention that this replacement process implicates the *Mason* and *Hurst* rules. See Grate's Proposition 12 that takes issue with the excusal of Juror 94. The focus of inquiry in *Mason* and *Hurst* was the role of the jury acting as a whole; *i.e.* a deliberative body composed of individuals who render a verdict as a discrete entity speaking with a single voice. The question of when and how a juror could be replaced with an alternate juror was not before the courts in *Mason* and *Hurst*.

Where Grate's contention has been squarely and unanimously rejected in *State v. Mason*, this Court should conclude that Proposition 11 is not well taken.

Response to Proposition 12: Where Criminal Rule 24(G) expressly permits the replacement of a regular juror with an alternate juror for the penalty phase of the trial, and the trial judge acted well within the bounds of discretion to grant Juror 94's request to be excused from further participation following the announcement of the guilt phase verdicts, Grate's Proposition 12 should be rejected.

The record shows that the trial judge and the parties evaluated the e-mail request by Juror 94 to be excused from further participation in the case so Juror 94 could avoid forfeiture of one thousand dollars in prepaid costs of a vacation that was scheduled to begin before the commencement of the penalty phase of the trial. The

record further shows that the neither the trial judge nor the parties questioned the good faith sincerity of Juror 94 in presenting this request to be excused. Moreover, the record shows that the trial judge and the parties agreed that Juror 94's request to be excused should be granted, and that appropriate instructions to the substituting alternate Juror 131 be issued. This substitution was completed without disruption of, or interruption to, the deliberation process. Tr. 3561-3567; 3591-3592.

When the penalty phase commenced, the trial judge gave an appropriate instruction to the newly empaneled Juror 131 stating, *inter alia*, that Juror 131 was bound by the guilty verdicts issued by the jury at the conclusion of the guilt phase of the trial. Since Juror 131 was empaneled before the commencement of the mitigation case, Juror 131 was a full participant at all times for the presentation of the mitigation case and fully participated in penalty phase deliberations. Tr. 3593-3594.

Where there was no objection by the defense at the trial level to the excusal of Juror 94 and the placement of Juror 131 for the commencement of penalty phase proceedings, Grate's Proposition 12 is subject to plain error review under Crim. R. 52(B). See *State v. Wilks*, 154 Ohio St. 3d 359, ¶121 (2018); *Cf. State v. Clinkscale*, 122 Ohio St. 3d 351, ¶21 (2009) (Despite no defense objection, error found where the trial judge acted in "direct contravention" to the former version of Crim. R. 24(G)(2) that prohibited the substitution of an alternate juror "during any deliberation.").

In context of the plain error review, it should be noted that Grate does not take issue before this Court with the good faith sincerity of Juror 94's request to be excused. Moreover, Grate does not take issue before this Court with the sufficiency of

the record or the propriety of the decision to excuse Juror 94 from further jury service. Instead, Grate's Proposition 12, wrongly and without legal support, alleges a "structural error" in the placement of Juror 131 such that the penalty phase jury recommendation is supposedly void because Juror 94 did not participate during the penalty phase proceedings.

Where the terms of Crim. R. 24(G)(2) expressly permit the replacement of an alternate juror for a regular juror after the guilty verdict in a capital case, Grate is plainly wrong in his contention of error. See Crim. R. 24(G)(2) ("If an alternate juror replaces a regular juror after a guilty verdict [in a capital case], the court shall instruct the alternate juror that the juror is bound by the verdict."). In other words, Grate's Proposition 12 does not show error at all, let alone structural error.

The jurisprudence of this Court shows that what happened here—that an alternate juror replaced a regular juror before commencement of the penalty phase proceedings in a capital case—is not error at all, let alone structural error as Grate erroneously contends. See *State v. Hutton*, 53 Ohio St. 3d 36, 48 (1990) ("Crim. R. 24(F) [later designated as Cri. R. 24(G) following the amendment "to reflect the addition of a new division (A)"] is not violated in a capital case where an alternate juror is substituted for another juror after the guilt phase verdict, but before deliberations begin in the penalty phase."); accord, *State v. Bryan*, 101 Ohio St. 3d 272 ¶82 (2004); see also O.R.C. 2945.29, Jurors becoming unable to perform duties.

Under a different fact pattern that is not found in this case, this Court in *State v. Clinkscale*, 122 Ohio St. 3d 351, ¶¶21-22 (2009), found reversible error where the

alternate juror was substituted for a regular juror at a time when the penalty phase jury deliberations had already commenced. The *Clinkscale* Court appropriately found error where the terms of Crim. R. 24(G)(2), which applied at the time when the *Clinkscale* case was tried, prohibited the substitution of an alternate juror for a regular juror once deliberations had commenced. *Id.*, ¶21 (“Crim. R. 24(G)(2) provided ... No alternate juror shall be substituted during any deliberation.” – this sentence was deleted from Crim. R. 24(G)(2) in the version that became effective on July 1, 2008).

In this case, the substitution of Juror 94 with Juror 131 was accomplished before the commencement of the penalty phase proceedings. Accordingly, from the standpoint of the timing, the substitution in this case was fully compliant with the express term of Crim. R. 24(G)(2) as applied by this Court in *Hutton, Bryan*, and *Clinkscale*.

Moreover, the provisions of Crim. R. 24(G)(2) were amended, effective July 1, 2008, to delete the prohibition against substitution of an alternate juror once deliberations had commenced. *Cf.* Crim. R. 24(G)(2) as it appears in Rules Governing the Courts of Ohio, 2007/08 with Crim. R. 24(G)(2) as it appears in Rules Governing the Courts of Ohio, 2008/09. See also Crim. R. 24, Staff Notes regarding 7-1-08 Amendment; Crim. R. 24, Staff Notes regarding 7-1-02 amendment that created the non-capital/capital distinction for the replacement of an alternate juror for a regular juror for the penalty phase of the trial.

What this means here is that the trial judge had discretion to do what happened here: to substitute an alternate juror for a regular juror for the penalty phase of a capital trial. That discretion was expanded under the new provisions of Crim. R. 24(G)(2) where the substitution with an alternate juror could be made even after penalty phase deliberations had commenced. But that did not happen here since the substitution was accomplished without interruption of, or disruption to, deliberation process. Thus, Grate is plainly wrong in his Proposition 12 that alleges error to the substitution of an alternate juror for a regular juror for penalty phase deliberations.

Grate is also wrong in his allegation that the mere replacement of a regular juror with an alternate juror in a capital case violates the federal constitution. To the contrary, the federal constitution does not address this matter. The jurisprudence of the United States Supreme Court addresses the capital jury as a single deliberative body, and does not dictate under what circumstances a regular juror could be replaced with an alternate juror. In other words, the federal constitution does not address rules for substitution of jurors, and the procedures are a matter of state law. See, *e.g.*, *Lockhart v. McCree*, 476 U.S. 162 (1986) (answering in the affirmative that the federal constitution permits the “death qualifying” process where jurors who would refuse to impose the death penalty under any circumstances are excluded from serving as a capital juror); compare Fed. R. Crim. Pro 24(c)(3) “Retaining Alternate Jurors. The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone

until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.”). All of these federal procedures are not founded federal constitutional principles but rather are founded on ordinary legislation and ordinary rulemaking by the United States Supreme Court.

Additionally, Grate erroneously argues that that his defense counsel should have aggressively interrogated Juror 94 on the veracity of his representation that further jury service would cause the forfeiture of one thousand dollars in connection with a pre-paid vacation. Nothing in the record, however, suggests impropriety, lack of good faith, or lack of candor by Juror 94.

Moreover, Grate does not contend that the trial judge abused his discretion in excusing Juror 94 and substituting Juror 131 just before commencement of the penalty phase. Where Grate fails to articulate an abuse of discretion claim, Grate has waived any claim of ordinary trial error as to the Juror 94/Juror 131 matter. See *State v. Underwood*, 124 Ohio St. 3d 365, ¶5, n.2 (declining to address a mistake in the state’s sentencing recommendation since “Underwood did not raise this issue on appeal.”).

The same would apply to Grate’s observation that defense counsel could have, but did not, individually question Juror 94 about the reasons to be excused from further jury service. Grate does not articulate what was supposedly deficient in the trial record, and does not explain how further questioning of Juror 94 would have changed the decision to allow the substitution. Grate’s lack of development means

that he has waived any claim of ineffective assistance of trial counsel as to the Juror 94/Juror 131 matter.

For the reasons expressed, the Court should reject Grate's Proposition 12.

CONCLUSION

For the reasons expressed, this Court should conclude that none of Grate's assignments of error are well taken, and furthermore that the death sentences imposed on Grate are appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Merit Brief of Appellee has been delivered by regular US Mail to Don Gallick, at 190 North Union St. Suite 102, Akron, OH 44304 and to Donald Hicks, at 259 S. Main St. Suite 423, Akron, OH 44308 on this **10th day of January, 2020.**

/s/ Stephen Maher
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IN THE SUPREME COURT OF OHIO

STATE OF OHIO :
 : Case No. 2018-0968
 Appellee, :
 :
 -vs- : *Death Penalty Case*
 :
 SHAWN M. GRATE, :
 :
 Appellant :

*On Appeal from the Ashland County
Court of Common Pleas
Case No. 16C-CRI-187*

APPENDIX A TO
MERIT BRIEF OF APPELLEE STATE OF OHIO
LISTING OF TRIAL EXHIBITS

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Exhibit Number	Identified By	Description
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State's Ex. 1	911 dispatcher Sarah Miller	911 call audio recording from surviving kidnap victim, Lori Svihlik, 6:48 AM, September 13, 2016, 19 minutes long, Tr. 2140-2150.
State's Ex. 2	Ashland police officer Sgt. James Cox; BCI agent George Edward Staley	Photo, exterior view of 363 Covert Court, Ashland, and adjacent vacant house. Tr. 2158-2159. Identified by Staley, Tr. 2213.
State's Ex. 3	Ashland police officer Sgt. James Cox; BCI agent George Edward Staley	Photo, exterior back door/screen door, 363 Covert Court, Ashland. Tr. 2159-2160. Identified by Staley, Tr. 2213.
State's Ex. 4	Ashland police officer Sgt. James Cox; BCI agent George Edward Staley	Photo, interior mud room/bathroom, 363 Covert Court, Ashland, also showing Grate's cell phone on the floor of the bathroom. Tr.2160-2162. Identified by Staley, Tr. 2213-2214.
State's Ex. 5	Ashland police officer Sgt. James Cox	Photo, Grate's bedroom, 363 Covert Court, Ashland. Tr. 2163-2164, 2170.
State's Ex. 6	BCI agent Larry Hootman	Certificate of basic training for the FARO X-30 scanner that uses laser signals to create a three-dimensional image of a scene. Tr. 2175-2176.

Exhibit Number	Identified By	Description
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State's Ex. 7	BCI agent Larry Hootman	Certificate of advanced training for the FARO X-30 scanner that uses laser signals to create a three-dimensional image of a scene. Tr. 2175-2176.
State's Ex. 8	BCI agent Larry Hootman; BCI agent George Edward Staley; APD detective Brian Evans; APD Lt. Tim Shreffler	Thumb drive containing FARO scans of 363 Covert Court, Ashland. Tr. 2179-2180; Tr. 2361 (Staley); Tr. 2956-2957, listed as item 84 on the evidence log, and placed into evidence in the log numbered as State's Ex. 202 (Evans); Tr. 3032 (Shreffler).
State's Ex. 8, file zero	BCI agent Larry Hootman	Bedroom with deceased victim Elizabeth Griffith in the second-floor closet of 363 Covert Court, Ashland. Tr. 2182.
State's Ex. 8, file one	BCI agent Larry Hootman	Close-up of deceased victim Elizabeth Griffith in the second-floor closet of 363 Covert Court, Ashland. Tr. 2183-2184.
State's Ex. 8, file two	BCI agent Larry Hootman	Second-floor hallway of 363 Covert Court, Ashland. Tr. 2184.
State's Ex. 8, file three	BCI agent Larry Hootman	Second-floor room of 363 Covert Court, Ashland. Tr. 2184-2185.
State's Ex. 8, file four	BCI agent Larry Hootman	Second-floor hallway near the stairs of 363 Covert Court, Ashland. Tr. 2185.

Exhibit Number	Identified By	Description
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State's Ex. 8, file five	BCI agent Larry Hootman	Second-floor hallway near the top of the stairs of 363 Covert Court, Ashland. Tr. 2185-2186.
State's Ex. 8, file six	BCI agent Larry Hootman	Stairway landing of 363 Covert Court, Ashland. Tr. 2186.
State's Ex. 8, file seven	BCI agent Larry Hootman	Interior front door area of 363 Covert Court, Ashland. Tr. 2186-2187.
State's Ex. 8, file eight	BCI agent Larry Hootman	Interior first-floor area of 363 Covert Court, Ashland. Tr. 2187-2188.
State's Ex. 8, file nine	BCI agent Larry Hootman	Interior first-floor living room area of 363 Covert Court, Ashland. Tr. 2188.
State's Ex. 8, file ten	BCI agent Larry Hootman	Interior first-floor kitchen area of 363 Covert Court, Ashland. Tr. 2188-2189.
State's Ex. 8, file eleven	BCI agent Larry Hootman	Interior first-floor kitchen area of 363 Covert Court, Ashland. Tr. 2188-2189.
State's Ex. 8, file twelve	BCI agent Larry Hootman	Interior first-floor bathroom of 363 Covert Court, Ashland. Tr. 2190-2191.
State's Ex. 8, file thirteen	BCI agent Larry Hootman	Interior first-floor bathroom of 363 Covert Court, Ashland. Tr. 2191.
State's Ex. 8, file fourteen	BCI agent Larry Hootman	Interior first-floor bedroom of 363 Covert Court, Ashland. Tr. 2191-2192.

Exhibit Number	Identified By	Description
State's Ex. 8, file fifteen	BCI agent Larry Hootman	Interior first-floor bedroom of 363 Covert Court, Ashland. Tr. 2192.
State's Ex. 8, file sixteen	BCI agent Larry Hootman	Interior first-floor bedroom closet area of 363 Covert Court, Ashland. Tr. 2192-2193.
State's Ex. 8, file seventeen	BCI agent Larry Hootman	Interior first-floor top of the basement steps area of 363 Covert Court, Ashland. Tr. 2193.
State's Ex. 8, file eighteen	BCI agent Larry Hootman	Interior basement of 363 Covert Court, Ashland. showing deceased victim. Tr. 2193-2194.
State's Ex. 8, file nineteen	BCI agent Larry Hootman	Interior basement of 363 Covert Court, Ashland. showing deceased victim Stacey Stanley Hicks. Tr. 2194.
State's Ex. 8, file twenty	BCI agent Larry Hootman	Interior basement of 363 Covert Court, Ashland. showing deceased victim Stacey Stanley Hicks. Tr. 2194.
State's Ex. 8, file twenty-one	BCI agent Larry Hootman	Interior basement of 363 Covert Court, Ashland. showing deceased victim Stacey Stanley Hicks. Tr. 2194.

Exhibit Number	Identified By	Description
State's Ex. 9	BCI agent Larry Hootman; Ashland police Sgt. Darcey Baker; Joanna Smith Ashland neighbor	Photo, right front of a 2003 Mitsubishi Eclipse Hatchback, car of deceased victim Stacey Stanley Hicks. Tr. 2199; Tr. 2474; Tr. 2501-2503 (Sgt. Baker).
State's Ex. 10	BCI agent Larry Hootman; Wayne Bright, friend of deceased victim Stacey Stanley Hicks; Joanna Smith, resident near abandoned car.	Photo, driver's side of a 2003 Mitsubishi Eclipse Hatchback, car of deceased victim Stacey Stanley Hicks. Tr. 2200; Tr. 2445 (Wayne Bright); Tr. 2501 (Joanna Smith).
State's Ex. 11	BCI agent Larry Hootman; Wayne Bright, friend of deceased victim Stacey Stanley Hicks	Photo, hatchback interior of a 2003 Mitsubishi Eclipse Hatchback, car of deceased victim Stacey Stanley Hicks. Tr. 2200-2201; Tr. 2445 (Wayne Bright).
State's Ex. 12	BCI agent Larry Hootman	Photo, from the interior of a 2003 Mitsubishi Eclipse Hatchback, car of deceased victim Stacey Stanley Hicks, showing boxes containing individual boxes containing glass vials containing roses that were packaged for retail sale. Tr. 2201-2202.

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State's Ex. 13	BCI agent Larry Hootman	Evidence log from the search of the 2003 Mitsubishi Eclipse Hatchback, car of deceased victim Stacey Stanley Hicks. Showing fourteen items collected. Tr. 2202-2203
State's Ex. 14	BCI agent Larry Hootman	Photo, can of mace in a pink case, next to deceased victim Stacey Stanley Hicks recovered from the basement of 363 Covert Court, Ashland. Tr. 2205-2206.
State's Ex. 15	BCI agent Larry Hootman; Kory Stanley, son of victim Stacey Stanley Hicks; APD Lt. Garry Alting	Tangible object, can of mace in a pink case, recovered from the basement of 363 Covert Court, Ashland. Same tangible object as depicted in State's Ex. 14 photo. Tr. 2204-2205; Tr. 2431 (Kory Stanley); Tr. 3014 (Alting).
State's Ex. 16	BCI agent George Edward Staley	Photo, exterior front door of 363 Covert Court, Ashland. Tr. 2214.
State's Ex. 17	BCI agent George Edward Staley	Photo, exterior side of 363 Covert Court, Ashland. Tr. 2214-2215.
State's Ex. 18	BCI agent George Edward Staley	Photo, exterior side of 363 Covert Court, Ashland. Tr. 2215.
State's Ex. 19	BCI agent George Edward Staley	Photo, exterior back of 363 Covert Court, Ashland. Tr. 2215-2216.

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State's Ex. 20	BCI agent George Edward Staley	Photo, exterior rear of the house next to 363 Covert Court, Ashland, also showing the laundromat across the street. Tr. 2216-2217.
State's Ex. 21	BCI agent George Edward Staley	Photo, exterior side of the house next to 363 Covert Court, Ashland, also showing the laundromat across the street. Tr. 2217.
State's Ex. 22	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing a cell phone laying on the floor of the first-floor bathroom. Tr. 2217-2218.
State's Ex. 23	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing a close-up of a cell phone laying on the floor of the first-floor bathroom. Tr. 2218.
State's Ex. 24	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the interior of the first-floor bathroom. Tr. 2218-2219.
State's Ex. 25	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the shower of the first-floor bathroom. Tr. 2219.

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State's Ex. 26	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the toilet and sink of the first-floor bathroom, and showing a bottle of hair conditioner. Tr. 2219-2220.
State's Ex. 27	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the kitchen. Tr. 2220.
State's Ex. 28	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the kitchen/dining room area. Tr. 2220-2221.
State's Ex. 29	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the kitchen/dining room area. Tr. 2221.
State's Ex. 30	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the kitchen/dining room area. Tr. 2221-2222.
State's Ex. 31	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the kitchen/dining room area. Tr. 2222.
State's Ex. 32	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the kitchen/dining room area. Tr. 2222.

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State's Ex. 33	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the kitchen/dining room area. Tr. 2222-2223.
State's Ex. 34	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area. Tr. 2223.
State's Ex. 35	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area. Tr. 2223-2224.
State's Ex. 36	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area. Tr. 2224.
State's Ex. 37	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area. Tr. 2224-2225.
State's Ex. 38	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area. Tr. 2225.
State's Ex. 39	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area. Tr. 2225-2226.
State's Ex. 40	BCI agent George Edward Staley	Photo of side table. Tr. 2333

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State's Ex. 41	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area. Tr. 2226.
State's Ex. 42	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area. Tr. 2226-2227.
State's Ex. 43	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area, showing roses in glass tubes. Tr. 2227.
State's Ex. 44	BCI agent George Edward Staley; APD Detective Kim Mager	Photo, interior of 363 Covert Court, Ashland, showing the first-floor bedroom area, also showing a Daily Reader calendar book (State's Exhibit 301) on the table. Tr. 2227-2228; Tr. 2866.
State's Ex. 45	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing bedroom closet door. Tr. 2228.
State's Ex. 46	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing covered doorway. Tr. 2228-2229.
State's Ex. 47	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the inside of the first-floor refrigerator. Tr. 2229.

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State's Ex. 48	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing covered doorway. Tr. 2229.
State's Ex. 49	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing first-floor front room area. Tr. 2230.
State's Ex. 50	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing first-floor front room area. Tr. 2230.
State's Ex. 51	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing first-floor front room area. Tr. 2230-2231.
State's Ex. 52	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing first-floor front room area. Tr. 2231.
State's Ex. 53	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing first-floor front room area. Tr. 2231-2232.
State's Ex. 54	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing first-floor front door area. Tr. 2232.
State's Ex. 55	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the stairway to the second-floor. Tr. 2232-2233.

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State's Ex. 56	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the stairway to the second-floor. Tr. 2233.
State's Ex. 57	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing barefoot footprint in the dust on a stair to the second-floor. Tr. 2233-2234.
State's Ex. 58	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the stairway landing area going up to the second-floor. Tr. 2234.
State's Ex. 59	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing top of stairway area on the second-floor hallway. Tr. 2234.
State's Ex. 60	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the second-floor bathroom area. Tr. 2234.
State's Ex. 61	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the second-floor bathroom area. Tr. 2235.
State's Ex. 62	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the second-floor bathroom area. Tr. 2235.

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State's Ex. 63	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the second-floor bathroom area. Tr. 2235-2236.
State's Ex. 64	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing a closet near the second-floor bathroom area. Tr. 2236.
State's Ex. 65	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the inside of the closet near the second-floor bathroom area. Tr. 2236.
State's Ex. 66	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the inside of the closet near the second-floor bathroom area. Tr. 2236-2237.
State's Ex. 67	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the living room area on the second-floor. Tr. 2237.
State's Ex. 68	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the living room area on the second-floor. Tr. 2237.
State's Ex. 69	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the hallway area on the second-floor. Tr. 2238.

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State's Ex. 70	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the kitchen area on the second-floor. Tr. 2238.
State's Ex. 71	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the stairway up to the attic in the kitchen area on the second-floor. Tr. 2238.
State's Ex. 72	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the attic area. Tr. 2239.
State's Ex. 73	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the attic area. Tr. 2239.
State's Ex. 74	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the attic area. Tr. 2239-2240.
State's Ex. 75	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the upstairs bedroom. Tr. 2256.
State's Ex. 76	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the rocking chair. Tr. 2256-2257.

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State's Ex. 77	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the clothes/closet. Tr. 2257.
State's Ex. 78	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the clothes over closet door. Tr. 2258-2259.
State's Ex. 79	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the air freshener and fly pupae on the floor. Tr. 2259-2260.
State's Ex. 80	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing air freshener on the floor. Tr. 2260.
State's Ex. 81	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing bedding with fly pupae. Tr. 2261.
State's Ex. 82	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing bedding with fly pupae. Tr. 2261-2263.

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State's Ex. 83	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing fly pupae on clothing on the floor. Tr. 2263.
State's Ex. 84	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing bedding with fly pupae. Tr. 2263-2264.
State's Ex. 85	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing fly pupae on clothing on the floor. Tr. 2264.
State's Ex. 86	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing fly pupae on clothing on the floor. Tr. 2265.
State's Ex. 87	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom. Tr. 2265-2266.
State's Ex. 88	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom. Tr. 2266.

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State's Ex. 89	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing a red towel with fly pupae on the floor and black duct tape on the closet door. Tr. 2266-2267.
State's Ex. 90	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing black duct tape on the closet door. Tr. 2266-2267.
State's Ex. 91	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing the top of the doorway. Tr. 2267-2269.
State's Ex. 92	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing the top of the doorway. Tr. 2269.
State's Ex. 93	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing black duct tape on the closet door. Tr. 2269.
State's Ex. 94	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing black duct tape on the closet door. Tr. 2270.

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State's Ex. 95	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing the door knob. Tr. 2270.
State's Ex. 96	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing the closet door area with fly larvae on the inside of the closet door. Tr. 2271-2272.
State's Ex. 97	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing in the closet a foot and leg of the deceased victim Elizabeth Griffith with ligature around the ankle. Tr. 2273-2274.
State's Ex. 98	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom, showing the deceased victim Elizabeth Griffith in the closet. Tr. 2275-2277.
State's Ex. 99	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor, showing the bedroom mattress. Tr. 2278.
State's Ex. 100	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, second-floor bedroom. Tr. 2279.

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State's Ex. 101	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the top of the top of the stairway to the basement. Tr. 2280.
State's Ex. 102	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the pile of trash in the basement. Tr. 2280.
State's Ex. 103	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the basement area. Tr. 2280-2281.
State's Ex. 104	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the basement area. Tr. 2282-2283.
State's Ex. 105	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing a chest freezer in the basement area. Tr. 2283.
State's Ex. 106	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the inside of a chest freezer in the basement area. Tr. 2283.
State's Ex. 107	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the access point to the crawlspace in the basement area. Tr. 2284.

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State's Ex. 108	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the hand of the deceased victim under trash bags in the basement area. Tr. 2284-2285.
State's Ex. 109	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing trash in the basement area. Tr. 2285-2286.
State's Ex. 110	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing trash and blanket in the basement area. Tr. 2285-2286.
State's Ex. 111	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the deceased victim Stacey Stanley Hicks under blanket in the basement area. Tr. 2287-2288.
State's Ex. 112	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the deceased victim Stacey Stanley Hicks under trash in the basement area. Tr. 2288-2289.
State's Ex. 113	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the deceased victim Stacey Stanley Hicks ligature in the basement area. Tr. 2289.

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State's Ex. 114	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing a close up of the left hand of the deceased victim Stacey Stanley Hicks in the basement area. Tr. 2289-2290.
State's Ex. 115	BCI agent George Edward Staley	Photo, interior of 363 Covert Court, Ashland, showing the body of the deceased victim Stacey Stanley Hicks in the basement area. Tr. 2290-2291.
State's Ex. 116	BCI agent George Edward Staley	Photo, black billfold recovered from under the basement stairs at 363 Covert Court, Ashland. Tr. 2291-2295.
State's Ex. 117	BCI agent George Edward Staley	Photo, inside of a billfold recovered from under the basement steps at 363 Covert Court, Ashland. Tr. 2295.
State's Ex. 118	BCI agent George Edward Staley	Photo, check number 1070 in the name of deceased victim Stacy Stanley Hicks, recovered from the basement of 363 Cover Court, Ashland. Tr. 2295.
State's Ex. 119	BCI agent George Edward Staley	Photo, sexual device recovered from the basement of 363 Cover Court, Ashland. Tr. 2295-2296.

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State's Ex. 120	BCI agent George Edward Staley; APD Capt. David Lay; APD detective Brian Evans; APD Lt. Garry Alting; APD Lt. Tim Shreffler; APD officer Joel Icenhour	BCI evidence log. Tr. 2293; resubmitted, Tr. 2787-2789; Tr. 2789-2791 (Lay); Tr. 2795-2796 (Lay); Listing items recovered pursuant To State's Ex. 342, search warrant documents dated September 13, 2016, for 3636 Covert Court, Ashland. Tr. 2935-2936 (Evans); Tr. 3007-3008, reference item 11 and item 39 (Alting); Tr. 3030 (Shreffler); Tr. 3211 (Icenhour).
State's Ex. 121	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing evidence items marked with evidence placards. Tr. 2297-2298.
State's Ex. 122	BCI agent George Edward Staley; APD Capt. David Lay; APD detective Brian Evans; APD Lt. Garry Alting; Emily Feldenkris, BCI DNA	Tangible object, sexual device recovered from 363 Covert Court, Ashland. Tr. 2298-2299; Tr. 2798-2800; Tr. 2942, listed as item number twelve on the evidence log numbered as State's Ex. 120 (Evans); Tr. 3008 (Alting); Tr. 3195 (Feldenkris).
State's Ex. 123	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing evidence items marked with evidence placards. Tr. 2302.

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State's Ex. 124	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing evidence items marked with evidence placards. Tr. 2302.
State's Ex. 125	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing evidence items marked with evidence placards. Tr. 2302-2303.
State's Ex. 126	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence item marked with evidence placard #4. Tr. 2303.
State's Ex. 127	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence item marked with evidence placard #5. Tr. 2304.
State's Ex. 128	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence item marked with evidence placard #6. Tr. 2304.

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State's Ex. 129	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence item marked with evidence placard #7. Tr. 2304-2305.
State's Ex. 130	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence item marked with evidence placard #8. Tr. 2305.
State's Ex. 131	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence item marked with evidence placard #9. Tr. 2305.
State's Ex. 132	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence item marked with evidence placard #10. Tr. 2305-2306.
State's Ex. 133	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence items marked with evidence placards #1, #2, #3. Tr. 2305-2307.

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State's Ex. 134	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence items marked with evidence placards #25 and #27. Tr. 2307.
State's Ex. 135	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence items marked with evidence placards #25 and #27. Tr. 2307.
State's Ex. 136	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence items marked with evidence placards #26 and #28. Tr. 2308.
State's Ex. 137	BCI agent George Edward Staley	Photo, second-floor bedroom of 3636 Covert Court, Ashland, showing a close up of the evidence items marked with evidence placards #1, #2, #3. Tr. 2308.
State's Ex. 138	BCI agent George Edward Staley	Photo, first-floor living room of 3636 Covert Court, Ashland. Tr. 2308-2309.
State's Ex. 139	BCI agent George Edward Staley	Photo, first-floor bathroom area of 3636 Covert Court, Ashland, showing a close up of the cell phone, evidence placard #16. Tr. 2309.

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State's Ex. 140	BCI agent George Edward Staley; APD detective Brian Evans; APD officer Joel Icenhour	Tangible object, cell phone recovered from the first-floor bathroom area of 3636 Covert Court, Ashland, which is BCI evidence item 16. Tr. 2309-2311; Tr. 2935-2937, 2943 from State's Ex. 120 evidence log that listed items recovered pursuant to the search warrant documents, State's Ex. 342, relative to 363 Covert Court, Ashland, on September 13, 2016. (Evans); Tr. 3211 (Icenhour).
State's Ex. 141	BCI agent George Edward Staley	Photo, first-floor kitchen area of 3636 Covert Court, Ashland, showing a close up of the item marked with evidence placard #22. Tr. 2311.
State's Ex. 142	BCI agent George Edward Staley	Photo, first-floor kitchen area of 3636 Covert Court, Ashland, showing items marked with evidence placards. Tr. 2312-2314.
State's Ex. 143	BCI agent George Edward Staley	Photo, first-floor bedroom area of 363 Covert Court, Ashland, showing a close up of the item marked with evidence placard #28. Tr. 2314-2317.

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State's Ex. 144	BCI agent George Edward Staley; Curtis Conner, bait store owner, Mifflin village; APD detective Brian Evans	Tangible object, fake cellular phone/stun gun, which was marked as evidence item 76, recovered from the nightstand of the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2317-2318; Tr. 2584 (Conner); Tr. 2936-2937.
State's Ex. 145	BCI agent George Edward Staley	Photo, first-floor bedroom of 363 Covert Court, Ashland, showing cigarette butts on a nightstand. Tr. 2318.
State's Ex. 146	BCI agent George Edward Staley; APD det. Brian Evans	Tangible object, Marlboro Black cigarette package from the nightstand in the first-floor bedroom of 363 Covert Court, Ashland, which is BCI evidence item 77. Tr. 2318-2319; Tr. 2935-2936 – from State's Ex. 120 evidence log that listed items recovered pursuant to the search warrant documents, State's Ex. 342, relative to 363 Covert Court, Ashland, on September 13, 2016, (Evans); Tr. 2961-2964, Circle K video, numbered as State's Ex. 341, and still photos from that video numbered as State's Ex. 345 and 346, showing Shawn Grate purchasing these cigarettes on September 12, 2016, at 4:00 PM (Evans).

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State's Ex. 147	BCI agent George Edward Staley	Photo, top of a refrigerator showing evidence placard #30, a stun gun, that was located in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2319-2320.
State's Ex. 148	BCI agent George Edward Staley; Curtis Conner, bait store owner, Mifflin village; APD detective Brian Evans	Tangible object, a stun gun, recovered from the top of the refrigerator in the first-floor bedroom of 363 Covert Court, Ashland, which was marked with evidence placard #30. Tr. 2320-2321; Tr. 2585 (Conner); Tr. 2937 listed as item number 30 on the evidence log numbered as State's Ex. 120 (Evans).
State's Ex. 149	BCI agent George Edward Staley	Photo, jar of petroleum jelly, marked with evidence placard #32, recovered from the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2321.
State's Ex. 150	BCI agent George Edward Staley	Photo, cell phone in a bucket, marked with evidence placard #38, recovered from the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2321.

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State's Ex. 151	BCI agent George Edward Staley; APD detective Brian Evans; APD officer Joel Icenhour	Tangible object, Microsoft Nokia smart cell phone, evidence item 38, recovered from the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2322-2323; Tr. 2938, 2943, recorded on State's Ex. 120 evidence log as item 38 (Evans); pursuant to the search warrant documents listed as State's Ex. 342, thirteen video files recovered from the phone marked as State's Ex. 151(Evans) Tr. 2946-2948; Tr. 3218 (Icenhour).
State's Ex. 152	BCI agent George Edward Staley	Photo, evidence items marked with placards #33 and #35, located in the first-floor bedroom of 3636 Covert Court, Ashland. Tr. 2323-2324.
State's Ex. 153	BCI agent George Edward Staley	Photo, evidence items marked with placards #33, #35, #45, located in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2324.
State's Ex. 154	BCI agent George Edward Staley	Photo, evidence item marked with placard #46, which is a set of Mitsubishi car keys in a bucket, located in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2324-2325.

Exhibit Number**Identified By****Description**

State's Ex. 155	BCI agent George Edward Staley; APD Capt. David Lay; APD detective Brian Evans; APD Lt. Tim Shreffler	Tangible object, set of Mitsubishi car keys, evidence item forty-six, recovered from the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2326. The keys were listed as item 46 on the evidence log marked as State's Exhibit 120. Tr. 2791-2792 (Lay); Tr. 2938 (Evans); Tr. 3031, reference item 46 being a set of Mitsubishi car keys. (Shreffler).
State's Ex. 156	BCI agent George Edward Staley	Photo, brass knuckles in a bucket, marked with evidence placard #48, recovered from the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2326-2327.
State's Ex. 157	BCI agent George Edward Staley	Photo, brass knuckles in a bucket, marked with evidence placard #48, recovered from the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2327.
State's Ex. 158	BCI agent George Edward Staley; Curtis Connor, bait store owner, Mifflin village; APD detective Brian Evans	Tangible object, brass knuckles, evidence placard #48, recovered from a bucket in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2327; Tr. 2584 (Connor); Tr. 2939, listed as item 48 on the evidence log, State's Ex. 120 (Evans).

Exhibit Number	Identified By	Description
State's Ex. 159	BCI agent George Edward Staley; Kory Stanley, son of victim Stacey Stanley Hicks	Photo, end table with keys, evidence placard #49, in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2328; Tr. 2431-2433 (Kory Stanley).
State's Ex. 160	BCI agent George Edward Staley	Photo, mattress with clothing tied to mattress handles to form bindings in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2328-2329.
State's Ex. 161	BCI agent George Edward Staley	Photo, close-up of bindings, evidence placard #52, located in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2329.
State's Ex. 162	BCI agent George Edward Staley	Photo, showing a mattress handle, evidence placard #53, located in the first-floor bedroom of 363 Covert Court, Ashland, Tr. 2329-2330.
State's Ex. 163	BCI agent George Edward Staley	Photo, showing a billfold evidence placard #54, located in the first-floor bedroom of 363 Covert Court, Ashland, Tr. 2329-2330.
State's Ex. 164	BCI agent George Edward Staley	Photo, showing contents of billfold, evidence placard #54, including an Ohio ID for Shawn Grate, located in the first-floor bedroom of 363 Covert Court, Ashland, Tr. 2330, 2333.

Exhibit Number	Identified By	Description
State's Ex. 165	BCI agent George Edward Staley; APD detective Brian Evans	Tangible object, being a billfold and contents, marked as evidence item #54, including an Ohio ID and Social Security card for Shawn Grate, as well as a debit card in the name of the deceased victim Stacey Stanley Hicks, recovered from the first-floor bedroom of 363 Covert Court, Ashland, Tr. 2330-2331; Tr. 2940, listed as item #54 on the evidence log numbered State's Ex. 120, described as a leather pouch and an ID and cards belonging to Shawn Grate (Evans).
State's Ex. 166	BCI agent George Edward Staley	Photo, evidence placard #55, a bag of pills, located in the first-floor living room of 363 Covert Court, Ashland. Tr. 2333.
State's Ex. 167	BCI agent George Edward Staley	Photo, underside of a mattress in the first-floor bedroom of 363 Cover Court, Ashland, showing suspected sexual devices, being evidence placards #56, #57, and #58. Tr. 2334-2335.

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State's Ex. 168	BCI agent George Edward Staley	Photo, underside of a mattress in the first-floor bedroom of 363 Cover Court, Ashland, showing evidence placard #59, an Ohio Direction card in the name of deceased victim Stacey Stanley Hicks, and #60, which is a pill bottle. Tr. 2335-2336.
State's Ex. 169	BCI agent George Edward Staley	Photo close up of the underside of a mattress in the first-floor bedroom of 363 Covert Court, Ashland, showing evidence placard #59, an Ohio Direction card in the name of deceased victim Stacey Stanley Hicks, and evidence placard #60, which is a pill bottle. Tr. 2336-2337.
State's Ex. 170	BCI agent George Edward Staley	Tangible object, the Ohio Direction card in the name of deceased victim Stacy Stanley Hicks, evidence item 59, recovered from the underside of a mattress in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2337.
State's Ex. 171	BCI agent George Edward Staley; APD detective Brian Evans	Tangible object, the Ohio Direction card in the name of deceased victim Stacey Stanley Hicks, evidence item 59, recovered from the underside of a mattress in the first-floor bedroom of 363 Covert Court,

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		Ashland. Tr. 2337-2338; Tr. 2939, listed as item 59 on the evidence log marked as State's Ex. 120 (Evans).
State's Ex. 172	BCI agent George Edward Staley	Photo, first-floor bedroom of 363 Covert Court, Ashland, showing evidence item #62, a sexual device, and item #65 a restraint device. Tr. 2338-2339.
State's Ex. 173	BCI agent George Edward Staley	Photo, close up, first-floor bedroom of 363 Covert Court, Ashland, showing evidence item #61, make-up and razors. Tr. 2339-2340.
State's Ex. 174	BCI agent George Edward Staley	Photo, close up view of inside closet, first-floor bedroom of 363 Covert Court, Ashland, showing evidence item #62, a sexual device, and item #65 a restraint device. Tr. 2340.
State's Ex. 175	BCI agent George Edward Staley	Photo, inside of a closet in the first-floor bedroom of 363 Covert Court, Ashland, showing evidence item #63, being a sexual device. Tr. 2340-2341.

Exhibit Number	Identified By	Description
State's Ex. 176	BCI agent George Edward Staley	Photo, close up, inside of a closet in the first-floor bedroom of 363 Covert Court, Ashland, showing evidence item #63, being a sexual device. Tr. 2341.
State's Ex. 177	BCI agent George Edward Staley	Photo, showing evidence item #70, being a bottle of makeup. Tr. 2342.
State's Ex. 178	BCI agent George Edward Staley	Photo, a yellow legal pad, marked as evidence item #71, located in the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2342-2343.
State's Ex. 179	BCI agent George Edward Staley; APD detective Brian Evans	Tangible object, a yellow legal pad, evidence item #71, recovered from the first-floor bedroom of 363 Covert Court, Ashland. Tr. 2343; Tr. 2940-2942, listed as item 71 in the evidence log numbered as State's Ex. 120 (Evans).
State's Ex. 180	Not offered	Not offered
State's Ex. 181	BCI agent George Edward Staley	Photo, exterior of the apartment complex where 236 Matthews Ave., Ashland is located, which is the apartment of surviving victim Lori Svihlik. Tr. 2348.

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State's Ex. 182	BCI agent George Edward Staley; APD detective Brian Evans	Photo, exterior door of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2348-2349; Tr. 2950-2951, showing detective initials reflecting by whom the apartment was secured (Evans).
State's Ex. 183	BCI agent George Edward Staley; APD detective Brian Evans	Photo, exterior door of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland, Tr. 2349; Tr. 2950-2951, showing detective initials reflecting by whom the apartment was secured (Evans).
State's Ex. 184	BCI agent George Edward Staley; APD detective Brian Evans	Photo, living room of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland, Tr. 2349-2350; Tr. 2952 (Evans).
State's Ex. 185	BCI agent George Edward Staley; APD detective Brian Evans	Photo, living room of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2350; Tr. 2952 (Evans).

Exhibit Number	Identified By	Description
State's Ex. 186	BCI agent George Edward Staley; APD detective Brian Evans	Photo, living room of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland, Tr. 2350-2351 Tr. 2953-2954 (Evans).
State's Ex. 187	BCI agent George Edward Staley; APD detective Brian Evans	Photo, living room of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland, Tr. 2350-2351; Tr. 2953-2954 (Evans).
State's Ex. 188	BCI agent George Edward Staley; APD detective Brian Evans	Photo, bed room of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2351-2352; Tr. 2954 (Evans).
State's Ex. 189	BCI agent George Edward Staley; APD detective Brian Evans	Photo, shelf unit in the living room of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland, Tr. 2352; Tr. 2954 (Evans).
State's Ex. 190	BCI agent George Edward Staley	Photo, close up of the shelf unit in the living room of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2352.

Exhibit Number	Identified By	Description
State's Ex. 191	BCI agent George Edward Staley; APD detective Brian Evans; APD Lt. Tim Shreffler	Tangible object, green wallet, recovered from the shelf unit in the living room of apartment I, being the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2352-2353; Tr. 2954-2955 (Evans); Tr. 3036, showing the item number as eighty-two (Shreffler).
State's Ex. 192	BCI agent George Edward Staley	Photo, of the living room of apartment I, being the underneath the sofa in the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2354-2355.
State's Ex. 193	BCI agent George Edward Staley	Photo, of the living room of apartment I, being the underneath the sofa in the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2355.
State's Ex. 194	BCI agent George Edward Staley	Photo, of the living room of apartment I, being a black box underneath the sofa in the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2355.

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State's Ex. 195	BCI agent George Edward Staley	Photo, of the living room of apartment I, being the inside of a black box underneath the sofa in the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2356.
State's Ex. 196	BCI agent George Edward Staley; APD detective Brian Evans; APD Lt. Tim Shreffler	Tangible object, being a black box recovered from underneath the sofa in the apartment of surviving victim Lori Svihlik, located at 236 Matthews Ave. Ashland. Tr. 2356; Tr. 2955 (Evans); Tr. 3036-3037 showing the item as number 83 (Shreffler).
State's Ex. 197	BCI agent George Edward Staley; APD detective Brian Evans; APD Lt. Tim Shreffler	Evidence log, Ashland police department, Tr. 2354; Tr. 2955-2957 (Evans); Tr. 3036 (Shreffler).
State's Ex. 198	BCI agent George Edward Staley; APD Officer Abraham Neuman; APD Lt. Garry Alting; APD Lt. Tim Shreffler	Tangible object, a Kwikset key. Tr. 2358; 2913-2914 (Neuman); Tr. 3008-3009 (Alting); Tr. 3036 (Shreffler).
State's Ex. 199	BCI agent George Edward Staley; APD officer Abraham Neuman; APD Lt. Garry Alting; APD Lt. Tim Shreffler	Evidence log. Tr. 2358-2359; 2913-2914 (Neuman); Tr. 3008 (Alting); Tr. 3036 (Shreffler).

Exhibit Number	Identified By	Description
State's Ex. 200	BCI agent George Edward Staley; APD officer Abraham Neuman; Ray Fuller, Stoney Creek Apartments maintenance supervisor; APD Lt. Garry Alting; APD Lt. Tim Shreffler	Tangible object, Kwikset Lock, 242 Matthews Ave. Apartment L, Stoney Creek Apartments, Ashland, being the apartment of deceased victim Elizabeth Griffith. Tr. 2359; 2915-2916 (Neuman); 2919 (Fuller); Tr. 3009 (Alting); Tr. 3035 (Shreffler).
State's Ex. 201	BCI agent George Edward Staley; APD officer Abraham Neuman; APD Lt. Garry Alting; APD Lt. Tim Shreffler	Evidence log. Tr. 2359; 2915-2916 (Neuman); Tr. 3009 (Alting); Tr. 3035 (Shreffler).
State's Ex. 202	BCI agent George Edward Staley; APD detective Brian Evans; APD Lt. Tim Shreffler	Evidence log, Ashland police department, Tr. 2360-2361; Tr. 2956 (Evans); Tr. 3031-3032, reference to item 84 thumb drive, which is numbered as State's Ex. 8 (Shreffler).
State's Ex. 203	Tina Schwartz, caseworker; Rebecca Taylor, Ashland bus driver; Cindy Swanger, mental health counselor	Lifetime photo of deceased victim Elizabeth Griffith. Tr. 2384 (Taylor); Tr. 2399; Tr.2411 (Swanger).
State's Ex. 204	Rebecca Taylor, Ashland bus driver	Ridership log for deceased victim Elizabeth Griffith showing a bus ride on August 16. Tr. 2400-2401.
State's Ex. 205	Kory Stanley, son of deceased victim Stacey Stanley Hicks	Lifetime photo of deceased victim Stacey Stanley Hicks. Tr. 2418-2419.

Exhibit Number	Identified By	Description
State's Ex. 206	Kory Stanley, son of deceased victim Stacey Stanley Hicks; APD Lt. Garry Alting	Photo of Kory's cell phone screen showing texts with his mother, deceased victim Stacey Stanley Hicks on September 8. Tr. 2420-2421; Tr. 3001-3002(Alting).
State's Ex. 207	Kory Stanley, son of deceased victim Stacey Stanley Hicks	Lifetime photo of deceased victim Stacey Stanley Hicks. Tr. 2434-2435.
State's Ex. 208	Kory Stanley, son of deceased victim Stacey Stanley Hicks	Photo of the car driven by deceased victim Stacey Stanley Hicks. Tr. 2435.
State's Ex. 209	BCI agent George Edward Staley; Kory Stanley, son of deceased victim Stacey Stanley Hicks; APD detective Brian Evans	Tangible object, billfold recovered from under the basement stairs of 363 Covert Court, Ashland, being evidence item 72. Tr. 2344-2345; Tr. 2437 (Kory Stanley); Tr. 2940 listed as item seventy-two on the evidence log numbered as State's Ex. 120 (Evans).
State's Ex. 210	Kory Stanley, son of deceased victim Stacey Stanley Hicks; APD Lt. Garry Alting	Photo showing the arm on deceased victim Stacey Stanley Hicks, showing a tattoo. Tr. 2436; Tr. 3017 (Alting).
State's Ex. 211	Wayne Bright, friend of deceased victim Stacey Stanley Hicks; APD Lt. Garry Alting	Photo showing Wayne Bright's cell phone entry showing a call to him from deceased victim Stacey Stanley Hicks at 10:19 PM on September 8. Tr. 2443-2444; Tr. 3000-3001(Alting)

Exhibit Number	Identified By	Description
State's Ex. 212	Ashland Police Sgt. Darcey Baker	Tow impoundment sheet for the car of deceased victim Stacey Stanley Hicks. Tr. 2475-2477.
State's Ex. 213	Josh Smith, Walmart Asset Protection	Video surveillance recording from September 8, 2016, showing deceased victim Stacey Stanley Hicks making purchases. Tr. 2486-2493.
State's Ex. 214	Josh Smith, Walmart Asset Protection	Walmart register transaction associated with the video surveillance recording. State's Ex. 213. Tr.2489.
State's Ex. 215	Sonny Phan, Nail Salon owner; APD Lt. Garry Alting	Photo from surveillance camera showing deceased victim Stacey Stanley Hicks leaving the nail salon at around 8:15 PM. Tr. 2496-2499; Tr. 3011 (Alting).
State's Ex. 216	Pamela Miley, Charles Mill Lake camper owner; Donovan Linder, Park Ranger	Photo of camper bedroom window with a broken window crank. Tr. 2519-2520; Tr. 2529 (Lindner).
State's Ex. 217	Pamela Miley, Charles Mill Lake Park camper owner; Donovan Linder, Park Ranger	Photo of ransacked camper kitchen area. Tr. 2520-2521; Tr. 2529-2530 (Lindner).
State's Ex. 218	Pamela Miley, Charles Mill Lake Park camper owner; Donovan Linder, Park Ranger	Photo of empty spots where the camper TV and DVD player had been. Tr. 2521; Tr. 2530 (Lindner).

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State's Ex. 219	Pamela Miley, Charles Mill Lake Park camper owner; Donavan Linder, Park Ranger	Photo showing broken door in the back-bedroom area. Tr. 2523, Tr. 2530 (Lindner).
State's Ex. 220	Pamela Miley, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the exterior of the camper also showing the next-door neighbor's camper. Tr. 2523-2524; Tr. 2552 (Boggs).
State's Ex. 221	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the exterior of the camper also showing the next-door neighbor's camper. Tr. 2540; Tr. 2553 (Boggs).
State's Ex. 222	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the exterior of the camper showing the front window. Tr. 2541-2542; Tr. 2553 (Boggs).
State's Ex. 223	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior living room area of the camper. Tr. 2542-2543; Tr. 2553-2554 (Boggs).
State's Ex. 224	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior living room area of the camper. Tr. 2543; Tr. 2554 (Boggs).
State's Ex. 225	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior kitchen area of the camper. Tr. 2543; Tr. 2554 (Boggs).
State's Ex. 226	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior kitchen area of the camper. Tr. 2544; Tr. 2554 (Boggs).

Exhibit Number	Identified By	Description
State's Ex. 227	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior living room area of the camper. Tr. 2544; Tr. 2554 (Boggs).
State's Ex. 228	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior living room area of the camper showing a cigarette box. Tr. 2544-2545; Tr. 2554-2555 (Boggs).
State's Ex. 229	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior kitchen area of the camper showing the cooler from the next-door neighbor's camper. Tr. 2545; Tr. 2554-2555 (Boggs).
State's Ex. 230	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior bathroom area of the camper showing tobacco debris. Tr. 2545; Tr. 2554-2555 (Boggs).
State's Ex. 231	Tom Molyneaux, Charles Mill Lake Park camper owner; Mark Boggs, Park Ranger	Photo of the interior bedroom area of the camper. Tr. 2546; Tr. 2555-2556 (Boggs).
State's Ex. 232	Mark Boggs, Charles Mill Lake Park Ranger; Mark Bittinger, Charles Mill Lake Park Ranger	Tangible object, a large knife recovered from the camper of Tom Molyneaux. Tr. 2557-2258; Tr. 2568 (Bittinger).

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State's Ex. 233	Mark Boggs, Charles Mill Lake Park Ranger; Mark Bittinger, Charles Mill Lake Park Ranger; Mark Brown, Charles Mill Lake Park Ranger	Tangible objects, pair of socks and a black T-shirt recovered from the camper of Tom Molyneaux, as was seen in the photo State's Ex. 231. Tr. 2558-2559; Tr. 2569-2571 (Bittinger); Tr. 2576 (Brown).
State's Ex. 234	Curtis Conner, bait store owner, Mifflin village	Photo showing hole in ceiling of bait store. Tr. 2582.
State's Ex. 235	Curtis Conner, bait store owner, Mifflin village	Photo, interior of the bait store showing debris from ceiling. Tr. 2582-2583.
State's Ex. 236	Curtis Conner, bait store owner, Mifflin village	Photo, interior of the bait store, showing the back door propped open. Tr. 2583.
State's Ex. 237	Curtis Conner, bait store owner, Mifflin village	Photo, metal knuckles that were for sale in the bait shop, the same as the tangible object brass knuckles shown as State's Ex. 158. Tr. 2583-2584.
State's Ex. 238	Curtis Conner, bait store owner, Mifflin village; Lt. Scott Smart, Ashland County Sheriff	Tangible object, blue cooler with wheels, being an item that was for sale in the bait store. Tr. 2586-2587; Tr. 2595 (Smart).
State's Ex. 239	Lt. Scott Smart, Ashland County Sheriff	Photo, area outside of the fort campsite in the woods near Mifflin Village. Tr. 2593-2594.

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State's Ex. 240	Lt. Scott Smart, Ashland County Sheriff	Photo, the fort campsite in the woods near Mifflin Village, showing a blue cooler, which was the tangible object, State's Ex. 238. Tr. 2595.
State's Ex. 241	Lt. Scott Smart, Ashland County Sheriff	Photo, the fort campsite in the woods near Mifflin Village. Tr. 2595.
State's Ex. 242	Lt. Scott Smart, Ashland County Sheriff	Photo, inside of the blue cooler, which was the tangible object, State's Ex. 238. Tr. 2596-2597.
State's Ex. 243	Lt. Scott Smart, Ashland County Sheriff	Evidence log for items recovered from the fort campsite in the woods near Mifflin Village. Tr. 2598.
State's Ex. 244	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Tangible object, Lisa Riley, RN resume and CV. Tr. 2628-2629.
State's Ex. 245	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center; Chad Kaufmann, PA, at University Hospital Samaritan Medical Center	Tangible object, medical records of victim Lori Svihlik. Tr. 2633; Tr. 2670 (Kaufmann).
State's Ex. 246	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik at University Hospital, September 13, 2016. Tr. 2652.

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State's Ex. 247	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2653-2654.
State's Ex. 248	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2654-2655.
State's Ex. 249	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2656.
State's Ex. 250	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2656.
State's Ex. 251	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2657.
State's Ex. 252	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2657.
State's Ex. 253	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2657-2658.

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State's Ex. 254	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2658.
State's Ex. 255	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Photo of victim Lori Svihlik's injuries at University Hospital, September 13, 2016. Tr. 2658-2659.
State's Ex. 256	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center	Tangible object, Rape Kit Release form relative to victim Lori Svihlik. Tr. 2662-2663.
State's Ex. 257	Lisa Riley, Registered Nurse at University Hospital Samaritan Medical Center; Chad Kaufmann, PA, at University Hospital Samaritan Medical Center; APD Capt. David Lay; APD Lt. Garry Alting; APD Officer Lee Eggeman; APD Lt. Tim Shreffler; Emily Feldenkris, BCI DNA	Tangible object, rape kit, relative to victim Lori Svihlik. Tr. 2662; Tr. 2675-2676 (Kaufmann); Tr. 2800-2801 (Lay); Tr. 3010, showing the rape kit to be item number 7 on the evidence log numbered as State's Ex. 274 (Alting); Tr. 3020-3021 (Eggeman); Tr. 3034 (Shreffler); Tr. 3188 (Feldenkris).
State's Ex. 258	Chad Kaufmann, PA, University Hospital Samaritan Medical Center	Tangible Object, Kaufmann CV. Tr. 2668.
State's Ex. 259	BCI agent David Hammond, DNA collection from Shawn Grate	Photo, Shawn Grate in the Ashland police department on September 13, 2016. Tr. 2623-2624

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State's Ex. 260	BCI agent David Hammond, DNA collection from Shawn Grate; APD Capt. David Lay	Photo, top of Shawn Grate's hand, taken in the Ashland police department on September 13, 2016. Tr. 2624-2625; Tr. 2803.
State's Ex. 261	BCI agent David Hammond, DNA collection from Shawn Grate	Photo, Shawn Grate's back, taken in the Ashland police department on September 13, 2016. Tr. 2625.
State's Ex. 262	BCI agent David Hammond; APD Capt. David Lay; Emily Feldenkris, BCI DNA	Tangible object, BCI Lab number 16-310871, DNA standard from Shawn Grate. Tr. 2620-2622; Tr. 2800 (Lay); Tr. 3189 (Feldenkris).
State's Ex. 263	APD Det. Curtis Dorsey, Grate statements	Audio recording CD of Shawn Grate interrogation (redacted) at 363 Covert Court, Ashland. Tr. 2764.
State's Ex. 264	APD Det. Curtis Dorsey, Grate statements	Tangible object, transcript of St. Ex. 263 audio recording. Tr. 2765.
State's Ex. 265	APD Capt. David Lay	Photo, overview of the living room of the apartment of deceased victim Elizabeth Griffith, showing a Yahtzee game box. Tr. 2779.

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State's Ex. 266	APD Capt. David Lay	Photo, inside of a drawer in a table inside the kitchen of the apartment of deceased victim Elizabeth Griffith, showing eighteen empty prescription pill bottles. Tr. 2779.
State's Ex. 267	APD Capt. David Lay	Photo, a number of hair conditioner bottles grouped together in the apartment of the deceased victim Elizabeth Griffith. Tr. 2780-2781.
State's Ex. 268	APD. Capt. David Lay; APD Lt. Tim Shreffler	Tangible object, Walmart receipt and Aldi's receipt dated August 15 and August 16, 2016, recovered from deceased Victim Elizabeth Griffith's apartment at 242 Matthews, Apt. L, on September 8, 2016, during the missing persons investigation. Tr. 2771; Tr. 3033 (Shreffler).
State's Ex. 269	Not Used	Not Used
State's Ex. 270	APD Capt. David Lay; APD Lt. Tim Shreffler	Tangible object, Yahtzee game box recovered from the apartment of the deceased victim, Elizabeth Griffith, 242 Matthews, Apt. L, as seen in the photo State's Exhibit 265. Tr. 2779-2782; Tr. 3033 (Shreffler).

Exhibit Number	Identified By	Description
State's Ex. 271	APD Capt. David Lay; APD Lt. Tim Shreffler	Tangible object, bottle of hair conditioner recovered from the apartment of the deceased victim, Elizabeth Griffith, same as seen in the photo State's Exhibit 267 from the apartment of the deceased victim Elizabeth Griffith and as seen in photo, State's Exhibit 26, showing a hair conditioner bottle in the bathroom of 363 Covert Court, Ashland. Tr. 2780-2782; Tr. 3034 (Shreffler).
State's Ex. 272	Not Used	Not Used
State's Ex. 273	APD. Capt. David Lay; APD Lt. Tim Shreffler	Tangible object, evidence log. Tr. 2772; Tr. 3033 (Shreffler).
State's Ex. 274	APD. Capt. David Lay; APD Lt. Garry Alting; APD officer Lee Eggeman; APD Lt. Tim Shreffler	Tangible object, evidence log in respect to the assault examination of victim Lori Svihlik. Tr. 2796-2801; Tr. 3009-3010 the rape kit is item number 7 on the evidence log, State's Ex. 274 (Alting); Tr. 3021 Eggeman); Tr. 3034 (Shreffler).

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State's Ex. 275	APD. Capt. David Lay; Beth Jackenheimer, Ashland coroner investigator	Tangible object, evidence log in respect to the autopsy examinations of deceased victim Stacey Stanley Hicks and Elizabeth Griffith, and the assault examination of victim Lori Svihlik. Tr. 2796-2798; Tr. 3097 (Jackenheimer).
State's Ex. 276	APD. Capt. David Lay; APD Lt. Tim Shreffler	Tangible object, evidence log of the search of the Mitsubishi car driven by the deceased victim Stacey Stanley Hicks. Tr. 2792-2795; Tr. 3037 (Shreffler).
State's Ex. 277	APD. Capt. David Lay	Tangible object, driver's license of deceased victim Stacey Stanley Hicks. Tr. 2801.
State's Ex. 278	APD. Capt. David Lay	Tangible object, evidence log in respect to the driver's license of deceased victim Stacey Stanley Hicks. Tr. 2801-2802
State's Ex. 279	APD. Capt. David Lay	Audio recording of interview between Shawn Grate and APD Capt. David Lay that took place on Tuesday September 13, 2016. Tr. 2803-2804; 2815-2817.

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State's Ex. 280	APD. Capt. David Lay	Tangible object, interview transcript between Shawn Grate and APD Capt. David Lay that took place at 8:30 AM on Tuesday September 13, 2016. Tr. 2803-2804; 2815-2817.
State's Ex. 281	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2828-2829.
State's Ex. 282	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 281, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2828-2829.
State's Ex. 283	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2828.
State's Ex. 283-B	APD Det. Kim Mager	Audio recording excerpt of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016, where Grate references a Pontiac car. Tr. 2896-2898.

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State's Ex. 284	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 283, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2828-2831.
State's Ex. 285	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2832.
State's Ex. 286	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 285, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2832.
State's Ex. 287	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2834.
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State's Ex. 290	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 289, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2834.
State's Ex. 291	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2835.
State's Ex. 292	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 291, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 13, 2016. Tr. 2835.
State's Ex. 293	APD Det. Kim Mager	Tangible object, affidavit and search warrant for the Mitsubishi car of the deceased victim Stacey Stanley Hicks. Tr. 2386.
State's Ex. 294	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 15, 2016. Tr. 2838, 2843.

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State's Ex. 295	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 291, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 15, 2016. Tr. 2838, 2843.
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State's Ex. 297	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr. 2860.
State's Ex. 298	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 297, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr.2860.
State's Ex. 299	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr. 2860-2861.
State's Ex. 300	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 299, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr.2861.

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State's Ex. 301	APD Det. Kim Mager; ADPD Lt. Tim Shreffler	Tangible object, Daily Reader calendar book recovered from 363 Covert Court, Ashland, on September 22, 2016. Tr. 2863-2867, 2882; Tr. 3033 (Shreffler).
State's Ex. 302	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr. 2860, 2869.
State's Ex. 303	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 302, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr.2869.
State's Ex. 304	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr. 2871
State's Ex. 305	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 304, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr.2871.

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State's Ex. 306	APD Det. Kim Mager; APD officer Abraham Neuman	Tangible object, line drawing by Shawn Grate on September 21, 2016, showing where he disposed of the key to Elizabeth Griffith's apartment. Tr. 2871-2872; 2909 (Neuman).
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State's Ex. 308	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr. 2860, 2874.
State's Ex. 309	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 308, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr.2874.
State's Ex. 310	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 21, 2016. Tr. 2875-2876.

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State's Ex. 313	APD Det. Kim Mager	Tangible object, affidavit and search warrant for 363 Covert Court, Ashland. Tr. 2877-2878.
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State's Ex. 322	APD Det. Kim Mager	Tangible object, <i>Miranda</i> form for Shawn Grate, dated September 27, 2016. Tr. 2883-2884.
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State's Ex. 324	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 323, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on September 27, 2016. Tr.2884-2885.
State's Ex. 325	APD Det. Kim Mager	Tangible object, <i>Miranda</i> form for Shawn Grate, dated October 4, 2016. Tr. 2886-2888.
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State's Ex. 328	APD Det. Kim Mager	Tangible object, <i>Miranda</i> form for Shawn Grate, dated October 5, 2016. Tr. 2890-2892.
State's Ex. 329	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on October 5, 2016. Tr. 2890-2892.

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State's Ex. 330	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 329, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on October 5, 2016. Tr. 2890-2892.
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State's Ex. 332	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 331, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on October 5, 2016. Tr. 2890-2892.
State's Ex. 333	APD Det. Kim Mager	Tangible object, <i>Miranda</i> form for Shawn Grate, dated October 17, 2016. Tr. 2893-2894.
State's Ex. 334	APD Det. Kim Mager	Audio recording of an interview between Shawn Grate and APD Det. Kim Mager on October 17, 2016. Tr. 2893-2895.
State's Ex. 335	APD Det. Kim Mager	Tangible object, transcript of State's Exhibit 334, an audio recording of an interview between Shawn Grate and APD Det. Kim Mager on October 17, 2016. Tr. 2893-2895.

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State's Ex. 337	APD officer Jeremy Jarvis; APD officer Abraham Neuman	Photo, house key in a grassy area behind the Stoney Creek Apartments, Ashland. Tr. 2905-2907; 2911 (Neuman).
State's Ex. 338	APD officer Jeremy Jarvis; APD officer Abraham Neuman	Photo, APD Sgt. Bloodhart pointing to a house key in a grassy area behind the Stoney Creek Apartments, Ashland. Tr. 2907; 2911 (Neuman).
State's Ex. 339	APD officer Abraham Neuman	Photo, alley scene where the house key was found in a grassy area behind the Stoney Creek Apartments, Ashland. Tr. 2911-2913.
State's Ex. 340	APD officer Abraham Neuman	Photo, close up of the alley scene where the house key was found in a grassy area behind the Stoney Creek Apartments, Ashland. Tr. 2911-2913.

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State's Ex. 341	Debra Steinhour, Circle K carryout manager; APD detective Brian Evans	Surveillance video from Circle K carry out, 411 E. Main St., Ashland. Tr. 2921-2929; Tr. 2959-2960, for the date September 12, 2016, following a statement from Shawn Grate that he made purchases at the Circle K at that time (Evans).
State's Ex. 342	APD detective Brian Evans	Tangible object, search warrant documents dated September 13, 2016 regarding 363 Covert Court, Ashland. Tr. 2931-2932); pursuant to the search warrant documents listed as State's Ex. 342, thirteen video files recovered from the phone marked as State's Ex. 151 (Evans) Tr. 2946-2948.
State's Ex. 343	APD detective Brian Evans	Tangible object, certification document showing detective Evans to be proficient in cell phone data recovery. Tr. 2943-2944.
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State's Ex. 345	APD detective Brian Evans	Photo, still image of Circle K surveillance video for September 12, 2016, numbered as State's Ex. 341, showing Shawn Grate making purchases as the cash register of the carry out. Tr. 2961.
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State's Ex. 347	APD detective Brian Evans	Photo, outside of victim Lori Svihlik's apartment, showing how her green wallet could be seen from the apartment doorway. Tr. 2957-2958.
State's Ex. 348	Sarah Fairchild, social services case manager at the Salvation Army Kroc Center facility in Ashland; APD Lt. Garry Alting	Tangible object, social services intake sheet for Shawn Grate, dated July 25, 2016. Tr. 2983-2986; Tr. 3002-3003.
State's Ex. 349	Sarah Fairchild, social services case manager at the Salvation Army Kroc Center facility in Ashland; APD Lt. Garry Alting	Tangible object, sign-in sheets from the Salvation Army Kroc Center in Ashland, for dates from May 31, 2016, to September 9, 2016. Tr.2989-2990; Tr. 3003 (Alting).

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State's Ex. 352	APD Lt. Garry Alting	Tangible object, search warrant documents for 363 Covert Court, Ashland, dated September 16, 2016. Tr. 3012-3013.
State's Ex. 353	APD Lt. Garry Alting	Photo, exterior of 363 Covert Court, Ashland, showing rear entrance. Tr. 3016.
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State's Ex. 356	APD Lt. Garry Alting	Tangible object, APD evidence log, showing item 4 as a can of mace numbered as State's Ex. 15. Tr. 3015.
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State's Ex. 358	Dr. Todd Barr, deputy coroner, Cuyahoga county	Tangible object, Dr. Barr CV. Tr. 3040.
State's Ex. 359	Dr. Todd Barr, deputy coroner, Cuyahoga county	Tangible object, autopsy report regarding Elizabeth Griffith. Tr. 3050.
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State's Ex. 361	Dr. Todd Barr, deputy coroner, Cuyahoga county	Photo, Elizabeth Griffith autopsy showing ligatures. Tr. 3055.
State's Ex. 362	Dr. Todd Barr, deputy coroner, Cuyahoga county	Photo, Elizabeth Griffith autopsy showing ligatures. Tr. 3056.
State's Ex. 363	Dr. Todd Barr, deputy coroner, Cuyahoga county	Photo, Elizabeth Griffith autopsy showing ligatures. Tr. 3057-3058.
State's Ex. 364	Dr. Todd Barr, deputy coroner, Cuyahoga county	Photo, Elizabeth Griffith autopsy showing blanching under the neck ligature. Tr. 3060-3062.

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State's Ex. 365	Dr. Todd Barr, deputy coroner, Cuyahoga county	Tangible object, autopsy report regarding Stacey Stanley Hicks. Tr. 3072.
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State's Ex. 367	Dr. Todd Barr, deputy coroner, Cuyahoga county	Photo, Stacey Stanley Hicks autopsy body overview. Tr. 3075.
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State's Ex. 369	Dr. Todd Barr, deputy coroner, Cuyahoga county	Photo, Stacey Stanley Hicks autopsy showing neck ligature. Tr. 3080.
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State's Ex. 383 (State's Ex. 1 for the sexual offender classification hearing)	APD detective Kim Mager	Photo, extracted from the Microsoft Nokia smart cell phone numbered State's Ex. 151, showing victim Lori Svihlik. Tr. 3550.
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State's Ex. 387	Not offered	Not offered
State's Ex. 388	APD Capt. David Lay; APD det. Kim Mager; APD Lt. Tim Shreffler	Tangible object, box of glass roses recovered from the Mitsubishi car driven by the deceased victim, Stacey Stanley Hicks. Tr. 2793-2794; Tr. 2880 (Mager); Tr. 3037 (Shreffler).

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	
	:	Case No. 2018-0968
Appellee,	:	
	:	
-vs-	:	<i>Death Penalty Case</i>
	:	
SHAWN M. GRATE,	:	
	:	
Appellant	:	

*On Appeal from the Ashland County
Court of Common Pleas
Case No. 16C-CRI-187*

APPENDIX B TO
MERIT BRIEF OF APPELLEE STATE OF OHIO

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State’s Merit Brief - Appendix B

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Excerpts from Shawn Grate's Statements to Police

Date: September 13, 2016

Time: early AM hours

Location: 363 Covert Court, Ashland, inside a police cruiser

Police Officer: Ashland police officer Curt Dorsey

Audio Exhibit Number: 263

Transcript Exhibit Number: 264

* * *

Q. [Officer Curt Dorsey] Got you. Did you ever leave [the Covert Court house], I mean did you like grocery shop and is there groceries and stuff in there?

THEREUPON, no audible response.

Q. Is there?

A. [Shawn Grate] Yeah, I had a job.

Q. Oh, really. Where are you working?

A. Well, I was working at Save-a-Lot, then I got an interview at Circle K, I haven't started yet.

Q. Which one?

A. On Main.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 5

* * *

Q. Okay. How long did you stay in the woods?

A. About two weeks, maybe more.

Q. Did you have a tent or anything?

A. No, I built forts.

Q. Oh, okay.

A. Yeah, to pass time.

Q. Okay. So, that was, ah, maybe like the beginning of August roughly, around that time frame?

A. July.

Q. Oh, July, okay.

A. Well, actually July 4th I stayed in these woods and watched the fireworks.

Q. Okay.

A. And then it was like a month later.

Q. And then a month later you ended up here?

A. June.

Q. June?

A. June, June is when it all started.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 7

* * *

Q. So, what, like you've been staying here since the beginning of August roughly, it's September 13th now, I don't know if you know what the date is, but so, a little more than a month, a month and a half maybe?

A. About.

Q. The electric works and everything?

A. The electric don't, the electric works, nothing else.

Q. Oh, nothing else, no water or anything?

A. No, but I get water from here --

Q. Okay.

A. -- the laundry mat.

Q. Okay. Just take it in in buckets or something?

A. Yeah gallons

Q. Okay.

A. -- a gallon of water.

Q. How do you, how do you shower and stuff?

A. By a gallon of water or two.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 8-9.

* * *

Q. I mean is it, was it hard to find a job, is that, is that why you ended up or are you basically just looking for a place?

A. No, I got tired of staying in that one building over there, not that one, but the other one with the big green wooden things.

Q. Oh, the big, the big abandoned building?

A. Mm.

Q. How long did you stay in there?

A. About a week.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 9-10.

* * *

Q. What's her name, that girl, I don't even know her name?

A. Lori.

Q. Okay. And how do you know her again?

A. We've spent a lot of time lately together, ah, we go eat lunch every day.

Q. Okay. Here in Ashland?

A. Yeah.

Q. Where do you guys normally go?

A. Kroc Center.

Q. Okay. Does she meet you there or do you guys go together?

A. I go to her place to pick her up on my feet.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 11.

* * *

Q. Since you've been in Ashland, so, right away, so, even, even when you were staying in that abandoned building over there, you, you knew her or was it when you moved here?

A. Once I went to the Kroc Center --

Q. Oh, you went to the Kroc, okay.

A. -- and had lunch --

Q. So, you met her at the Kroc Center?

A. -- she introduced herself, yeah.

Q. Okay.

A. We've just been going and playing tennis and stuff.

Q. Where do you play tennis?

A. That park down here at the very - - about a 20-minute walk

Q. Okay.

A. -- not even that far.

Q. What's, what's by it, there's a couple different tennis courts?

A. I was wondering that, if there was more tennis courts.

Q. What, what's by it, the tennis courts that you play?

A. Brookfield maybe, Brook, there's a swimming pool out there.

Q. Okay. So, you go to the Brookside Park?

A. Is that it, Brookside, okay, yeah.

Q. Okay. That's where you guys would play tennis, how many times do you think you've done that?

A. Four times.

Q. Four times?

A. Maybe.

Q. Maybe, okay.

A. Around there.

Q. So, other than playing tennis together and going to the Kroc Center for lunch and stuff like that, what's, what would you consider the relationship, are you guys like dating or are you just friends or?

A. Talking about marriage.

Q. Talking about marriage, how long has that talk been going on?

A. A couple weeks.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 13-14.

* * *

Q. Okay. So, the marriage thing just gets thrown out the window when she does get mad at you, and how many times do you think that's happened?

A. A couple times.

Q. Okay. So, it's not like an every day thing?

A. We could get married and divorced in a day.

Q. Okay, got you. You haven't popped the question or anything, it's just kind of been like an open discussion?

A. Yeah, it's just been an open discussion.

Q. Okay. So, how long would you say you've actually known her?

A. Oh, God, July.

Q. Since July?

A. Mm.

Q. Okay. And have you started seeing each other like more frequently?

A. About every day.

Q. About every day now?

A. Yeah.

Q. How did it start out, did it start out every day and you guys kind of --

A. It started with, I'd, I'd be busy for a few days --

Q. Okay.

A. -- I did get a job at Save-A-Lot, I've been working.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 18-19.

Q. What's her name, that girl, I don't even know her name?

A. Lori.

Q. Okay. And how do you know her again?

A. We've spent a lot of time lately together, ah, we go eat lunch every day.

Q. Okay. Here in Ashland?

A. Yeah.

Q. Where do you guys normally go?

A. Kroc Center.

Q. Okay. Does she meet you there or do you guys go together?

A. I go to her place to pick her up on my feet.

Q. Oh, you walk, okay. Um, where does she live?

A. Those apartments down here.

Q. Like on Cleveland Avenue, Almond Tree?

A. Hmm.

Q. No, what are they by, do you know any landmarks or anything?

A. By Circle K to the left.

Q. The one on Main?

A. Mm.

Q. Are you talking about Village Green, Stoney Creek?

A. No, Stoney Creek, yeah, I'm not too sure actually.

Q. Is it like a big apartment complex where there's a bunch of buildings?

A. Mm.

Q. Right off Main Street?

A. Yeah, they have some around the back.

Q. Yeah, it's probably, you cross a creek

A. Yeah.

Q. -- to get to it?

A. Yep.

Q. Yeah, okay, that's Stoney Creek.

A. She lives there.

Q. Got you, okay. So, you would walk there, you guys meet up there and then walk to the Kroc Center for lunch?

A. Mm.

Q. Now, did you know her before coming to Ashland?

A. No, I just met her.

Q. Oh, you just met her, okay. Like how long ago would you say?

A. I met her since I've been in Ashland.

Q. Since you've been in Ashland, so, right away, so, even, even when you were staying in that abandoned building over there, you, you knew her or was it when you moved here?

A. Once I went to the Kroc Center--

Q. Oh, you went to the Kroc, okay.

A. -- and had lunch --

Q. So, you met her at the Kroc Center?

A. -- she introduced herself, yeah.

Q. Okay.

A. We've just been going and playing tennis and stuff.

Q. Where do you play tennis?

A. That park down here at the very - - about a 20-minute walk

Q. Okay.

A. -- not even that far.

Q. What's, what's by it, there's a couple different tennis courts?

A. I was wondering that, if there was more tennis courts.

Q. What, what's by it, the tennis courts that you play?

A. Brookfield maybe, Brook, there's a swimming pool out there.

Q. Okay. So, you go to the Brookside Park?

A. Is that it, Brookside, okay, yeah.

Q. Okay. That's where you guys would play tennis, how many times do you think you've done that?

A. Four times.

Q. Four times?

A. Maybe.

Q. Maybe, okay.

A. Around there.

Q. So, other than playing tennis together and going to the Kroc Center for lunch and stuff like that, what's, what would you consider the relationship, are you guys like dating or are you just friends or?

A. Talking about marriage.

Q. Talking about marriage, how long has that talk been going on?

A. A couple weeks.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 11-14.

* * *

Q. Okay. So, how long would you say you've actually known her?

A. Oh, God, July.

Q. Since July?

A. Mm.

Q. Okay. And have you started seeing each other like more frequently?

A. About every day.

Q. About every day now?

A. Yeah.

Q. How did it start out, did it start out every day and you guys kind of

A. It started with, I'd, I'd be busy for a few days --

Q. Okay.

A. -- I did get a job at Save-A-Lot, I lve been working.

Q. Right. So, would you consider that you guys are basically dating then?

A. Yeah.

Q. Okay. Because before you, you mentioned that she was a friend, but it sounds to me like --

A. Yeah, she's one of my best friends.

Q. -- if you're talking, if you're talking marriage, then pretty much dating, right?

A. Yeah.

Q. Okay. So, you guys have obviously been intimate together?

A. No.

Q. You haven't, I mean you guys are staying together, right?

A. No.

Q. How, how many times has she stayed here, was this the first, she's never stayed the night - -

A. Hmm.

Q. -- you guys are talking marriage and she's never stayed the night?

A. I've never, I've never been in her apartment, but I stand at the door.

Q. Okay. You've never been inside?

A. Too much temptation, we have temptation, we avoid that, we try not to be alone.

Q. Okay. So, the temptation of being intimate is what you're trying to avoid because you know it's wrong -

A. Mm.

Q. -- is that on her end or both of you?

A. She initiated it first, but it don't matter, it's both of our fault, we both are struggling with the lust thing.

Q. You initiate it first or she did?

A. I don't initiate it because I know how she is.

Q. How's that, because she wants to wait?

A. Yeah, because she wants to wait --

Q. Okay.

A -- but then when I sit around and stuff, she just sits on my lap and stuff like that, it's okay, I try to do that with her, just sit on her lap, just hold her and I said, this is nice, you know, and I don't even mention anything, first, at first, it's like --

Q. So, were you --

A. -- asking her how her day was and everything.

Q. Right. Is this like a daily thing where she comes and sits on your lap --

A. Mm.

Q. -- when, when did she --

A. Just recently when she really realized that she wanted to marry me.

Q. Okay. So, within the past couple of weeks?

A. Yeah.

Q. Okay. You guys hold hands and kiss and stuff like that?

A. Hmm.

Q. None of that?

A. Nothing, it's okay.

Q. She just sits on your lap, what's she do when she's sitting on your lap?

A. Talk.

St. Ex. 264, Grate Interview at the Covert Court house with Ashland Ofc. Dorsey, September 13, 2016, Tr. 18-21.

Date: September 13, 2016

Time: before 10:53 AM.

Location: Ashland Justice Center

Police Officer: Ashland police Captain David Lay

Audio Exhibit Number: 279

Transcript Exhibit Number: 280

* * *

Q. [Captain David Lay] All right. Where were we, you were telling me about where, how you met Lori?

A. [Shawn Grate] At the Kroc Center.

Q. How long ago?

A. About two months ago.

Q. Okay. What were you doing there to meet her?

A. Ah, they do serve lunch every day through Monday through Friday --

Q. Mm.

A. -- so, I met her there, um, about two months ago or less, when I first got to Ashland.

Q. Where are you from?

A. Um, I came from Mansfield.

Q. What's the deal with, ah, so, you're living where, there on Covert since you 've been here?

A. Ah, maybe about a month over there.

Q. But you've been living there in Covert?

A. Is that the duplex?

Q. Covert, yeah.

A. Yeah.

Q. Where you were at this morning?

A. Mm.

Q. Okay. Whose house is it?

A. I'm not too sure.

Q. So, you're just like squatting in there?

A. Yeah.

St. Ex. 280, Grate Interview at the Ashland jail with Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 4-5.

* * *

Q. Okay. But how did you, how long have you been with her like today, how long has she been in that house with you?

A. Around 24 hours.

Q. Okay. Where did you meet her to bring her back to the house?

A. Her place.

Q. Where does she live?

A. She lives in, um, I think, I don ' t know what them apartments are called, right off Main, down past the bridge over there, there's a church over there.

Q. Oh, off of Holbrook, Stoney Creek, the apartments back in there?

A. I think those are, might be Stoney Creek.

Q. Yeah, I think that's where you ' re talking about. So, how did you get there, I mean just, how do you get there?

A. Walk.

Q. -- to her apartment? Okay. And then you take her where?

A. Ah, we walked around and we went back to where I was staying.

Q. Okay.

A. We kind of started fooling around a little bit and then things got carried away.

Q. Explain carried away?

A. Um, like, no, don't, do you know what I mean, we're not ready for that, which we, we settled, we've dealt with that before, dealt with that.

Q. She's saying?

A. Yeah.

Q. Now, what's she meaning when she's saying that?

A. What?

Q. When she says, no, what's she talking about?

A. Oh, she didn't really say, no, she's like, oh, stop it, you know, we're, we're not going to, we don't do this, we don't fool around because we want to wait for marriage.

Q. You don't fool around, you're talking intercourse?

A. Anything.

Q. Anything, okay, all right.

A. No kissing or anything, I just like went to give her a little tap on the back, you know, the conversations we have, you know, it's nice conversation and stuff.

Q. So, did you guys have sex?

A. Yeah, we ended up having sex.

Q. Against her will?

A. Well, it ended up she didn't like it and she's really beating herself up about it, the sex part, so.

Q. Mm, it looks like you might have hit her a couple times?

A. I did because I lost control and I did.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 7-9.

* * *

Q. Okay. And you were in the middle of sex when you punched her?

A. Hmm, no, we weren't, the sex, with her fighting and everything, we made up, we had sex.

Q. After you punched her?

A. Yeah.

Q. Okay. Now, you know, we talked about honesty earlier, okay, I mean she's saying that she didn't want to have sex and that you punched her.

A. She may not have wanted to have sex like afterwards.

Q. After what?

A. After I hit her.

Q. How many times did you have sex?

A. Um, it ended up being a few times within 24 hours.

Q. Mm.

A. Yeah, I mean I don't, I don't think it really was against her, her will.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 10.

* * *

Q. Okay. So, we're talking over 24 hours then that you've been with her, right?

A. Sunday evening, yeah, times since I've been asleep –

Q. So, you've got --

A. -- you can ask her about it.

Q. -- so, you've been with her since Sunday evening?

A. Yeah, Sunday evening.

Q. Okay. Can you tie down a time when you guys got together?

A. 6 o'clock probably in the evening.

Q. Okay. You go straight to the apartment, um, she's saying you tied her down to a bed, I mean what's the deal with all the straps and the mattresses?

A. I did tie her down, I abducted her.

Q. You abducted her?

A. Yes.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 11.

* * *

Q. Do you know, how many of Lori's friends do you know?

A. I met someone the other day.

Q. Who's that?

A. I think her, her name is, maybe Susan I think it was and Lori, not Lori, but, ah, maybe Anna, she's an older lady, she just picked us up the other day from walking back from Walmart is how I met her.

Q. Now, the patrol guys are saying you know an Elizabeth?

A. Elizabeth, um, I met her one time outside, I guess I didn't, ah, her, well, I talked to a lot, a few people out there but that was just like a moment. Um, we played some badminton, Lori and I was playing badminton and Elizabeth come outside and talked to us.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 16.

* * *

Q. When did you see [Elizabeth], when did you meet her?

A. Out, it's been probably two months ago when I first seen, like seen her, like talking to her at the yard playing badminton with Lori --

Q. Mm.

A. -- and then we played badminton again, then I just seen her come -- go in, come in and talk to the neighbors.

Q. Did you ever hook up with her?

A. Hmm, no.

Q. Did you ever try to?

A. No, not like that.

Q. Not like that, how?

A. Oh, I don't see her like that, hooking up with her.

Q. How do you see her?

A. Just trying to find her way.

Q. I don't, what do you mean?

A. I mean just trying to, I don't know, she talks constantly just for like the five minutes while I was playing badminton.

Q. What does she talk about?

A. Ah, the, ah, the mental hospital and stuff that she's dealing with.

Q. Yeah, she had some issues, she is missing.

A. That's what I heard.

Q. How did you hear that?

A. Um, through Tracy at the Kroc Center, Tracy.

Q. Mm.

A. Um, through Lori.

Q. Lori told you that?

A. Yeah, and her friend that we met the other day.

Q. Who's the friend?

A. I think her name is Susan, Lori knows, Lori knows because she picked us up and gave us a ride yesterday.

Q. Okay. What did Lori say about Elizabeth?

A. She just don't know.

Q. Don't know what?

A. She's thinking that she was at the mental hospital somewhere, she didn't know.

Q. Well, usually if that's the case they, we can find that out pretty easy. So, I mean, so, we don't think she's at a mental hospital, if you know where she's at or if you've had any contact with her, you know, just keeping along the same lines of being honest, this is when you need to tell me.

A. Yeah.

Q. So, when was the last time you had contact with her?

A. I haven't had no contact with her.

Q. Because it kind of makes me wonder if, since Lori's talked about her and you've talked about her, if you haven't seen her since she's been missing, it kind of

makes me wonder if you didn't have something to do with her being missing?

A. I understand with the Lori situation.

Q. Yeah, I mean it kind of looks funny, it looks strange.

A. What does she, I mean do you know what's going on?

Q. No, I really don't, I'm hoping you can help me because if, if there's any kind of connection, you know, with you and Lori and Elizabeth, it's, it's very important that we find Elizabeth because she's got some psychological issues, she's got some health issues, some medical issues.

A. Oh, yeah?

Q. So, I mean if you were to know where she was and we could find her, that would go a long way to helping.

A. Yeah, I wish --

Q. Do you know where she's at?

A. -- I wish I could help, I don't know what to say right now.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 17-20.

* * *

Q. So, you tie [Lori's] arm under her leg, why that position?

A. One tie, she's not able to move.

Q. Is she tied down to the mattress from the other side?

A. No, not until I had to leave.

Q. So, you left at some point, when was that?

A. About 8 o'clock to 9 o'clock.

Q. A.m. or p.m.?

A. P.m.

Q. On Sunday or Monday?

A. Monday.

Q. So, when you left, you tied her down to the mattress, why?

A. Just for cigarettes, I just left for cigarettes, then I came back and untied her.

Q. But why did you tie her when you left?

A. So, she wouldn't leave.

Q. So, she couldn't leave?

A. Yeah, I wasn't ready for her to leave yet.

Q. Where did you walk to get cigarettes?

A. Duke.

Q. Duke, what, Main and Union

A. -- Main, yes.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 22-23.

* * *

Q. You know, you talked about you abducted her, you've, you've had sex with her against her will too, yes or no?

A. Yes, I did.

Q. What do you call that?

A. Rape.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 27.

* * *

Q. Sorry, dude. Um, you say you came into town, broke into that house by breaking the window, where else have you stayed since you've been in town?

A. At the Grain Mill.

Q. The Grain Mill, where's that at?

A. You know where the brick road is on Orange Street?

Q. Mm, off of Orange, yeah.

A. That building, it has green wood.

Q. I think that's the old Hess & Clark building I think they call it, I think that's what it is.

A. Yeah, I heard that, that's what it is.

Q. You've heard it called that?

A. Yeah.

Q. So, you stayed in there?

A. Mm.

Q. For how long?

A. A week.

Q. Is that where you first stayed when you came to town or where did you first stay?

A. In the woods.

Q. In what woods?

A. Over by the church.

Q. By the church?

A. Out that way.

Q. What church?

A. That gravel road that goes into -- from Orange to that gravel road to Orange it goes right around and it goes up to Circle K it goes onto Troy I think.

Q. You're talking the railroad tracks?

A. By the railroad tracks.

Q. Okay. Right there behind Circle K, you stayed in that woods back in there?

A. Yeah, just for about three days.

Q. Do you have a tent or something or you just lay, I mean?

A. Okay. Where's your sleeping bag at now?

A. It's probably up in the old Hess & Clark building.

Q. Still up in there?

A. Yeah.

Q. Okay. So, you stayed in the woods for three days behind or around the tracks behind Circle K, and where did you stay from there, where did you go from there?

A. In that building.

Q. The Hess & Clark building?

A. Mm.

Q. So, when you're in town, you say you got in town you think mid when?

A. July.

Q. Okay. And what, in relationship to July 4th, where was it to that holiday?

A. Eighth.

Q. Oh, you know what day you got into town, the 8th somewhere?

A. I'm just assuming it was probably three, four, five days after

Q. After the fourth?

A. -- after the 4th of July.

Q. Okay, okay.

A. Yeah.

Q. And you were in the Hess & Clark building for a week you said, where did you go from there?

A. To that building, to the, where I am.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 30-32.

* * *

Q. Well, you should be proud of that, trying to find a job?

A. I'm proud of it, a challenge.

Q. What kind of work you do?

A. Well, I was at Save-A-Lot when I first got here.

Q. You worked at Save-A-Lot here in Ashland?

A. Mm.

Q. For how long?

A. Three weeks.

Q. How come you got, did you get - - why aren't you there anymore?

A. I quit.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 36.

* * *

Q. Okay. So, what happened, how do you keep her there for another day?

A. Just sit there in the room with her a lot, most of the time, so, I laid her on the -- I just wanted to go get cigarettes, I needed, I couldn't just sit there.

Q. So, that's when you tied her up?

A. Yes, that's when I tied her up.

Q. And what time did you go get cigarettes?

A. I'm not exactly sure, I might have went to Circle K, that's what, ah, I think Monday I went to Circle K, yeah, Monday was Circle K getting cigarettes, then I went to Duke the day before.

Q. Before --

A. Circle K is Monday, I went.

Q. So, after you tied her up, you went to Circle K to get the cigarettes, you say you were at Duke the day before, was that before or after?

A. Oh, man, that was before we even got together.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 47.

Q. So, I want to give you the opportunity before we dig into that to be honest with me.

A. About Elizabeth?

Q About Elizabeth. So, what do you know about her disappearing? Shawn, what do you know about her?

A. She's crazy.

Q. How do you know that? Help me out here, Shawn, help yourself?

A. She's crazy.

Q. Where's she at?

A. You already know where she is, you don't know where she is?

A. No.

Q. Where's she at? Shawn, you know where she's at, where's she at?

A. She's set free, no more problems, she don't have to cry no more.

Q. How did you set her free?

A. Because she jumped on my back.

Q. What happened?

A. She kept crying to me, I'd say, yeah, it's what you make of this world and everything and she wishes she would just die.

Q. And what happened?

A. When I think about it, I just don't know what happens sometimes.

Q. I get that, can, we can work through that, right now tell me where she's at and then we'll work through the rest of it.

A. I gave up my life a long time ago to help people do things that they can't do theirself.

Q. How did you help her do something she couldn't do, did you help her kill herself, Shawn?

A. Well, I tried to be encouraging for her and I told her to leave people alone, just not even worry about talking to nobody, you know, just isolate yourself for a little while and then whoever gets ahold of you, see who your true friends are, you got to find your true friends.

Q. So, where's she at, Shawn? She's got a lot of family that's worried about her, I'm worried about her, I know you know where she's at. Where's she at, Shawn?

A. I really am, I'm listening on everything, I cooperate, I'm trying to help.

Q. Well, I know you want to, but you got to tell me and where she's at, man, and like I said, we'll work through the rest of it, but right now the important thing is finding her, so, where's she at? Shawn?

A. Yes.

Q. Where's she at? Shawn, am I going to find her in one of those places that I told you about?

A. I don't know.

Q. You know. Let's not let it get to that point, I can tell that you know where she's at, you said you helped her find peace.

A. Didn't talk to her.

Q. Hmm, when did you talk to her?

A. Lori was with us.

Q. When was this?

A. Maybe a month, a week ago or so.

Q. Where did you talk to her at?

A. In front of the yard out there playing badminton, it's just a sad situation, I don't know what to think about all that.

Q. Well, how did you help her find peace?

A. To move, to clear her mind, just let her like relax, don't worry about things.

Q. How did you accomplish this?

A. Maybe a month, a week ago or so.

Q. Where did you talk to her at?

A. In front of the yard out there playing badminton, it's just a sad situation, I don't know what to think about all that.

Q. Well, how did you help her find peace?

A. To move, to clear her mind, just let her like relax, don't worry about things.

Q. How did you accomplish this?

A. Just talking to her and then, then I hear she's missing.

Q. You told, you said that, you asked me if I knew where she was, you know where she's at.

A. I wish I knew where she was, I mean you asked me where I was, where she was a while ago and I don't have no clue what's going on with her.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 50-53.

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Q. Where do you think [Elizabeth's] at?

A. I don't know, that's what I was thinking, dang, that's why I asked, does she have family, I thought Lori said someone was in Columbus, family. I never heard Lori talk, Lori kind of ditched her, Lori made her feel bad.

Q. Did you tell Lori what you did with her?

A. I didn't do nothing with her.

Q. Did you tell Lori how you helped her find peace?

A. No, not really because, well, I mean in different words I helped her find, I encouraged her, that's that I told Lori, because Lori was over there about 15 feet and I was here, Elizabeth was here and she's just talking like depressed and it's like you need to quit worrying about what other people think, you know, just focus on you, everything else would work out, you know, she goes, ah, thanks, it gives me peace.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 54-55.

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Q. So, where's Elizabeth?

A. I'm not too sure where Elizabeth is.

Q. Do you know what happened to her?

A. No, all I've heard is a couple -- like two weeks ago she come up missing.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 58.

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Q. [Lori] says you took some video of her when you forced her to give her, give you oral sex, from your cell phone?

A. Yeah.

Q. Yeah, what?

A. I acted like a video, might, yeah, there might have been a video.

Q. So, where's your cell phone?

A. It should be around there.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 60.

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Q. [Lori's] saying that you duct taped her mouth.

A. That's when I went to the gas station.

Q. You put duct tape on [Lori's] mouth, so, you tie her to what the bed, and then you put duct tape on her mouth, why?

A. So, she wouldn't yell, I'll be right back, as so on as I got back though I um, I untied her and I know that's not right.

Q. And did you take the duct tape off her mouth?

A. Mm.

Q. She said you were freaking out because you couldn't find the duct tape and the scissors.

A. No, I couldn't find the scissors to take off, to cut the duct tape and stuff off of her, I couldn't find the scissors to take it off of her.

St. Ex. 280, Grate Interview at the Ashland jail with Ashland police Captain David Lay, before 10:53 AM, September 13, 2016, Tr. 66-67.

Date: September 13, 2016
Time: 10:53 AM
Location: Ashland Justice Center
Police Officer: Ashland Detective Kim Mager
Audio Exhibit Number: 281
Transcript Exhibit Number: 282

* * *

Q. [Detective Kim Mager] [Lori's], she's hurt, all, kind of all over, isn't she? Tell me what happened.

A. [Shawn Grate] I only hit her once.

Q. You only hit her once?

A. Yeah, I hit her once and cut me right here with her tooth. Which I didn't mean that, but she flipped out on me, which I understand, and she started to claw me and stuff.

Q. She was scared, right?

A. Yeah.

Q. Yeah.

A. So, I just went, attacked her.

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 9-10.

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Q. Well, when you told her, I'm going to go find another place and then I'll burn, I'll burn this place, is that -- tell me where your thoughts were there, what would be the purpose of that?

A. Just angry.

Q. Just angry, angry because of what you did?

A. Yeah.

Q. Did you have any, anything to - - that you could set it on fire with, did you have any gasoline or what would you use?

A. I don't know.

Q. Just anything?

A. I was just rambling, no purpose.

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 16-17.

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Q. What I know, you guys, you guys met how long ago?

A. Maybe two months ago.

Q. Okay. And where did you meet?

A. We met at the Pump House.

Q. Okay.

A. The Kroc Center.

Q. Kroc Center. Did you go there to eat or what were you doing there, having, having luncheons or?

A. Yeah, I went there to talk to Stacey about my dad, yeah, assisted living, no places to live - -

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 18-19.

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Q. But you do understand, with your strength, that a little tap to you on somebody like that, is going to cause a mark?

A. I just did taps like that, but this was actually when she just started going crazy at first and I didn't know what to do.

Q. So, you thought if I hit her, she'll snap out of it and submit?

A. She didn't still submit.

Q. She didn't, she still tried to fight?

A. She stopped when I did, I hit her, she stopped, I stunned her.

Q. Yeah, you stunned her. Did her mouth bleed?

A. Yeah, I split her with the tooth, it must have been.

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 27-28.

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Q. Do you have somebody's car that you borrowed that you've been driving around, you told her that you had a car down the street?

A. Oh, I just lied to her, I was –

Q. All right.

A. -- I found some car keys and I showed her them.

Q. You found some car keys?

A. Yeah, like a car key, I found a car key.

Q. Where did you find it?

A. In, down by the Circle K. I said I was going to leave, drive and leave....

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 31-32.

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Q. But you're five times as strong as her, am I right, is that right or wrong?

A. Yeah.

Q. That's kind of a given, right? So, she doesn't have the option of not -- she tried to fight you off, I mean looking at this whole thing, you forced her to have sex, she didn't want to.

A. I abducted her and I raped her.

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 34-35.

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Q. Why, Shawn, it's the right thing, it's the right thing to do. Shawn, look at me, it's the right thing, I know it is, can you do it, if I take you in my little detective truck, can you take me out and we can go find her, and go get her where she is, hey, are you willing to do that?

A. I don't know what you're talking about right now.

Q. I'm looking for Elizabeth's body, can you take me to it?

A. She, she's dead?

Q. I believe she is. Hey --

A. Maybe it's another other guy, just because I did this one, you know, doesn't mean I did all this other stuff --

Q. Hey --

A. -- I mean.

Q. -- listen to me, this is your moment.

A. Is it my moment?

Q. I believe it is.

A. My moment is when I die, once I'm put in a cell, the key locks, is my moment.

Q. We don't want, we don't -- listen, things are never the way they look at face value, even the thing with Lori is not exactly the way you think it is right off the bat, do you know what I mean?

A. I might not be able to take you to her, maybe someone else

Q. It does, how many are there?

A. I don't know, let's just say many.

Q. What?

A. I don't know, there might not be none. You say Elizabeth's dead?

Q. What?

A. You think that she is dead?

Q. I believe she is, I don't know 100 percent, I'm honest with you, I think she is.

A. Why don't you know 100 percent?

Q. What?

A. Why don't you know 100 percent?

Q. Because we haven't found her. Hey, you know how bad your parents hurt you, her mom is decent, you know what she's doing right now, she's begging, she's begging to have her daughter, she doesn't think she's okay either. I think you're broken inside and I think everybody you've cared about have let you down. The thing with Lori, we didn't make it any bigger than it is, as a matter of fact, I talked to her and asked questions that benefit you. I'm asking you to stand up right now in size, to stand up and do the right thing, to take the things that have happened, the things that are wrong and right now, right now, do the right thing, that's what I'm asking. Hey, do you know where Elizabeth is right now, I don't care what you told anybody else, I care what you tell me. Hey?

A. You already know, I can't answer your question right now.

Q. Look at me, I do not know where she is, I'm not lying, why would I lie about that, what do I have to gain, why have I spent 20 minutes trying to get you to tell me where she is, what would I gain from that, that you won't trust me --

A. No.

Q. -- that's not where I am.

A. Because if I knew where she was, and then I'm just guilty.

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 43-46.

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Q. Where is, I want you to take me to where Elizabeth is or tell me where she is, you've already tried to make one situation right, right? Can we go to her, why wouldn't you do that, hey, either you have a conscience or you don't, and I, I believe you do?

A. I don't know where she is.

Q. Tell me why you don't know that?

A. Out of my hands, I don't –

Q. What do you, what do you mean?

A. I don't know where she is, I don't know where she is or what she's doing, I just know she's been missing for a while now, I've heard it about three times from people.

You rack a lot of nerves around here with all these lines.

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 46-47.

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Q. Hey, remember I told you, I'm not going to judge you, I meant it, you're, you're open and honest and I, I really appreciate it

A. I guess I'm ready to go ahead and get my lethal injection, but I'll tell you everything first.

Q. Okay.

A. How many before lethal injections?

Q. How many what?

A. How many people before I get lethal injected?

Q. Let's not worry about any of that.

A. Okay.

Q. ****

A. Well, I already mentioned her.

Q. Who are you thinking of?

A. The house, the home.

Q. The house what?

A. The house where I came from.

Q. Yeah. Is somebody in there?

A. Yeah.

Q. Who is it, is it Elizabeth?

A. Yeah.

Q. Where is she in there?

A. In the closet.

Q. In the closet? Which closet?

A. Upstairs.

Q. Upstairs.

A. Yeah.

Q. What happened?

A. I do, I love, I care, I hate seeing people suffer.

Q. Okay.

A. That's it.

Q. Okay, all right, Shawn.

A. Nothing's safe for her or nothing, I didn't hurt her.

Q. Okay. How did you do it, Shawn?

A. Well, she wanted more, she didn't at first, I was like well, what the heck, because she came over, I said, I'm just going to go home and eat some barbecue chicken.

Q. Okay.

A. She's like, oh, that sounds good, I said, well, do you want some, she came over, she went back home.

Q. Okay.

A. She calls me later, asked me what I was doing, and this was like at 11 o'clock at night, 11, maybe it was 10 o'clock, you know, she asked if I wanted to play some Yahtzee and talk some more, all right, that's fine if you want, she came over. She

started bad mouthing Lori too in a way, it was like what, but Lori and her, they have their moments, it's like a girl thing --

Q. Okay.

A. -- like with her, you know, so, I try and listen, we kept playing, you know, like just wishes that she wasn't around no more or not, she kept everything. And I'm not going to marry her, and I don't see no one else marrying her, she's just going to be miserable all her life, I'll free her, I'll sacrifice my life for her.

Q. Okay.

A. *** Nowhere I just wanted to enjoy, just because all of this is going to catch up to me and I'm not worthy of being her husband.

Q. Okay. So, with Elizabeth, you wanted to free her, how did you do that *** okay, is she in anything or just in the closet?

A. The closet.

Q. I mean do you have her put -- did you put her in anything?

A. Just a bunch of clothes.

Q. A bunch of clothes?

A. I threw in there, flies are in there --

Q. Flies?

A. -- flies like crazy.

Q. You mean the house that you're staying in right now?

Q. All right. Which closet, what room?

A. Upstairs, the one beside the bathroom.

Q. Can you, is there an odor?

A. Yeah, there's an odor.

Q. Is there, okay.

A. There's an odor.

St. Ex. 282, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 10:53 AM, September 13, 2016, Tr. 57-60.

Date: September 13, 2016
Time: 12:34 PM
Location: Ashland Justice Center
Police Officer: APD Detective Kim Mager
Audio Exhibit Number: 283
Transcript Exhibit Number: 284

* * *

Q. [Detective Mager] With Elizabeth, is she nude or is she in clothes?

A. [Shawn Grate] Well, when, she took her shirt off, right --

Q. Okay.

A. -- I was just showing her around then, she wanted, she insisted to look around, right --

Q. Okay.

A. -- so, I go upstairs, she, I showed her the upstairs, you know, and she just kind of like, you know, trying to put moves on me, which was weird because I wasn't talking to her, I didn't really feel that, do you know what I mean --

Q. Yeah.

A. -- I didn't feel that.

Q. Yeah. Did you end up having sex with her?

A. No, I did not.

Q. Okay.

A. I didn't do nothing with her at all.

Q. So, when it came to the point that --

A. I was struggling, you know, her, her shirt did end up coming off, no.

Q. Okay. How did it come off?

A. I was moving it like, like choking her.

Q. You were choking her?

A. Yeah.

Q. Did you choke her from the front or choke her from behind?

A. Well, it just happened that I choked her, I just reached up and just choked her, right, and I asked her, I said, are you sure this is what you want? And I mean because she talked about like killing herself, so, I mean I do that as jokes a lot of times like even with friends, like guy friends, whatever, do you know what I mean, they start talking about killing themselves, well, what are you waiting on, you know, I joke around --

Q. Yeah.

A. -- whatever, you know, but now it's to the point, it's like okay, let's see exactly how much they really do want to die, do you know what I mean --

Q. Yeah.

A. -- so, I put a little fear in them, right?

Q. Yeah.

A. She fought it like, I was like it's not what you want, then she like started blowing up, like she took it out of proportion like I was just joking, she doesn't know, wake up, strangle --

Q. Okay.

A. -- front knee, strangle like, do you know what I mean, she got all serious, when I went to calm her down, she just lost it, and I panicked.

A. You panicked?

Q. Mm.

Q. Then you just did it again?

A. I didn't have no other choice. Just slow, like calm her down because I mean she was just like (indicating a noise) moving around and stuff like that, so, I was like I put her on the bed and like, oh, man.

Q. So, did you strangle her again, is that how she died or is there another way?

A. No, that's the way she died.

Q. That's the way, was that on your, your bed?

A. The bed upstairs.

Q. It was upstairs, is there a bed in that room?

A. Yeah.

Q. Okay. And then was that during the day or at night?

A. This was like, she came over about 11 o'clock when she brought over Yahtzee, we played Yahtzee.

Q. 11 o'clock at night, so, you guys played Yahtzee and then what happened?

A. She couldn't sleep, so, she called me.

Q. Okay. What do you have her in your phone as?

A. I don't think I have her, I think I just gave her my number, I didn't even give her --

Q. Okay.

A. -- I probably didn't get hers until she called me and then it was just everything all happened so, fast at that time, then it was only like that day, I met her like a few days before and then like that day this, you know, like it's when she gave, called me.

Q. Okay. Earlier you said when she was there, that she was maybe talking poorly about Lori, did that, did that anger you that she was talking about Lori?

A. No, because that's just Lori, Lori is straightforward, do you know what I mean, if she sees something then--

Q. Right, I mean when, when Elizabeth was talking poorly about Lori, did that make you mad at Elizabeth that she was talking bad about Lori?

A. No, not really, I felt, I kind of laughed about it because I mean it's like, you don't like seeing a big girl cry

Q. Yeah.

A. -- like I really could just smack her, wake up.

Q. So, after she died, did you immediately put her in the closet or what happened then?

A. Yeah, I put her in the closet pretty much.

Q. Have you taken her out of the closet at all or just left her in there?

A. I put her in the closet, threw a bunch of clothes in the closet and shut it and I've just been killing a lot of flies, opened the window letting the flies out, it's crazy, I'm surprised it don't stink as worse then what it does.

Q. Yeah.

A. It soaks in, the smell is soaking into everything else though, clothes and things, I guess.

Q. Are there any other girls in the house right now?

A. Mm.

Q. Yeah?

A. There's one down in the basement.

Q. Down in the basement, and what's she in?

A. She's just down in the basement.

Q. She's just down in the basement?

A. Yeah.

Q. Tell me about it.

A. She just led me on to the point of there was no stopping and it really irritated me, ah, an ex-druggie supposedly, I guess, just, I don't know, during everything else I just snapped on her.

Q. What's her name?

A. Stacey.

Q. Stacey, what's her last name?

A. I don't remember right now, Stacey.

Q. Where's she from?

A. Frankington (phonetic), I'm not sure where she's from, I'm trying to remember.

Q. Okay. How did you meet her?

A. Walking to the gas station.

Q. Okay. When did that happen?

A. I'm not sure, Thursday.

Q. Thursday, well, let's look, let's look at our calendar again.

A. Thank you.

Q. You're welcome. Let's find it here. All right. Here's September, today's the 13th, Tuesday the 13th, so, you've had, um, Lori since Sunday the 11th.

A. Okay.

Q. What day do you think this happened with Stacey?

A. Probably Thursday.

Q. Probably Thursday?

A. Let's see, it's still, it's kind of, it's hard for me to say.

Q. Right around that day though you think?

A. The Thursday, maybe it was Thursday.

Q. Is that the day you met her, when you were walking by the --

A. I met her Thursday, yeah --

Q. Okay.

A. -- it happened Friday night, I mean Thursday morning, ah, I don't know what her last name is.

Q. We'll get her last name.

A. I'm trying to remember her last name.

Q. What did she look like?

A. She's a sweet lady though.

Q. Sweet lady?

A. Yeah.

Q. What color hair does she have?

A. Black.

Q. Black hair, about how old is she?

A. Young.

Q. Young?

A. 42.

Q. 42?

A. 45 or 43 or something like that.

Q. Okay. Does she have a car?

A. Mm.

Q. Are those the keys that you have?

A. Yeah.

Q. Those are the keys that you have?

A. Yeah.

Q. Where's her car?

A. I don't know what street it's on.

Q. Have you been in that car, I mean have you driven it since this happened? And then you've just been parking it over there?

A. I parked it, I got into it a few different times, ah, took a drive to Mansfield and back. Really, I don't even think I drove it, it's getting too hard, I don't drive it now.

Q. How did, ah, how did she die, like the same way or another way?

A. Tongue out of her mouth.

Q. You what?

A. When you choke a woman out --

Q. Yeah.

A. -- you choke someone, they die with their tongue out of their mouth.

Q. And she put her tongue out of her mouth?

A. Oh, no, just, just the pressure, it makes people's tongues stick out and then after they die, it just makes them still, their tongue stays out of their mouth --

Q. Okay.

A. -- automatic.

Q. Yeah. What room did that happen in?

A. Bathroom door, bedroom where I was.

Q. The bedroom where you had Lori?

A. Yeah, then I took her down in the basement.

Q. All right. What is she wearing?

A. I'm not exactly sure.

Q. All right. Did you have sex with her?

A. Yeah.

Q. All right.

A. See at first, kind of like playing around and then she wanted to play that innocent thing, so, I then, I kind of just snapped on her. If you're going to play all

innocent, she come home with me at 11 o'clock, don't even know me, I mean kind of like almost sent from God or it could have been sent from the devil, I don't know, someone gave up on her.

Q. Did you have sex with her before she died or after?

A. No one ever after.

Q. Okay, all right.

A. Nothing's never happened afterwards.

Q. Okay. So, what did you put her in, in the basement?

A. Just put her on the floor.

Q. Put her on the floor. All right. Is there anything in that freezer down there?

A. Hmm.

Q. Nothing, where, where on the floor in the basement?

A. Underneath all that stuff, garbage.

Q. Okay.

A. Underneath the garbage.

Q. And that's at the house on, um - -

A. 4th is it?

Q. -- on 4th, right by the laundry?

A. Yeah.

Q. Kind of near the laundry. I'll get her last when I can. Um, is there anybody else in the house?

A. Hmm, no.

Q. All right. Did she try to fight you when you were strangling her?

A. Yeah.

Q. Tell me about that.

A. She even, she maced me too.

Q. She maced you?

A. Well, that's what happened, yeah, she maced me, right, and I just snapped on her, as well as the other, I mean it's like --

Q. When you had sex with her, did she want to or did you have to make her?

A. No, I didn't have sex with her after that, I made her actually give me head, right, just like, I was in that rage of like, all right, with everything else that was going on I guess I could blame it, but she, ah, I don't know, I don't know exactly why --

Q. Okay.

A. -- with her, just with -- she came home with me, we kind of like hit it off pretty good and then, then it didn't, it just went sour fast, I even thought I'm done, it just went fast and I just snapped on her, that was--

Q. Have you used your stun gun on, on any of them?

A. No, I don't think it's powerful enough.

Q. Okay.

A. I mainly got that, ah, when I was breaking in the Flea Market in Mifflin--

Q. Okay.

A. -- and there's no one else.

Q. So, there's no other person in that house?

A. No.

Q. And who was the last one?

A. Um, victims?

Q. Yeah.

A. Lori.

Q. Lori, were you going to do the same thing to Lori?

A. Never, no.

Q. What's the difference?

A. Because she will help people.

Q. Because she helps people?

A. She knows how to help people, yeah, and I was told not to, just so, many things, reasons not to --

Q. Okay.

A. -- for her, even though she's mentioned she wanted to die before and she even mentioned that she wanted to die then because of the abuse I was putting her in.

Q. Yeah, she told me that she said that, why don't you just kill me or something like that?

A. I mean she didn't, when I grabbed her in the throat, she did not fight back, so, she really wanted to die, so, I must have been really bad off torturing her pretty bad to make her want to die.

Q. Did she lose consciousness when you were, had your hands on her throat?

A. No, no, I was only taken to that point just once to relate with all the other women that had to go through it, brother and dads probably, but.

Q. Do you -- when you're with a woman and you're having sex with a woman, do you strangle during sex ever, a lot?

A. No, I have before, but no, not normally, not normally.

Q. Okay. Other, other women who this almost happened to, but didn't?

A. No, but I probably planted that seed, it's like, man, I should of, do you know what I mean, like --

Q. Like what's that feel like directly during and then directly afterwards?

A. Oh, man.

Q. I mean does it feel like a release, does it feel good, does it, be honest, this helps me?

A. When I'm choking them?

Q. Yeah.

A. Well, by then I know, right, right then I know if I should finish or not, do you know what I mean, I feel like when I put my hands on Lori, I knew, no.

St. Ex. 284, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 12:34 PM, September 13, 2016, Tr. 7-21.

Date: September 13, 2016
Time: 1:38 PM
Location: Ashland Justice Center
Police Officer: APD detective Kim Mager
Audio Exhibit Number: 285(a), 285(b)
Transcript Exhibit Number: 286

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Q. [Detective Mager] Why, if you had a car available to you, why did you keep Elizabeth's body in your house and why did you keep Stacey's body in your house, if you knew you had Stacey's car, why did you not take them somewhere else, what's your thoughts on that?

A. [Shawn Grate] I didn't worry about it.

Q. You didn't worry about it?

A. It would just be in the same mess, do you know what I mean, I'd still be running.

Q. So, when you told Lori that you would go find another place to stay and burn the house or torch the house, were you thinking more about that there's two bodies in your house, then just covering up what happened with Lori, is that what you were thinking?

A. Yeah.

Q. Okay.

A. Yeah, I was mainly just to cover up pretty much.

St. Ex. 286, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 1:38 PM, September 13, 2016, Tr. 7.

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Q. How long did you keep Stacey before she --

A. Oh, just about an hour.

Q. Just about an hour?

A. Short time, yeah, she flipped out, acted up, so, I didn't have a choice.

Q. You didn't have a choice, do you really, I mean think about it, did you have, did you really have a choice whether to kill her or not, rationally, looking back at it, did you have a choice?

A. She knew where I was, um --

Q. Oh, she knew where you were meaning

A. Living.

Q. -- she knew and you had already made her give you oral sex, like forced that on her, so, is that what you're meaning?

A. We, yeah, we already bumped heads.

St. Ex. 286, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 1:38 PM, September 13, 2016, Tr. 11-12.

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Q. Like when you meet Stacey at the Circle K or, yeah, I think is where you walked to, am I right, is that the one?

A. Duke.

Q. The Duke, okay, so, when you met Stacey at the Duke, how did the conversation go that she ends up coming back to your place, did you just walk up to her and start talking?

A. Well, it was raining, I had an umbrella, I was going to give her my umbrella and then keep walking because she was standing outside and then she had a flat tire in her car, do you want me to give you a hand and she's like, well, I have someone coming. Okay. It's only a one-man job. So, I went head and walked down to Circle K and then back and she was still there waiting, then I went back up there in about 10 minutes, someone showed up. And, yeah, I asked her if she wanted to hang out sometime, she said, sure and she was, asked me what I was doing that evening, I tell her I wasn't doing nothing. She said, we can hang out, so, we started hanging out. She came in and everything was fine, I mean, we ended up kissing --

Q. Okay.

A. -- just kind of like it just happened and then, I don't know --

Q. Okay.

A. -- it just went all bad.

Q. Yeah. Because it's already happened before and everything's just kind of like emotionally kind of hard, when you decided to approach her, when she had her flat

tire, did you think I need to do that again?

A. No, I don't think I have that feeling, that desire to kill again, it's always just something I have to run from, like once you snap, you don't come back, but I don't know, I think I really snapped.

Q. So, when you brought her to your apartment, did she just show up or did she come with you right then?

A. Oh, yeah, she came with me, we went to the apartment in the back.

Q. Okay. Did you -- did she give you a ride back or did you --

A. Yeah, she gave me a ride back.

Q. Okay. So, at what point while she was there did you decide you're going, that you were going, you were going to kill her, at what point?

A. I didn't, yeah, I didn't know, it wasn't planned, but, um, the point is when -- she just gave me these flashbacks of all these other women and just, that's probably broken my heart to really break it down --

Q. Okay.

A. -- flashbacks like my mom really, I mean I hate to blame people, but --

Q. I know.

A. -- someone has to be blamed, I mean, I'm taking my blame.

St. Ex. 286, Grate Interview at the Ashland jail with Ashland police detective Kim Mager, 1:38 PM, September 13, 2016, Tr. 13-15.

* * *

Q. Okay. And you say walk towards Mifflin, walking to your mom's or where were you walking to or you just mean that direction?

A. To Ashland.

Q. Okay.

A. And I stayed in the woods in Mifflin for a little while too.

Q. Okay. Where in Mifflin?

A. Ah, like, um, 18, I think 2018 or something, County Road 2018, where you go up the hill by the church.

Q. Do you take a left or right there?

A. Left and go around to get on the main road, it – that takes you down to Ashland, it crosses 30.

Q. Okay. So, you stayed in the woods for a little while?

A. I stayed there for three weeks, just walking back and forth, Charles Mill --

Q. Okay.

A. -- to Ashland, yeah.

Q. Were you in the park at Charles Mill some?

A. Mm, why, did you have any complaints over there, mysteries?

Q. No, there's nothing, is there anything over there?

A. There ain't no dead bodies --

Q. Okay.

A. -- just I stayed in people's trailers.

Q. You stayed in people's trailers in the park?

A. Mm, Charles Mill.

Q. How did you get in them?

A. Shoot the back window like that and see if they come up.

Q. Why did you do that?

A. I was out there for probably about three or four weeks.

Q. You stayed in the same trailers or went in different ones? How many different ones?

A. Like three and two, and I lived out of another one that had food --

Q. Okay.

A. -- to get the ones that, the only one that had food and stuff, dividing it in those two, that way I could go to either one.

Q. Okay. And that was since, what month was that?

A. That was before July, I was back and forth from Mansfield.

Q. I mean were there people that would come to those trailers on the weekends?

A. Luckily, no.

Q. Okay.

A. But they did eventually come, but it just so, happened as I was walking to it I seen, do you know what I mean, I got lucky --

Q. Do you know what lot it was?

A. -- that I wasn't in there. No, I'm not too sure, but I'm sure there's police reports.

Q. Of break-ins?

A. Yeah.

**St. Ex. 286, Grate Interview at the Ashland jail with Ashland police
Detective Kim Mager, 1:38 PM, September 13, 2016, Tr. 20-22.**

Date: September 13, 2016
Time: 2:29 PM
Location: Ashland Justice Center
Police Officer: APD Detective Kim Mager
Audio Exhibit Number: 287
Transcript Exhibit Number: 288

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Q. [Detective Mager] All right. We're going to go to, okay, we have them. My question is, Elizabeth, what did you have her in, she's, she's tied up in a -- first of all, we're looking at notes, there are notes, what was going on, just something you wrote down?

A. [Shawn Grate] Just wanted it.

Q. Just want it, all right. How long did you have her there before she died, Elizabeth, we're talking about Elizabeth?

A. She died right away.

Q. When did you tie her up?

A. I just tied her up to, just in case she came back through, but she didn't, I believe I tied her up.

Q. You tied her up after she died?

A. After she let off that big scream, yeah.

Q. She let out a scream when she died?

A. Mm.

Q. Is Stacey also, tied, they have not looked at her yet, she's still in the basement, they're still upstairs, is she tied up also?

A. No.

Q. Okay. So, the only one that's tied up is who?

A. Elizabeth died, I tied her so, that if she did wake up, she wouldn't be no surprise.

St. Ex. 288, Grate Interview at the Ashland jail with Ashland police Detective Kim Mager, 2:29 PM, September 13, 2016, Tr. 3-4.

Date: September 13, 2016
Time: after 2:29 PM
Location: Ashland Justice Center
Police Officer: APD Detective Kim Mager
Audio Exhibit Number: 289
Transcript Exhibit Number: 290

* * *

Q. [Detective Mager] Are you glad you let [Lori] live?

A. [Shawn Grate] Oh, yeah, Lori definitely no matter what, to live, Lori to live, do you know what I mean. I just wasn't too sure how to get her out quick enough and me down the street somewhere at least for a little while, yeah, I don't have to worry about that no more.

St. Ex. 290, Grate Interview at the Ashland jail with Ashland police Detective Kim Mager, after 2:29 PM, September 13, 2016, Tr. 11.

Date: September 15, 2016

Time: 2:23 PM

Location: Ashland County Sheriff's Office

Police Officer: Ashland Detective Kim Mager, Ashland Detective Brian Evans

Audio Exhibit Number: 294

Transcript Exhibit Number: 295

* * *

Q. [Detective Mager] -- with Stacey, and I know I'm jumping from girl to girl, but your, your brain can, your brain can do that, probably better than mine I think. When I'm talking about Stacey you recorded an incident with her, was she, had she taken any pills or anything prior to that incident?

A. [Shawn Grate] No.

Q. No. Did she die during that or did she die, well, you already told me how she died by strangulation. How far after that --

A. She was fine and dandy until I started videoing, she acted okay and everything, she was cooperative more so, um, until I started videoing and then she, and that's when she started acting up in the video.

Q. How far after the video was made did you strangle her?

A. I gave her leeway, right, I sat her mace right there.

Q. Say it again, I 'm sorry?

A. I was on the other the side of the room.

Q. Yeah.

A. Her mace was right there.

Q. Okay.

A. She grabbed her mace, sprayed me and I just grabbed her up and choked her up.

Q. And that was how long after?

A. 15 minutes.

Q. 15 minutes after the oral sex?

A. Yeah.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 35-36.

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Q. Your apartment, the one you live, okay. [Tracy] told me that and I thought she was lying, I didn't know, I just thought if somebody's trying to, you know, so, I didn't put a ton of value in it, now, I feel like I was rude, because I said, okay, and then, so, when she came in, why didn't you do anything to her, she was, she came in your apartment, she doesn't even know you, right, the same as kind of what you said about --

A. I know.

Q. -- why didn't you do anything to [Tracy]?

A. Well, Lori's been in there before too, you know.

Q. But with this girl, did you rub her back in there, did you massage her shoulders or something?

A. Mm.

Q. You did, she was being honest, shit, I'm going to have to go apologize to that girl, she was being honest.

A. Yeah, I treated her like all the others, she's just, I just, I didn't have, do you know what I mean, like --

Q. Why did [Tracy] leave?

A. -- she didn't flip out or anything, I guess it went smooth.

Q. It did.

A. You know, it did, even though she still needs to go find God first, something, she needs to go find herself, she had like, do you know what I mean, I can't take that away from her.

Q. All right. How about another girl sitting outside at 324 Orange out of those apartments, was there a girl with really blond hair, that's really mouthy and a younger girl with her, not younger, she's an adult, were there two girls out there and then the one, the older one, the mom went in and you were talking to the younger one, because I also, treated them like they weren't being honest --

DETECTIVE EVANS: Ut-oh.

Q. I did.

A. That's all right.

Q. I did, I didn't mean to.

A. I'm not too sure here, what you're talking about.

Q. Okay. She said she talked to you, you gave her your phone number and you had walked past and then you came back and you were talking to her and I think you asked her if she wanted to hang out or something sometime and she said she said, no?

A. Is she the 17-year-old that has a kid --

Q. Yes.

A. -- she was a 17-year-old that had a kid?

Q. Yes, did that conversation happen?

A. Yeah, I talked to her.

Q. Okay. I did it twice.

A. I didn't know she was 17.

Q. No, is she 17 or 18?

A. Maybe she was just lying to me saying 17, but she has a two-year-old --

Q. Yeah, that's her --

DETECTIVE EVANS: Yeah, that's her.

Q. -- she's got a little kid, so, okay, I owe two people an apology.

DETECTIVE EVANS: That happens, you'll have that.

A. Yeah, she was at the laundry mat, I helped her carry her laundry before home, I'd see her drop it, like sit it down like ten times, I'm like all right, I'm going to go carry it for her and then I seen her again, I asked her if she needed help with her laundry when I was walking around with Lori also.

Q. Okay, all right. She didn't say anything bad happened, she just said, I know him and I thought -- Stop it.

A. Yeah, a lot of people know me.

Q. Yeah, yeah.

A. It never would happen, I've shocked a lot of people.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 39-41.

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Q. [Lori] had some courage there, didn't she?

A. I told her to, I told her you better find a way out of here or I'm going to kill you, she's like, because she already --

Q. Did you mean it?

A. No, no, I just was trying to boost her to go so, I could just, I don't know what I was doing.

DETECTIVE EVANS: It sounds like she was a good enough girl that you didn't want to ever have to kill her or for that to ever come across your mind would be my guess?

A. Yeah, I would have give up my life before I would have killed her for sure.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 43.

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DETECTIVE EVANS: Did Lori have any money in her apartment, were you able to get enough for some smokes or anything when you went back?

A. Yeah, she had \$34.

Q. 34, what --

DETECTIVE EVANS: 34, did you bring her something?

A. She had \$24, huh?

DETECTIVE EVANS: Did you bring -- what did you bring her back, anything, a Polar Pop, she smoke, she probably doesn't even smoke, I bet, does she?

A. She does nothing.

DETECTIVEEVANS: I was going to say I figured she probably --

A. She does nothing at all, she wouldn't take nothing.

Q. What was the money in at her house?

A. This green thing. Did she ever call and report that missing?

Q. No.

A. She probably won't.

Q. No, she's a woman of God.

DETECTIVE EVANS: Was that in the bedroom in a dresser or does she keep it in like a dresser drawer?

A. A stash.

DETECTIVE EVANS: A stash, what's that?

A. She's just glad she's home.

DETECTIVE EVANS: Oh, yeah.

A. Yeah, it's in a green thing, that's all right though, I mean I've given her like, I don't know how much, times I have, just do things, groceries or whatever.

DETECTIVE EVANS: Mm.

Q. Yeah.

A. I'd find a way if she needed anything, I'd get it for her.

Q. You got her some clothes, I think a pair of shoes she's wearing

A. Mm.

Q. -- even. Um, what room was the green thing in?

A. Living room.

Q. The living room, what was it on?

A. I think on her stand --

Q. Okay.

A. -- just her money bag, she might have had more, but when I've seen her in there, she sits like her money there, from the door, I never walk in, she sets it there. When I left, that's where I went.

T St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 44-46.

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DETECTIVE EVANS: I was at the house; do you have any idea where Elizabeth or Stacey's phones are?

A. Mm.

DETECTIVE EVANS: Where would those be because I think some of their, I don't know if they had pictures to give back to the families or not or what, I don't know, but I just never found their phones, I don't think.

A. I just broke them.

DETECTIVE EVANS: Broke both of them or?

A. Yeah, I just --

DETECTIVE EVANS: Just break them in half?

A. They were Obama phones, I believe.

DETECTIVE EVANS: Mm, they in the trash or gone out with the trash?

A. In the creek, one of them went in the creek out by [Elizabeth's] house, the apartments.

DETECTIVE EVANS: Oh, Elizabeth's, I guess there is a creek there, yeah, where did Stacey's go?

A. Just randomly, randomly tossed.

DETECTIVE EVANS: One time when you were in her car or?

A. Yeah, one time I was in her car.

DETECTIVE EVANS: Okay.

Q. For Elizabeth's when you put it in the creek, because she came to your house, right? Then when did you get it back over there or how did you end up back over there that you put that there?

A. Before 11[AM], before I went to pick Lori up for breakfast, for lunch.

Q. Oh, so, you were on your way to pick Lori up and then you tossed that, Elizabeth's phone?

A. Yeah.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 62-63.

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Q. How, how long was Stacey, she was the one that was in the basement, right, how long was Stacey at your apartment total or your house?

A. 9[PM], probably about, maybe 10 o'clock [PM] is when she got there.

Q. 10 o'clock at night, and she's the one that drove you home?

A. Mm.

Q. From Circle, ah, BP area, she got there at 10 o'clock [PM] and how long, how long was she there before the incident happened?

A. Probably 11:30 [PM].

Q. About an hour and a half, okay.

A. Yeah.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 67-68.

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Q. Okay. What -- you put makeup on Lori and I know you covered up her injury on her face with liquid makeup in that little tube or thing - -

A. Yeah.

Q. -- why did you put lipstick on her?

A. Because her lip was busted too.

Q. To cover up her lip --

A. Yeah.

Q. -- or because you thought that would look pretty on her?

A. Well, my main objective was to cover it, to get her, with all the bruises on her, I mean she bruised up bad.

Q. Yeah.

A. And after I put makeup on her, I almost let her go right then and there, I mean because she looked like almost, like almost ready to go.

Q Did you believe that when she left, did you think she would tell or what did you think she would do?

A. Well, she said she would give me a couple hour grace, like a couple hours --

Q. Did you believe it?

A. I did, but I was like, no, this is a bad situation, right now - -

DETECTIVE EVANS: You got a lot to do in a couple hours.

A. -- she said, I mean she said a lot, she was like to the point it was like almost, like she was still on my side saying like because I told her I loved her, I told her I

loved her, you know --

DETECTIVE EVANS: Mm.

A. -- nothing's going to happen, you're going to live through this, everything's fine, okay. And she told me that she loved me too, later on, do you know what I mean, not then she didn't, but I just feeling, just been talking to her and she said that she loved me too, I mean that's fine, that's good, it would be cool if she would write me, but I think I ruined that. If it was just an incident between her and I, maybe eventually she probably would write me, but that ain't going to happen.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 68-69.

Q. How long were you in there [at Charles Mills Park campground]?

A. About a month --

Q. DETECTIVE EVANS: No kidding.

A. -- in them three.

Q. What if somebody would have shown up?

DETECTIVE EVANS: That's why he had a wire tie.

Q. You would have ran, you would have jumped out the back?

A. Mm, yeah.

Q. Did you worry that somebody was going to come?

DETECTIVE EVANS: Yeah, that would be hard to sleep.

Q. Did you see the Rangers and stuff going by?

A. Yeah, I waved to them all the time.

Q. They would wave to you?

A. I was friends with them, I'd sit and talk to them sometimes.

Q. Did they know that you weren't supposed to be there, no?

A. No, I would always ask them, how is your day going today?

DETECTIVE EVANS: That's the way to do it.

A. How's yours?

Q. Did they see you in different ones though?

A. No, nobody ever really seen me in any of them, but one, one, I became friends with this one family though, it was pretty nice, we'd, we'd sit around the fire, and this lady, she's like 85 probably, and staying there with her son and grandkids.

Q. Just nice people?

A. Mm, yeah, sing, she'd sing Gospel music around the fire.

Q. Wow.

A. Old Gospel.

DETECTIVE EVANS: Some of those are some good singers that can do that.

Q. Do you know what lot that was or who they were?

A. They were right by the, the shower. I forget their names, I really didn't know their names, but one of them is Fred, Fred he is or Freddy, he's a counselor at the Family Life in Mansfield.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 82-84.

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Q. The fort outside of Mifflin or near Mifflin, where is that?

A. Okay. I did take Lori to one, I took Lori to a fort, I had some odds and ends there, batteries.

Q. Is that one by the bridge, by the 430 bridge --

A. 430.

Q. -- is there?

A. Oh, no, this was up the hill, the Village.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 85.

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Q. You still feel comfortable with us?

DETECTIVE EVANS: Which would be easier for you, to kind of show it or to have like a, like a stuffed animal, doll, Teddy Bear thing, of however you had that, I can go grab one from these guys or something?

A. I was thinking I could demonstrate it on you.

DETECTIVE EVANS: I f that's what you want to do, look at that big s mile.

A. I don't know, I mean it' s no big deal, it's not like you just want to throw me over your back anyways and put me on my head.

DETECTIVE EVANS: I don't need to do all that.

A. No, there ain't no need for all that.

Q. How do you want to do it?

A. Normally they're standing too.

Q. Let's get it, can we video you, Shawn?

A. Yeah, you might as well.

DETECTIVE EVANS: I 'm just going to tell them, so, they don't come in and Tase both of us.

DETECTIVE MAGER: Oh, yeah, we don't want to get tased.

DETECTIVE EVANS: I don't mind you showing me to choke me up, I don't want to get tased.

A. You're taller than all the others. I have choked a man before just like to slow him down, I had to do this to a man before, I had to choke a man out before.

Q. What?

A. I had to choke a man out before.

Q. Okay.

A. But he stayed.

Q. Do you want to use me or him?

A. Him.

Q. Him, okay.

DETECTIVE EVANS: I don't want to get choked twice.

A. Normally though --

DETECTIVE MAGER: Okay. This is Detective Mager, we have Detective Evans in the room, Shawn Grate in the room, it's September 15, 2016, the time is 17:04. Shawn's going to demonstrate the way he used his strangulation in, in the cases that we have been discussing.

A. Well, Elizabeth, right, it was kind of shocking, right, I was just joking, we were just joking and like how she wished she would kind, would die, do you know what I mean, so, I'll help you out, I'll just go like this, do you know what I mean, like --

DETECTIVE EVANS: Pushing forward and up at the same time?

A. Yeah, right, and then she kind of just like, whacked my hands and like started flipping out and stuff like that to the point to where I had to just like grab her and I just leaned forward and just press, do you know what I mean?

Q. Okay, all right. That explains that with Elizabeth.

A. And she would fall down and then --

DETECTIVE EVANS: And you would kind of just go down with her?

A. Yeah, I just kind of laid her down and finished, you know, even after she stopped breathing, I held on until she messed her pants pretty much --

Q. Okay.

A. -- do you know what I mean, I didn't release --

Q. Okay.

A. -- I continued.

Q. Okay. Shawn, um, that was with Elizabeth, how about with -- Elizabeth is the girl that we found --

A. Upstairs.

Q. -- upstairs in the closet? All right. How about with Stacey?

A. Stacey, a lot of it we were sitting side-by-side the meantime, the whole time and I'd give her, like I'd stand up, go across the room, she would just still stay sitting, do you know what I mean, because she didn't feel threatened or nothing, we were getting along still.

Q. Okay.

A. Then, so, somewhere along the line she felt, she felt threatened and I'm still thinking about this, of what went wrong exactly with Stacey and I -- because I didn't have no thoughts, but I do remember when she grabbed her mace and she missed me the first time and then I turned her around --

DETECTIVE EVANS: And did the same thing?

A. -- I put her on the bed, right, and she did this backhand and kind of got me.

DETECTIVE EVANS: With the spray again?

A. Yeah, she sprayed me again, I told her that's a good shot, do you know what I mean, but it's just dang, I just lost it and then I just turned her around, right, did pretty much the same thing, I just clinched on, did not let go.

DETECTIVE EVANS: The same hold though, back and then pushing her head down?

A. Mm.

DETECTIVE EVANS: Like same thing?

A. Yeah, same thing and then I didn't let go. She struggled, she did tum around and then there was a time when I had, I just squeezed her neck, put all my weight and knee on her for a moment like that --

DETECTIVE EVANS: Mm.

A. -- you know, I couldn't really see her, my eyes were maced, I turned her around, just clinched my fist, I just clinched and leaned back.

DETECTIVE EVANS: Mm, how did you know to stop?

A. When she went like this [indicating slumping], and I didn't, I didn't stop even after that, for like two or three minutes.

DETECTIVE EVANS: Thinking maybe she just passed out or?

A. I kept her air off.

Q. Just to make sure she was dead?

A. Yes.

St. Ex. 295, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, 2:23 PM, September 15, 2016, Tr. 124-128.

Date: September 21, 2016

Location: Ashland Justice Center

Police Officer: Ashland Detective Kim Mager, Ashland Detective Brian Evans

Audio Exhibit Number: 299

Transcript Exhibit Number: 300

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Q. [Detective Mager] I'm going to maybe get some pictures of that room and see if, if we need to point it out a little bit better, but tell me what's in that Reader.

A. [Shawn Grate] I wrote down Elizabeth's date, the date Elizabeth died.

Q. Okay.

A. Okay. Um, that would be the oldest date, then I wrote down Stacey's. That's the first time, I was keeping track of how many days I was there at the apartment. Every day when I woke up, I'd read it, flip the page, I've gone through that whole book and some - - I've been there over probably 40 some days.

St. Ex. 300, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 7.

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Q. And no one's come to the door [of 363 Covert Court, Ashland] or checked on you ever?

A. Ever, the guy, I mean that helps seeing TV too, because that guy, the guy they interviewed that owns the building, his, his maintenance men never checked inside.

Q. And he said they did?

A. Yeah, he said that once a week they do it, they check on every, all the apartments.

Q. And you know that's not true --

A. Yeah.

Q. -- because you're in there?

A. Yeah.

Q. And obviously they would have known you were in there, if they would have checked, right?

A. And if he's right down here, I would go in and out of there, like once I wake up, I'm like, like every day at 10:30 I leave, you know, especially when I was working at Save-A-Lot. I'd get up at 8 o'clock, I'd go in and out of that apartment like it, like it was mine, I mean there ain't --

Q. Wow, yeah, okay.

St. Ex. 300, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 8.

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Q. So, you wrote, you wrote the dates, did you write any narrative or?

A. No, I didn't, I just wrote the date –

Q. You just wrote the date down?

A. -- the first date would be Elizabeth, the oldest one would be Elizabeth and the newer date would be Stacey.

Q. Are there other dates on there or just those dates?

A. Just them two.

Q. Why did you write those?

A. So, I would know, I like to have reference.

Q. Reference to?

A. How long their bodies are in there, been in there and trying like to know, well, because I was kind of paying attention with the odor --

Q. Yeah.

A. -- the smells, I mean my clothes were starting to absorb the smell, ah, Lori started recognizing like the smell and my odor.

Q. Yeah.

A. Because I would hang out with her every day.

Q. Okay. So, it was to kind of see when they were there to kind of compare it to the decomposition?

A. Ah, to know when, how, like I was getting down to what happened to, I was really thinking about, I don't know, actually for a week I've been getting ready to catch the place on fire, do you know what I mean --

Q. Okay.

A. -- like building things up, do you know what I mean?

Q. When you say building things up, what do you mean, meaning in your head or building or physically building things up?

A. Physically getting things ready for a fire, like, like everything was downstairs, a lot of stuff that was burnable.

Q. And you were collecting that and putting that in the basement to burn?

A. Yeah, I was just in there getting it -- for the past week before Lori, I've been thinking about the fire --

Q. Okay.

A. -- burning the house down to get rid of evidence and know that, yeah, they're going to find two bodies in there, you know?

Q. Okay.

A. But then Lori came about and then it's just, you know, I really fell in love with Lori, I did, I care about her.

St. Ex. 300, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 9-10.

Q. So, you wanted to tell me about the [Daily Reader] journal.

A. Yeah, because the dates are important I believe, right?

Q. Yes, I think they are.

A. Oh, I knew there was something else. Um, now Stacey, right, after she, like she maced me, I pretty much had my eyes closed as I was strangling her and that's what, do you know what I mean, I know, I know I ended up, I got something, a cloth or something, I just twisted it on her neck, I didn't completely strangle her because she was getting all sweaty and just, she had mace on her, me, I mean, now I remember I got the cloth, I don't know what it was, but I just kept twisting it --

Q. Okay.

A. -- and that's to -- maybe it can explain some of the marks or a mark on her neck.

Q. Okay.

A. Yeah, I just kept, I twisted it on her, so, I could hear (indicating a grunt), ah, she's trying to apologize for maceing me, she, I don't know, which I understand why she maced me, you know, she figured, she's angry with the situation, she wanted to get her last, she wanted to get her last uh in because she thought she had the clearance from the door. She had her keys and mace, she had her keys and mace was all in one thing. I told her she could go, because when she left, I was gone, you know, I mean, I don't know, she got her last, do you know what I mean, word in.

Q. So, you're saying she could have left, but decided she needed to do one last thing with the pepper spray?

A. Yeah, she had the mace, she, oh, I ought to, once it went off and then I grabbed it from her, it was just a little bit, it looked like a little, she got me, um, yeah, she got her last word in and then once she realized, like oh, shoot, that didn't work out, she's saying she didn't mean to do it, it's like her nerves, like it just happens, do you know what I mean, it's like well, maybe it was just meant to be, I guess, I don't know.

Q. Meant to be meaning, meaning you strangling her or?

A. Yeah, maybe it just, because, maybe because it wasn't, nothing was, I don't know, it wasn't supposed to be, meant to be. I was confused on a lot of things, but I know, like, I done, I done a lot of praying though in between a lot of this, I don't know, to get like led to safe places.

Q. Yeah.

A. Like that house like.

St. Ex. 300, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 16-18.

* * *

Q. Um, I didn't go to it, but I, I know the Deputies took a look at it. Are there, is there something you dug up, up there, cans, a couple cans or tins or something?

A. Yes, something like --

Q. What is that?

A. Over by the rock?

Q. I don't know where, um, I only know it because I think Lori told me that.

A. Her and I, we walked there.

Q. Yeah, she said you guys took a journey out there.

A. Yeah, we took a journey.

Q. Yeah.

A. That was a good one.

Q. Yeah, that's far, that's a long walk --

A. It is.

Q. I don't know how many miles that is to get out from here to there?

A. I walked it a lot, I had a lot of time, I probably did it about eight times.

Q. Wow.

St. Ex. 300, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 29-30.

* * *

Q. An opportunist?

A. Yeah.

Q. Okay, yeah.

A. Definitely an opportunist. I think things through, I'm pretty dangerous, you know, I have to admit it, it's not good, all my life I have been this way, I think things through.

St. Ex. 300, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 31.

* * *

A. Um, that guy, he's the one that brought me in.

Q. He is, you recognized him all this way, yeah, that's Curt Dorsey.

A. People, I remember people very good.

Q. He's a good guy.

A. Yeah, he's the one that pulled the gun on me, freeze.

Q. Yeah.

A. I'm free, he got Lori, do you know what I mean, it went good.

Q. Yeah, absolutely.

A. It couldn't have went no better, I was thinking about keeping her one more day, but it's like and then at nighttime before that -- shoo, it's got me lightheaded, but it feels good to be lightheaded though

Q. Okay.

A. --in a way, just through everything, but I let her, like one more day I just wanted -- I planned on asking her to forgive me that day and just kind of like let her go and right when it becomes dark and then that's when I was going to catch the place on fire and then I was going to go to the Eagle's Gas Station and just go there for a little bit, but I figured that you guys would catch up with me there through all the stuff that's in the apartment and you and talking and stuff and that's where you would have found me, I would have just stayed at Eagle's Gas Station until you guys came --

Q. Okay.

A. -- or until like someone seen me there and thought like, hey, someone's staying at the Eagle's Gas Station.

St. Ex. 300, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 42-43.

Date: September 21, 2016

Location: Ashland Justice Center

Police Officer: Ashland Detective Kim Mager and Ashland Detective Brian Evans

Audio Exhibit Number: 302

Transcript Exhibit Number: 303

* * *

Q. [Detective Mager] Yeah, I don't like what happened, but I'm not judging you, I was trying to understand what you meant. Um, you have restraints on the bed upstairs --

A. [Shawn Grate] They never were used.

Q. Tell me about those. I mean that, that's one of those things --

A. Premeditated.

Q. What do you mean, premeditated meaning what, meaning you finish that sentence, I don't want to put --

A. I already met Elizabeth, they weren't really made for no one, as I was cleaning the place up and got all the clothes, I just went ahead just in case.

Q. Just in case you would get, just in case (inaudible, static). (Inaudible static). You brought Elizabeth up, so, you already met her, was she on your mind when that was going on, be honest?

A. Not with her, no. I took her upstairs, she, we, I showed her around and she kept, she kept initiating it to go upstairs, we go upstairs and then as I go upstairs, that's when we were talking about how she wished, you know, nothing to drink or, you know, she can't get along with her own life, you know, the pressure or like helping with her life.

Q. There were strings put on there and how long before, was it after you met Elizabeth and before she came over?

A. I mean, no, Elizabeth was already in the closet.

Q. When you put the restraints on?

A. She was already in the closet with all the clothes and the closet was sealed -

Q. Okay.

A. I think.

Q. So, you put the restraints on just in case if somebody else would be in there, be honest?

A. I think (inaudible, static).

Q. But she wasn't, she wasn't, had you ever had sex with her before?

A. Never.

Q. Okay. So, you're saying that with her it wasn't sexual?

A. No.

Q. The restraints on there, is that, in your mind, sexual, help me?

A. It was for Lori, I had to take her upstairs she would, she battles, she wanted to marry me because of her lustful mind.

Q. So, you put those restraints and you were going to tie Lori up, but you never took her upstairs at all, why?

A. I didn't want her to know about the smell.

Q. Okay. (Inaudible). Okay. So, you had prepared the house for Lori, how long, how long did you guys stay in there?

A. (Inaudible) right after Elizabeth.

Q. So, right after you --

A. I didn't say nothing to Lori.

Q. -- (inaudible) so, right after Elizabeth you put the restraints on the bed for Lori so, that you could get her there and you're going to tie her up to do?

A. Just for a while for both of our lustful desires tomorrow because she wanted to marry me, she wanted to marry me like that Monday, right, and then, when did I, she married me and divorced me all like within 24 hours just because of like one little thing.

Q. Like I consider (inaudible) like her lustful mind are you saying she is, while you communicated with her, you can tell that she's attracted to you physically, is that what you're saying or did she verbalize it or could you tell?

A. She verbalized it playing tennis.

Q. When she was playing tennis, you could tell?

A. She was so, frustrated she couldn't even play tennis, she wanted us, she wanted to go back to the apartment actually, but we didn't.

Q. But you don't, right, so, you talk, if you think she's going to be alone, you didn't think she would be alone when it came down to it, okay.

A. No, because --

Q. So, those restraints were only for Lori, in your mind, be honest because this is, this is important because it's a mindset and it's something that, I don't want to have the wrong value on it, because it needs to be the correct value for your sake

and for hers and for mine, it needs to be correct because if there's a dynamic of this that's not true or it's a different way than you say, then there's people until the end of time who will hurt people and if you have an opportunity to have an impact on whether we understand that, then you have to take that opportunity even when it's hard, even when it's embarrassing or you're ashamed, regardless of what you're feeling, it's still that way, so, you got to push through that for the betterment of, of anything. So, - -

A. Yeah, okay. I haven't really thought about the restraints.

Q. I just know that they weren't used, from what you told me, on anyone there and they're on there, has anybody been tied up with those restraints, anybody else?

A. No.

Q. Anybody even legitimately that allowed you to tie them up because it's not hard for us to figure that out, I mean we can, we can see whose DNA's on those or that there's DNA on them, will it just be yours, meaning you touched them to put them on there?

A. Yeah, it would just be me.

Q. Is there any female that's going to be on there?

A. No, no, but it was meant to be --

Q. Okay.

A. -- just for Lori, I didn't know if we were going to be upstairs or downstairs, so, I had them both ready.

Q. All right. How about the chair restraints?

A. What chair?

Q. There's a chair that has something tied on it, is there a chair in the closet or something?

A. Oh, yeah.

Q. Tell me about that.

A. That's just for Lori just in case too.

Q. That was just in case for Lori, meaning you intended, you were going to keep her there?

A. For three days, I was going to keep her there for three days so, I had to have something to keep her.

Q. So, you prepared different areas where you could put her?

A. I didn't know which way it worked, it was going to work out because I was going to have a confession to her, I was going to tell her everything, is the reason why she don't want to marry me --

Q. Okay.

A. -- but I was going to try to give her a child, I wanted to get her pregnant, she needs a child, she needs something.

Q. You wanted to get her pregnant? When you engaged in sex with her, I think, um, did you ejaculate inside of her, no?

A. I tried, but I was hurting her, so, I stopped, her claim I was hurting her like, do you know what I mean, when she was fighting me, I hooked her in the jaw, I cried, I don't want to hurt her, I care about her that much it would hurt her, but I

did want because we talked about abortion and stuff and I was pretty sure, you know, she said she wouldn't get an abortion.

St. Ex. 303, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 7-12.

Q. Yeah. So, when I mentioned the restraints, you said you put those on before, after you met Elizabeth, but before Lori came. When it comes to Elizabeth, you met her when you guys were playing badminton, she came out, I think she was talking the world to you, how did you get her phone number and how did she get yours, was it right there or another time?

A. Another time.

Q. When was the other time?

A. Oh, maybe about two weeks later, I went to -- I told Lori I, I was late walking to Lori's and she wouldn't answer her door.

Q. Yeah.

A. On my way out Elizabeth hollers at me, we talked for a little bit and she invites me into her, her apartment, played, talked, then we decided to play a game of Yahtzee and I told her -- I stayed there for about an hour, then she asked me for my number, you know, hang out some time okay, you know?

Q. Nothing physical happened there?

A. Hmm.

Q. Did you have any physical attraction to her at all?

A. No, just she, my attraction to her was, she was, she was, just wanted to -- it was all about God.

Q. You're talking about Lori or Elizabeth?

A. Elizabeth.

Q. Elizabeth talked about God? When you went home from her I think at some point you felt like she was miserable?

A. That's what she says.

Q. At what point do you think I'm going to help her with that?

A. She calls me, it's about 11:30 at night.

Q. You knew right then, I mean had you been thinking about it that I could --

A. No, it was a surprise, it was a surprise call, she was bored, she, somehow it got brought up, she came over, wanted to play some Yahtzee and we played, ah, this other game, I can't remember what it was called, it's a dice game and then we talked, you know, I took her upstairs and she was like, sometimes I wish I was never born, you know, I get that way too sometimes, we all do sometimes, we have our bad days. And I asked her if she ever thought about killing herself, she said, yes, I thought about it and she like, I mean she, yeah, she just kept going on, she said so, much, I mean I still hear her words, like she said so, much --

Q. Yeah.

A. -- Elizabeth's really confusing in my mind --

Q. Okay.

A. -- because she has a heart, a big heart.

Q. She does, I met her ten times probably.

A. Yeah, I talk to her.

Q. Yeah.

A. Yeah, she has.

Q. She would call us if she smelled weed, like if somebody was smoking weed, she would smell it, she'd call us --

A. Yeah.

Q. -- and want us to deal with it, so.

A. Yeah, she's really, um, trying to live that straight and narrow life, I mean I just, just to see what level she was on, that's when I think, just joking.

Q. Tell me about that, were you thinking about it or?

A. That they're crazy (inaudible).

Q. I mean at what point when she at what point did you know I'm going to do this, be honest, whether it meant you were thinking about doing it and didn't or that you did, help me understand?

A. I don't know.

Q. Was it while she was there or was it sometime after you met her or was it?

A. It was before we went upstairs that I knew that I was going to see if she wanted to really die.

Q. Okay.

A. Because she mentioned upstairs a few times and I kept avoiding it, you know, you know, I believe everything else, some other time because she was over before, she left, I walked her back home, then she called me because she - -

Q. On that same day she was over before?

A. Yeah, I told her I would walk home to eat because I had some barbeque chicken in a crock pot and I asked her, I'm like well, I'm going home to eat, that's when I left, she's like --

Q. So, she was over at your house or you were over at hers before?

A. Well, I was at her house and then I had told her I'm going to go home and eat.

Q. Okay. And you're at her house --

A. And she's like, oh, what are you having, I'm like oh, I got some barbeque chicken in the crock pot, she's like mmm that sounds good, I'm like do you want some, so, we walked and I showed her where I lived.

Q. And she came in?

A. We ate, made a couple sandwiches and then I walked her back home and then she calls me later on that night.

Q. And says she can't sleep (inaudible)?

A. Yeah, can't sleep.

Q. And then she came over?

A. She wanted me to meet her down at the YMCA.

Q. Did you meet her or did she just show up?

A. I walked, I met her.

Q. At the YMCA and you walked her back, did you know then?

A. No, I didn't know.

Q. You knew when you were downstairs and then, meaning you didn't know how this was going to end?

A. I didn't know, I didn't know the end result until that happened.

Q. You just knew you were going to see what she wanted or what you thought she needed or wanted, am I wrong or is that right?

A. I guess.

Q. Well, if I'm -- help me if I'm wrong because --

A. I'm not sure.

Q. Okay. That's a good answer sometimes.

A. Maybe you're right.

St. Ex. 303, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 15-20.

Date: September 21, 2016

Location: Ashland Justice Center

Police Officer: APD Detective Kim Mager and APD Detective Brian Evans

Audio Exhibit Number: 304

Transcript Exhibit Number: 305

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Q. [Detective Mager] Um, you went back after -- when Lori was still at your apartment and you went back into her apartment, and we've talked about that, did you also, go back into Elizabeth's that same time?

A. [Shawn Grate] I've been in Elizabeth's.

Q. Since she died?

A. Mm.

Q. Okay. Where are her keys?

A. Her key.

Q. It's just one key on a ring, okay.

A. I'm going to have to draw it.

St. Ex. 305, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 10.

* * *

Q. Okay.

A. Trees and whatnot, as I left, I just went in [Elizabeth's apartment] there to clean up.

Q. Like take a shower or what?

A. I just, it's like a bird bath in a way, I just kind of like --

Q. Yeah.

A. -- freshened up and, ah, I also, got, when we played Yahtzee, I wrote my name down on a Yahtzee board.

Q. By yourself?

A. Yeah, I mean like the scoreboard --

Q. Yeah.

A. -- I wrote my name on it, it was sitting on the table.

Q. That's after [Elizabeth] died?

A. Yeah.

Q. Okay.

A. So, I went in and got that.

Q. What did you write, Shawn or did you write Grate?

A. Shawn.

Q. You wrote Shawn on her Yahtzee board?

A. I already grabbed it, I grabbed it already and ripped it up, disposed of it, it's gone.

Q. Okay.

A. The key, the key would be somewhere in here.

Q. So, after she, after she was dead --

A. One single key.

Q. It's one single key and you threw it?

A. I just tossed it right in here.

Q. So, you kept it, how many times did you go in her apartment after she died?

A. Once.

Q. One time was that, and that was not the same day you went to Lori's, on a different day?

A. Oh, yeah, it was a different day, the time's already, too much time's already past for me to go into Elizabeth's at this time.

Q. What do you mean?

Q. Probably three weeks already went by.

A. When you went into Elizabeth's?

A. No, I mean like one week went by, I went over to Elizabeth's --

Q. So, she was dead for a week and then you went into her apartment and you took the Yahtzee and wrote your name on the Yahtzee?

A. No, I, I -- that was when we first played when she invited me into her apartment.

Q. Yeah, oh, on the score sheet, you had put your name when you were there legitimately playing?

Yeah.

A. But afterwards --

THEREUPON, a knock on the door.

SPEAKER: I got one.

DETECTIVE MAGER: Thank you.

A. Thank you.

SPEAKER: Yep.

Q. Afterwards, she died, you went in and ripped that paper up because it had your name on it?

A. Mm.

Q. Okay. Is that why you went in, is to get that paper or did you go in to freshen up?

A. I just went in trying to just look around, just like --

Q. What else is in there that you got, is there any money or food or?

A. Ah, paper towels.

Q. You took some paper towels, anything else?

A. I just kind of looked around, no, I went ahead and grabbed the shampoo too.

Q. What kind was it?

A. She has tons of them.

Q. Tons of shampoos?

A. She's a little grabby on that one, I think.

Q. Yeah.

A. A whole bunch --

Q. Okay.

A. -- she made sure she had enough shampoo for her whole life.

Q. Yeah, so, you took a shampoo, how many shampoos did you take?

A. One shampoo and one conditioner.

Q. Okay. And took them back to your place and the paper towels?

A. Well, I took the paper towels to the gas station to start cleaning it up.

Q. Meaning the Eagle to get it prepared for you staying there?

A. Yeah. The key is probably like right in here [referring to the hand-drawn map].

St. Ex. 305, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 12-16.

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Q. Did you throw that when did you do that, on the way to Lori's -- how long did you have [Elizabeth's] phone?

A. The very next day, it was daylight, on my way to go get Lori at 11 o'clock for lunch is when I threw the phone.

St. Ex. 305, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 17-18.

Date: September 21, 2016

Location: Ashland Justice Center

Police Officer: APD Detective Kim Mager and APD Detective Brian Evans

Audio Exhibit Number: 308

Transcript Exhibit Number: 309

* * *

Q. [Detective Mager] Well, I'm back. I want to touch base on something else that has been brought to my attention, okay? Um, down at Charles Mill --

A. [Shawn Grate] Okay.

Q. --that's beautiful down there, isn't it?

A. It is.

Q. It's amazing, good people down there.

A. I had a blast, I didn't really meet no one, but one family.

Q. You said there was an older lady --

A. -- Older lady, yeah.

Q. -- you said she was singing at the fire?

A. Would sing old hymns around the fire.

Q. Do you know where that was, because you were by the, it was by the restroom?

A. Yeah, it was right by the restroom.

Q. The trailers that you were in there, how many in the Park were you in?

A. Three.

Q. Three in the Park?

A. They 're all side-by-side-by-side.

Q. All side-by-side, so, I know there were two side-by-side and then was this old lady to the -- far away from there or on one of the sides?

A. You can see the trailers from the place, I kind of just pointed over in that direction.

St. Ex. 309, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 3-4.

Date: September 21, 2016

Location: Ashland Justice Center

Police Officer: Ashland Detective Kim Mager and Ashland Detective Brian Evans

Audio Exhibit Number: 310

Transcript Exhibit Number: 311

* * *

Q. DETECTIVE EVANS: I think they were received from you somebody or something [referring to cigarettes]. After you got money from Lori's, did you go buy smokes at the Moto Mart down there?

A. I think I went to Circle K.

DETECTIVE EVANS: Circle K, which one do you think?

A. The one on Main.

DETECTIVE EVANS: Because I remember you said you got, bought some --

A. I applied there.

DETECTIVE EVANS: Do you remember what day that is?

Q. [Detective Mager] Ah, Lori came to your house on Sunday at 6 and then Tuesday morning is when we got, when we got her, so, between Sunday, so, Monday is when you think that happened, yeah?

DETECTIVE EVANS: Evening, day?

A. Evening.

DETECTIVE EVANS: Evening.

Q. That's when she said.

DETECTIVE EVANS: What kind of cigarettes did you get there?

A. Marlboro Black 100s. I'm still trying to forgive myself, you know, I just want to be alone, once the family is able to forgive me, if they are able to, they need to, it's important for them to.

St. Ex. 311, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 21, 2016, Tr. 6-7.

Date: September 27, 2016

Time: 1:25 PM

Location: Ashland County Sheriff's Office

Police Officer: APD Detective Kim Mager and APD Detective Brian Evans

Audio Exhibit Number: 323

Transcript Exhibit Number: 324

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Q. [Detective Mager] Did you try to use any phone while you were in [Elizabeth's] apartment?

A. [Shawn Grate] No, but I seen it, it was sitting on the mattress, but I never used it.

Q. Tried to use a flip phone in [Elizabeth] Griffith's apartment when he went in there.

A. No.

Q. Are you sure, I mean did you pick **it** up just to check it out?

A. My fingerprints are on it, yeah.

Q. All right. Tell me about that.

A. I just looked at it, like it looks like a phone I had, that's what I was wondering, the phone that I, that one, I don't know if it was an Obama phone, I think it might have been the one that I threw, that one --

Q. That might be the one you threw?

A. No, the Obama phone --

Q. Yeah.

A. -- so, when I went into [Elizabeth's] apartment, I seen a flip phone, I'm like, huh, you know, it was kind of like right there and I went through the pictures and kind of just like, like, oh.

Q. Did you take any pictures or anything?

A. No.

Q. I think they're trying to see, maybe it was used or something, I don't know what he's talking about, let me send him a message on it, um --

A. I opened it and through the pictures.

Q. What was on it?

A. Just some of her friends, ah, one of her girlfriends.

Q. Oh, it says there was a text attempt at 7:04 p.m., did you try it just to see if it worked, it doesn't matter?

A. I didn't, no, I didn't text no one, no.

Q. Okay.

A. Maybe, maybe I turned it on, but I don't think I did, I might have turned it on, I think it might have been off, I might have turned it on, but no text attempt.

Q. Okay.

A. I didn't text no one, was it an accident, no, all I did was flipped it, went to the menu, pictures.

Q. Why were you looking at the pictures, tell me, explain that, that's just, I'm just wondering that?

A. Yeah, I went through the pictures just to kind of see if she even used the phone at all, if it was used, if she used it.

St. Ex. 324, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 27, 2016, Tr. 46-47.

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Q. So, when you were with Lori, there's a point when you're choking her and she's not fighting you.

A. I, I just choked her for, I didn't even put no pressure I just -- Lori said she had enough, she was done, just kill me, so, I was like, okay, right, and for not even three seconds, she actually wanted me to kill her and I let go, I let go.

Q. Why did you let go?

A. I told her the reason, I was like -- and myself regardless, am I supposed to kill her, set her free as many times as she's wanted to die, she thought about killing herself several times and I wasn't going to, she still can reach out to others, she has a good heart, she is --

Q. So, you're saying, I'm going to paraphrase, you feel like she has a purpose on this Earth, therefore, you let her live?

A. Yeah, my only object, my, my -- I was, I was only going to just fulfill her lustful desires as well as mine, I guess. I said I'm here, I'm going to fulfill your lustful desires and she's like yours too to me and yours too, I'm like well, yeah.

St. Ex. 324, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 27, 2016, Tr. 65-66.

* * *

Q. Why not just take [Elizabeth] out of the house totally?

A. I don't know, that was, she'd be --

Q. Or had you already thought you could torch the house?

A. Yeah, once that happened, once after that happened as I was thinking what to do next I thought then I could catch the house on fire, but too, too many people already know that I lived there, there was like a handful of people that knew I lived there and once it got on the news that there's Elizabeth, then they would pinpoint it to me. So, I already knew that I've gone too far, do you know what I mean --

St. Ex. 324, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 27, 2016, Tr. 73-74.

A. If I ever have them, even though there towards the end Elizabeth forgave me, forgive him Lord for he don't know what he does.

Q. She said that?

A. Yeah.

Q. After you strangled her or when you were strangling her?

A. Mm, when it was too late.

Q. Meaning what?

A. Elizabeth was already way, it was like way too late.

Q. Way too late --

A. We were talking --

Q. -- in your mind like it's going to happen or way too late during it, I didn't say that right.

A. No, you said it right, I mean, no, I wasn't too far into it for it to have been too late, I could have stopped.

Q. But you were strangling [Elizabeth] and she says while you're strangling her, forgive him Lord for he knows not what he does, quotes the Bible?

A. Well, she kept saying, Lord, save me, right, and I would stop, I'm like he already has, do you know what I mean?

Q. Meaning her soul?

A. Yeah, he already has, you know, she kept repeating it and repeating it and I said, now you got to believe it we have the Bible we even said Jesus loves me together.

Q. At what point?

A. [Elizabeth] kept saying Jesus and I said, Jesus what? And then she just started saying -- at what point, the point after me choking and then trying to get a hug to try to find like a comfort of being able to let her go, but she kept resisting --

Q. Meaning --

A. I wanted to give her a hug.

Q. Meaning, I'm paraphrasing, correct me when I'm wrong, okay? Meaning you had already just strangled her, but let go and then she's kind of freaking out, so, you kind of try to come up with a comfort, meaning you're trying to hug her to make this go away so, that you could let her go because she won't tell anybody?

A. I said, you do want to live and then I tried to hug her.

Q. What did [Elizabeth] do?

A. She said, get off me, you know, you tried to hurt me and she just kept going on and on and it's like Jesus, save me and it's like you're not saved, I thought you already asked Jesus into your heart, we just talked about that.

Q. And she said that she had asked him?

A. Yeah.

Q. And you told her didn't -- weren't you already saved?

A. Well, she said it three times, what do you mean, yeah, it was an emotional one, Elizabeth --

Q. Yeah.

A. -- she probably might be the only true Christian ***

Q. Elizabeth?

A. Yeah.

Q. Why do you say that?

A. I could see it in her eyes, she was, she was just there she was like very encouraging and she was, you know, she don't understand a lot of things about her life and her family.

Q. Yeah, it's pretty rough.

A. And, you know, I probably, all what I've gone through with my family, I mean it clicked, I thought we were better than that and I didn't even put no pressure on her, I just like scared her just a little bit enough and I was just trying to show her that you do want to live.

Q. Were you trying to show [Elizabeth] that or do you, being honest with yourself and me, and if the way you're saying it is then it is and I'll believe you, but is it you just trying to show her or is it, the momentum is, I'm going to do this to her, but yet your conscience is telling you not to do it, does that make sense?

A. Yeah.

Q. Because we talked --

A. I didn't want to do it at all, I wanted to find a reason not to.

Q. Because we talked about how, the last time, how you were downstairs thinking --

A. My compassion wanted to just free [Elizabeth] from this world, I just wanted, I did, first talking to her, this poor lady --

Q. Yeah.

A. -- you know, unfortunately I know [Elizabeth's] going to go through many, many years of torment and it just, like being sad, like this, it's going to be horrible going through my mind that --

Q. And so, you're thinking downstairs when she's going to come upstairs that, depending on how this goes, you may or may not do it, I think is what you told me before and then you're going up the stairs, you get up the stairs and you know this is going to go one way or the other depending on what she does or depending on how this goes?

A. Yeah, mm.

Q. So, then you put your hands on her neck?

A. I was scared --

Q. But is it about, is it about how she does or are you at that point saying don 't do this, telling yourself, Shawn, don't do this --

A. I was --

Q. -- like, like it ' s coming, like tell me?

A. Yeah, it's coming, I feel it, like it's coming, my heart's pumping and then I, I just hope [Elizabeth] don't say nothing else about, nothing that's going to make me feel sorry for her in a way. It's almost, it depends on what she says, do you know what I mean, I just go along, show her the upstairs, it needs a lot of work, you know, she sits down in the rocking chair, this is nice, I said, yeah, I sit down in bed, I showed her some stuffed animals, she don't do stuffed animals, and I asked her if she had

stuffed animals and, I'm going to say she was trying to say, I don't know exactly, a good long pause, it was a good pause for a while. I opened the windows, we was upstairs for probably like 15 minutes.

Q. Okay. When your heart's pumping, do you feel like you're going to do this for your -- is it a feeling that you can't put into words, that you just feel like this is going to happen here or is it -- how is that, when you say your heart's pumping and you're thinking oh, you know, here's where the momentum's going, ah, here we go?

A. A lot of things flashing before me, like flashing.

Q. Like what?

A. Like it just, what am I going to have to do next, and I thought then before I even did do it, I thought about I'm going to have to leave, that there's no way to really get away with this, too many people already know I live here.

St. Ex. 324, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 27, 2016, Tr. 86-92.

* * *

Q. -- Elizabeth was gone, you went back over to her apartment?

A. Yeah, when I went over there, I did get her pills.

Q. How many?

A. Whatever was in the drawer, ah, I think two bottles were in the drawer.

Q. Like how many pills did you take?

A. Um, maybe 50.

Q. How many like different kinds?

A. Maybe five different kinds.

Q. So, it was whatever was left in the bottles?

A. Yeah.

Q. So, you just took them out of the bottles, put them in the drawer, were the bottles in the drawer or somewhere else?

A. Yeah, I put the bottles back in the drawer --

Q. Okay.

A. -- because they got my fingerprints on them.

Q. Okay.

A. I didn't worry about finger prints or anything.

Q. Do you know what kind of pills those were?

A. No.

Q. All right. Is that the pills that you had in the bowl in the house?

A. Mm, some of them.

* * *

Q. What else am I missing, are you all right?

A. I'm all right, just thinking.

Q. What are you thinking?

A. If I took anything else out of that apartment.

Q. Okay.

A. Paper towels I already mentioned.

Q. Paper towels --

A. I mentioned the pills.

Q. -- I think you said shampoo --

A. Oh, yeah, shampoo and conditioner.

Q. -- and conditioner.

A. And razors.

Q. Oh, razors?

A. Yeah.

Q. What did you do with that paper from the Yahtzee, did you rip it up, did you leave it there or take it with you?

A. I ripped it up on the way back.

Q. Okay.

A. I wadded it up, it was raining.

St. Ex. 324, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland Police Detective Brian Evans, September 27, 2016, Tr. 116-119.

Date: October 4, 2016

Time: 1:47 PM

Location: Ashland County Jail

Police Officer: APD Detective Kim Mager and FBI Agent John Minnichello

Audio Exhibit Number: 326

Transcript Exhibit Number: 327

* * *

Q. You told us no one ever came to that house to check on you, am I -- is that right? Did the front, does the front door work at all, but you would use that side door?

A. It did for the longest time until Elizabeth, then I screwed the front door where it wouldn't open.

Q. Because you were afraid somebody would come in?

A. Yeah.

Q. Okay.

A. And the smell started, like the lawnmower man, you know, yeah, that's when I screwed the front door where they would have to at least push it open real hard to get it opened.

Q. Okay.

A. But that's all they would have to do is just push it real hard, two screws in there, yeah.

St. Ex. 327, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland FBI Agent John Minnichello, September 27, 2016, Tr. 29.

Q. Okay. Because I think you called yourself an opportunist once to me, I'm going to paraphrase this, correct me when I 'm wrong, okay? So, I'm going to use, so, let's take, um, Stacey, she didn't come in there wanting, wanting to die, right?

A. Hmm.

Q. Because you had plans that night, she didn't, she didn't come in there for that, so, when she's in there, it has to be inside you already that this, this is heading that way, this is going to end bad --

A. Enthralled.

Q. -- and it just is a wait for you, it's just a wait for her to make the mistake or tell me the, going from it might happen, to it's going to happen, what's in your mind, like what has to happen for her, what happens there for the switch to happen?

A. She might be honest with me, I mentioned, I mentioned that she had sugar daddies, I call it like, in a way, I brought that up and she was, straight up lied to me, just like she's playing it off like she's all innocent. I just seen, I just seen how she just played this dude about changing her tire and, you know, call me sometime and all this, do you know what I mean, because she was waiting on this guy to come and change the tire, which I wanted to change the tire with his tools and stuff when she was talking to him, do you know what I mean, it's like whatever, do you know what I mean, I'm used to that type of lie.

Q. So, did you feel like she had already sealed her fate when you watched her be manipulative to that man?

A. No, when she lied to me.

Q. About, when you called her, when you call her out on it?

A. Yeah.

Q. So, --

A. Like different guys and she just took defense already like, yeah, he's just a friend, I mean, and then it's like, no, I mean I had to argue with her because I know whatever --

Q. Okay.

A. -- I said, you don't got, I said, just like everyone else, all the other women they, they do not know that, the more honest they are to me, the better we get along, do you know what I mean, no matter what the situation, just be honest, do you know what I mean?

Q. So, her fate was sealed when she lied?

A. Well, she had a chance to leave, I don't know, she could have fought, she just, she, she was closer to the door than me. She had her, I don't know, her keys were sitting here and her mace were on her keys. I walked over here, right, she could have ran out, instead she just grabs her mace and the keys, she, she could have left and she maced me, she already knew that she was getting ready to leave, but she wanted to mace me, she's angry.

Q. She what?

A. She was angry I'm sure.

Q. Yeah.

A. She maced me.

St. Ex. 327, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager and Ashland FBI Agent John Minnichello, September 27, 2016, Tr. 72-74.

Date: October 5, 2016
Time: 1:11 PM
Location: Ashland County Sheriff's Office
Police Officer: APD Detective Kim Mager
Audio Exhibit Number: 331
Transcript Exhibit Number: 332

* * *

Q. [Detective Mager] Did you ever feel like, wait a minute, this reminded me of something. When you were -- when Lori was in your place and you would come in in the dark and shining a flashlight or a lighter to see her, why not just have the light on?

A. [Shawn Grate] Well, I kept the lights down a lot, yeah, usually about midnight, midnight to five in the morning is the time I use a light if I have to - -

Q. Okay.

A. -- I don't use much electric.

Q. That way nobody would see you or that way?

A. Yeah, because that house right, that house right up there is like the homeless shelter and I think they were tied into it, with it, but they work for the thing - -

Q. Yeah.

A. -- and I thought they know I was in there, they just didn't really put two and two together or whatever maybe, you know --

Q. Yeah.

A. -- there's people that knew I was in there, I'd go to the laundry mat three or four times like within a half hour to refill up on water, do you know what I mean, they're walking right down the alley, different people from that house and stuff, I'm

giving that one -- well, Lori suggested that because I was going to give her this like bear thing, um, and other little things and she's not really into collectibles or anything like that. Well, we pass this little girl and her dad in an alley and we walked back around and I gave it to them, you know, I know they seen me --

Q. Yeah.

A. -- right in that area a lot.

St. Ex. 332, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager, 1:11 PM, October 5, 2016, Tr. 24-25.

* * *

Q. So, if you know it's brewing and it might happen, would the next person, the next opportunity be it or would it not be, do you know what I mean?

A. Mm.

Q. How would that be, like --

A. Yeah, Stacey was probably more of like a brewing because of Lori, the things she said just really hurt me and things built up.

Q. Will you be honest with me about something?

A. Yeah.

Q. When you first offered to help Stacey, was it already brewing for you then?

A. No.

Q. When you went back to your place and waited or wherever and waited 10 minutes and came back, was it brewing then?

A. The first 15 minutes --

Q. That's honesty.

A. -- the first 15 minutes I just actually took my, took that umbrella, and I was like, well, I offered to try to change her tire and she didn't have the proper tools, she's waiting on a guy to bring over a jack. And I 'm like, okay, well, do you -- how about I just give you this umbrella because I have another one and, you know, she's like , oh, no, that's okay, you know, well, I thought --

Q. Like what was your view of her right at that moment when you offered to help and she says I have somebody bringing a jack, what was your view of her at that point?

A. Just, just talking, it was mainly just a conversation.

Q. So, when you left and came back --

A. I never left.

Q. Oh, you never left, okay.

A. No, I offered to give her the umbrella though and she just offered that I could just wait with her, I'm like, okay, you know, she asked what I was doing, well, I just got me some cigarettes. I seen you standing here like there was something wrong, do you know what I mean, I asked her, is everything okay, you know, she's like, oh, she pointed at her car, flat tire, well, I'll change your tire, I said, well, are you sure it's a flat, I mean it could be a slow leak then we could put some air in it, we tried to put air in it, and it was, it was done for. I was thinking nice lady possibly all for me to be able to find someone to take me in and I can start over.

Q. When did that change?

A. Probably when she started talking about that guy about getting together sometime. She was on the phone, I think with her son, like why are you with another guy, do you know what I mean, a guy's coming to help you, you know like, like she was being pimped out by her son or someone, whoever she was talking to, I don't know who it was, but was like on her case about, like why is she talking to me when another, when someone's coming, it's like I talked to, one of my friends is coming over

to help you, do you know what I mean, and she initiated with him to get together sometime and that's when I called her out later on --

Q. So, when you --

A. -- it started brewing then that, dang, another - -

Q. So, it ' s brewing then?

A. -- just another sneaky woman, I'm going to use her --

Q. Okay.

A. -- then I learned, you know, that she told on herself about getting, I call it a retard check, but assistance check each month.

Q. So, when you asked her to come in?

A. I wasn't too sure what I was going to do, I mean --

Q. But you knew it might happen?

A. Yeah, it might --

Q. Thank you for being honest.

A. -- I wasn't too sure, I wasn't too sure, that's where I was like, it was premeditate with her in a way, before I even got into the house because it was brewing, it just depends on how things went, um --

Q. Do you feel in that situation that --

A. I'll get worse and worse.

Q. Okay. And, and that's only once she comes in, she's going to say something wrong, but the chances of her ever leaving are pretty limited or are pretty slim, am I right, when she comes in, she's going to mess up?

A. Yeah.

Q. Is that right?

A. Unfortunately.

Q. Okay.

A. Yeah, you're right. We hit it off though at first for a while, um, just talking and I guess --

Q. Can I, let me ask you this.

A. -- we just kissed, right, and started making out and everything was fine, right.

Q. When you're kissing and making out?

A. Yeah, we just fooled around just a little bit, you know, and just, then she started playing all innocent like, oh.

Q. Like she didn't want to go farther than that?

A. Yeah, and that's when I called her out on the sugar daddies, I said, quit, if I lifted out 40 bucks, will you do something, do you know what I mean, yeah, yeah, no matter what it is, it's going to get bad. During sex it probably would have just, just make sure I called her a whore dirty slut.

St. Ex. 332, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager, 1:11 PM, October 5, 2016, Tr. 72-74.

Date: October 17, 2016
Time: 2:15 PM
Location: Ashland County Justice Center
Police Officer: APD Detective Kim Mager
Audio Exhibit Number: 334
Transcript Exhibit Number: 335

* * *

Q. Did your back up phone have a cell -- have a number to it?

A. No, that was given to me.

Q. So, there's no cell, there's no number?

A. I never got it turned on.

Q. What's the number, is there a 543 number that you have 419-543?

A. 5436.

Q. What's that number?

A. Trac phone, that's the phone I got when I got the job at Save-A-Lot, so, they could get ahold of me.

St. Ex. 335, Grate Interview at the Ashland jail with Ashland Police Detective Kim Mager, 2:15 PM, October 17, 2016, Tr. 26.

IN THE SUPREME COURT OF OHIO

STATE OF OHIO :
 : Case No. 2018-0968
 Appellee, :
 :
 -vs- : *Death Penalty Case*
 :
 SHAWN M. GRATE, :
 :
 Appellant :

*On Appeal from the Ashland County
Court of Common Pleas
Case No. 16C-CRI-187*

APPENDIX C TO
MERIT BRIEF OF APPELLEE STATE OF OHIO
CHART OF MOTIONS AND ENTRIES REGARDING MITIGATION

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Record Entry Number**Description**

R. 28 , Grate motion for expert funds (Def. 1, Def. 3 - competency), October 28, 2016	Requesting “up to \$10,000.00” to hire Dr. John Fabian “...for competency and possible Not Guilty by Reason of Insanity Evaluation....”
R. 29 , Grate motion for jail access by Dr. Fabian (Def. 2,), October 28, 2016	Requesting “...unrestricted contact ... at the Ashland County Jail....”
R. 31 , Grate motion for a mitigation specialist (Def. 4), October 28, 2016	Requesting “...appointment of a mitigation specialist....”
R. 32 , Entry, October 31, 2016	Scheduling order in respect to defense motions 1 through 4.
R. 34 , Entry, October 31, 2016	Ordering, <i>inter alia</i> , that “All experts retained by either the prosecution or the defense shall be advised immediately of discovery deadlines and of the trial dates set by the court in this particular matter. Counsel shall confirm with their experts their availability for trial and shall provide notification to the court that the experts have been advised of their availability and of their willingness to work within the time periods set herein.”
R. 37 , Grate motion for expert funds (Def. 5), November 7, 2016	Requesting “...up to \$10,000.00 for a mitigation expert....”
R. 38 , Grate motion for an investigator, November 7, 2016	Requesting “...up to \$10,000.00 for an investigator....”
R. 45 , Entry, November 21, 2016	Competency evaluation by Dr. Brian O’Reilly ordered, Dr. Fabian jail access granted, \$5,000 allowed for a mitigation specialist.
R. 46 , Entry, November 23, 2016	Directing that application for additional expert funds be supported with specific justifications.

Record Entry Number**Description**

R. 47 , Grate NGRI plea, December 27, 2016	NGRI plea entered, request for examination.
R. 52 , Entry, January 6, 2017	Competency to stand trial affirmed, evaluation for NGRI by Dr. Jon Fabian and Dr. Brian O'Reilly ordered.
R. 68 , R.R. Whitney interim fee application, March 15, 2017	Out of court, 54.70 hours, in court 1.50.
R. 71 , Grate withdrawal of NGRI plea, April 13, 2017	NGRI plea withdrawn, signed by Shawn Grate and counsel.
R. 73 , Grate motion to designate Dr. Fabian and Jim Crates for defense mitigation (Def. 7), May 8, 2017	Letter plus CV of mitigation specialist Jim Crates provided.
R. 74 , Entry, May 10, 2017	NGRI plea to be withdrawn, NGRI reports to be completed.
R. 76 , Entry, May 10, 2017	Authorizing \$7,500.00 for mitigation specialist Jim Crates, granting Crates jail access.
R. 81 , mitigation specialist Jim Crates interim fee application, June 21, 2017	For the period from May 10, 2017, through June 8, 2017, 45.5 hours expended, 365 miles of travel.
R. 83 , Grate motion for Ohio Department of Rehabilitation and Corrections Records (Def. 7), June 22, 2017	Requesting all files.
R. 84 , Grate motion for Marion County juvenile records (Def. 8), June 22, 2017	Requesting all files.
R. 85 , Grate motion for Marion County children's services records (Def. 9), June 22, 2017	Requesting all files.
R. 89 , Entry, June 30, 2017	Ordering production of Marion County juvenile court records, copy to the prosecution.

Record Entry Number**Description**

R. 90 , Entry, June 30, 2017	Ordering production of ODRC prison records, copy to the prosecution.
R. 91 , Entry, June 30, 2017	Ordering production of Marion County children's services records, copy to the prosecution.
R. 92 , Grate motion for additional mitigation specialist funds (Def. 10), August 14, 2017	Requesting additional funds.
R. 94 , Grate motion for trial continuance (Def. 11), August 21, 2017	Requesting a continuance of the November 6, 2017, trial date for additional mitigation preparation time, as supported letters from mitigation psychologist Dr. John Fabian and mitigation specialist Jim Crates.
R. 99 , Entry, August 29, 2017	Trial date continued from November 6, 2017, to April 9, 2018.
R. 105 , mitigation specialist Jim Crates interim fee application, October 10, 2017	For the period from June 10, 2017 through August 1, 2017, 41.0 hours expended.
R. 112 , mitigation specialist Jim Crates interim fee application, December 20, 2017	For the period from August 1, 2017 through November 27, 2017, 43.75 hours expended. Included was a 45-minute phone call on November 15, 2017, with Dr. Fabian and a 45-minute phone call with OSU Neurologist Dr. Scharre, plus "research OSU MRI/DTI" and a memo to counsel for an additional half hour of time. Also showing on November 28, 2017, an expenditure of 1.25 hours for "Contact(s) re: Neuro; Document Prep for [OSU neurologist Dr.] Scharre; memo."
R. 114 , mitigation psychologist Dr. John Fabian, interim fee application, December 20, 2017	Showing expenditure of 29.25 hours.

Record Entry Number**Description**

R. 116 , R.R. Whitney interim fee application, January 16, 2018	Showing 68.4 hours out of court, 1.10 hours in court.
R. 123 , Grate motion for funds for, and transport to OSU hospital for brain scanning (Def. 14), February 1, 2018	Letter in support by Dr. Fabian, who wrote that “Given the nature of the law and the development of neuroscience over the last several years, I have integrated neuroimaging and brain structure and function data into my capital death mitigation evaluations.” Attached to Dr. Fabian’s letter was e-mail correspondence to OSU neurologist Dr. Scharre, dated December 5, 2017, explaining the technical specification requirements for the neuroimaging to be done.
R. 131 , Entry, February 12, 2018	Granting the sum of \$10,000.00 “...for the purpose of obtaining neurological testing through Douglas Scharre, MD, as outlined in the request of Dr. John Fabian...” The testing is to be completed by March 5, 2018.
R. 209 , R.R. Whitney interim fee application, March 13, 2018	Showing 49.9 hours out of court, 3.80 hours in court.
R. 330 , Grate motion for funds for additional neuroimaging under the direction of Mindset Consulting Group, April 19, 2018.	Letter in support from Dr. Fabian, dated April 17, 2018, who reported that while the OSU brain scanning had been completed, he is of the opinion that an additional round of brain scanning should be conducted through the Mindset Consulting Group. An additional letter in support, dated April 16, 2018, was submitted from the legal director of Mindset Consulting Group.
R. 565 , transcript of motion hearing conducted on April 20, 2018 in respect to Grate’s R. 330 motion for additional neuroimaging.	Testimony from Dr. Fabian about the status of brain scanning.
R. 342 , Entry, April 23, 2018	April 20, 2018, hearing memorialized. Funds authorized to pay Mindset Consulting Group for the preliminary

Record Entry Number**Description**

	analysis of the brain scanning data generated by Dr. Scharre. Additional funds at a maximum of \$15,000.00 authorized for additional brain scanning, provided that Mindset Consulting Group issue written findings that additional brain scanning is necessary.
R. 351 , R.R. Whitney interim fee application, April 25, 2018	Showing 136.30 hours out of court, no in court time.
R. 354 , State motion for mitigation records (St. 8), April 26, 2018	Requesting mitigation records in the possession of Dr. John Fabian, Dr. Douglas Scharre, and Mindset Consulting Group.
R. 356 , Entry, April 27, 2018	Granting mitigation records in the possession of Dr. John Fabian, Dr. Douglas Scharre, and Mindset Consulting Group to be delivered to the court and “disseminated immediately to counsel for the State and the Defendant.”
R. 357 , Grate motion for expert funds (Def. 16), April 27, 2018	Requesting additional funds in the amount of \$24,050.00 for compensation of Dr. Fabian.
R. 361 , Grate motion in additional support for the R. 357 (Def. 16) motion for additional funds to compensate Dr. Fabian (Def. 17), May 1, 2018	Attached was an expense memo written by Jason Kerkmans from Mindset Consulting Group, dated April 30, 2018, regarding the proposed testimony of Dr. Jeffrey David Lewine for an “evidence admissibility hearing.” Also attached was a letter written by attorney Jason Kerkmans from Mindset Consulting Group, dated April 30, 2018, explaining that the evaluation by Mindset Consulting Group of the neuroimaging of Grate conducted Dr. Scharre at OSU hospital would require additional neuroimaging that they proposed would be conducted by the Cleveland Clinic. Kerkmans explained that Mindset

Record Entry Number**Description**

	<p>Consulting Group could not conduct a preliminary analysis of the OSU brain scanning data on Shawn Grate without Mindset Consulting Group conducting a “20-minute scan on the same MRI machine [that] OSU used to collect Mr. Grate’s MRI.” Kerkmans explained that since OSU denied their request, Mindset Consulting Group could not evaluate Grate’s MRI. Kerkmans suggested that a new round of brain scanning should be undertaken at the Cleveland Clinic.</p>
R. 366 , Entry, May 3, 2018	<p>Expenditure of \$2,000.00 for Mindset Consulting Group to participate in an evidence admissibility hearing set for Monday May 7, 2018, at 2:00 PM (Def. 17) is authorized. Decision on additional expenditures for additional neuroimaging deferred pending further review.</p>
R. 367 , Entry, May 3, 2018	<p>Expenditure of an additional \$14,000.00 for mitigation psychologist Dr. Fabian (Def. 16) is authorized.</p>
R. 388 , Entry, May 9, 2018	<p>Noting that Mindset Consulting Group was a no-show at the evidence admissibility hearing conducted on Monday May 7, 2018, at 2:00 PM, and further noting that the defense offered nothing to show admissibility under the <i>Daubert</i> standard for the admissibility of the neuroimaging evidence, the State’s motion to exclude Mindset Consulting Group from the mitigation case was granted.</p>

Record Entry Number**Description**

R. 389 , Entry. May 10, 2018	Noting the conclusion of the guilt phase on May 7, 2018, the court noted that Grate was advised as to his right to request a presentence investigation and mental health exam pursuant to R.C. 2929.03(D)(1) and R.C. 2947.06. The court additionally noted that Grate was advised as to his testimonial options during the sentencing phase. The sentencing phase will commence on Friday May 18, 2018, at 9:00 AM.
R. 391 , Grate motion for expert funds (Def. 18), May 14, 2018	Requesting an additional \$40,000.00 for mitigation psychologist Dr. Fabian, supported by a letter from Dr. Fabian dated May 7, 2018 and a letter from Dr. Fabian dated May 11, 2018.
R. 399 , Entry, May 23, 2018	Noting that Def. motion 18 was misstating the request for additional funds, the Court authorized the expenditure of an additional \$8,500.00 fees for Dr. Fabian, bringing the total authorized for Dr. Fabian at \$32,000.00
R. 449 , Sentencing opinion, June 1, 2018	The court noted that Grate declined a presentence investigation and mitigation mental health exam pursuant to R.C. 2929.03(D)(1) and R.C. 2947.06. The court additionally noted that Grate was advised of his testimonial options for the sentencing phase and that Grate did not make any statement to the jury, either sworn or unsworn.
R. 465 , R.H. Whitney fee application, June 20, 2018	Showing 31.0 hours out of court and .50 hours in court. Also showing an expenditure of \$188.44 regarding records from Marion General Hospital obtained on August 4, 2017.
R. 467 , R.R. Whitney fee application, June 20, 2018	Showing 187.3 hours out of court.

Record Entry Number**Description**

R. 468 , R.H. Whitney fee application	Showing 326.60 hours out of court.
R. 532 , fee application for OSU neurologist Dr. Douglas Scharre, filed September 6, 2018	Showing a total of two hours of diagnostic time, (half hour in February 2018, one hour in March 2018, half hour in April 2018) and three quarters of an hour in consultation time with “attorneys/Dr/ Fabian” (one half hour in February 2018 and one quarter hour in April 2018). Fees of 1,250.00 paid. R. 533.