IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO,	*	Supreme Court Case No.:2008-2370
Appellee,	*	On Appeal from the Wood County Court of Common Pleas
v.	*	
CALVIN NEYLAND, JR.,	*	
Appellant.	*	Common Pleas Case No. 2007-CR-0359

DEATH PENALTY CASE

APPENDIX OF APPELLANT, CALVIN NEYLAND, JR.

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COUNSEL FOR APPELLEE, STATE OF OHIO

APPENDIX	PAGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appendix of Appellant was mailed to the Prosecutor of Wood County, Wood County Courthouse, Bowling Green, Ohio, 43502, on the 21st day of October 2008.

Spiros P. Cocoves
COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	*	Supreme Court Case No.:
	*	
Appellee,	*	On Appeal from the
	*	Wood County Court of
vs.	*	Common Pleas
	*	
CALVIN NEYLAND, JR.,	*	
	*	Common Pleas
Appellant.	*	Case No. 2007-CR-0359

DEATH PENALTY CASE

NOTICE OF APPEAL OF APPELLANT, CALVIN NEYLAND, JR.

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COUNSEL FOR APPELLEE, STATE OF OHIO

Notice of Appeal of Appellant, Calvin Neyland, Jr.

Appellant, Calvin Neyland, Jr., hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Common Pleas pronounced, file-stamped, and journalized November 14, 2008. The R.C. 2929.03(F) Opinion was filed and journalized on November 14, 2008.

This is a capital case in which the offense occurred after January 1, 1995.

Respectfully submitted,

SPIROS P. COCOVES

ANN M. BARONAS

COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of appeal was delivered by hand to the office of the Wood County Prosecuting Attorney the 5th day of December 2008.

Spiros P. Cocoves
COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR.

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio,

Plaintiff,

vs.

Calvin C. Neyland, Jr.,

Defendant.

Case No. 2007-CR-0359

JUDGMENT ENTRY ON JURY TRIAL

Judge Robert C. Pollex

This cause came on for individual jury voir dire on the 20th and 21st days of October, 2008. Appearing on behalf of the State of Ohio was Prosecuting Attorney Raymond Fischer, Chief Assistant Prosecuting Attorney Gwen Howe-Gebers and Assistant Prosecuting Attorney Heather Baker, and appearing with and on behalf of the Defendant were Adrian Cimerman, Esq. and J. Scott Hicks, Esq.

Court reconvened on October 23, 2008 for group jury selection. Following voir dire examination and the selection of jurors, the jury heard the Court's preliminary instructions. Court was then recessed for the day.

Court reconvened on October 27, 2008, whereupon the jury heard the opening statements of counsel and the testimony of State's witnesses. Court was then recessed for the day with the jury being instructed to return the following day.

Court reconvened on October 28, 2008, whereupon the State continued with the presentation its case. Court was then recessed for the day with the jury being instructed to return the following day.

Court reconvened on October 29, 2008, where the State concluded its case. The jury was instructed as to sequestering and to return the following day.

Out of the presence of the jury, the State moved for the admission of exhibits and rested. Defendant also moved to admit exhibits. Defendant then moved for a judgment of acquittal pursuant to Criminal Rule 29(A). Following the arguments of counsel, the Court denied the motion.

Court reconvened on October 30, 2008 whereupon the State rested. The Defendant presented no witnesses and rested. No rebuttal witnesses were called by either party.

The jury then heard the closing arguments of counsel and the charge of the Court. The alternate jurors were then removed and placed in an alternate location. The jurors then returned to their room under the charge of the bailiff for deliberation. After having notified the Court that a verdict had been reached, the jurors returned to open court whereupon the court read the verdicts of the jury as follows:

> Count 1: "We, the jury, find the Defendant, Calvin Neyland, Jr., Guilty of aggravated murder of Thomas Lazar with prior calculation and design as charged in Count 1."
>
> Specification 1: "We, the jury, having found Calvin Neyland, Jr. GUILTY of aggravated murder as charged in Count 1, find Calvin Neyland, Jr. Guilty of engaging in conduct involving the purposeful killing of or attempted killing of two or more persons by him."
>
> Specification 2: "We, the jury, having found Calvin Neyland, Jr. GUILTY of aggravated murder as charged in Count 1, find Calvin Neyland, Jr. Guilty of having a firearm on or about his person or under his control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used the firearm to facilitate the offense."
>
> Count 2: "We, the jury, find the defendant, Calvin Neyland, Jr. Guilty of aggravated murder of Douglas Smith with prior calculation and design as charged in Count 2."
>
> Specification 1: "We, the jury, having found Calvin Neyland, Jr. GUILTY of aggravated murder as charged in Count 2, find Calvin Neyland, Jr. Guilty of engaging in conduct involving the purposeful killing of or attempted killing of two or more persons by him."
>
> Specification 2: "We, the jury, having found Calvin Neyland, Jr. GUILTY of aggravated murder as charged in Count 2, find Calvin Neyland, Jr. Guilty of having a firearm on or about his person or under his control while committing the

offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used the firearm to facilitate the offense."

Specification 3: "We, the jury, having found Calvin Neyland, Jr. GUILTY of aggravated murder as charged in Count 2, find Calvin Neyland, Jr. Not Guilty of committing the offense for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by the Defendant."

The jury was then released and instructed to return on November 4, 2008 to commence the Mitigation Phase.

Court reconvened on November 4, 2008, whereupon the court polled the jury and gave the court's preliminary instructions. The jury then heard the opening statements of counsel and the unsworn statement of the Defendant. Dr. Thomas Sherman then testified on behalf of the Defendant. The Defendant then supplemented his unsworn statement and rested.

The State presented rebuttal testimony and, following the admission of exhibits, rested. The jury then heard the closing arguments of counsel and the court's instructions of law. The alternate jurors were then excused and released with the court's thanks. The jury then returned to their room under the charge of the bailiff to begin deliberations. The jury was then released for the evening to a sequestered location under the charge of the bailiff.

The jury reconvened on November 5, 2008 to continue their deliberations and then was released for the evening to a sequestered location under the charge of the bailiff.

The jury reconvened on November 6, 2008 to continue their deliberations. After having notified the court that a verdict had been reached, the jury was returned to open court whereupon the following verdicts were read:

Count 1: "We, the jury, do hereby find that the aggravating circumstance that the defendant was found guilty of committing does outweigh the mitigating factors presented in this case by proof beyond a reasonable doubt. We, therefore unanimously find that the sentence of death should be imposed upon Calvin Neyland, Jr."

Count 2: "We, the jury, do hereby find that the aggravating circumstance that the defendant was found guilty of committing does outweigh the mitigating factors presented in this case by proof beyond a reasonable doubt. We therefore

unanimously find that the sentence of death should be imposed upon Calvin Neyland, Jr."

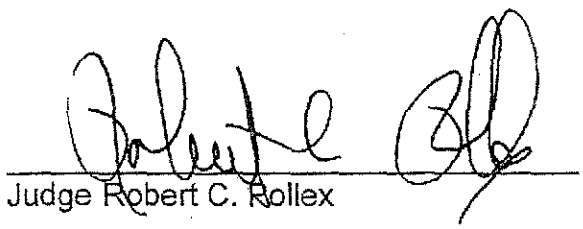
Following a recess, the court conducted a sentencing hearing whereupon Mr. Cimerman spoke on behalf of the Defendant. The State also made a statement to the court. The court then received victim impact statements as read onto the record by relatives of the victims. The Defendant then personally addressed the court.

After much consideration and deliberation, the court announced its sentencing decision. The court finds, beyond a reasonable doubt, that the aggravating factor outweighs the mitigating factors presented in this case. As to each count, the Defendant's commission of the aggravated murder as part of a course of conduct involving the purposeful killing or attempt to kill two or more persons by the Defendant outweighs the Defendant's lack of a significant criminal record; the history of employment by the Defendant; and the personality disorder as testified by the competency evaluators.

The court hereby finds and ORDERS, that as to Count 1: the court imposes upon the Defendant Calvin C. Neyland, Jr., the sentence of Death for the charge of Aggravated Murder with Specifications, a violation of O.R.C. §2903.01(A), a special felony; and as to Count 2: the court imposes upon the Defendant Calvin C. Neyland, Jr., the sentence of Death for the charge of Aggravated Murder with Specifications, a violation of O.R.C. §2903.01(A), a special felony. Further, the court imposes a three (3) year term of incarceration as to Specification 2 of Count 1; and a three (3) year term of incarceration as to Specification 2 of Count 2. The Defendant is ordered to pay the outstanding costs of this prosecution. Judgment granted for costs and execution awarded.

The Defendant was informed of his right to appeal this sentence within thirty (30) days of the filing of this Judgment Entry and that counsel will be appointed for him. The Defendant acknowledged this information and stated that he understood this right.

The Defendant is hereby remanded to the custody of the Wood County Sheriff to await transportation to the Correction and Reception Center, Orient, Ohio.



Judge Robert C. Rollex

xc: Prosecutor – Raymond Fisher/Gwen Howe-Gebers/Heather Baker
Defense counsel – Adrian Cimerman/J. Scott Hicks
Wood County Sheriff

IN THE COURT OF COMMON PLEAS
WOOD COUNT, OHIO

State of Ohio, Case No. 2007-CR-0359

Plaintiff, Judge Robert C. Pollex

v. **SENTENCING OPINION**

Calvin Neyland, Jr.

On October 30, 2008, the defendant was convicted by the jury of two counts of aggravated murder with specifications. The defendant was convicted of purposely, with prior calculation and design, causing the death of Thomas Lazar as to Count 1 and Douglas Smith as to Count 2 in violation of R.C. 2903.01(A). In addition, the jury convicted the defendant of a firearm specification and the following aggravated circumstance as to each count: that the defendant committed the aggravated murder as part of a course of conduct involving the purposeful killing or attempt to kill two or more persons by the defendant.

Pursuant to R.C. 2929.04(B), a sentencing hearing was held on November 4, 2008 in which the jury was instructed to determine what sentence shall be imposed upon the defendant. The jury returned a verdict recommending the sentence of death. This opinion is being rendered pursuant to R.C. 2929.03(F) which requires that the Court make its own findings as to the existence of any mitigating factors, the aggravating

circumstance the defendant was guilty of committing, and the reasons why the aggravating circumstance is sufficient to outweigh the mitigating factors.

The evidence as to the aggravating circumstance indicated that defendant shot each victim several times and purposefully killed both of them as part of a single course of conduct. Defendant intended the deaths of both Mr. Lazar and Mr. Smith. It was not an impulsive act. Defendant himself, in his unsworn statement, indicated that he is "not the type of person that would just jump off the gun and * * * just do anything that just comes to mind." The Court is convinced beyond a reasonable doubt that each offense defendant was convicted of was part of a course of conduct involving the purposeful killing of two or more persons.

Against this aggravating circumstance, the Court must consider and weigh the mitigating factors presented by defendant. Defendant presented evidence to establish the following statutory factors in possible mitigation of the death penalty: (1) whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law [R.C. 2929.04(B)(3)]; (2) the offender's lack of a significant history of prior criminal convictions and delinquency adjudications [R.C. 2929.04(B)(5)]; and, (3) any other factors that are relevant to the issue of whether the defendant should be sentenced to death [R.C. 2929.04(B)(7)].

As to the first statutory factor, defendant presented the expert testimony of Dr. Sherman, a psychiatrist, who described defendant as being mentally ill, suffering from delusion and schizophrenia. However, the state presented considerable expert witness evidence in rebuttal. The state's three mental experts, Drs. Bergman, Haskins, and

Smith, testified that defendant was not mentally ill. All three experts testified that he was suffering merely from a personality disorder and that he was able to make reasoned choices. The Court finds Drs. Bergman, Haskins, and Smith as the more credible expert witnesses. Dr. Smith was actually defendant's treating psychiatrist for thirty days who had more opportunity to observe and interact with the defendant. During the time defendant was under Dr. Smith's care, she did not observe any signs of mental illness. Dr. Sherman, on the other hand, had a limited observation and evaluation of the defendant.

Considering all of the expert testimonies, the Court finds, as the three State's experts have opined, that defendant has a personality disorder which does not rise to the level of a "mental disease or defect" that prevented defendant from appreciating the criminality of his conduct. Defendant's personality disorder falls under the "catch-all" statutory provision and the Court accords it modest weight.

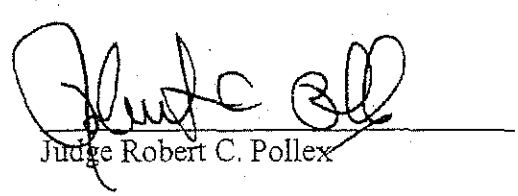
As to the second statutory factor, defendant presented evidence that he lacks a significant history of prior criminal convictions and delinquency adjudications. The Court finds this mitigating factor to be applicable in this case. Defendant, a forty-four year-old male, merely had traffic infractions and three convictions for passing bad checks. The Court accords some weight to this fact.

As to "other factors that are relevant to the issue of whether the offender should be sentenced to death", R.C. 2929.04(B)(7), defendant proposed that defendant's long and relatively successful employment history and his good behavior while incarcerated should merit some mitigating weight. The Court considered both circumstances and finds them to have minimal weight. Defendant's employment history showed short-term

jobs and eventual resignation or termination. Records from the Wood County Justice Center where Defendant has spent time while awaiting trial have indicated his good behavior. The Court finds that this has minimal significance as a mitigating factor. While defendant did not have any major disciplinary problems at the jail, there was no showing that he would make a positive contribution to prison life or the welfare of others. There is not much mitigating weight to his good behavior while in detention, being watched by authorities, and while awaiting trial.

In conclusion, the court finds that defendant was able to establish the existence of these mitigating factors: lack of significant criminal history, personality disorder, relatively successful and long employment history, and good behavior while in detention awaiting trial. However, they pale in comparison to the aggravating circumstance in this case and are only entitled to modest weight. The purposeful killing two or more persons is a grave aggravating circumstance of a very serious weight.

Taking all the foregoing into account and after much deliberation, the court has no doubt that the aggravating circumstance defendant was found guilty of committing outweighs the mitigating factors present in this case. It is the judgment of this Court that the death penalty is appropriate as to each count of the aggravated murder.



Judge Robert C. Pollex

I hereby certify that a copy of the foregoing opinion was hand delivered to Attorney Gwen Howe-Gebers, Attorney Heather Baker, Attorney Adrian Cimerman, and Attorney Scott Hicks this 14 day of November, 2008.

Judge Robert C. Pollex

I also hereby certify that a copy of the foregoing opinion was duly mailed by ordinary U.S. mail to the Clerk of Courts of the Supreme Court of Ohio, 65 S. Front St., Columbus, OH 43215, this 14 day of November, 2008.

Judge Robert C. Pollex

2007CR0359

INDICTMENT
CRIMINAL RULE 6, 7

STATE OF OHIO
COURT OF COMMON PLEAS WOOD COUNTY

THE JURORS OF THE GRAND JURY of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that:

Count 1: On or about the 8th day of August, 2007, at Wood County the defendant, Calvin Neyland, Jr did purposely, and with prior calculation and design, cause the death of Thomas Lazar, in violation of the Ohio Revised Code Title 29, Section 2903.01(A) and against the peace and dignity of the State of Ohio

Specification 1 as to Count 1 of the Indictment: The Grand Jurors further find and specify that the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by Calvin Neyland, Jr in violation of section 2929.04(A)(5) of the Revised Code.

Specification 2 as to Count 1 of the Indictment: The Grand Jurors further find and specify that the said Calvin Neyland, Jr. had a firearm on or about his person or under his control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used the firearm to facilitate the offense.

Count 2: On or about the 8th day of August, 2007, at Wood County the defendant, Calvin Neyland, Jr. did purposely, and with prior calculation and design, cause the death of Douglas Smith, in violation of the Ohio Revised Code Title 29, Section 2903.01(A) and against the peace and dignity of the State of Ohio

Specification 1 as to Count 2 of the Indictment: The Grand Jurors further find and specify that the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by Calvin Neyland, Jr. in violation of section 2929.04(A)(5) of the Revised Code

Specification 2 as to Count 2 of the Indictment: The Grand Jurors further find and specify that the said Calvin Neyland, Jr. had a firearm on or about his person or under his control while committing the offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used the firearm to facilitate the offense

Specification 3 as to Count 2 of the Indictment: The Grand Jurors further find and specify that the offense was committed for the purpose of escaping detention, apprehension, trial or punishment for another offense committed by Calvin Neyland, Jr in violation of section 2929 04(A)(3) of the Revised Code.

Raymond C. Fischer
Prosecuting Attorney

DOB: 01/30/64
SSN.

By: _____
Assistant Prosecuting Attorney

2007CR0359

The State of Ohio, Wood County

I, the undersigned, Clerk of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the original indictment, with the endorsements thereon, now on file in my office

WITNESS my hand and the seal of said Court, at Wood County, Ohio this _____ day of _____ 20__.

REBECCA E. BHAER, CLERK

_____
Deputy Clerk

CASE NO.

COMMON PLEAS COURT, WOOD COUNTY, OHIO

State of Ohio vs. Calvin Neyland, Jr.

Indictment for Count 1. Aggravated Murder with Specification 1 and Specification 2, ORC 2903.01(A), a special felony; Count 2 Aggravated Murder with Specification 1, Specification 2, and Specification 3, ORC 2903 01(A), a special felony.

_____
Chief Assistant Prosecuting Attorney

A TRUE BILL A True Bill

_____
Foreman of the Grand Jury

This Bill of Indictment found upon testimony sworn and sent before the Grand Jury at the request of the Prosecuting Attorney.

_____
Foreman of the Grand Jury

Sup R 20 Appointment of counsel for indigent defendants in capital cases-courts of common pleas

I. APPLICABILITY

(A) This rule shall apply in cases where an indigent defendant has been charged with aggravated murder and the indictment includes one or more specifications of aggravating circumstances listed in R.C. 2929.04(A). This rule shall apply in cases where a juvenile defendant is indicted for a capital offense, but because of his or her age, cannot be sentenced to death.

(B) The provisions for the appointment of counsel set forth in this rule apply only in cases where the defendant is indigent and counsel is not privately retained by or for the defendant.

(C) If the defendant is entitled to the appointment of counsel, the court shall appoint two attorneys certified pursuant to this rule. If the defendant engages one privately retained attorney, the court shall not appoint a second attorney pursuant to this rule.

(D) The provisions of this rule apply in addition to the reporting requirements created by section 2929.021 of the Revised Code.

II. QUALIFICATIONS FOR CERTIFICATION AS COUNSEL FOR INDIGENT DEFENDANTS IN CAPITAL CASES

(A) Trial Counsel

(1) At least two attorneys shall be appointed by the court to represent an indigent defendant charged with aggravated murder and the indictment includes one or more specifications of aggravating circumstances listed in R.C. 2929.04(A). At least one of the appointed counsel must maintain a law office in Ohio and have experience in Ohio criminal trial practice. The counsel appointed shall be designated "lead counsel" and "co-counsel."

(2) Lead counsel shall satisfy all of the following:

(a) Be admitted to the practice of law in Ohio or admitted to practice pro hac vice;

(b) Have at least five years of civil or criminal litigation or appellate experience;
(c) Have specialized training, as approved by the committee, on subjects that will assist counsel in the defense of persons accused of capital crimes in the two-year period prior to making application;
(d) Have at least one of the following qualifications:
(i) Experience as "lead counsel" in the jury trial of at least one capital case;
(ii) Experience as "co-counsel" in the trial of at least two capital cases;
(e) Have at least one of the following qualifications:
(i) Experience as "lead counsel" in the jury trial of at least one murder or aggravated murder case;
(ii) Experience as "lead counsel" in ten or more criminal or civil jury trials, at least three of which were felony jury trials;
(iii) Experience as "lead counsel" in either: three murder or aggravated murder jury trials; one murder or aggravated murder jury trial and three felony jury trials; or three aggravated or first- or second-degree felony jury trials in a court of common pleas in the three years prior to making application.
(3) Co-counsel shall satisfy all of the following:
(a) Be admitted to the practice of law in Ohio or admitted to practice pro hac vice;
(b) Have at least three years of civil or criminal litigation or appellate experience;
(c) Have specialized training, as approved by the committee, on subjects that will assist counsel in the defense of persons accused of capital crimes in the two years prior to making application;
(d) Have at least one of the following qualifications:
(i) Experience as "co-counsel" in one murder or aggravated murder trial;
(ii) Experience as "lead counsel" in one first-degree felony jury trial;
(iii) Experience as "lead" or "co-counsel" in at least two felony jury or civil jury trials in a court of common pleas in the three years prior to making application.
(4) As used in this rule, "trial" means a case concluded with a judgment of acquittal under Criminal Rule 29 or submission to the trial court or jury for decision and verdict.
(B) Appellate Counsel.
(1) At least two attorneys shall be appointed by the court to appeal cases where the trial court has imposed the death penalty on an indigent defendant. At least one of the appointed counsel shall maintain a law office in Ohio.
(2) Appellate counsel shall satisfy all of the following:
(a) Be admitted to the practice of law in Ohio or admitted to practice pro hac vice;
(b) Have at least three years of civil or criminal litigation or appellate experience;

(c) Have specialized training, as approved by the Committee, on subjects that will assist counsel in the defense of persons accused of capital crimes in the two years prior to making application;
(d) Have specialized training, as approved by the Committee, on subjects that will assist counsel in the appeal of cases in which the death penalty was imposed in the two years prior to making application;
(e) Have experience as counsel in the appeal of at least three felony convictions in the three years prior to making application.
(C) Exceptional Circumstances. If an attorney does not satisfy the requirements of divisions (A)(2), (A)(3), or (B)(2) of this section, the attorney may be certified as lead counsel, co-counsel, or appellate counsel if it can be demonstrated to the satisfaction of the Committee that competent representation will be provided to the defendant. In so determining, the Committee may consider the following:
(a) Specialized training on subjects that will assist counsel in the trial or appeal of cases in which the death penalty may be or was imposed;
(b) Experience in the trial or appeal of criminal or civil cases;
(c) Experience in the investigation, preparation, and litigation of capital cases that were resolved prior to trial;
(d) Any other relevant considerations.
(D) Savings Clause. Attorneys certified by the Committee prior to January 1, 1991 may maintain their certification by complying with the requirements of Section VII of this rule, notwithstanding the requirements of Sections II(A)(2)(d), II(A)(3)(b) and (d), and II(B)(2)(d) as amended effective January 1, 1991.

III. COMMITTEE ON THE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CAPITAL CASES
(A) There shall be a Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases.
(B) Appointment of Committee Members. The Committee shall be composed of five attorneys. Three members shall be appointed by a majority vote of all members of the Supreme Court of Ohio; one shall be appointed by the Ohio State Bar Association; and one shall be appointed by the Ohio Public Defender Commission.
(C) Eligibility for Appointment to the Committee. Each member of the Committee shall satisfy all of the following qualifications:
(1) Be admitted to the practice of law in Ohio;
(2) Have represented criminal defendants for not less than five years;
(3) Demonstrate a knowledge of the law and practice of capital cases;
(4) Currently not serving as a prosecuting attorney, city director of law, village solicitor, or similar officer or their assistant or employee, or an employee of any court.
(D) Overall Composition. The overall composition of the Committee shall meet both of the following criteria:
(1) No more than two members shall reside in the same county;

(2) No more than one shall be a judge.
(E) Terms; Vacancies. The term of office for each member shall be five years, each term beginning on the first day of January. Members shall be eligible for reappointment. Vacancies shall be filled in the same manner as original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of a term shall hold office for the remainder of the term.
(F) Election of Chair. The Committee shall elect a chair and such other officers as are necessary. The officers shall serve for two years and may be reelected to additional terms.
(G) Powers and Duties of the Committee. The Committee shall do all of the following:
(1) Prepare and notify attorneys of procedures for applying for certification to be appointed counsel for indigent defendants in capital cases;
(2) Periodically provide all common pleas and appellate court judges and the Ohio Public Defender with a list of all attorneys who are certified to be appointed counsel for indigent capital defendants;
(3) Periodically review the list of certified counsel, all court appointments given to attorneys in capital cases, and the result and status of those cases;
(4) Develop criteria and procedures for retention of certification including, but not limited to, mandatory continuing legal education on the defense and appeal of capital cases;
(5) Expand, reduce, or otherwise modify the list of certified attorneys as appropriate and necessary in accord with division (G)(4) of this section;
(6) Review and approve specialized training programs on subjects that will assist counsel in the defense and appeal of capital cases;
(7) Recommend to the Supreme Court of Ohio amendments to this rule or any other rule or statute relative to the defense or appeal of capital cases.
(H) Meetings. The Committee shall meet at the call of the chair, at the request of a majority of the members, or at the request of the Supreme Court of Ohio. A quorum consists of three members. A majority of the Committee is necessary for the Committee to elect a chair and take any other action.
(I) Compensation. All members of the Committee shall receive equal compensation in an amount to be established by the Supreme Court of Ohio.

IV. PROCEDURES FOR COURT APPOINTMENTS OF COUNSEL
(A) Appointing counsel. Only counsel who have been certified by the Committee shall be appointed to represent indigent defendants charged with aggravated murder and the indictment includes one or more specifications of aggravating circumstances listed in R.C. 2929.04(A). Each court may adopt local rules establishing qualifications in addition

to and not in conflict with those established by this rule. Appointments of counsel for these cases should be distributed as widely as possible among the certified attorneys in the jurisdiction of the appointing court.
(B) Workload of Appointed Counsel.
(1) In appointing counsel, the court shall consider the nature and volume of the workload of the prospective counsel to ensure that counsel, if appointed, could direct sufficient attention to the defense of the case and provide competent representation to the defendant.
(2) Attorneys accepting appointments shall provide each client with competent representation in accordance with constitutional and professional standards. Appointed counsel shall not accept workloads that, by reason of their excessive size, interfere with the rendering of competent representation or lead to the breach of professional obligations.
(C) Notice to the Committee.
(1) Within two weeks of appointment, the appointing court shall notify the Committee secretary of the appointment on a form prescribed by the committee. The notice shall include all of the following:
(a) The court and the judge assigned to the case;
(b) The case name and number;
(c) A copy of the indictment;
(d) The names, business addresses, telephone numbers, and Sup.R. 20 certification of all attorneys appointed;
(e) Any other information considered relevant by the Committee or appointing court.
(2) Within two weeks of disposition, the trial court shall notify the Committee secretary of the disposition of the case on a form prescribed by the Committee. The notice shall include all of the following:
(a) The outcome of the case;
(b) The title and section of the Revised Code of any crimes to which the defendant pleaded or was found guilty;
(c) The date of dismissal, acquittal, or that sentence was imposed;
(d) The sentence, if any;
(e) A copy of the judgment entry reflecting the above;
(f) If the death penalty was imposed, the name of counsel appointed to represent the defendant on appeal.
(g) Any other information considered relevant by the Committee or trial court.
(D) Support Services. The appointing court shall provide appointed counsel, as required by Ohio law or the federal Constitution, federal statutes, and professional standards, with the investigator, mitigation specialists, mental health professional, and other forensic experts and other support services reasonably necessary or appropriate for counsel to prepare for and present an adequate defense at every stage of the proceedings including, but not limited to, determinations relevant to competency to stand trial, a not guilty by reason of insanity plea, cross-

examination of expert witnesses called by the prosecution, disposition following conviction, and preparation for and presentation of mitigating evidence in the sentencing phase of the trial.

V. MONITORING; REMOVAL

(A) The appointing court should monitor the performance of assigned counsel to ensure that the defendant is receiving competent representation. If there is compelling evidence before any court, trial or appellate, that an attorney has ignored basic responsibilities of providing competent counsel, which results in prejudice to the defendant's case, the court, in addition to any other action it may take, shall report this evidence to the Committee, which shall accord the attorney an opportunity to be heard.

(B) Complaints concerning the performance of attorneys assigned in the trials or appeals of indigent defendants in capital cases shall be reviewed by the Committee pursuant to the provisions of Section III(G)(3), (4), and (5) of this rule.

VI. PROGRAMS FOR SPECIALIZED TRAINING

(A) Programs for Specialized Training in the Defense of Persons Charged With a Capital Offense.

(1) To be approved by the Committee, a death penalty trial seminar shall include instruction devoted to the investigation, preparation, and presentation of a death penalty trial.

(2) The curriculum for an approved death penalty trial seminar should include, but is not limited to, specialized training in the following areas:

(a) An overview of current developments in death penalty litigation;

(b) Death penalty voir dire;

(c) Trial phase presentation;

(d) Use of experts in the trial and penalty phase;

(e) Investigation, preparation, and presentation of mitigation;

(f) Preservation of the record;

(g) Counsel's relationship with the accused and the accused's family;

(h) Death penalty appellate and post-conviction litigation in state and federal courts.

(B) Programs for Specialized Training in the Appeal of Cases in Which the Death Penalty has been Imposed.

(1) To be approved by the Committee, a death penalty appeals seminar shall include instruction devoted to the appeal of a case in which the death penalty has been imposed.

(2) The curriculum for an approved death penalty appeal seminar should include, but is not limited to, specialized training in the following areas:

(a) An overview of current developments in death penalty law;

(b) Completion, correction, and supplementation of the record on appeal;

(c) Reviewing the record for unique death penalty issues;

(d) Motion practice for death penalty appeals;

(e) Preservation and presentation of constitutional issues;
(f) Preparing and presenting oral argument;
(g) Unique aspects of death penalty practice in the courts of appeals, the Supreme Court of Ohio, and the United States Supreme Court;
(h) The relationship of counsel with the appellant and the appellant's family during the course of the appeals.
(i) Procedure and practice in collateral litigation, extraordinary remedies, state post-conviction litigation, and federal habeas corpus litigation.
(C) The sponsor of a death penalty seminar shall apply for approval from the Committee at least sixty days before the date of the proposed seminar. An application for approval shall include the curriculum for the seminar and include biographical information of each member of the seminar faculty.
(D) The Committee shall obtain a list of attendees from the Supreme Court Commission on Continuing Legal Education that shall be used to verify attendance at and grant Sup.R. 20 credit for each Committee-approved seminar. Credit for purposes of this rule shall be granted to instructors using the same ratio provided in Rule X of the Supreme Court Rules for the Government of the Bar of Ohio.
(E) The Committee may accredit programs other than those approved pursuant to divisions (A) and (B) of this section. To receive accreditation, the program shall include instructions in all areas set forth in divisions (A) and (B) of this section. Application for accreditation of an in-state program may be made by the program sponsor or a program attendee and shall be made prior to the program. Application for accreditation of an out-of-state program may be submitted by the program sponsor or a program attendee and may be made prior to or after completion of the program. The request for credit from a program sponsor shall include the program curriculum and individual faculty biographical information. The request for credit from a program attendee shall include all of the following:
(1) Program curriculum;
(2) Individual faculty biographical information;
(3) A written breakdown of sessions attended and credit hours received if the seminar held concurrent sessions;
(4) Proof of attendance.

VII. STANDARDS FOR RETENTION OF SUP.R. 20 CERTIFICATION
(A)(1) To retain certification, an attorney who has previously been certified by the Committee shall complete at least twelve hours of Committee-approved specialized training every two years. To maintain certification as lead counsel or co-counsel, at least six of the twelve hours shall be devoted to instruction in the trial of capital cases. To maintain certification as appellate counsel, at least six of the twelve hours shall be devoted to instruction in the appeal of capital cases.

(2) On the first day of July of each year, the Committee shall review the list of certified counsel and revoke the certification of any attorney who has not complied with the specialized training requirements of this rule. An attorney whose certification has been revoked shall not be eligible to accept future appointment as counsel for an indigent defendant charged with or convicted of an offense for which the death penalty can be or has been imposed.

(B) The Committee may accredit an out-of-state program that provides specialized instruction devoted to the investigation, preparation, and presentation of a death penalty trial or specialized instruction devoted to the appeal of a case in which the defendant received the death penalty, or both. Requests for credit for an out-of-state program may be submitted by the seminar sponsor or a seminar attendee. The request for credit from a program sponsor shall include the program curriculum and individual faculty biographical information. The request for credit from a program attendee shall include all of the following:

(1) Program curriculum;

(2) Individual faculty biographical information;

(3) A written breakdown of sessions attended and credit hours received if the seminar held concurrent sessions;

(4) Proof of attendance.

(C) An attorney who has previously been certified but whose certification has been revoked for failure to comply with the specialized training requirements of this rule must, in order to regain certification, submit a new application that demonstrates that the attorney has completed twelve hours of Committee approved specialized training in the two year period prior to making application for recertification.

VIII. RESERVED

IX. EFFECTIVE DATE

(A) The effective date of this rule shall be October 1, 1987.

(B) The amendments to Section II(A)(5)(b), Section III(B)(2), and to the Subcommittee Comments following Section II of this Rule adopted by the Supreme Court of Ohio on June 28, 1989, shall be effective on July 1, 1989.

(C) The amendments to Sections I(A)(2), I(A)(3), I(B), and II, and the addition of Sections I(C) and IV, adopted by the Supreme Court of Ohio on December 11, 1990, shall be effective on January 1, 1991.

(D) The amendments to this rule adopted by the Supreme Court of Ohio on April 19, 1995, shall take effect on July 1, 1995.

(E) The amendment to Sup. R. 20 adopted by the Supreme Court on December 4, 2002, shall take effect on January 6, 2003.

(F) The amendment to Sup. R. 20 adopted by the Supreme Court on February 1, 2005, shall take effect on March 7, 2005.

charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

(B) **Joinder of defendants.** Two or more defendants may be charged in the same indictment, information or complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or in the same course of criminal conduct. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

RULE 9. Warrant or Summons Upon Indictment or Information

(A) **Issuance.** Upon the request of the prosecuting attorney the clerk shall forthwith issue a warrant for each defendant named in the indictment or in the information. The clerk shall issue a summons instead of a warrant where the defendant has been released pursuant to Rule 46 and is indicted for the same offense for which he was bound over pursuant to Rule 5. In addition, the clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court.

Upon like request or direction, the clerk shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to any officer authorized by law to execute or serve it. If a defendant fails to appear in response to summons, a warrant shall issue.

(B) **Form of warrant and summons.**

(1) Warrant. The form of the warrant shall be as provided in Rule 4(C)(1) except that it shall be signed by the court or clerk. It shall describe the offense charged in the indictment or information. A copy of the indictment or information shall be attached to the warrant which shall command that the defendant be arrested and brought before the court issuing the warrant without unnecessary delay.

(2) Summons. The summons shall be in the same form as the warrant, except that it shall not command that the defendant be arrested, but shall order the defendant to appear before the court at a stated time and place and inform him that he may be arrested if he fails to appear at the time and place stated in the summons. A copy of the indictment or information shall be attached to the summons.

(C) **Execution or service; return.**

(1) Execution or service. Warrants shall be executed or summons served as provided in Rule 4(D) and the arrested person shall be treated in accordance with Rule 4(E)(1).

(2) Return. The officer executing a warrant shall make return thereof to the court.

When the person serving summons is unable to serve a copy of the summons within twenty-eight days of the date of issuance, he shall endorse that fact and the reasons therefor on the summons and return the summons and copies to the clerk, who shall make the appropriate entry on the appearance docket.

At the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled, or a summons returned unserved, or a copy thereof, may be delivered by the clerk to the sheriff or other authorized person for execution or service.

(Amended, eff 7-1-75)

RULE 10. Arraignment

(A) **Arraignment procedure.** Arraignment shall be conducted in open court, and shall consist of reading the indictment, information or complaint to the defendant, or stating to him the substance of the charge, and calling on him to plead thereto. The defendant may in open court waive the reading of the indictment, information, or complaint. The defendant shall be given a copy of the indictment, information, or complaint, or shall acknowledge receipt thereof, before being called upon to plead.

(B) **Presence of defendant.** The defendant must be present, except that the court, with the written consent of the defendant and the approval of the prosecuting attorney, may permit arraignment without the presence of the defendant, if a plea of not guilty is entered.

(C) **Explanation of rights.** When a defendant not represented by counsel is brought before a court and called upon to plead, the judge or magistrate shall cause him to be informed and shall determine that he understands all of the following:

(1) He has a right to retain counsel even if he intends to plead guilty, and has a right to a reasonable continuance in the proceedings to secure counsel.

(2) He has a right to counsel, and the right to a reasonable continuance in the proceeding to secure counsel, and, pursuant to Crim. R. 44, the right to have counsel assigned without cost to himself if he is unable to employ counsel.

(3) He has a right to bail, if the offense is bailable.

(4) He need make no statement at any point in the proceeding, but any statement made can and may be used against him.

(D) **Joint arraignment.** If there are multiple defendants to be arraigned, the judge or magistrate may by general announcement advise them of their rights as prescribed in this rule.

(Amended, eff 7-1-90)

RULE 11. Pleas, Rights Upon Plea

(A) **Pleas.** A defendant may plead not guilty, not guilty by reason of insanity, guilty or, with the consent of the court, no contest. A plea of not guilty by reason of insanity shall be made in writing by either the defendant or the defendant's attorney. All other pleas may be made orally. The pleas of not guilty and not guilty by reason of insanity may be joined. If a defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

(B) **Effect of guilty or no contest pleas.** With reference to the offense or offenses to which the plea is entered:

(1) The plea of guilty is a complete admission of the defendant's guilt.

(2) The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

(3) When a plea of guilty or no contest is accepted pursuant to this rule, the court, except as provided in divisions (C)(3) and (4) of this rule, shall proceed with sentencing under Crim. R. 32.

(C) **Pleas of guilty and no contest in felony cases.**

(1) Where in a felony case the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.

(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself.

(3) With respect to aggravated murder committed on and after January 1, 1974, the defendant shall plead separately to the charge and to each specification, if any. A plea of guilty or no contest to the charge waives the defendant's right to a jury trial, and before accepting a plea of guilty or no contest the court shall so advise the defendant and determine that the defendant understands the consequences of the plea.

If the indictment contains no specification, and a plea of guilty or no contest to the charge is accepted, the court shall impose the sentence provided by law.

If the indictment contains one or more specifications, and a plea of guilty or no contest to the charge is accepted, the court may dismiss the specifications and impose sentence accordingly, in the interests of justice.

If the indictment contains one or more specifications that are not dismissed upon acceptance of a plea of guilty or no contest to the charge, or if pleas of guilty or no contest to both the charge and one or more specifications are accepted, a court composed of three judges shall: (a) determine whether the offense was aggravated murder or a lesser offense; and (b) if the offense is determined to have been a lesser offense, impose sentence accordingly; or (c) if the offense is determined to have been aggravated murder, proceed as provided by law to determine the presence or absence of the specified aggravating circumstances and of mitigating circumstances, and impose sentence accordingly.

(4) With respect to all other cases the court need not take testimony upon a plea of guilty or no contest.

(D) **Misdemeanor cases involving serious offenses.** In misdemeanor cases involving serious offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first addressing the defendant personally and informing the defendant of the effect of the pleas of guilty, no contest, and not guilty and determining that the defendant is making the plea voluntarily. Where the defendant is unrepresented by counsel the court shall not accept a plea of guilty or no contest unless the defendant, after being readvised that he or she has the right to be represented by retained counsel, or pursuant to Crim. R. 44 by appointed counsel, waives this right.

(E) **Misdemeanor cases involving petty offenses.** In misdemeanor cases involving petty offenses the court may refuse to accept a plea of guilty or no contest, and shall not accept such plea without first informing the defendant of the effect of the pleas of guilty, no contest, and not guilty.

The counsel provisions of Crim. R. 44(B) and (C) apply to division (E) of this rule.

(F) **Negotiated plea in felony cases.** When, in felony cases, a negotiated plea of guilty or no contest to one or more offenses charged or to one or more other or lesser offenses is offered, the underlying agreement upon which the plea is based shall be stated on the record in open court.

(G) **Refusal of court to accept plea.** If the court refuses to accept a plea of guilty or no contest, the court shall enter a plea of not guilty on behalf of the defendant. In such cases neither plea shall be admissible in evidence nor be the subject of comment by the prosecuting attorney or court.

(H) **Defense of insanity.** The defense of not guilty by reason of insanity must be pleaded at the time of arraignment, except that the court for good cause shown shall permit such a plea to be entered at any time before trial.

(Amended, eff 7-1-76; 7-1-80; 7-1-98)

RULE 12. Pleadings and Motions Before Trial: Defenses and Objections

(A) **Pleadings and motions.** Pleadings in criminal proceedings shall be the complaint, and the indictment or information, and the pleas of not guilty, not guilty by reason of insanity, guilty, and no contest. All other pleas, demurrers, and motions to quash, are abolished. Defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(B) **Filing with the court defined.** The filing of documents with the court, as required by these rules, shall be made by filing them with the clerk of court, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note the filing date on the documents and transmit them to the clerk. A court may provide, by local rules adopted pursuant to the Rules of Superintendence, for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following:

(1) the complaint, if permitted by local rules to be filed electronically, shall comply with Crim. R. 3.

(2) any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(3) a provision shall specify the days and hours during which electronically transmitted documents will be received by the court, and a provision shall specify when documents received electronically will be considered to have been filed.

(4) any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the

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RULE 51. Exceptions Unnecessary

An exception, at any stage or step of the case or matter, is unnecessary to lay a foundation for review, whenever a matter has been called to the attention of the court by objection, motion, or otherwise, and the court has ruled thereon.

RULE 52. Harmless Error and Plain Error

(A) **Harmless error.** Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

(B) **Plain error.** Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

RULE 53. Reserved

RULE 54. Amendment of Incorporated Civil Rules

An amendment to or rescission of any provision of the Ohio Rules of Civil Procedure which has been incorporated by reference in these rules, shall, without the necessity of further action, be incorporated by reference in these rules unless the amendment or rescission specifies otherwise, effective on the effective date of the amendment or rescission.

RULE 55. Records

(A) **Criminal appearance docket.** The clerk shall keep a criminal appearance docket. Upon the commencement of a criminal action the clerk shall assign each action a number. This number shall be placed on the first page, and every continuation page, of the appearance docket which concerns the particular action. In addition this number and the names of the parties shall be placed on the case file and every paper filed in the action.

At the time the action is commenced the clerk shall enter in the appearance docket the names, except as provided in Rule 6(E), of the parties in full, the names of counsel and index the action by the name of each defendant. Thereafter the clerk shall chronologically note in the appearance docket all: process issued and returns, pleas and motions, papers filed in the action, orders, verdicts and judgments. The notations shall be brief but shall show the date of filing and the substance of each order, verdict and judgment.

An action is commenced for purposes of this rule by the earlier of, (a) the filing of a complaint, uniform traffic ticket, citation, indictment, or information with the clerk, or (b) the receipt by the clerk of the court of common pleas of a bind over order under Rule 5(B)(4)(a).

(B) **Files.** All papers filed in a case shall be filed in a separate file folder and on or after July 1, 1986 shall not exceed 8 inches x 11 inches in size and without backing or cover.

(C) **Other books and records.** The clerk shall keep such other books and records as required by law and as the supreme court or other court may from time to time require.

(D) **Applicability to courts not of record.** In courts not of record the notations required by subdivision (A) shall be placed on a separate sheet or card kept in the file folder.

(Amended, eff 7-1-85)

RULE 56. Reserved

RULE 57. Rule of court; procedure not otherwise specified

(A) **Rule of court.**

(1) The expression "rule of court" as used in these rules means a rule promulgated by the Supreme Court or a rule concerning local practice adopted by another court that is not inconsistent with the rules promulgated by the Supreme Court and is filed with the Supreme Court.

(2) Local rules shall be adopted only after the court gives appropriate notice and an opportunity for comment. If the court determines that there is an immediate need for a rule, the court may adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

(B) **Procedure not otherwise specified.** If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules of criminal procedure, and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.

(Amended, eff 7-1-94)

RULE 58. Forms

The forms contained in the Appendix of Forms which the supreme court from time to time may approve are illustrative and not mandatory.

RULE 59. Effective date

(A) **Effective date of rules.** These rules shall take effect on July 1, 1973, except for rules or portions of rules for which a later date is specified, which shall take effect on such later date. They govern all proceedings in actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(B) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on January 10, 1975, shall take effect on July 1, 1975. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(C) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general assembly on January 9, 1976 shall take effect on July 1, 1976. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(D) **Effective date of amendments.** The amendments submitted by the Supreme Court to the general

RULE 201. Judicial Notice of Adjudicative Facts

(A) **Scope of rule.** This rule governs only judicial notice of adjudicative facts; i.e., the facts of the case.

(B) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(C) **When discretionary.** A court may take judicial notice, whether requested or not.

(C) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(E) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(F) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

(G) **Instructing jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

ARTICLE III
PRESUMPTIONS

RULE 301. Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by statute enacted by the General Assembly or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

RULE 302. [Reserved]

ARTICLE IV
RELEVANCY AND ITS LIMITS

RULE 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having 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.

RULE 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio. Evidence which is not relevant is not admissible.

RULE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay

(A) **Exclusion mandatory.** Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) **Exclusion discretionary.** Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

(Amended, eff 7-1-96)

RULE 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(A) **Character evidence generally.** Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, subject to the following exceptions:

(1) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

(3) Character of witness. Evidence of the character of a witness on the issue of credibility is admissible as provided in Rules 607, 608, and 609.

(B) **Other crimes, wrongs or acts.** Evidence of the other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

RULE 405. Methods of Proving Character

(A) **Reputation or opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(B) **Specific instances of conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

RULE 406. Habit; Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

RULE 407. Subsequent Remedial Measures

When, after an injury or harm allegedly caused by an event, measures are taken which, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

(Amended, eff 7-1-00)

RULE 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

RULE 409. Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

RULE 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements

(A) Except as provided in division (B) of this rule, evidence of the following is not admissible in any civil or criminal proceeding against the defendant who made the plea or who was a participant personally or through counsel in the plea discussions:

(1) A plea of guilty that later was withdrawn;

(2) A plea of no contest or the equivalent plea from another jurisdiction;

(3) A plea of guilty in a violations bureau;

(4) Any statement made in the course of any proceedings under Rule 11 of the Rules of Criminal Procedure or equivalent procedure from another jurisdiction regarding the foregoing pleas;

(5) Any statement made in the course of plea discussions in which counsel for the prosecuting authority or for the defendant was a participant and that do not result in a plea of guilty or that result in a plea of guilty later withdrawn.

(B) A statement otherwise inadmissible under this rule is admissible in either of the following:

(1) Any proceeding in which another statement made in the course of the same plea or plea discussions has been introduced and the statement should, in fairness, be considered contemporaneously with it;

(2) A criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(Amended, eff 7-1-91)

RULE 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership or control, if controverted, or bias or prejudice of a witness.

ARTICLE V
PRIVILEGES

Rule
501. General Rule

RULE 501. General Rule

The privilege of a witness, person, state or political subdivision thereof shall be governed by statute enacted by the General Assembly or by principles of common law as interpreted by the courts of this state in the light of reason and experience.

ARTICLE VI
WITNESSES

Rule
601. General Rule of Competency
602. Lack of Personal Knowledge
603. Oath or Affirmation
604. Interpreters
605. Competency of Judge as Witness

(1) If the statement is offered solely for the purpose of impeaching the witness, the witness is afforded a prior opportunity to explain or deny the statement and the opposite party is afforded an opportunity to interrogate the witness on the statement or the interests of justice otherwise require;

(2) The subject matter of the statement is one of the following:

(a) A fact that is of consequence to the determination of the action other than the credibility of a witness;

(b) A fact that may be shown by extrinsic evidence under Evid. R. 608(A), 609, 616(A), 616(B) or 706;

(c) A fact that may be shown by extrinsic evidence under the common law of impeachment if not in conflict with the Rules of Evidence.

(C) **Prior inconsistent conduct.** During examination of a witness, conduct of the witness inconsistent with the witness's testimony may be shown to impeach. If offered for the sole purpose of impeaching the witness's testimony, extrinsic evidence of the prior inconsistent conduct is admissible under the same circumstances as provided for prior inconsistent statements by Evid. R. 613(B)(2).

(Amended, eff 7-1-98)

RULE 614. Calling and Interrogation of Witnesses by Court

(A) **Calling by court.** The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(B) **Interrogation by court.** The court may interrogate witnesses, in an impartial manner, whether called by itself or by a party.

(C) **Objections.** Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

RULE 615. Separation and Exclusion of Witnesses

(A) Except as provided in division (B) of this rule, at the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. An order directing the 'exclusion' or 'separation' of witnesses or the like, in general terms without specification of other or additional limitations, is effective only to require the exclusion of witnesses from the hearing during the testimony of other witnesses.

(B) This rule does not authorize exclusion of any of the following persons from the hearing:

(1) a party who is a natural person;

(2) an officer or employee of a party that is not a natural person designated as its representative by its attorney;

(3) a person whose presence is shown by a party to be essential to the presentation of the party's cause;

(4) in a criminal proceeding, a victim of the charged offense to the extent that the victim's presence is authorized by statute enacted by the General Assembly. As used in this rule, "victim" has the same meaning as in the provisions of the Ohio Constitution providing rights for victims of crimes.

(Amended, eff 7-1-01; 7-1-03)

RULE 616. Methods of Impeachment

In addition to other methods, a witness may be impeached by any of the following methods:

(A) **Bias.** Bias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

(B) **Sensory or mental defect.** A defect of capacity, ability, or opportunity to observe, remember, or relate may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

(C) **Specific contradiction.** Facts contradicting a witness's testimony may be shown for the purpose of impeaching the witness's testimony. If offered for the sole purpose of impeaching a witness's testimony, extrinsic evidence of contradiction is inadmissible unless the evidence is one of the following:

(1) Permitted by Evid. R. 608(A), 609, 613, 616(A), 616(B), or 706;

(2) Permitted by the common law of impeachment and not in conflict with the Rules of Evidence.

(Effective 7-1-91; amended, eff 7-1-98)

ARTICLE VII
OPINIONS AND EXPERT TESTIMONY

RULE 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

(amended, eff 7-1-07)

RULE 702. Testimony by Experts

A witness may testify as an expert if all of the following apply:

(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:

(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;

(2) The design of the procedure, test, or experiment reliably implements the theory;

(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.

(Amended, eff 7-1-94)

sanction other than a fine under section 2929.28 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 199 (Eff 7-1-83); 140 v H 380 (Eff 4-3-84); 146 v S 2. Eff 7-1-96; 149 v H 490, § 1, eff. 1-1-04.

The effective date is set by section 4 of HB 490.

Not analogous to former RC § 2901.02 (RS §§ 6808, 6809; S&S 268; S&C 401; 33 v 33; 60 v 17; 93 v 223; GC § 12401; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.03 Common law offenses abrogated.

(A) No conduct constitutes a criminal offense against the state unless it is defined as an offense in the Revised Code.

(B) An offense is defined when one or more sections of the Revised Code state a positive prohibition or enjoin a specific duty, and provide a penalty for violation of such prohibition or failure to meet such duty.

(C) This section does not affect any power of the general assembly under section 8 of Article II, Ohio Constitution, nor does it affect the power of a court to punish for contempt or to employ any sanction authorized by law to enforce an order, civil judgment, or decree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2901.03 (RS § 7388-52; 98 v 180; GC § 12402; Bureau of Code Revision, 10-1-53; 126 v 575), repealed 134 v H 511, § 2, eff 1-1-74.

The effective date is set by section 4 of HB 511.

§ 2901.04 Rules of construction; references to previous conviction; interpretation of statutory references that define or specify a criminal offense.

(A) Except as otherwise provided in division (C) or (D) of this section, sections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused.

(B) Rules of criminal procedure and sections of the Revised Code providing for criminal procedure shall be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(C) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code shall be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under an existing or former law of this state, another state, or the United States or under an existing or former municipal ordinance.

(D) Any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense shall be construed to also refer to an existing or former law of this state, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

HISTORY: 134 v H 511 (Eff 1-1-74); 148 v S 107. Eff 3-23-2000; 150 v S 146, § 1, eff. 9-23-04.

Not analogous to former RC § 2901.04 (GC § 12402-1; 109 v 545; 111 v 77; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.05 Burden and degree of proof.

(A) Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution. The burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense, is upon the accused.

(B) As part of its charge to the jury in a criminal case, the court shall read the definitions of "reasonable doubt" and "proof beyond a reasonable doubt," contained in division (D) of this section.

(C) As used in this section, an "affirmative defense" is either of the following:

(1) A defense expressly designated as affirmative;

(2) A defense involving an excuse or justification peculiarly within the knowledge of the accused, on which he can fairly be required to adduce supporting evidence.

(D) "Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs.

HISTORY: 134 v H 511 (Eff 1-1-74); 137 v H 1168. Eff 11-1-78.

Not analogous to former RC § 2901.05 (RS § 6810; S&C 402; 33 v 33; GC § 12403; 124 v 14; Bureau of Code Revision, eff 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2901.06 Battered woman syndrome testimony as evidence relevant to claim of self-defense.

(A) The general assembly hereby declares that it recognizes both of the following, in relation to the "battered woman syndrome:"

(1) That the syndrome currently is a matter of commonly accepted scientific knowledge;

(2) That the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

(B) If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self-defense, the person may introduce expert testimony of the "battered woman syndrome" and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question. The introduction of any expert testimony under this division shall be in accordance with the Ohio Rules of Evidence.

HISTORY: 143 v H 484. Eff 11-5-90.

Not analogous to former RC § 2901.06 (RS § 6811; S&C 403; 33 v 33; GC § 12404; 116 v 205; Bureau of Code Revision, 10-1-53), repealed, 134 v H 511, § 2, eff 1-1-74.

§ 2901.07 DNA testing of offenders.

(A) As used in this section:

(1) "DNA analysis" and
same meanings as in secti
Revised Code.

(2) "Jail" and "commun
have the same meanings
Revised Code.

(3) "Post-release control
section 2967.01 of the Revi

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or community-based correc
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shall be collected in accord
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(2) Regardless of when t
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is convicted of, has pleaded
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The DNA specimen shall b
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(3)(a) Regardless of wh
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CHAPTER 2903: HOMICIDE AND ASSAULT

Section

[HOMICIDE]

[ASSAULT]

[MENACING]

[STALKING]

[PATIENT ABUSE AND NEGLECT IN CARE FACILITIES]

[HOMICIDE]

§ 2903.01 Aggravated murder.

(A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, or escape.

(C) No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.

(D) No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another.

(E) No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies:

(1) The victim, at the time of the commission of the offense, is engaged in the victim's duties.

(2) It is the offender's specific purpose to kill a law enforcement officer.

(F) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.

(G) As used in this section:

(1) "Detention" has the same meaning as in section 2921.01 of the Revised Code.

(2) "Law enforcement officer" has the same meaning as in section 2911.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 239 (Eff 9-6-96); 147 v S 32 (Eff 8-6-97); 147 v H 5 (Eff 6-30-98); 147 v S 193 (Eff 12-29-98); 149 v S 184. Eff 5-15-2002.

Not analogous to former RC § 2903.01 (GC § 12423-1; 109 v 45; 121 v 557 (572); Bureau of Code Revision, 10-1-53; 126 v 114), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.02 Murder.

(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.

(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense.

(D) Whoever violates this section is guilty of murder, and shall be punished as provided in section 2929.02 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 147 v H 5. Eff 6-30-98.

Not analogous to former RC § 2903.02 (RS § 6998; S&S 377; 59 v 65; 83 v 202; GC §§ 12962, 12963; Bureau of Code Revision, 10-1-53; 131 v 671), repealed 134 v H 511, § 2, eff 1-1-74.

§ 2903.03 Voluntary manslaughter.

(A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another or the unlawful termination of another's pregnancy.

)n 2929.04 of the Revised
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of the Revised Code.
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impose sentence of life
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as included in the indict-
r information charging the
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erm consisting of a mini-
a maximum term of life

ing, the panel of judges, if
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tried by jury, shall, when
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listed in division (A)(5) of
Code is proven beyond a
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of the Revised Code, the
judge shall terminate the
e sentence on the offender

) of this section, the panel
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twenty years of imprison-

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otivation specification that
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suant to division (B)(3) of

section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

HISTORY: 139 v S 1. Eff 10-19-81; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

[§ 2929.02.3] § 2929.023 Defendant may raise matter of age.

A person charged with aggravated murder and one or more specifications of an aggravating circumstance may, at trial, raise the matter of his age at the time of the alleged commission of the offense and may present evidence at trial that he was not eighteen years of age or older at the time of the alleged commission of the offense. The burdens of raising the matter of age, and of going forward with the evidence relating to the matter of age, are upon the defendant. After a defendant has raised the matter of age at trial, the prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the defendant was eighteen years of age or older at the time of the alleged commission of the offense.

HISTORY: 139 v S 1. Eff 10-19-81.

[§ 2929.02.4] § 2929.024 Investigation services and experts for indigent.

If the court determines that the defendant is indigent and that investigation services, experts, or other services are reasonably necessary for the proper representation of a defendant charged with aggravated murder at trial or at the sentencing hearing, the court shall authorize the defendant's counsel to obtain the necessary services for the defendant, and shall order that payment of the fees and expenses for the necessary services be made in the same manner that payment for appointed counsel is made pursuant to Chapter 120. of the Revised Code. If the court determines that the necessary services had to be obtained prior to court authorization for payment of the fees and expenses for the necessary services, the court may, after the services have been obtained, authorize the defendant's counsel to obtain the necessary services and order that payment of the fees and expenses for the necessary services be made as provided in this section.

HISTORY: 139 v S 1. Eff 10-19-81.

§ 2929.03 Imposing sentence for aggravated murder.

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(2) of this section, the trial court shall impose one of the following sentences on the offender:

(a) Life imprisonment without parole;

(b) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(c) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(d) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(e) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (A)(1)(a) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be served pursuant to that section.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 [2929.02.3] of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C)(1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code, the trial court shall impose sentence on the offender as follows:

(a) Except as provided in division (C)(1)(b) of this section, the trial court shall impose one of the following sentences on the offender:

(i) Life imprisonment without parole;

(ii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(iii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iv) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(v) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (C)(1)(a)(i) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(2)(a) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be one of the following:

(i) Except as provided in division (C)(2)(a)(ii) or (iii) of this section, the penalty to be imposed on the offender shall be death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(ii) Except as provided in division (C)(2)(a)(iii) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of death or life imprisonment without parole on the offender pursuant to division (C)(2)(a)(i) of this section, the penalty to be imposed on the offender shall be an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(iii) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(b) A penalty imposed pursuant to division (C)(2)(a)(i), (ii), or (iii) of this section shall be determined pursuant to divisions (D) and (E) of this section and shall be determined by one of the following:

(i) By the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury;

(ii) By the trial jury and the trial judge, if the offender was tried by jury.

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in divi
this section, to life imprisonme
imprisonment with parole eligibil
five full years of imprisonment, o
parole eligibility after serving thir
ment;

(b) Except as provided in di
section, if the victim of the aggr
than thirteen years of age, the offe
or pleads guilty to a sexual moti
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(D)(3) of this section.

(3) Upon consideration of the
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of this section, if, after receiv
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the panel shall impose one of t
the offender:

(a) Except as provided in
section, one of the following:

(i) Life imprisonment withou

(ii) Subject to division (D)(3)
imprisonment with parole eligib
five full years of imprisonment;

(iii) Subject to division (D)(3
imprisonment with parole eligib
years of imprisonment;

(a) Except as provided in division (D)(2)(b) or (c) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) Except as provided in division (D)(2)(c) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the jury does not recommend a sentence of life imprisonment without parole pursuant to division (D)(2)(a) of this section, to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(c) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, life imprisonment with parole eligibility after serving thirty full years of imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment imposed as described in division (D)(2)(b) of this section or a sentence of life imprisonment without parole imposed under division (D)(2)(c) of this section, the sentence shall be served pursuant to section 2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

(i) Life imprisonment without parole;

(ii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(iv) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (D)(3)(a)(i) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(E) If the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code, was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court or the panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall impose one of the following sentences on the offender:

(1) Except as provided in division (E)(2) of this section, one of the following:

(a) Life imprisonment without parole;

(b) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(c) Subject to division (E)(2)(d) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(d) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (E)(2)(a) of this section, the court or panel shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the

mitigating factors. The court or panel, when it imposes life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(C)(1) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed before January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

(2) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the supreme court.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 180. Eff 1-1-97; 150 v H 184, § 1, eff. 3-23-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of H.B. 184 (150 v —) read as follows:

SECTION 3. Section 2929.03 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 180 and Am. Sub. S.B. 269 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 3 of HB 180.

See provisions, § 4 of HB 180 (146 v —) following RC § 2921.34.

The provisions of §§ 3, 4 of SB 269 read as follows:

SECTION 3. That Section 5 of Am. Sub. S.B. 2 of the 121st General Assembly be amended to read as follows:

"Sec. 5. The provisions of the Revised Code in existence prior to July 1, 1996, shall apply to a person upon whom a court imposed a term of imprisonment prior to that date and, notwithstanding division (B) of section 1.58 of the Revised Code, to a person upon whom a court, on or after that date and in accordance with the law in existence prior to that date, imposes a term of imprisonment for an offense that was committee prior to that date.

The provisions of the Revised Code in existence on and after July 1, 1996, apply to a person who commits an offense on or after that date."

SECTION 4. That existing Section 5 of Am. Sub. S.B. 2 of the 121st General Assembly is hereby repealed.

§ 2929.04 Criteria for imposing death or imprisonment for a capital offense.

(A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to section 2941.14 of the Revised Code and proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or a person in line of succession to the presidency, the governor or lieutenant governor of this state, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of this state, or a candidate for any of the offices described in this division. For purposes of this division, a person is a candidate if the person has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under detention or while the offender was at large after having broken detention. As used in division (A)(4) of this section, "detention" has the same meaning as in section 2921.01 of the Revised Code, except that detention does not include hospitalization, institutionalization, or confinement in a mental health facility or mental retardation and developmentally disabled facility unless at the time of the commission of the offense either of the following circumstances apply:

(a) The offender was in the facility as a result of being charged with a violation of a section of the Revised Code.

(b) The offender was under detention as a result of being convicted of or pleading guilty to a violation of a section of the Revised Code.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code, whom the offender had reasonable cause to know or knew to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

(8) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of the

offense to which the victim was
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(9) The offender, in the co
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(10) The offense was commi
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**HISTORY: 134 v H 51
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(9) The offender, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

(10) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit terrorism.

(B) If one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code or if the offender, after raising the matter of age, was found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court, trial jury, or panel of three judges shall consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:

(1) Whether the victim of the offense induced or facilitated it;

(2) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;

(3) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(4) The youth of the offender;

(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(6) If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim;

(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

(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.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender but shall be weighed pursuant to divisions (D)(2) and (3) of section 2929.03 of the Revised Code by the trial court, trial jury, or the panel of three judges against the aggravating circumstances the offender was found guilty of committing.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 147 v S 32 (Eff 8-6-97); 147 v H 151 (Eff 9-16-97); 147 v S 193 (Eff 12-29-98); 149 v S 184. Eff 5-15-2002.

The provisions of § 3 of SB 193 (147 v —) read as follows:

SECTION 3. Section 2929.04 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 151 and Am. S.B. 32 of the 122nd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

§ 2929.05 Appellate review of death sentence.

(A) Whenever sentence of death is imposed pursuant to sections 2929.03 and 2929.04 of the Revised Code, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall review upon appeal the sentence of death at the same time that they review the other issues in the case. The court of appeals and the supreme court shall review the judgment in the case and the sentence of death imposed by the court or panel of three judges in the same manner that they review other criminal cases, except that they shall review and independently weigh all of the facts and other evidence disclosed in the record in the case and consider the offense and the offender to determine whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors in the case, and whether the sentence of death is appropriate. In determining whether the sentence of death is appropriate, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. They also shall review all of the facts and other evidence to determine if the evidence supports the finding of the aggravating circumstances the trial jury or the panel of three judges found the offender guilty of committing, and shall determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court shall affirm a sentence of death only if the particular court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case.

A court of appeals that reviews a case in which the sentence of death is imposed for an offense committed before January 1, 1995, shall file a separate opinion as to its findings in the case with the clerk of the supreme court. The opinion shall be filed within fifteen days after the court issues its opinion and shall contain whatever information is required by the clerk of the supreme court.

(B) The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall give priority over all other cases to the review of judgments in which the sentence of death is imposed and, except as otherwise provided in this section, shall conduct the review in accordance with the Rules of Appellate Procedure.

(C) At any time after a sentence of death is imposed pursuant to section 2929.022 [2929.02.2] or 2929.03 of the Revised Code, the court of common pleas that sentenced the offender shall vacate the sentence if the offender did not present evidence at trial that the offender was not eighteen years of age or older at the time of the commis-

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3 v 123(164), eh 16, § 6;
3; 134 v H 511. Eff 1-1-74.

§ 2941.08 Certain defects do not render indictment invalid.

An indictment or information is not made invalid, and the trial, judgment, or other proceedings stayed, arrested, or affected:

(A) By the omission of "with force and arms," or words of similar import, or "as appears by the record";

(B) For omitting to state the time at which the offense was committed, in a case in which time is not of the essence of the offense;

(C) For stating the time imperfectly;

(D) For stating imperfectly the means by which the offense was committed except insofar as means is an element of the offense;

(E) For want of a statement of the value or price of a matter or thing, or the amount of damages or injury, where the value or price or the amount of damages or injury is not of the essence of the offense, and in such case it is sufficient to aver that the value or price of the property is less than, equals, or exceeds the certain value or price which determines the offense or grade thereof;

(F) For the want of an allegation of the time or place of a material fact when the time and place have been once stated therein;

(G) Because dates and numbers are represented by figures;

(H) For an omission to allege that the grand jurors were impaneled, sworn, or charged;

(I) For surplusage or repugnant allegations when there is sufficient matter alleged to indicate the crime and person charged;

(J) For want of averment of matter not necessary to be proved;

(K) For other defects or imperfections which do not tend to prejudice the substantial rights of the defendant upon the merits.

HISTORY: GC § 13437-7; 113 v 123(165), eh 16, § 7; Bureau of Code Revision. Eff 10-1-53.

§ 2941.09 Identification of corporation.

In any indictment or information it is sufficient for the purpose of identifying any group or association of persons, not incorporated, to state the proper name of such group or association, to state any name or designation by which the group or association has been or is known, to state the names of all persons in such group or association or of one or more of them, or to state the name of one or more persons in such group or association referring to the others as "another" or "others." It is sufficient for the purpose of identifying a corporation to state the corporate name of such corporation, or any name or designation by which such corporation has been or is known.

HISTORY: GC § 13437-8; 113 v 123(165), eh 16, § 8; Bureau of Code Revision. Eff 10-1-53.

§ 2941.10 Indictment complete.

No indictment or information for any offense created or defined by statute is objectionable for the reason that it fails to negative any exception, excuse, or proviso contained in the statute creating or defining the offense. The fact that the charge is made is an allegation that no legal excuse for the doing of the act exists in the particular case.

HISTORY: GC § 13437-9; 113 v 123(165), eh 16, § 9; Bureau of Code Revision. Eff 10-1-53.

§ 2941.11 Pleading prior conviction.

Whenever it is necessary to allege a prior conviction of the accused in an indictment or information, it is sufficient to allege that the accused was, at a certain stated time, in a certain stated court, convicted of a certain stated offense, giving the name of the offense, or stating the substantial elements thereof.

HISTORY: GC § 13437-10; 113 v 123(166), eh 16, § 10; Bureau of Code Revision. Eff 10-1-53.

§ 2941.12 Pleading a statute.

In pleading a statute or right derived therefrom it is sufficient to refer to the statute by its title, or in any other manner which identifies the statute. The court must thereupon take judicial notice of such statute.

HISTORY: GC § 13437-11; 113 v 123(166), eh 16, § 11; Bureau of Code Revision. Eff 10-1-53.

§ 2941.13 Pleading a judgment.

In pleading a judgment or other determination of, or a proceeding before, any court or officer, civil or military, it is not necessary to allege the fact conferring jurisdiction on such court or officer. It is sufficient to allege generally that such judgment or determination was given or made or such proceedings had.

HISTORY: GC § 13437-12; 113 v 123(166), eh 16, § 12; Bureau of Code Revision. Eff 10-1-53.

§ 2941.14 Allegations in homicide indictment.

(A) In an indictment for aggravated murder, murder, or voluntary or involuntary manslaughter, the manner in which, or the means by which the death was caused need not be set forth.

(B) Imposition of the death penalty for aggravated murder is precluded unless the indictment or count in the indictment charging the offense specifies one or more of the aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code. If more than one aggravating circumstance is specified to an indictment or count, each shall be in a separately numbered specification, and if an aggravating circumstance is specified to a count in an indictment containing more than one count, such specification shall be identified as to the count to which it applies.

(C) A specification to an indictment or count in an indictment charging aggravated murder shall be stated at the end of the body of the indictment or count, and may be in substantially the following form:

"SPECIFICATION (or, SPECIFICATION 1, SPECIFICATION TO THE FIRST COUNT, or SPECIFICATION 1 TO THE FIRST COUNT). The Grand Jurors further find and specify that (set forth the applicable aggravating circumstance listed in divisions (A)(1) to (10) of section 2929.04 of the Revised Code. The aggravating circumstance may be stated in the words of the subdivision in which it appears, or in words sufficient to give the accused notice of the same)."

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the manner and for the purpose described in section 2152.17 of the Revised Code.

(D) As used in this section, "firearm" and "automatic firearm" have the same meanings as in section 2923.11 of the Revised Code.

HISTORY: 143 v S 258 (Eff 11-20-90); 146 v S 2 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 2941.14.5] § 2941.145 Specification that offender displayed, brandished, indicated possession of or used firearm.

(A) Imposition of a three-year mandatory prison term upon an offender under division (D)(1)(a) of section 2929.14 of the Revised Code is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense. The specification shall be stated at the end of the body of the indictment, count, or information, and shall be stated in substantially the following form:

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or the prosecuting attorney's name when appropriate) further find and specify that (set forth that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense)."

(B) Imposition of a three-year mandatory prison term upon an offender under division (D)(1)(a) of section 2929.14 of the Revised Code is precluded if a court imposes a one-year or six-year mandatory prison term on the offender under that division relative to the same felony.

(C) The specification described in division (A) of this section may be used in a delinquent child proceeding in the manner and for the purpose described in section 2152.17 of the Revised Code.

(D) As used in this section, "firearm" has the same meaning as in section 2923.11 of the Revised Code.

HISTORY: 146 v S 2 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 2941.14.6] § 2941.146 Specification that offender discharged firearm from motor vehicle.

(A) Imposition of a mandatory five-year prison term upon an offender under division (D)(1)(c) of section 2929.14 of the Revised Code for committing a violation of section 2923.161 [2923.16.1] of the Revised Code or for committing a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle other than a manufactured home is precluded unless the indictment, count in the indictment, or information charging the offender specifies that the offender committed the offense by discharging a firearm from a motor vehicle other than a manufactured home. The specification shall be stated at the end of the body of the indictment, count, or information, and shall be stated in substantially the following form:

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or prosecuting attorney's name when appropriate) further find and specify that (set forth that the offender committed the violation of section 2923.161 [2923.16.1] of the Revised Code or the felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle other than a manufactured home)."

(B) The specification described in division (A) of this section may be used in a delinquent child proceeding in the manner and for the purpose described in section 2152.17 of the Revised Code.

(C) As used in this section:

(1) "Firearm" has the same meaning as in section 2923.11 of the Revised Code;

(2) "Motor vehicle" and "manufactured home" have the same meanings as in section 4501.01 of the Revised Code.

HISTORY: 146 v S 2 (Eff 7-1-96); 148 v S 107 (Eff 3-23-2000); 148 v S 179, § 3. Eff 1-1-2002.

The effective date is set by section 5 of SB 179.

[§ 2941.14.7] § 2941.147 Specification of sexual motivation.

(A) Whenever a person is charged with an offense that is a violation of section 2903.01, 2903.02, 2903.11, or 2905.01 of the Revised Code, a violation of division (A) of section 2903.04 of the Revised Code, an attempt to violate or complicity in violating section 2903.01, 2903.02, 2903.11, or 2905.01 of the Revised Code when the attempt or complicity is a felony, or an attempt to violate or complicity in violating division (A) of section 2903.04 of the Revised Code when the attempt or complicity is a felony, the indictment, count in the indictment, information, or complaint charging the offense may include a specification that the person committed the offense with a sexual motivation. The specification shall be stated at the end of the body of the indictment, count, information, or complaint and shall be in substantially the following form:

"SPECIFICATION (OR, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or the prosecuting attorney's name when appropriate) further find and specify that the offender committed the offense with a sexual motivation."

(B) As used in this section, "sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.

HISTORY: 146 v H 180. Eff 1-1-97.

The effective date is set by section 3 of HB 180.

See provisions, § 4 of HB 180 (146 v —), following RC § 2921.34.

[§ 2941.14.8] § 2941.148 Specification that offender is a sexually violent predator.

(A)(1) The application of Chapter 2971. of the Revised Code to an offender is precluded unless one of the following applies:

HISTORY: GC § 13443-5; 113 v 123(183), ch 22, § 5; Bureau of Code Revision, 10-1-53; 136 v H 133 (Eff 6-3-76); 139 v S 1 (Eff 10-19-81); 145 v H 41. Eff 9-27-93.

See provisions, § 3 of HB 41 (145 v —) following RC § 2945.18.

§ 2945.25 Causes of challenging of jurors.

A person called as a juror in a criminal case may be challenged for the following causes:

(A) That he was a member of the grand jury that found the indictment in the case;

(B) That he is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from examination of the juror or from other evidence, that he will render an impartial verdict according to the law and the evidence submitted to the jury at the trial;

(C) In the trial of a capital offense, that he unequivocally states that under no circumstances will he follow the instructions of a trial judge and consider fairly the imposition of a sentence of death in a particular case. A prospective juror's conscientious or religious opposition to the death penalty in and of itself is not grounds for a challenge for cause. All parties shall be given wide latitude in voir dire questioning in this regard.

(D) That he is related by consanguinity or affinity within the fifth degree to the person alleged to be injured or attempted to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant;

(E) That he served on a petit jury drawn in the same cause against the same defendant, and that [petit]† jury was discharged after hearing the evidence or rendering a verdict on the evidence that was set aside;

(F) That he served as a juror in a civil case brought against the defendant for the same act;

(G) That he has been subpoenaed in good faith as a witness in the case;

(H) That he is a chronic alcoholic, or drug dependent person;

(I) That he has been convicted of a crime that by law disqualifies him from serving on a jury;

(J) That he has an action pending between him and the state or the defendant;

(K) That he or his spouse is a party to another action then pending in any court in which an attorney in the cause then on trial is an attorney, either for or against him;

(L) That he is the person alleged to be injured or attempted to be injured by the offense charged, or is the person on whose complaint the prosecution was instituted, or the defendant;

(M) That he is the employer or employee, or the spouse, parent, son, or daughter of the employer or employee, or the counselor, agent, or attorney of any person included in division (L) of this section;

(N) That English is not his native language, and his knowledge of English is insufficient to permit him to understand the facts and law in the case;

(O) That he otherwise is unsuitable for any other cause to serve as a juror.

The validity of each challenge listed in this section shall be determined by the court.

HISTORY: GC § 13443-8; 113 v 123(183), ch 22, § 8; 118 v 429; Bureau of Code Revision, 10-1-53; 138 v H 965 (Eff 4-9-81); 139 v S 1. Eff 10-19-81.

† Division (E), S 1 failed to contain the word "petit" here. It was added in H 965.

§ 2945.26 Challenge for cause.

Challenges for cause shall be tried by the court on the oath of the person challenged, or other evidence, and shall be made before the jury is sworn.

HISTORY: GC § 13443-9; 113 v 123(184), ch 22, § 9; Bureau of Code Revision. Eff 10-1-53.

§ 2945.27 Examination of jurors by the court.

The judge of the trial court shall examine the prospective jurors under oath or upon affirmation as to their qualifications to serve as fair and impartial jurors, but he shall permit reasonable examination of such jurors by the prosecuting attorney and by the defendant or his counsel.

HISTORY: GC § 13443-10; 113 v 123(184), ch 22, § 10; Bureau of Code Revision, 10-1-53; 127 v 419. Eff 9-9-57.

§ 2945.28 Form of oath to jury.

In criminal cases jurors and the jury shall take the following oath to be administered by the trial court or the clerk of the court of common pleas: "You shall well and truly try, and true deliverance make between the State of Ohio and the defendant (giving his name). So help you God."

A juror shall be allowed to make affirmation and the words "this you do as you shall answer under the pains and penalties of perjury" shall be substituted for the words, "So help you God."

HISTORY: RS §§ 7281, 7282; 66 v 308, §§ 137, 138; GC §§ 13443-11, 13443-12; 113 v 123(184), ch 22, §§ 11, 12; Bureau of Code Revision. Eff 10-1-53.

§ 2945.29 Jurors becoming unable to perform duties.

If, before the conclusion of the trial, a juror becomes sick, or for other reason is unable to perform his duty, the court may order him to be discharged. In that case, if alternate jurors have been selected, one of them shall be designated to take the place of the juror so discharged. If, after all alternate jurors have been made regular jurors, a juror becomes too incapacitated to perform his duty, and has been discharged by the court, a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or thereafter impaneled.

HISTORY: GC § 13443-13; 113 v 123(184), ch 22, § 13; Bureau of Code Revision. Eff 10-1-53.

§ 2945.30 Medical attendance of juror.

In case of sickness of any juror before the conclusion of the trial, the court may order that such juror receive medical attendance and shall order the payment of a reasonable charge for such medical attendance out of the judiciary fund.

HISTORY: GC § 13443-14; 113 v 123(184), ch 22, § 14; Bureau of Code Revision. Eff 10-1-53.

HISTORY: GC § 13443-13; 113 v 123(184), ch 22, § 13; Bureau of Code Revision, Eff 10-1-53.

§ 2945.30 Medical attendance of juror.

In case of sickness of any juror before the conclusion of the trial, the court may order that such juror receive medical attendance and shall order the payment of a reasonable charge for such medical attendance out of the judiciary fund.

HISTORY: GC § 13443-14; 113 v 123(184), ch 22, § 14; Bureau of Code Revision, Eff 10-1-53.

§ 2945.31 Separation of jurors.

After the trial has commenced, before or after the jury is sworn, the court may order the jurors to be kept in charge of proper officers, or they may be permitted to separate during the trial. If the jurors are kept in charge of officers of the court, proper arrangements shall be made for their care, maintenance, and comfort, under the orders and direction of the court. In case of necessity the court may permit temporary separation of the jurors.

HISTORY: GC § 13443-15; 113 v 123(185), ch 22, § 15; Bureau of Code Revision, Eff 10-1-53.

§ 2945.32 Oath to officers if jury sequestered.

When an order has been entered by the court of common pleas in any criminal cause, directing the jurors to be kept in charge of the officers of the court, the following oath shall be administered by the clerk of the court of common pleas to said officers: "You do solemnly swear that you will, to the best of your ability, keep the persons sworn as jurors on this trial, from separating from each other; that you will not suffer any communications to be made to them, or any of them, orally or otherwise; that you will not communicate with them, or any of them, orally or otherwise, except by the order of this court, or to ask them if they have agreed on their verdict, until they shall be discharged, and that you will not, before they render their verdict communicate to any person the state of their deliberations or the verdict they have agreed upon, so help you God." Any officer having taken such oath who willfully violates the same, or permits the same to be violated, is guilty of perjury and shall be imprisoned not less than one nor more than ten years.

HISTORY: GC § 13443-16; 113 v 123(185), ch 22, § 16; Bureau of Code Revision, Eff 10-1-53.

§ 2945.33 Keeping and conduct of jury after case submitted.

When a cause is finally submitted the jurors must be kept together in a convenient place under the charge of an officer until they agree upon a verdict, or are discharged by the court. The court, except in cases where the offense charged may be punishable by death, may permit the jurors to separate during the adjournment of court overnight, under proper cautions, or under supervision of an officer. Such officer shall not permit a communication to be made to them, nor make any himself except to ask if they have agreed upon a verdict, unless he does so by order of the court. Such officer shall not communicate to any person, before the verdict is delivered, any matter in relation to their deliberation. Upon the trial of any prosecution for misdemeanor, the court may permit the jury to separate during their deliberation, or upon adjournment of the court overnight.

In cases where the offense charged may be punished by death, after the case is finally submitted to the jury, the jurors shall be kept in charge of the proper officer and proper arrangements for their care and maintenance shall be made as under section 2945.31 of the Revised Code.

HISTORY: GC § 13443-1; 113 v 123(194), ch 27; 115 v 531; Bureau of Code Revision, 10-1-53; 131 v 681. Eff 11-9-65.

§ 2945.34 Admonition if jurors separate during trial.

If the jurors are permitted to separate during a trial, they shall be admonished by the court not to converse with, nor permit themselves to be addressed by any person, nor to listen to any conversation on the subject of the trial, nor form or express any opinion thereon, until the case is finally submitted to them.

HISTORY: GC § 13443-17; 113 v 123(185), ch 22, § 17; Bureau of Code Revision, Eff 10-1-53.

§ 2945.35 Papers the jury may take.

Upon retiring for deliberation, the jury, at the discretion of the court, may take with it all papers except depositions, and all articles, photographs, and maps which have been offered in evidence. No article or paper identified but not admitted in evidence shall be taken by the jury upon its retirement.

HISTORY: GC § 13444-26; 113 v 123(191), ch 23, § 26; Bureau of Code Revision, Eff 10-1-53.

§ 2945.36 For what cause jury may be discharged.

The trial court may discharge a jury without prejudice to the prosecution:

(A) For the sickness or corruption of a juror or other accident or calamity;

(B) Because there is no probability of such jurors agreeing;

(C) If it appears after the jury has been sworn that one of the jurors is a witness in the case;

(D) By the consent of the prosecuting attorney and the defendant.

The reason for such discharge shall be entered on the journal.

HISTORY: GC § 13443-18; 113 v 123(185), ch 22, § 18; Bureau of Code Revision, Eff 10-1-53.

[COMPETENCY TO STAND TRIAL]

§ 2945.37 Definitions; hearing on competence to stand trial.

(A) As used in sections 2945.37 to 2945.402 [2945.40.2] of the Revised Code:

(1) "Prosecutor" means a prosecuting attorney or a city director of law, village solicitor, or similar chief legal officer

of a municipal corporation who has authority to prosecute a criminal case that is before the court or the criminal case in which a defendant in a criminal case has been found incompetent to stand trial or not guilty by reason of insanity.

(2) "Examiner" means either of the following:

(a) A psychiatrist or a licensed clinical psychologist who satisfies the criteria of division (I)(1) of section 5122.01 of the Revised Code or is employed by a certified forensic center designated by the department of mental health to conduct examinations or evaluations.

(b) For purposes of a separate mental retardation evaluation that is ordered by a court pursuant to division (H) of section 2945.371 [2945.37.1] of the Revised Code, a psychologist designated by the director of mental retardation and developmental disabilities pursuant to that section to conduct that separate mental retardation evaluation.

(3) "Nonsecured status" means any unsupervised, off-grounds movement or trial visit from a hospital or institution, or any conditional release, that is granted to a person who is found incompetent to stand trial and is committed pursuant to section 2945.39 of the Revised Code or to a person who is found not guilty by reason of insanity and is committed pursuant to section 2945.40 of the Revised Code.

(4) "Unsupervised, off-grounds movement" includes only off-grounds privileges that are unsupervised and that have an expectation of return to the hospital or institution on a daily basis.

(5) "Trial visit" means a patient privilege of a longer stated duration of unsupervised community contact with an expectation of return to the hospital or institution at designated times.

(6) "Conditional release" means a commitment status under which the trial court at any time may revoke a person's conditional release and order the rehospitalization or reinstitutionalization of the person as described in division (A) of section 2945.402 [2945.40.2] of the Revised Code and pursuant to which a person who is found incompetent to stand trial or a person who is found not guilty by reason of insanity lives and receives treatment in the community for a period of time that does not exceed the maximum prison term or term of imprisonment that the person could have received for the offense in question had the person been convicted of the offense instead of being found incompetent to stand trial on the charge of the offense or being found not guilty by reason of insanity relative to the offense.

(7) "Licensed clinical psychologist," "mentally ill person subject to hospitalization by court order," and "psychiatrist" have the same meanings as in section 5122.01 of the Revised Code.

(8) "Mentally retarded person subject to institutionalization by court order" has the same meaning as in section 5123.01 of the Revised Code.

(B) In a criminal action in a court of common pleas, a county court, or a municipal court, the court, prosecutor, or defense may raise the issue of the defendant's competence to stand trial. If the issue is raised before the trial has commenced, the court shall hold a hearing on the issue as provided in this section. If the issue is raised after the trial has commenced, the court shall hold a hearing on the issue only for good cause shown or on the court's own motion.

(C) The court shall conduct the hearing required or authorized under division (B) of this section within thirty days after the issue is raised, unless the defendant has been referred for evaluation in which case the court shall conduct the hearing within ten days after the filing of the report of the evaluation or, in the case of a defendant who is ordered by the court pursuant to division (H) of section 2945.371 [2945.37.1] of the Revised Code to undergo a separate mental retardation evaluation conducted by a psychologist designated by the director of mental retardation and developmental disabilities, within ten days after the filing of the report of the separate mental retardation evaluation under that division. A hearing may be continued for good cause.

(D) The defendant shall be represented by counsel at the hearing conducted under division (C) of this section. If the defendant is unable to obtain counsel, the court shall appoint counsel under Chapter 120. of the Revised Code or under the authority recognized in division (C) of section 120.06, division (E) of section 120.16, division (E) of section 120.26, or section 2941.51 of the Revised Code before proceeding with the hearing.

(E) The prosecutor and defense counsel may submit evidence on the issue of the defendant's competence to stand trial. A written report of the evaluation of the defendant may be admitted into evidence at the hearing by stipulation, but, if either the prosecution or defense objects to its admission, the report may be admitted under sections 2317.36 to 2317.38 of the Revised Code or any other applicable statute or rule.

(F) The court shall not find a defendant incompetent to stand trial solely because the defendant is receiving or has received treatment as a voluntary or involuntary mentally ill patient under Chapter 5122. or a voluntary or involuntary mentally retarded resident under Chapter 5123. of the Revised Code or because the defendant is receiving or has received psychotropic drugs or other medication, even if the defendant might become incompetent to stand trial without the drugs or medication.

(G) A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the court shall find the defendant incompetent to stand trial and shall enter an order authorized by section 2945.38 of the Revised Code.

(H) Municipal courts shall follow the procedures set forth in sections 2945.37 to 2945.402 [2945.40.2] of the Revised Code. Except as provided in section 2945.371 [2945.37.1] of the Revised Code, a municipal court shall not order an evaluation of the defendant's competence to stand trial or the defendant's mental condition at the time of the commission of the offense to be conducted at any hospital operated by the department of mental health. Those evaluations shall be performed through community resources including, but not limited to, certified forensic centers, court probation departments, and community mental health agencies. All expenses of the evaluations shall be borne by the legislative authority of the municipal court, as defined in section 1901.03 of the Revised Code, and shall be taxed as costs in the case. If a defendant is found incompetent to stand trial or not guilty by reason of insanity, a municipal court may commit the defendant as provided in sections 2945.38 to 2945.402 [2945.40.2] of the Revised Code.

HISTORY: 137 v H 565 (Eff 11-1-78); 138 v S 297 (Eff 4-30-80); 139 v H 694 (Eff 11-15-81); 142 v S 156 (Eff 7-1-89); 146 v S 285. Eff 7-1-97.

Analogous to former RC § 2945
123; Bureau of Code Revision,
repealed 137 v H 565, § 2, eff 11-
The effective date is set by section

[§ 2945.37.1] §

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11-1-78); 138 v S 297 (Eff
1); 142 v S 156 (Eff 7-1-89);

Analogous to former RC § 2945.37 (GC § 13441-1; 113 v 123; Bureau of Code Revision, 10-1-53; 136 v S 368), repealed 137 v H 565, § 2, eff 11-1-78.

The effective date is set by section 4 of SB 285.

[§ 2945.37.1] § 2945.371 Evaluations of defendant's mental condition at relevant time; separate mental retardation evaluation.

(A) If the issue of a defendant's competence to stand trial is raised or if a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. An examiner shall conduct the evaluation.

(B) If the court orders more than one evaluation under division (A) of this section, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to perform one of the evaluations. If a defendant enters a plea of not guilty by reason of insanity and if the court does not designate an examiner recommended by the defendant, the court shall inform the defendant that the defendant may have independent expert evaluation and that, if the defendant is unable to obtain independent expert evaluation, it will be obtained for the defendant at public expense if the defendant is indigent.

(C) If the court orders an evaluation under division (A) of this section, the defendant shall be available at the times and places established by the examiners who are to conduct the evaluation. The court may order a defendant who has been released on bail or recognizance to submit to an evaluation under this section. If a defendant who has been released on bail or recognizance refuses to submit to a complete evaluation, the court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by the department of mental health or the department of mental retardation and developmental disabilities where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days.

(D) A defendant who has not been released on bail or recognizance may be evaluated at the defendant's place of detention. Upon the request of the examiner, the court may order the sheriff to transport the defendant to a program or facility operated by the department of mental health or the department of mental retardation and developmental disabilities, where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days, and to return the defendant to the place of detention after the evaluation. A municipal court may make an order under this division only upon the request of a certified forensic center examiner.

(E) If a court orders the evaluation to determine a defendant's mental condition at the time of the offense charged, the court shall inform the examiner of the offense with which the defendant is charged.

(F) In conducting an evaluation of a defendant's mental condition at the time of the offense charged, the examiner shall consider all relevant evidence. If the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered woman syndrome."

(G) The examiner shall file a written report with the court within thirty days after entry of a court order for evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the following:

(1) The examiner's findings;

(2) The facts in reasonable detail on which the findings are based;

(3) If the evaluation was ordered to determine the defendant's competence to stand trial, all of the following findings or recommendations that are applicable:

(a) Whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense;

(b) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, whether the defendant presently is mentally ill or mentally retarded and, if the examiner's opinion is that the defendant presently is mentally retarded, whether the defendant appears to be a mentally retarded person subject to institutionalization by court order;

(c) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner's opinion as to the likelihood of the defendant becoming capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense within one year if the defendant is provided with a course of treatment;

(d) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or mentally retarded, the examiner's recommendation as to the least restrictive treatment alternative, consistent with the defendant's treatment needs for restoration to competency and with the safety of the community.

(4) If the evaluation was ordered to determine the defendant's mental condition at the time of the offense charged, the examiner's findings as to whether the defendant, at the time of the offense charged, did not know, as a result of a severe mental disease or defect, the wrongfulness of the defendant's acts charged.

(H) If the examiner's report filed under division (G) of this section indicates that in the examiner's opinion the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that in the examiner's opinion the defendant appears to be a mentally retarded person subject to institutionalization by court order, the court shall order the defendant to undergo a separate mental retardation evaluation conducted by a psychologist designated by the director of mental retardation and developmental disabilities. Divisions (C) to (F) of this section apply in relation to a separate mental retardation evaluation conducted under this division. The psychologist appointed under this division to conduct the separate mental retardation evaluation shall file a written report with the court within thirty days after the entry of the court order requiring the separate mental retardation evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the information described in divisions (G)(1)

to (4) of this section. If the court orders a separate mental retardation evaluation of a defendant under this division, the court shall not conduct a hearing under divisions (B) to (H) of section 2945.37 of the Revised Code regarding that defendant until a report of the separate mental retardation evaluation conducted under this division has been filed. Upon the filing of that report, the court shall conduct the hearing within the period of time specified in division (C) of section 2945.37 of the Revised Code.

(I) An examiner appointed under divisions (A) and (B) of this section or under division (H) of this section to evaluate a defendant to determine the defendant's competence to stand trial also may be appointed to evaluate a defendant who has entered a plea of not guilty by reason of insanity, but an examiner of that nature shall prepare separate reports on the issue of competence to stand trial and the defense of not guilty by reason of insanity.

(J) No statement that a defendant makes in an evaluation or hearing under divisions (A) to (H) of this section relating to the defendant's competence to stand trial or to the defendant's mental condition at the time of the offense charged shall be used against the defendant on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated the defendant or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the prosecutor or defense counsel from calling other witnesses or presenting other evidence on competency or insanity issues.

(K) Persons appointed as examiners under divisions (A) and (B) of this section or under division (H) of this section shall be paid a reasonable amount for their services and expenses, as certified by the court. The certified amount shall be paid by the county in the case of county courts and courts of common pleas and by the legislative authority, as defined in section 1901.03 of the Revised Code, in the case of municipal courts.

HISTORY: 137 v H 565 (Eff 11-1-78); 138 v S 297 (Eff 4-30-80); 138 v H 900 (Eff 7-1-80); 138 v H 965 (Eff 4-9-81); 146 v S 285 (Eff 7-1-97); 149 v S 122. Eff 2-20-2002.

See provisions, § 2 of SB 122 (149 v —) following RC § 2945.38.

§ 2945.38 Disposition of defendant after competency hearing; treatment and evaluation orders.

(A) If the issue of a defendant's competence to stand trial is raised and if the court, upon conducting the hearing provided for in section 2945.37 of the Revised Code, finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law. If the court finds the defendant competent to stand trial and the defendant is receiving psychotropic drugs or other medication, the court may authorize the continued administration of the drugs or medication or other appropriate treatment in order to maintain the defendant's competence to stand trial, unless the defendant's attending physician advises the court against continuation of the drugs, other medication, or treatment.

(B)(1)(a) If, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order the defendant to undergo treatment. If the defendant has been charged with a felony offense and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial, but the court is unable at that time to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court shall order continuing evaluation and treatment of the defendant for a period not to exceed four months to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment.

(b) The court order for the defendant to undergo treatment or continuing evaluation and treatment under division (B)(1)(a) of this section shall specify that the treatment or continuing evaluation and treatment shall occur at a facility operated by the department of mental health or the department of mental retardation and developmental disabilities, at a facility certified by either of those departments as being qualified to treat mental illness or mental retardation, at a public or private community mental health or mental retardation facility, or by a psychiatrist or another mental health or mental retardation professional. The order may restrict the defendant's freedom of movement as the court considers necessary. The prosecutor in the defendant's case shall send to the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed copies of relevant police reports and other background information that pertains to the defendant and is available to the prosecutor unless the prosecutor determines that the release of any of the information in the police reports or any of the other background information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person.

In determining placement alternatives, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that is consistent with public safety and treatment goals. In weighing these factors, the court shall give preference to protecting public safety.

(c) If the defendant is found incompetent to stand trial, if the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed for treatment or continuing evaluation and treatment under division (B)(1)(b) of this section determines that medication is necessary to restore the defendant's competency to stand trial, and if the defendant lacks the capacity to give informed consent or refuses medication, the chief clinical officer, managing officer, director, or person to which the defendant is committed for treatment or continuing evaluation and treatment may petition the court for authorization for the involuntary administration of medication. The court shall hold a hearing on the petition within five days of the filing of the petition if the petition was filed in a municipal court or a county court regarding an incompetent defendant charged with a misdemeanor or within ten days of the filing of the petition if the petition was filed in a court of common pleas regarding an

incompetent defendant cl
Following the hearing, the
untary administration of
petition.

(2) If the court finds tha
to stand trial and that, eve
with a course of treatme
probability that the defen
stand trial within one y
discharge of the defenda
prosecutor or on its own
retain jurisdiction over th
2945.39 of the Revised C
probate court for the civi
pursuant to Chapter 5122
alleging that the defendan
to hospitalization by cou
person subject to institut
affidavit is filed in the pr
send to the probate court
the defendant's mental
pursuant to section 2945
Code.

The trial court may
detention that a probate
5122.11 or 5123.71 of t
effect until the probable
probate court. Further p
are civil proceedings gov
of the Revised Code.

(C) No defendant sha
ment, including any cont
under division (B)(1)
whichever of the followi

(1) One year, if the m
defendant is charged is

(a) Aggravated murd
lence for which a senter
may be imposed;

(b) An offense of viol
second degree;

(c) A conspiracy to c
complicity in the comm
division (C)(1)(a) or (b
attempt, or complicity
degree.

(2) Six months, if th
the defendant is charg
described in division (C

(3) Sixty days, if the
the defendant is charg
second degree;

(4) Thirty days, if th
the defendant is charg
fourth degree, a minc
misdemeanor.

(D) Any defendant
section shall not volu
voluntarily admitted to
section 5122.02, 512
Revised Code.

(E) Except as othe
defendant who is cha
ted to a hospital or oth
section shall not be
movement, supervis
nonsecured status. T

40 v H 291, § 2 [GC
h 34, § 5; Bureau of Code

ecution for felony.

tation of prisoners; ex-

one guard for every two
rted to a correctional insti-
horize a larger number of
of the sheriff, in which
he judge shall be certified
mmon pleas under the seal
all deliver the order with the
of the correctional insti-

nursement for the county
ation for indigent convicted
of common pleas shall
ill for each indigent con-
nt to this section for an
nile from the county seat to
on and return for the sheriff
ve cents a mile from the
tional institution for each
s shall be computed by the
k's duties under this division
f section 2949.19 of the

13 v 123(207), ch 34, § 6;
1-53; 138 v 542 (Eff 7-17-59);
v H 694 (Eff 11-15-81); 140 v
(Eff 10-6-94); 148 v H 283.

tion 162 of HB 283.

140 v H 291, § 2 [GC
ch 34, § 7; Bureau of Code
04; 139 v H 694]. Eff 7-1-83.

tion and payment of cost bill.

ıyment of criminal costs.

of this section, the clerk of
all report to the state public
h an indigent person was
s in which reimbursement is
f the Revised Code, and all
at are prepared pursuant to
d Code. The reports shall be
ithin thirty days after the end
escribed by the state public
panied by a certification of a
cases listed in the report the
be indigent and convicted of
reported pursuant to section
and that for each transpor-
rsuant to section 2949.17 of
nvicted felon was determined
blic defender shall review the
division and prepare a trans-
quarterly subsidy voucher for

each county for the amounts the state public defender finds to be correct. To compute the quarterly subsidy, the state public defender first shall subtract the total of all transportation cost vouchers that the state public defender approves for payment for the quarter from one-fourth of the state public defender's total appropriation for criminal costs subsidy for the fiscal year of which the quarter is part. The state public defender then shall compute a base subsidy amount per case by dividing the remainder by the total number of cases from all counties the state public defender approves for subsidy for the quarter. The quarterly subsidy voucher for each county shall then be the product of the base subsidy amount times the number of cases submitted by the county and approved for subsidy for the quarter. Payment shall be made to the clerk.

The clerk shall keep a record of all cases submitted for the subsidy in which the defendant was bound over to the court of common pleas from the municipal court. Upon receipt of the quarterly subsidy, the clerk shall pay to the clerk of the municipal court, for municipal court costs in such cases, an amount that does not exceed fifteen dollars per case, shall pay foreign sheriffs for their services, and shall deposit the remainder of the subsidy to the credit of the general fund of the county. The clerk of the court of common pleas then shall stamp the clerk's records "subsidy costs satisfied."

(B) If notified by the state public defender under section 2949.201 [2949.20.1] of the Revised Code that, for a specified state fiscal year, the general assembly has not appropriated funding for reimbursement payments pursuant to division (A) of this section, the clerk of the court of common pleas is exempt for that state fiscal year from the duties imposed upon the clerk by division (A) of this section and by sections 2949.17 and 2949.20 of the Revised Code. Upon providing the notice described in this division, the state public defender is exempt for that state fiscal year from the duties imposed upon the state public defender by division (A) of this section.

HISTORY: GC § 13455-8; 113 v 123(207), ch 34, § 8; Bureau of Code Revision, 10-1-53; 130 v 668 (Eff 10-14-63); 138 v H 204 (Eff 7-30-79); 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 140 v H 462 (Eff 3-28-85); 141 v H 201 (Eff 7-1-85); 142 v H 171 (Eff 7-1-87); 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

§ 2949.20 Costs in case of reversal.

In any case of final judgment of reversal as provided in section 2953.07 of the Revised Code, whenever the state of Ohio is the appellee, the clerk of the court of common pleas of the county in which sentence was imposed shall certify the case to the state public defender for reimbursement in the report required by section 2949.19 of the Revised Code, subject to division (B) of section 2949.19 of the Revised Code.

HISTORY: GC § 13455-9; 115 v 532, § 2; Bureau of Code Revision, 10-1-53; 138 v H 204 (Eff 7-30-79); 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

[§ 2949.20.1] § 2949.201 Notification to clerks of courts of common pleas as to status of state appropriations.

(A) On or before the date specified in division (B) of this section, in each state fiscal year, the state public defender shall notify the clerk of the court of common pleas of each county whether the general assembly has, or has not, appropriated funding for that state fiscal year for reimbursement payments pursuant to division (A) of section 2949.19 of the Revised Code.

(B) The state public defender shall provide the notification required by division (A) of this section on or before whichever of the following dates is applicable:

(1) If, on the first day of July of the fiscal year in question, the main operating appropriations act that covers that fiscal year is in effect, on or before the thirty-first day of July;

(2) If, on the first day of July of the fiscal year in question, the main operating appropriations act that covers that fiscal year is not in effect, on or before the day that is thirty days after the effective date of the main operating appropriations act that covers that fiscal year.

HISTORY: 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

[DEATH SENTENCE]

§ 2949.21 Conveyance to reception facility; assignment to institution.

A writ for the execution of the death penalty shall be directed to the sheriff by the court issuing it, and the sheriff, within thirty days and in a private manner, shall convey the prisoner to the facility designated by the director of rehabilitation and correction for the reception of the prisoner. For conducting the prisoner to the facility, the sheriff shall receive like fees and mileage as in other cases, when approved by the warden of the facility. After the procedures performed at the reception facility are completed, the prisoner shall be assigned to an appropriate correctional institution, conveyed to the institution, and kept within the institution until the execution of his sentence.

HISTORY: GC § 13456-1; 113 v 123(207), ch 35; Bureau of Code Revision, 10-1-53; 144 v S 359 (Eff 12-22-92); 145 v H 571. Eff 10-6-94.

§ 2949.22 Execution of death sentence.

(A) Except as provided in division (C) of this section, a death sentence shall be executed by causing the application to the person, upon whom the sentence was imposed, of a lethal injection of a drug or combination of drugs of sufficient dosage to quickly and painlessly cause death. The application of the drug or combination of drugs shall be continued until the person is dead. The warden of the correctional institution in which the sentence is to be executed or another person selected by the director of rehabilitation and correction shall ensure that the death sentence is executed.

(B) A death sentence shall be executed within the walls of the state correctional institution designated by the director of rehabilitation and correction as the location for executions, within an enclosure to be prepared for that purpose, under the direction of the warden of the institution or, in the warden's absence, a deputy warden, and on the day designated by the judge passing sentence or otherwise designated by a court in the course of any

appellate or postconviction proceedings. The enclosure shall exclude public view.

(C) If a person is sentenced to death, and if the execution of a death sentence by lethal injection has been determined to be unconstitutional, the death sentence shall be executed by using any different manner of execution prescribed by law subsequent to the effective date of this amendment instead of by causing the application to the person of a lethal injection of a drug or combination of drugs of sufficient dosage to quickly and painlessly cause death, provided that the subsequently prescribed different manner of execution has not been determined to be unconstitutional. The use of the subsequently prescribed different manner of execution shall be continued until the person is dead. The warden of the state correctional institution in which the sentence is to be executed or another person selected by the director of rehabilitation and correction shall ensure that the sentence of death is executed.

(D) No change in the law made by the amendment to this section that took effect on October 1, 1993, or by this amendment constitutes a declaration by or belief of the general assembly that execution of a death sentence by electrocution is a cruel and unusual punishment proscribed by the Ohio Constitution or the United States Constitution.

HISTORY: GC § 13456-2; 113 v 123(208), ch 35, § 2; Bureau of Code Revision, 10-1-53; 144 v S 359 (Eff 12-22-92); 145 v H 11 (Eff 10-1-93); 145 v H 571 (Eff 10-6-94); 149 v H 362. Eff 11-21-2001.

§ 2949.23 Repealed, 144 v S 359, § 2 [GC § 13456-3; 113 v 123(208), ch 35, § 3; Bureau of Code Revision, 10-1-53]. Eff 12-22-92.

This section concerned time of execution. See now RC § 2949.22.

§ 2949.24 Execution and return of warrant.

Unless a suspension of execution is ordered by the court of appeals in which the cause is pending on appeal or the supreme court for a case in which a sentence of death is imposed for an offense committed before January 1, 1995, or by the supreme court for a case in which a sentence of death is imposed for an offense committed on or after January 1, 1995, or is ordered by two judges or four justices of that court, the warden or another person selected by the director of rehabilitation and correction shall proceed at the time and place named in the warrant to ensure that the death sentence of the prisoner under death sentence is executed in accordance with section 2949.22 of the Revised Code. The warden shall make the return to the clerk of the court of common pleas of the county immediately from which the prisoner was sentenced of the manner of the execution of the warrant. The clerk shall record the warrant and the return in the records of the case.

HISTORY: GC § 13456-4; 113 v 123(208), ch 35, § 4; Bureau of Code Revision, 10-1-53; 144 v S 359 (Eff 12-22-92); 146 v S 4. Eff 9-21-95.

§ 2949.25 Attendance at execution.

(A) At the execution of a death sentence, only the following persons may be present:

(1) The warden of the state correctional institution in which the sentence is executed or a deputy warden, any other person selected by the director of rehabilitation and correction to ensure that the death sentence is executed, any persons necessary to execute the death sentence by lethal injection, and the number of correction officers that the warden thinks necessary;

(2) The sheriff of the county in which the prisoner was tried and convicted;

(3) The director of rehabilitation and correction, or the director's agent;

(4) Physicians of the state correctional institution in which the sentence is executed;

(5) The clergyperson in attendance upon the prisoner, and not more than three other persons, to be designated by the prisoner, who are not confined in any state institution;

(6) Not more than three persons to be designated by the immediate family of the victim;

(7) Representatives of the news media as authorized by the director of rehabilitation and correction.

(B) The director shall authorize at least one representative of a newspaper, at least one representative of a television station, and at least one representative of a radio station to be present at the execution of the sentence under division (A)(7) of this section.

HISTORY: GC § 13456-5; 113 v 123(208), ch 35, § 5; Bureau of Code Revision, 10-1-53; 125 v S 155 (Eff 7-1-54); 134 v H 494 (Eff 7-12-72); 144 v S 359 (Eff 12-22-92); 145 v H 11 (Eff 10-1-93); 145 v H 571 (Eff 10-6-94); 149 v H 362. Eff 11-21-2001.

§ 2949.26 Disposition of body of executed convict.

The body of an executed convict shall be returned for burial in any county of the state, to friends who made written request therefor, if made to the warden the day before or on the morning of the execution. The warden may pay the transportation and other funeral expenses, not to exceed fifty dollars.

If no request is made by such friends therefor, such body shall be disposed of as provided by section 1713.34 of the Revised Code and the rules of the director of job and family services.

HISTORY: GC § 13456-6; 113 v 123(208), ch 35, § 6; Bureau of Code Revision, 10-1-53; 141 v H 201 (Eff 7-1-85); 148 v H 471. Eff 7-1-2000.

The effective date is set by section 12(A) of HB 471.

§ 2949.27 Escape, rearrest, and execution.

If a convicted felon escapes after sentence of death, and is not retaken before the time fixed for his execution, any sheriff may rearrest and commit him to the county jail, and make return thereof to the court in which the sentence was passed. Such court shall again fix the time for execution, which shall be carried into effect as provided in sections 2949.21 to 2949.26, inclusive, of the Revised Code.

HISTORY: GC § 13456-7; 113 v 123(209), ch 35, § 7; Bureau of Code Revision. Eff 10-1-53.

§ 2949.28 Suspension of execution of death sentence of insane convict.

(A) As used in this section and section 2949.29 of the Revised Code, "insane" means that the convict in question

does not have the mental
nature of the death penalty a
the convict.

(B)(1) If a convict senten
insane, the warden or the sh
convict, the convict's counsel,
ogist who has examined the c
apparent insanity to whichev
ble:

(a) If the convict was trie
imposed the sentence upon t
unavailable, to another judg
mon pleas;

(b) If the convict was trie
any of the three judges who
the convict or, if each of th
another judge of the same c

(2) Upon receiving a noti
of this section, a judge sh
notice and any supporting
submitted by the prosecutin
the case, including previous
probable cause exists to beli
If the judge finds that proba
the convict is insane, the j
determine whether the conv
not find that probable cause
may dismiss the matter with

(3) If the judge who is
(B)(1) of this section finds
the convict is insane, the
convict's insanity at a time
judge and shall give immedi
prosecuting attorney who
prosecuting attorney's succ
the convict's counsel. The
the place at which the con
does not have counsel, the
to represent the convict i
appoint one or more psy
examine the convict. The c
atrist or psychologist who
ment of rehabilitation an
convict. The court shall c
section and section 2949.29
any ruling in the matter n
date of the notice given
section.

(4) Execution of the sen
ing completion of the inq
supreme court. If the su
granting a stay of executi
order also may authorize
continue the stay of exec
execution as provided in th
the Revised Code.

(C) If the court appoin
to examine the convict, th
atrist or psychologist of th
the purpose of the examin
access to any available psy
previously submitted to
mental condition of the co
report regarding the convi
the convict's plea of not g
examiner also shall have
mental health and medica

ve department or of
law provide, transmit
pro tempore of the
se of Representatives
esident is unable to
his office. Thereupon
sembling within forty-
not in session. If the
r receipt of the latter
s required to assem-
both Houses that the
e powers and duties of
continue to discharge
rwise, the President
of his office.

XVI

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XVII

for the services of the
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CONSTITUTION OF THE STATE OF OHIO

ADOPTED MARCH 10, 1851
WITH AMENDMENTS CURRENT TO MARCH 13, 2006

ARTICLE I: BILL OF RIGHTS

Section

§ 1 Right to freedom and protection of property.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

§ 2 Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

§ 3 Right to assemble together.

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances.

§ 4 Bearing arms; standing armies; subordination of military power.

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

§ 5 Trial by jury; reform in civil jury system.

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

HISTORY: (As amended September 3, 1912.)

§ 6 Slavery and involuntary servitude.

There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

§ 7 Rights of conscience; education; necessity of religion and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

§ 8 Writ of habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

§ 9 Bail; cruel and unusual punishments.

All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the

type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio.

(As amended January 1, 1998.)

§ 10 Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases.

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

HISTORY: (As amended September 3, 1912.)

§ 10a Rights of victims of crime.

Victims of criminal offenses shall be accorded fairness, dignity, and respect in the criminal justice process, and, as the general assembly shall define and provide by law, shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process. This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this constitution, and does not create any cause of action for compensation or damages against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(Adopted November 8, 1994)

§ 11 Freedom of speech and of the press; libel.

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

§ 12 Transportation, etc., for crime.

No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

§ 13 Quartering of troops.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

§ 14 Search warrants and general warrants.

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

§ 15 No imprisonment for debt.

No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

§ 16 Redress in courts.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

HISTORY: (As amended September 3, 1912.)

§ 17 Hereditary privileges, etc.

No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this state.

§ 18 Suspension of laws.

No power of suspending laws shall ever be exercised, except by the general assembly.

§ 19 Inviolability of private property.

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war

or other public exigency,
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SECTION 1. As used in
(A) "Blighted area" has th
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(B) "Public body" means
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(2) For a public utility
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SECTION 3. (A) Th
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or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

The provisions of 151 v S 167 read as follows:

SECTION 1. As used in Sections 2 to 7 of this act:

(A) "Blighted area" has the same meaning as in section 303.26 of the Revised Code, but also includes an area in a municipal corporation.

(B) "Public body" means any entity of the state government, and any county, municipal corporation, township, commission, district, authority, or other political subdivision of the state, that has the power to take private property by eminent domain.

SECTION 2. (A) Notwithstanding any provision of the Revised Code to the contrary, until December 31, 2006, no public body shall use eminent domain to take, without the consent of the owner, private property that is not within a blighted area, as determined by the public body, when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person.

(B)(1) Until December 31, 2006, if any public body uses eminent domain to take, without the consent of the owner, private property that is not within a blighted area, as determined by the public body, when the primary purpose for the taking is economic development that will ultimately result in ownership of that property being vested in another private person, each of the following shall apply:

(a) The Ohio Public Works Commission shall not award or distribute to the public body any funding under a capital improvement program created under Chapter 164. of the Revised Code.

(b) The Department of Development shall not award or distribute to the public body any funding under a shovel ready sites program created under section 122.083 of the Revised Code.

(c) The public body shall not receive any funding designated for capital purposes in any act of the General Assembly.

(2) Until December 31, 2006, any public body seeking to obtain funds described in division (B)(1) of this section, shall certify in writing to the grantor of the funds that the public body has not used its eminent domain authority on or after the effective date of this act to take private property in violation of the moratorium established by this act.

(C) Divisions (A) and (B) of this section do not apply to the use of eminent domain for the taking of private property to be used as follows:

(1) In the construction, maintenance, or repair of streets, roads, or walkways, paths, or other ways open to the public's use, including rights of way immediately adjacent to those public ways, including, but not limited to, such use pursuant to authority granted under Title LV of the Revised Code;

(2) For a public utility purpose;

(3) By a common carrier;

(4) For parks or recreation areas open to the public;

(5) In the construction, maintenance, or repair of buildings and grounds used for governmental purposes.

SECTION 3. (A) There is hereby created the Legislative Task Force to Study Eminent Domain and Its Use and Application in the State. The Task Force shall consist of the following twenty-five members:

(1) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives. The Speaker of the House of Representatives shall designate one of the members the Speaker appoints to serve as co-chairperson of the Task Force.

(2) Three members of the Senate, appointed by the President of the Senate in consultation with the Minority Leader of the Senate. The President of the Senate shall designate one of the members the President appoints to serve as co-chairperson of the Task Force.

(3) One member representing the home building industry in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(4) One member who shall be a statewide advocate on the issues raised in Kelo v. City of New London (2005), 125 S. Ct. 2655, insofar as they affect eminent domain, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(5) One member representing the agricultural industry in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(6) One member representing the commercial real estate industry in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(7) One member representing licensed realtors in the state, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(8) One member representing the Ohio Prosecuting Attorneys Association or the Ohio Association of Probate Judges, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(9) One member who shall be an attorney who is knowledgeable on the issues confronting the Task Force and who represents persons who own property and reside within Ohio, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(10) One member knowledgeable on the issues confronting the Task Force who represents persons who own property and reside within Ohio, appointed jointly by the Speaker of the House of Representatives and the President of the Senate;

(11) One member representing the planning industry in the state, one member representing an Ohio labor organization, one member representing a statewide historic preservation organization that works within commercial districts, one member representing municipal corporations, one member representing counties, and one member representing townships, each appointed by the Governor;

(12) The Director of Development or the Director's designee;

(13) The Director of Transportation or the Director's designee;

(14) Two members who shall be attorneys with expertise in eminent domain issues, each appointed by the Attorney General;

(15) One member representing small businesses, appointed jointly by the Speaker of the House of Representatives and the President of the Senate.

(B) Appointments to the Task Force shall be made not later than thirty days after the effective date of this section. Any vacancy in the membership of the Task Force shall be filled in the same manner as the original appointment. Members of the Task Force shall serve without compensation.

(C)(1) The Task Force shall study each of the following:

(a) The use of eminent domain and its impact on the state;

(b) How the decision of the United States Supreme Court in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, affects state law governing the use of eminent domain in the state;

(c) The overall impact of state laws governing the use of eminent domain on economic development, residents, and local governments in Ohio.

(2) The Task Force shall prepare and submit to the General Assembly by not later than April 1, 2006, a report that shall include the findings of its study and recommendations concerning the use of eminent domain and its impact on the state, and by not later than August 1, 2006, a report that shall include findings and recommendations regarding the updating of state law governing eminent domain. On submission of the report due not later than August 1, 2006, the Task Force shall cease to exist.

(D) The Legislative Service Commission shall provide any technical, professional, and clerical employees that are necessary for the Task Force to perform its duties.

(E) All meetings of the Task Force are declared to be public meetings open to the public at all times. A member of the Task Force shall be present in person at a meeting that is open to the public in order to be considered present or to vote at the meeting and for the purposes of determining whether a quorum is present. The Task Force shall promptly prepare and maintain the minutes of its meetings, which shall be public records under section 149.43 of the Revised Code. The Task Force shall give reasonable notice

of its meetings so that any person may determine the time and place of all scheduled meetings. The Task Force shall not hold a meeting unless it gives at least twenty-four hours advance notification to the news media organizations that have requested such notification.

SECTION 4. The General Assembly hereby makes the following statements of findings and intent:

(A) On June 23, 2005, the United States Supreme Court rendered its decision in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, which allows the taking of private property that is not within a blighted area by eminent domain for the purpose of economic development even when the ultimate result of the taking is ownership of the property being vested in another private person. As a result of this decision, the General Assembly believes the interpretation and use of the state's eminent domain law could be expanded to allow the taking of private property that is not within a blighted area, ultimately resulting in ownership of that property being vested in another private person in violation of Sections 1 and 19 of Article I, Ohio Constitution, which protect the rights of Ohio citizens to maintain property as inviolate, subservient only to the public welfare. Thus, the General Assembly finds it is necessary to enact a moratorium on any takings of this nature by any public body until further legislative remedies may be considered.

(B) The General Assembly finds that it is a matter of statewide concern to enact the moratorium. The moratorium is necessary to protect the general welfare and the rights of citizens under Sections 1 and 19 of Article I, Ohio Constitution, and to ensure that these rights are not violated due to the *Kelo* decision. In enacting this provision, the General Assembly wishes to ensure uniformity throughout the state.

SECTION 5. Section 2 of this act applies only to taking actions initiated on or after the effective date of this act. As used in this section, "initiated" means the adoption of a resolution or ordinance of necessity by the public body or filing of a court action, but excludes taking actions for which a resolution or ordinance of necessity or other official action of a public body has been taken and public funds have been expended in connection with that taking action prior to the effective date of this act.

SECTION 6. If any item of law that constitutes the whole or part of an uncodified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of an uncodified section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the uncodified sections contained in this act are composed, and their applications, are independent and severable.

SECTION 7. Nothing in this act shall be construed to imply that any public body with eminent domain authority has prior to the enactment of this act abused that authority or engaged in any wrongdoing in the exercise of its eminent domain authority conferred by statute or the Ohio Constitution.

SECTION 8. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for the necessity is that the United States Supreme Court decision in *Kelo v. City of New London* (2005), 125 S. Ct. 2655, could allow the taking of private property that is not within a blighted area, ultimately resulting in ownership of that property being vested in another private person in violation of Sections 1 and 19 of Article I, Ohio Constitution, and, as a result, warrants a moratorium on any takings of this type until further legislative remedies may be considered. Therefore, this act shall go into immediate effect.

§ 19a Damage for wrongful death.

The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

HISTORY: (Adopted September 3, 1912.)

§ 20 Powers reserved to the people.

This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

ARTICLE II: LEGISLATIVE

Section

39 Regulating expert testimony in criminal trials.

§ 39 Regulating expert testimony in criminal trials.

Laws may be passed for the regulation of the use of expert witnesses and expert testimony in criminal trials and proceedings.

HISTORY: (Adopted September 3, 1912.)

ARTICLE III: EXECUTIVE

Section

11 May grant reprieves, commutations, and pardons.

§ 11 May grant reprieves, commutations, and pardons.

The Governor shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the Governor may think proper; subject, however, to such regulations, as to the manner of applying for commutations and pardons, as may be prescribed by law. Upon conviction for treason, the Governor may suspend the execution of the sentence, and report the case to the General Assembly, at its next meeting, when the General Assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. The Governor shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with the Governor's reasons therefor.

(As amended January 1, 1996)

ARTICLE IV: JUDICIAL

Section

1 In whom judicial power vested.
2 The supreme court.
3 Court of appeals.
4 Common pleas court.
5 Additional powers of supreme court; supervision; rule making.
20 Style of process, prosecution, and indictment.

§ 1 In whom judicial power vested.

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.

HISTORY: (Amended May 7, 1968; Nov. 6, 1973; SJR No.30.)

§ 2 The supreme

(A) The supreme cour
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chief justice. If any mem
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consider and decide a ca
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of appeals to sit with the
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supreme court shall be r
or to render a judgment.

(B)(1) The supreme c
tion in the following:

(a) Quo warranto;
(b) Mandamus;
(c) Habeas corpus;
(d) Prohibition;
(e) Procedendo;
(f) In any cause on re
complete determination;
(g) Admission to the
persons so admitted, and
practice of law.

(2) The supreme cour
as follows:

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right in the following:
(i) Cases originating i
(ii) Cases involving qu
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(b) In appeals from
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(c) In direct appeals
or other courts of record
a matter of right in case
been imposed;
(d) Such revisory ju
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law;
(e) In cases of publi
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record to the supreme c
modify, or reverse the ju
(f) The supreme cou
or reverse the judgment
of appeals pursuant to s

(3) No law shall be p
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(C) The decisions in
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(Amended November

§ 3 Court of app

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AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Articles in addition to, and amendments of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
(Effective 1791)

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.
(Effective 1791)

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.
(Effective 1791)

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
(Effective 1791)

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
(Effective 1791)

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.
(Effective 1791)

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.
(Effective 1791)

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
(Effective 1791)

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
(Effective 1791)

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
(Effective 1791)

AMENDMENT XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.
(Effective 1798)

AMENDMENT XII

The Electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the

President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

(Effective 1804)

AMENDMENT XIII

SECTION 1. Neither slavery nor involuntary servitiude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

(Effective 1865)

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ohio Constitution

Due process, OConst art I, § 16

Equal protection, OConst art I, § 2

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Ohio Constitution

Apportionment, OConst art XI, §§ 1, 2, 3

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Ohio Constitution

Qualification for office, OConst art II, § 5

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Ohio Constitution

Public debt, OConst art VIII, §§ 1, 3

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(Effective 1868)

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

(Effective 1870)

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(Effective 1913)

AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

(Effective 1913)

AMENDMENT XVIII

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxi-

cating liquors within, the im
exportation thereof from the
subject to the jurisdiction the
hereby prohibited.

SECTION 2. The Congress
have concurrent power to en
ate legislation.

SECTION 3. This article sl
shall have been ratified as a
tution by the legislatures of t
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submission hereof to the St

(Effective 1919)

AMEND

The right of citizens of t
not be denied or abridged b
State on account of sex.

Congress shall have pow
appropriate legislation.

(Effective 1920)

AMEND

SECTION 1. The terms of
dent shall end at noon on th
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terms of their successors s

SECTION 2. The Congres
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day of January, unless they
day.

SECTION 3. If, at the tim
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the Vice President elect
President shall not have b
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have failed to qualify, the
act as President until a Pr
the Congress may by la
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SECTION 4. The Cong
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SECTION 5. Sections
day of October followi

SECTION 6. This arti
shall have been ratifie
tution by the legislatu
States within seven ye

(Effective 1933)

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

RON NABAKOWSKI, Clerk
JOURNAL ENTRY
James M Burge, Judge

Date June 10, 2008 Case No. 04CR065940
05CR068067

STATE OF OHIO
Plaintiff

LORAIN COUNTY PROSECUTOR
Plaintiff's Attorney

VS

RUBEN O. RIVERA
RONALD MCCLOUD
Defendant

KREIG J BRUSNAHAN
DANIEL WIGHTMAN
Defendant's Attorney (440) 930-2600

JUDGMENT ENTRY

The Case

These causes came on to be heard upon the motion filed by each defendant, challenging the Ohio lethal injection protocol as constituting cruel and unusual punishment, proscribed by the Eighth Amendment to the United States Constitution and by Section 9, Article 1 of the Ohio Constitution.

Defendants argue further that the Ohio lethal injection protocol violates the very statute which mandates that executions in Ohio be carried out by lethal injection, R.C.2949.22. Defendants claim that the three-drug protocol currently approved for use by the Ohio Department of Rehabilitation and Correction violates R.C.2949.22 because the drugs used create an unnecessary risk that the condemned will experience an agonizing and painful death. Defendants argue that the use of this protocol is contrary to the language of the statute, which mandates that the method of lethal injection cause death "quickly and painlessly." Defendants maintain that the use of this three-drug protocol arbitrarily abrogates the condemned person's statutorily created, substantive right to expect and to suffer a painless execution.

The state of Ohio has responded that the current lethal injection protocol conforms to the statute because death is caused quickly, and unless an error is made in conducting the execution, which the state claims is extremely unlikely the drugs used will cause a painless death.

The court conducted hearings over two days and heard expert testimony from the defense (Mark Heath, M.D.) and from the state (Mark Dershwitz, M.D.). After reviewing the reports of the physicians, together with other written materials submitted with each

report, and after evaluating the testimony provided by each physician, the court makes the following findings of fact, draws the following conclusions of law, and enters its judgment accordingly.

Findings of Fact

1. The state of Ohio uses a three-drug lethal injection protocol consisting of sodium thiopental, pancuronium bromide and potassium chloride, administered in the above order, as follows:

   A. sodium thiopental: 40 cc;
   B. sodium thiopental: 40 cc;
   C. saline flush: 20 cc;
   D. pancuronium bromide: 25 cc;
   E. pancuronium bromide: 25 cc;
   F. saline flush: 20 cc;
   G. potassium chloride: 50 cc;
   H. saline flush: 20 cc.

2. The properties of the above drugs produce the following results:

   A. sodium thiopental – anesthetic;
   B. pancuronium bromide – paralytic;
   C. potassium chloride – cardiac arrest.

3. The issue of whether an execution is painless arises, in part, from the use of pancuronium bromide, which will render the condemned person unable to breath, move, or communicate:

   "...it does not affect our ability to think, or to feel, or to hear, or anything, any of the senses, or any of our intellectual processes, or consciousness. So a person who's given pancuronium...would be wide awake, and - - but looking at them, you would - - they would look like they were peacefully asleep...But they would, after a time, experience intense desire to breathe. It would be like trying to hold one's breathe. And they wouldn't be able to draw a breath, and they would suffocate." (Heath, Tr. 72)

   ...

   "Pancuronium also would kill a person, but again, it would be excruciating. I wouldn't really call it painful, because I don't think being unable to breathe exactly causes pain. When we hold our breath it's clearly agonizing, but I wouldn't use the word "pain" to describe that. But clearly, an agonizing death would occur." (Heath, Tr. 75)

4. The second drug in the lethal injection protocol with properties which cause pain is potassium chloride. The reason is that before stopping the heart,

"it gets in contact with nerve fibers, it activates the nerve fibers to the maximal extent possible, and so it will activate pain fibers to the maximal extent that they can be activated. And so concentrated potassium causes excruciating pain in the veins as it travels up the arms and through the chest." (Heath, Tr. 73)

5. Based upon the foregoing, and upon the agreement of the expert witnesses presented by each party, the court finds that pancuronium bromide and potassium chloride will cause an agonizing or an excruciatingly painful death, if the condemned person is not sufficiently anesthetized by the delivery of an adequate dosage of sodium thiopental.

6. The following causes will compromise the delivery of an adequate dosage of sodium thiopental:

A. the useful life of the drug has expired;
B. the drug is not properly mixed in an aqueous solution;
C. the incorrect syringe is selected;
D. a retrograde injection may occur where the drug backs up into the tubing and deposits in the I.V. bag;
E. the tubing may leak;
F. the I.V. catheter may be improperly inserted into a vein, or into the soft issue;
G. the I.V. catheter, though properly inserted into a vein, may migrate out of the vein;
H. the vein injected may perforate, rupture, or otherwise leak.

7. The court fines further that:

A. It is impossible to determine the condemned person's depth of anesthesia before administering the agonizing or painful drugs, in that medical equipment supply companies will not sell medical equipment to measure depth of anesthesia for the purpose of carrying out an execution;

B. Physicians will not participate in the execution process, a fact which results in the use of paraprofessionals to mix the drugs, prepare the syringes, run the I.V. lines, insert the heparin lock (catheter) and inject the drugs; and,

C. The warden of the institution is required to determine whether the condemned person is sufficiently anesthetized before the pancuronium bromide and the potassium chloride are delivered, and the warden is not able to fulfill his duty without specialized medical equipment.

8. The experts testifying for each party agreed, and the court finds that mistakes are made in the delivery of anesthesia, even in the clinical setting, resulting in approximately 30,000 patients per year regaining consciousness during surgery, a circumstance which, due to the use of paralytic drugs, is not perceptible until the procedure is completed.

9. The court finds further that the occurrence of the potential errors listed in finding no. 6, *supra*, in either a clinical setting or during an execution, is not quantifiable and, hence, is not predicable.

10. Circumstantial evidence exists that some condemned prisoners have suffered a painful death, due to a flawed lethal injection; however, the occurrence of suffering cannot be known, as post-execution debriefing of the condemned person is not possible.

Conclusions of Fact

1. Pancuronium bromide prevents contortion or grotesque movement by the condemned person during the delivery of the potassium chloride, which also prevents visual trauma to the execution witnesses should the level of anesthesia not be sufficient to mask the body's reaction to pain. Pancuronium is not necessary to cause death by lethal injection.

2. Potassium chloride hastens death by stopping the heart almost immediately. Potassium chloride is not necessary to cause death by lethal injection.

3. The dosage of sodium thiopental used in Ohio executions (2 grams) is sufficient to cause death if properly administered, though death would not normally occur as quickly as when potassium chloride is used to stop the heart.

4. If pancuronium bromide and potassium chloride are eliminated from the lethal injection protocol, a sufficient dosage of sodium thiopental will cause death rapidly and without the possibility causing pain to the condemned.

A. Executions have been conducted where autopsy results showed that cardiac arrest and death have occurred after the administration of sodium thiopental, but before the delivery of pancuronium bromide and potassium chloride.

B. In California, a massive dose (five grams) of sodium thiopental are used in the lethal injection protocol.

Conclusions of Law

1. Capital punishment is not per se cruel and unusual punishment, prohibited by the Eighth Amendment to the United States Constitution and by Section 1, Article 9 of the Ohio Constitution. Gregg v. Georgia (1976), 428 U.S. 153,187 (FN5.); State v. Jenkins (1984), 15 Ohio St. 3d 164, 167-169.

2. Capital punishment administered by lethal injection is not per se cruel and unusual punishment, prohibited by the Eighth Amendment to the United States Constitution and by Section 1, Article 9 of the Ohio Constitution. Baze v. Rees (2008), 128 S. Ct. 1520, 1537-1538.

3. The Ohio statute authorizing the administration of capital punishment by lethal injection, R.C.2949.22, provides, in relevant part, as follows:

"(A) Except as provided in division (C) of this section, a death sentence shall be executed by causing the application to the person, upon whom the sentence was imposed, of ***a lethal injection of a drug or combination of drugs of sufficient dosage to quickly and painlessly cause death.*** The application of the drug or combination of drugs shall be continued until the person is dead..." (emphasis supplied)

4. The purpose of division (A), *supra*, is to provide the condemned person with an execution which is "quick" and "painless;" and the legislature's use of the word, "shall," when qualifying the state's duty to provide a quick and painless death signifies that the duty is mandatory.

5. When the duty of the state to the individual is mandatory, a property interest is created in the benefit conferred upon the individual, i.e. "Property interests...are created and their dimensions are defined by existing ***rules*** or understandings that ***stem from an independent source such as state law rules***...that secure certain benefits and that support claims of entitlement to those benefits." Board of Regents of State Colleges v. Roth (1972), 408 U.S. 564, 577 (emphasis supplied).

6. If a duty from the state to a person is mandated by statute, then the person to whom the duty is owed has a substantive, property right to the performance of that duty by the state, which may not be "arbitrarily abrogated." Wolf v. McDonnell (1974), 418 U.S. 539, 557.

7. The court holds that the use of two drugs in the lethal injection protocol (pancuronium bromide and potassium chloride) creates an unnecessary and arbitrary risk that the condemned will experience an agonizing and painful death. Thus, the right of the accused to the expectation and suffering of a painless death, as mandated by R.C.2949.22(A), is "arbitrarily abrogated."

8. The court holds further that the words, "quickly and painlessly," must be defined according to the rules of grammar and common usage, and that these words must be read together, in order to accomplish the purpose of the General Assembly in enacting the statute, i.e. to enact a death penalty statute which provides for an execution which is painless to the condemned. R.C.1.42, 1.47.

9. The parties have agreed and the court holds that the word, "painless," is a superlative which cannot be qualified and which means "without pain."

10. The word, "quickly," is an adverb that always modifies a verb, in this case, the infinitive form of the verb, "to be." It describes the rate at which an action is done. Thus, the meaning of the word, "quickly," is relative to the activity described: to pay a bill "quickly" could mean, "by return mail;" to respond to an emergency "quickly," could mean, "immediately." Hence, the word "quickly" in common parlance means, "rapidly enough to complete an act, and no longer."

11. Therefore, the court holds that when the General Assembly, chose the word, "quickly," together with the word, "painlessly," in directing that death by lethal injection be carried out "quickly and painlessly," the legislative intent was that the word, "quickly," mean, "rapidly enough to complete a painless execution, but no longer."

12. This holding, supra, is consistent with the legislature intent that the death penalty in Ohio be imposed without pain to the condemned, the person for whose benefit the statute was enacted, but that the procedure not be prolonged, a circumstance that has been associated with protracted suffering.

13. Further, because statutes defining penalties must be construed strictly against the state and liberally in favor of the accused (condemned), the court holds that any interest the state may have, if it has such an interest,

in conducting an execution "quickly," i.e. with a sense of immediacy, is outweighed by the substantive, property interest of the condemned person in suffering a painless death. R.C.2901.04(A).

14. Thus, because the Ohio lethal injection protocol includes two drugs (pancuronium bromide and potassium chloride) which are not necessary to cause death and which create an unnecessary risk of causing an agonizing or an excruciatingly painful death, the inclusion of these drugs in the lethal injection protocol is inconsistent with the intent of the General Assembly in enacting R.C.2949.22, and violates the duty of the Department of Rehabilitation and Correction, mandated by R.C.2949.22, to ensure the statutory right of the condemned person to an execution without pain, ***and to an expectancy that his execution will be painless.***

15. As distinguished from this case, the Kentucky lethal injection statute has no mandate that an execution be painless, Ky. Rev. Stat. Am. §431.220(1) (a). Thus, the analysis of that statute, having been conducted under the Eighth Amendment "cruel and unusual" standard, is not applicable here because "...the [U.S.] Constitution does not demand the avoidance of all risk of pain in carrying out executions." Baze, supra, 128 S. Ct. at 1529. In contrast, the court holds that R.C.2949.22 demands the avoidance of any unnecessary risk of pain, and, as well, any unnecessary expectation by the condemned person that his execution may be agonizing, or excruciatingly painful.

16. The purpose of R.C.2949.22 is to insure that the condemned person suffer only the loss of his life, and no more.

17. The mandatory duty to insure a painless execution is not satisfied by the use of a lethal injection protocol which is painless, assuming no human or mechanical failures in conducting the execution.

18. The use of pancuronium bromide and potassium chloride is ostensibly permitted because R.C.2949.22 permits "a lethal injection of a drug or combination of drugs."

19. However, as set forth *supra*, the facts established by the evidence, together with the opinions expressed by the experts called to testify by each party, compel the conclusion of fact that a single massive dose of sodium thiopental or another barbiturate or narcotic drug will cause certain death, reasonably quickly, and with no risk of abrogating the substantive right of the condemned person to expect and be afforded the painless death, mandated by R.C.2949.22.

Analysis

1. The court begins its analysis of R.C.2949.22 with the presumption of its compliance with the United States and Ohio Constitutions, and that the entire statute is intended to be effective. R.C.1.47(A),(B). However, the court holds that the phrase, "or combination of drugs," ostensibly permits the use of substances which, *de facto*, create an unnecessary risk of causing an agonizing or an excruciatingly painful death.

2. This language offends the purpose of the legislature in enacting R.C.4929.22, and thus, deprives the condemned person of the substantive right to expect and to suffer an execution without the risk of suffering an agonizing or excruciatingly painful death.

3. The court holds, therefore, that the legislature's use of the phrase, "or combination of drugs," has proximately resulted in the arbitrary abrogation of a statutory and substantive right of the condemned person, in a violation of the Fifth and Fourteenth Amendments to the United Constitution and Section 16, Article 1 of the Ohio Constitution (due process clause).

Remedy

1. R.C.1.50, however, allows the court to sever from a statute that language which the court finds to be constitutionally offensive, if the statute can be given effect without the offending language. Geiger v. Geiger (1927), 117 Ohio St. 451, 466.

2. The court finds that R.C.2949.22 can be given effect without the constitutionally offense language, and further, that severance is appropriate. State v. Foster (206), 109 Ohio St. 3d. 1, 37-41.

3. Thus, the court holds that the words, "or a combination of drugs," may be severed from R.C.2949.22; that the severance will result in a one-drug lethal injection protocol under R.C.2949.22; that a one-drug lethal injection protocol will require the use of an anesthetic drug, only; and, that the use of a one-drug protocol will cause death to the condemned person "rapidly," i.e. in an amount of time sufficient to cause death, without the unnecessary risk of causing an agonizing or excruciatingly painful death, or of causing the condemned person the anxiety of anticipating a painful death.

Holding

4. Therefore, the holds that severance of the words, "or combination of drugs," from R.C.2949.22 is necessary to carry out the intent of the legislature and thus, to cure the constitutional infirmity.

ORDER

Accordingly, it is ordered that the words, 'or combination of drugs," be severed from R.C.2949.22; that the Ohio Department of Rehabilitation and Correction eliminate the use of pancuronium bromide and potassium chloride from the lethal injection protocol; and, if defendants herein are convicted and sentenced to death by lethal injection, that the protocol employ the use of a lethal injection of a single, anesthetic drug.

It is so ordered.

Honorable Judge James M. Burge

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

RON NABAKOWSKI, LORAIN COUNTY CLERK OF THE COURT OF COMMON PLEAS

BY Barbara Pashman DEPUTY

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio,

Plaintiff,

vs.

Calvin C. Neyland, Jr.,

Defendant.

Case No. 2007-CR-0359

DECISION AND JUDGMENT ENTRY ON COMPETENCY HEARING

Judge Robert C. Pollex

This matter came on for hearing on the issue of competency to stand trial, pursuant to Motion of the Defendant under O.R.C. §2945.37. Appearing on behalf of the Defendant was Adrian Cimerman, Esq. and J. Scott Hicks, Esq. and on behalf of the State of Ohio, Prosecuting Attorney Raymond Fischer, Chief Assistant Prosecuting Attorney Gwen Howe-Gebers and Assistant Prosecuting Attorney Heather Baker.

The Court received evidence and testimony including three competency evaluation reports which were admitted into the record as joint exhibits. The Court also received arguments of counsel.

FINDINGS OF FACT

1. The witnesses consisted of two psychiatrists and two Ph.D clinical psychologists.
2. Dr. Sherman, of Court Diagnostic & Treatment Center, found the Defendant was incompetent in that he had mental illness associated with paranoia.

3. The two other reports and evaluations received by the Court indicated the Defendant was competent to stand trial and that he did not have mental illness, but rather had personality characteristics that had paranoia and schizoid tendencies.

4. The two evaluators who found Defendant competent had more opportunity to observe and record his behavior while the evaluation by Dr. Sherman was based on several hours of interview and evaluation. The opportunity to observe at the Twin Valley facility permitted viewing the Defendant in all circumstances over a thirty-day period, from which it was concluded that the Defendant was competent to stand trial.

5. The Defendant did test low on rational decision making in one of the psychological tests, but the evaluators concluded that this was because Defendant refused to answer the questions posed to him, rather than a true reading or indication of mental illness.

6. The Court concludes the Defendant does have personality disorders associated with paranoia and schizoid (avoidance of other people) but does not have a mental illness.

7. The Defendant is not suffering from mental retardation and has average intelligence.

8. All witnesses indicated the Defendant was very guarded and very protective of his rights against self-incrimination, which tends to show he makes rational decisions in his own best interest. He was very guarded in what information he would provide, choosing to only provide to the evaluators information that he considered to be helpful to himself.

9. The Defendant was not delusional or disoriented as to time and place for the thirty-day observational period, nor during his incarceration.

10. The Defendant was not malingering and in fact, denied being incompetent, both to his attorneys and to the evaluators.

11. The evaluators all concluded the Defendant would be difficult to represent as an attorney, but this appears to be his voluntary choice in refusing to

assist due to his guarded nature. Also, the Defendant tends to exaggerate the importance of irrelevant facts and issues related to his criminal case.

12. The Court finds the Defendant understands the nature of the proceedings and their importance to him.
13. The Defendant is capable of assisting his attorneys in a meaningful way.
14. The Defendant does not have a mental illness that would prohibit his assisting in his own defense.
15. The Defendant has been shown by a preponderance of the evidence to be competent to stand trial under the standards of the statute.

CONCLUSIONS OF LAW

A review of the case law indicates that if a Defendant chooses not to effectively assist in his own defense, does not constitute grounds for finding him incompetent to stand trial. He would only be incompetent to stand trial if his mental illness or mental retardation prohibited him from either understanding the nature of the proceedings or preventing him from assisting in his defense. The Court has found from extensive evidence from three of the four witnesses that clearly establish that the Defendant is fully capable of assisting in his defense in a meaningful way. Thus, the Court has found him to be competent to stand trial.

The testimony was unrefuted that he does not have mental retardation. There were inconsistent opinions as to whether he was competent to stand trial. However, as noted in the findings of fact, the evaluators who supported a finding of competency had a thirty-day observational period when he resided at the Twin Valley Behavioral Healthcare center. During this time, he was observed while he ate, slept, and interacted with staff and other patients. The psychological tests and the observations resulting from that observational opportunity was subject to staffings and meetings among professionals all of which supported the conclusion the Defendant was competent to stand trial. The evaluation of Dr. Sherman, although he is greatly respected by this Court, was based on a much more limited opportunity to observe the Defendant. The experts testified the Defendant may present a much different appearance for such a

short observational period than would be obtained from a lengthy thirty-day observational opportunity. Thus, the weight of the evidence supports the conclusions of the expert witnesses establishing competency of the Defendant to stand trial.

The defense raised a very legitimate issue as to his low scores as to certain testing in the area of rational decision making or logical reasoning. The evaluators who conducted the test indicated that the low score was not attributable to Defendant's decision making process, but rather to his guarded and paranoid refusal to answer the questions posed to him. Rather than answer the question by choosing one of two choices presented to him, he chose to argue about the premises or facts on which the answer was to be based. This caused his scores to be low in the category of rational decision making. Mental illness was not the cause of his low readings on these tests as indicated by the experts administering the tests.

Considering the statutory standards and the testimony of all of the expert witnesses, the Court reaches the conclusion that the presumption of competency was not overcome by a preponderance of the evidence and that the Defendant's mental condition is not a mental illness that prevents him from (a) understanding the nature of the proceedings against him, or (b) preventing him from assisting in his defense in a meaningful manner. Accordingly, the Court has concluded the Defendant is competent to stand trial and orders the case proceed accordingly pursuant to statute.

Judge Robert C. Pollex

xc: Prosecutor – Gwen Howe-Gebers/Heather Baker
Defense counsel – Adrian Cimerman/J. Scott Hicks

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December 4, 2007

The Honorable Robert C. Pollex
Wood County Court of Common Pleas
One Courthouse Square
Bowling Green, OH 43402

Re: Calvin C. Neyland, Jr.
DOB: January 30, 1964
Docket No. 2007-CR-0359
Date Referral Rec'd: October 25, 2007
Date of Evaluation: December 4, 2007

Dear Judge Pollex:

Pursuant to your referral, under the provisions of Ohio Revised Code Section 2945.371(G)(3), I had an opportunity to perform a psychiatric evaluation on Calvin C. Neyland, Jr. I saw this 43-year-old defendant at my office at the Court Diagnostic and Treatment Center (CDTC) on December 4, 2007. My evaluation was conducted to assist the Court in determination of his Competence to Stand Trial on two charges of Aggravated Murder with specifications.

At the beginning of the evaluation, my identity, the purpose of the evaluation and its inherent lack of confidentiality were explained in detail to Mr. Neyland. When I was satisfied he understood this Disclaimer and was willing to proceed, the evaluation continued.

MATERIALS REVIEWED IN PREPARATION OF THIS REPORT

1. Crime Report and Supplemental Narratives, Instant Offenses, 8/8/07
2. Description of the contents of a storage unit occupied by Calvin Neyland, Jr. (search warrant)
3. Brief psychological evaluation, Calvin Neyland, Alice Holly, Ph.D., Clinical Psychologist, CDTC, 7/7/99. Mr. Neyland was referred to CDTC by Work Release. Dr. Holly

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comments, "Mr. Neyland showed loose associations, tangential thinking, grandiosity, and paranoid ideas. It is likely this is longstanding and that he sees it as normal. I doubt seriously if he will submit to treatment".

PERTINENT HISTORY (INSTANT OFFENSE)

According to Mr. Neyland, he is charged with "two aggravated murders". He refused to answer any more questions about how he came to be charged, and that it is "his fifth amendment right" to avoid self-incrimination.

PERSONAL HISTORY

Mr. Neyland's personal history was given by the defendant with no collateral sources. As I will point out in "Mental Status Evaluation", I have reason to believe that his ability as a historian is "tainted" by mental illness. Often he would avoid questions entirely or answer questions with questions.

Mr. Neyland is a native of Toledo. He grew up in the Old West End and was raised by both parents who are now deceased. The couple divorced when he was 14 and he claims to have lived with his father, then mother and his uncle. When I asked why he moved around so much, he commented (cryptically), "That was an adult decision", as if he had no so say in the matter and did not know why.

He has nine siblings. He is the third oldest and is the oldest boy. He states that his siblings are still alive and although he has no problems with them, he has no close contact.

Educational History: States he graduated from Scott High School on time with his class in 1982. He had no extracurricular activities because he had part time jobs during high school.

Military History: States he enlisted in the military immediately after graduating. When I asked what branch of the military he was in, he comments, "I signed a non-disclosure statement". As a result of this "statement", he was unwilling

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to tell me anything about his military service, including what branch of the service he was in, what rank he achieved, whether or not he got an honorable discharge, or even the years he served.

Medical History: States that he is in good health and except for having a "burn on his hand", he has never been hospitalized.

Psychiatric History: Denies any psychiatric history. States he was never in a psychiatric hospital and never received any psychiatric treatment.

Legal History: When I asked if he was ever arrested, his first comment provided this strange rejoinder, "You mean like that catch and release thing the police have?" Asking the question any number of ways did not reveal very much, except that "I don't have a rap sheet". He steadfastly denied any "passing bad check" charge in 1999. However, later in the session he mentioned that in 1999 there was an episode in which he was chased by "a guy with a knife". He states that no one would listen to him, that no one was charged except for him, and that he spent 30 days in jail because "the judge gave me contempt of court".

Marital History: Single, never married, no children. He states he was living "in his truck most of the time". Around "1998 or 1999", he did have a residence on Summit Street in Toledo. He left that residence, never to return after he came home to find that "someone was in his house watching television and listening to his answering machine". Since that time he had lived with his father in Detroit, then off and on in his truck.

Employment History: States he has been a truck driver for 19 years. Apparently he had a history (his claim) of being "fired from a lot of jobs". He implies that this somehow was the result of one of his young nieces being reported as an occupant of one of his places of residence and that perhaps the people fired him because of suspecting "child support" issues (??).

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MENTAL STATUS EVALUATION

General/Appearance: Mr. Neyland arrived on time for the evaluation, accompanied by two sheriff's deputies. He was a larger than average in stature African-American male, with a bushy beard and a piercing gaze. He never appeared to be friendly and was always on guard.

Speech/Thought: He was always very cautious about how he "phrased" an answer. Even something as simple as what he thought of his attorney was answered with the disclaimer that he has difficulty assessing another person's character, based on a friend who disappointed him when he was 15 years of age.

His speech and thinking could at least be described as "stilted" if not overtly paranoid. He "made something" out of virtually everything that has happened in his life, often with peculiar reasoning. For example, he states that when he was "on the road", he would from time to time find prophylactics in his laundry. At first he thought that it was just something that he "picked up" from one of the dryers in a laundromat, but it happened so often that it couldn't possibly have been an accident. Like the episode of "someone watching television in his house" he was unwilling to give any speculations, being very careful to not "volunteer" any "explanations" that might give rise to autistic or bizarre logic.

His speech and thinking never displayed the obvious disorganization seen in acute worsening of mental illness, such as schizophrenia. His thinking never moved quickly from topic to topic without connection. He never answered in non-sequiturs but as mentioned earlier, his answers were often "peculiar".

Affect: Guarded, distant, aloof.

Cognitive Functions: Oriented to time, place and person. No evident attention or concentration deficits that interfered with our conversation. He never appeared to be distracted or responding to external stimuli (i.e., hearing voices).

Appraisal of Defendant's Cooperation/Level of Participation: Mr. Neyland was so guarded that he was unwilling

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to even address a simple hypothetical example about assisting an innocent "defendant" (an example I use often that is readily responded to). Any ideas he might have had about his own case other than the fact of being charged with "two Aggravated Murders" can only be guessed at. He refused to respond, stating that it has to do with his case and he is not going to incriminate himself. He certainly had an objective "understanding" of the adversarial process in court, the value of witnesses, etc., but one can only guess at what interpretations he makes about the actions of his attorneys, prosecution evidence, etc. He continually dwelled on the "discovery" which he apparently has read through. He was preoccupied with apparent minutia (past residences) which would appear to have not much to do with his current case. note is made of the earlier comments he made about "discovering" that his niece had been listed as an occupant of one of his residences, perhaps "explaining" his numerous loss of jobs.

DIAGNOSTIC ASSESSMENT

Axis I:	Delusional Disorder, Persecutory Type Rule Out Schizophrenia, Paranoid Type
Axis II:	Deferred
Axis III:	"None"
Axis IV:	Psychosocial Stressors: Effects of current legal situation, Axis I diagnosis
Axis V:	GAF = 45 (current)

OPINION

It is my medical opinion with reasonable professional certainty that this defendant suffers from a mental illness which renders him incapable of understanding the nature and objectives of the proceedings against him and especially of assisting in his defense.

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Rationale: I base the above opinion on the following assessment of specific competency areas:

1. Evidence of a mental illness was described nine years ago, indicating that the clinical presentation seen by me was not manufactured. This is also borne out by the seeming authenticity of his symptoms (bizarre conclusions about prophylactics in his clothes, people in his apartment who were "listening to his messages", etc.).

2. If his demeanor with his attorney is anything like his demeanor with me, it is impossible to determine how he could ever provide meaningful information to that attorney without it being contaminated by paranoid thinking. This is a man to whom nothing ever happens "by accident". He makes interpretations of things in his life based upon an internal "logic" that makes sense only to him.

3. The descriptions given in the police report (victim described him as "weird") and even the acts themselves may indicate bizarre motives. At this point he is either unwilling to discuss or admit to what might be useful in a possible insanity defense.

4. At the very least, there appears to be at least some comments by the witnesses of mounting tension between one of the victims and this defendant, but giving little information about a "true" motive.

5. In addition, the materials discovered in his storage unit also give reason to pause and consider the possibility of an underlying paranoid disorder.

Respectfully submitted,

Thomas G. Sherman, M.D.
Medical Director

TGS/pas/neyland.371

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December 7, 2007

The Honorable Robert C. Pollex
Wood County Court of Common Pleas
One Courthouse Square
Bowling Green, OH 43402

ADDENDUM REPORT

Re: Calvin C. Neyland, Jr.
DOB: January 30, 1964
Docket No. 2007CR0359
Date Referral Rec'd: October 25, 2007
Date of Evaluation: December 4, 2007

Dear Judge Pollex:

Your Honor, if the Court is interested in my opinion regarding his restorability to competence, I would like to add the following:

1. Any attempt at restoration must include an inpatient (secure) forensic unit (Northcoast or Dayton)

2. It is highly unlikely that this individual would willingly take medication, although even with medical treatment, residual paranoia could remain. There is a substantial likelihood that within the time allowed by statute, this individual could be restored to competence, at least to the point of where he is able to provide more details to his attorney and discuss his state of mind at the time of the alleged offenses.

Respectfully submitted,

Thomas G. Sherman M.D.

Thomas G. Sherman, M.D.
Medical Director

TGS/paa/neyland.add

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Fax: (937) 258-6288

February 1, 2008 **Competency Report**

The Honorable Robert C. Pollex
Wood County Common Pleas Court
One Courthouse Square
Bowling Green, Ohio 43402

RE: Calvin C. Neyland (746929) **Case Number: 2007-CR-0359**
Date of Admission: 1/2/2008 **ORC Section: 2945.371(G)(3)**

Dear Judge Pollex:

In accordance with ORC Section 2945.371(G)(3), it is the opinion of the Psychologist that Calvin Neyland is capable of understanding the nature and objective of the proceedings against him and can assist his attorney in his defense. Therefore, the least restrictive setting until his trial is the jail where he can be maintained at his current level of functioning.

Please find attached a report of our findings. If testimony will be required, we ask that a subpoena be sent to Kristen E. Haskins, Psy.D., Psychologist, who will represent the official position of the hospital. If testimony is necessary, we also request that the Court issue an order for the release of the records to the person testifying in this case pursuant to ORC Section 5122.31.

Please call the Legal Assurance Office at (614) 752-0333, ext. 5216, with any questions relative to this case. Please note that the defendant was returned to jail on January 30, 2008.

Respectfully submitted,

Karen E. Woods-Nyce, LISW, CCFC
Director of Patient Services, Campus Administrator

cc: Prosecuting Attorney: (enclosed with courts copy)
Defense Counsel: (enclosed with courts copy)
Wood County ADAMH Board
File

COMPETENCY TO STAND TRIAL EVALUATION REPORT 2945.371 (G) (3)

Date: January 31, 2008

Reason for Evaluation:
The Honorable Robert C. Pollex, Judge in the Court of Common Pleas of Wood County, Ohio, remanded Calvin C. Neyland to the Twin Valley Behavioral Healthcare-Columbus Campus, Timothy B. Moritz Forensic Unit in accordance with Section 2945.371 (G) (3) of the Ohio Revised Code: psychiatric inpatient evaluation of current mental condition and competency to stand trial. Specifically, the Court is asking if Mr. Neyland is mentally ill or mentally retarded, if he is capable of understanding the nature and objective of the proceedings against him, and if he is capable of assisting his attorneys in his own legal defense. Mr. Neyland was admitted to this hospital on January 2, 2008.

Mr. Neyland has been indicted for one count of Aggravated Murder, a special felony, in violation of the Ohio Revised Code Title 29, Section 2903.01 (A), with a specification that this offense was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons (2929.04 (A) (5)), and a firearm specification, and one count of Aggravated Murder, a special felony, in violation of Ohio Revised Code Title 29, Section 2903.01 (A), with a specification that this offense was a part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons (2929.04 (A) (5)), a firearm specification and a specification that the offense was committed for the purpose of escaping detention, apprehension, trial or punishment for another offense committed by Calvin Neyland (2929.04 (A) (3)) as a result of alleged incidents said to have occurred on or about August 8, 2007. The alleged victims are Thomas Lazar and Douglas Smith. Mr. Neyland was arrested and incarcerated on August 8, 2007. He remained incarcerated until his admission to this hospital.

Examination Procedure:
Mr. Neyland was privately examined in the treatment team room on his hospital living unit on January 22, 2008 for a little over four hours. During that time Mr. Neyland took a break for dinner and returned after twenty minutes. At the conclusion of the clinical examination, Mr. Neyland completed a Minnesota Multiphasic Personality Inventory-2 (MMPI-2). On January 29, 2008 the examiner requested to meet again with Mr. Neyland. Mr. Neyland refused to meet stating that the "twenty days" allow for the evaluation were up. This examination consisted of taking a

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psychosocial history, mental status examination, semi-structured interview related to competency to stand trial criteria including administration of The MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA), MMPI-2 and consideration of the below-listed collateral sources of information.

At the onset of the examination Mr. Neyland was informed that he had been sent to the hospital for a competency to stand trial evaluation, and he was told what would be included in that evaluation. It was explained that anything he said was not secrete, private, just between us or confidential because a report would be written containing the facts, findings and conclusions of the evaluation. Further, he was advised, should I be called to testify in this matter, that report would be the basis for my testimony. Additionally, it was explicated to Mr. Neyland that, because he had been indicted with death penalty specifications, the examiner could be called to testify by either side during mitigation proceedings should those proceedings occur. There followed a brief explanation of the bifurcated process in a death penalty trial. Mr. Neyland was also told that he did not have to speak with me and that he could stop at any point during the evaluation and that he had a right to consult with his attorney about any concerns he had. Additionally, he was informed that, if he refused to cooperate for any reason, that would be reported to the Court. Finally, Mr. Neyland was informed that I would not be seeing him for any form of treatment. When I was satisfied that Mr. Neyland understood the purpose of the evaluation and the limitations on confidentiality and he agreed to proceed, the examination was begun.

Collateral Information Reviewed:

1. Court entry ordering this examination.
2. Indictment in case number 2007CR0359 Court of Common Pleas Wood County, Ohio.
3. Twin Valley Behavioral Healthcare-Columbus Campus current treatment chart including admission evaluations by treatment team members, comprehensive treatment/recovery plan and treatment team updates and interdisciplinary progress notes (01-02-08 to 01-29-08).
4. Competency to Stand Trial Evaluation report and Addendum Report by Thomas G. Sherman, M.D., Medical Director at the Court Diagnostic & Treatment Center, Toledo, Ohio (12-04-07 and 12-07-07).
5. Perrysburg Township Police Department investigation reports.

6. Ohio Bureau of Criminal Identification and Investigation Investigative Report by Agent Keith Williamson (08-14-07).
7. Lucas County Sheriff's Office Crime Reports.
8. Lock-It-Up Self Storage Notice of Default and Intent to Sell at Auction (07-10-07) with a hand written note written on it related to "last will and testament."
9. Hand written note found in Mr. Neyland's storage locker.
10. Transcript of Pretrial Proceedings in Case No: 07-CR-359 (12-11-07).
11. Work Release/Court Diagnostic and Treatment Center Clinical Note: Calvin Neyland, by Alice Holly, Ph.D., Clinical Psychologist, (07-07-99).
12. Telephone consultation with Gwen Howe-Gebers Wood County Assistant Prosecuting Attorney (01-25-08 and 01-31-08).
13. Telephone consultation with J. Scott Hicks Defense Counsel Wood County Public Defender's Office (01-28-08).
14. E-mail from Lori Runzo, Senior Vice President Liberty Transportation, Inc. to Gwen Howe-Gebers and response by Robb Gates (01-23-08).
15. Consultation with Delaney Smith MD, Mr. Neyland's Attending Psychiatrist Twin Valley Behavioral Healthcare-Columbus Campus (01-29-08).

Background Information:
The following information has been assembled primarily from clinical interview with Mr. Neyland whose accuracy as a historian is not known. He was unwilling to have the hospital staff consult with family members. Collateral information has been added in those areas where it was available.

Developmental History:
Mr. Neyland reported he had no knowledge of his mother having any illness or injury during her pregnancy with him. He said he never knew her to smoke, drink, or use drugs. No problems at the time of his birth were ever mentioned to him. He thought he had likely achieved developmental milestones as the expected ages. He reported

no delays in development. Mr. Neyland reported no childhood or adolescent serious illness or injury and no hospitalization.

Inquiry was made of Mr. Neyland regarding his adjustment to home, school and community as a child and adolescent. He was asked if he had been one to bully, threaten or intimidate others. He answered, "My parents required us to go straight to and from school. We were not allowed to go to others' houses, play sports, or do anything with anybody without supervision." He added that his parents were very strict and his father was a pastor. The question was repeated and Mr. Neyland related that he was "smaller than others" and he did not talk to other people. In response to a question about ever having fights, he answered, "We went to private school and had to fight every day going in and out of the neighborhood. The public kids beat up the Catholic kids." He then spoke about his school, St. Mary's requiring self defense classes and the person who taught those classes. In response to further questions, Mr. Neyland reported that he had never as a child or adolescent caused serious harm to another person, used a weapon in a fight, was not physically cruel to people or animals, did not mug, purse snatch or extort and did not force another to have sexual activity. He said he did not fire set, destroy the property of others, break into anyone's house, car or building, or lie to get good or favors or steal. He said that he began staying out late at age 15-16 because he was working as a grill cook, crew chief and closer at a McDonald's and his mother called the police on him. When further questioning about this was attempted he responded that he "was a child, ask my mother about it." He related that he did not run away from home, but he recalled he often truanted because he was tired from working.

Mr. Neyland said he grew up in the old West End of Toledo. He recalled his parents moved a couple of times but they stayed in the same area of the city.

Family History:

He said that when he was age 14 his parents divorced. He remained with is mother for a while and then his mother sent him to live with his uncle. After staying with his uncle a while he was sent to live with his father. He recalled that his father was living with a girlfriend and placed him in an apartment of his own. Mr. Neyland stated that both

of his parents are deceased. His mother died in June 2006 of cancer. He recalled that he saw her daily in a nursing home in Toledo prior to her death. He said his mother was a Registered Nurse who worked as a Visiting Nurse for the State of Ohio. He was asked what kind of a person his mother was. He answered, "She was my mother." Pressed a bit further to describe her, he commented "she had to work for us, she cooked. She was strict. Since I've been grown I've met no woman that could compare to her." Asked about his relationship with his mother, Mr. Neyland indicated that he was not too involved with others and that he lived his own life. He added, "All I did was work." His father died in 1997 or 1998 of cancer of the throat or jaw and he recalled that after surgery his father could no longer speak. He did not know how to describe his father. He recalled he had no hobbies, worked two jobs-a 16 hour day and church. His father's church, Church of God in Christ, required him to leave as pastor after the divorce. He said he did not relate much with his father and that he really did not know him. He recalled that his father remarried.

Mr. Neyland is the third of his parents' ten children and the oldest son. There were five boys and five girls. The oldest is in her 50's and he did not know how old the youngest sibling would be now. He recalled that he did not have much to do with his siblings though when he was working he said he would get them what they needed and give them money. He said he had not maintained contact with his siblings. However, recently he has called his youngest sister, but he felt he couldn't depend on her. Inquiry was made regarding any other significant others as he was growing up. Mr. Neyland said there were a lot of people, but "no one I could depend on. I could only depend on me. That's my security, my security is working." He continued, "I chose not to be involved with people and relationships. I was a bad judge of character. I don't know how they think. It seems I was the only person not to do drugs." He spontaneously offered that his family consisted of educated people and included nurses, doctors, school principals and teachers. He recalled, "Once I spoke up, and the person said I needed to be medicated." He would not further elaborate on that statement.

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There was no reported physical or sexual abuse by family members. He also thought that family members had not emotionally abused him. However, he said that if someone is "fast, slick, I might be a little slow." When asked about any mental abuse, Mr. Neyland talked about having to go to juvenile court in Toledo as a juvenile. He believed that as a juvenile a parent was supposed to represent him, but in his case "we sat at different tables." There apparently were several different times he and his mother appeared in juvenile court. Mr. Neyland recalled, "Over and over they asked, 'What is the problem'?" He said that there was never any answer. Prior to the divorce all family activities were involved with the church. He said he did not currently belong to a church, but he added that he believed in God. Mr. Neyland reported no family history of alcoholism, drug addiction, criminal legal problems, psychiatric hospitalization or mental health treatment.

Relationship History:

Mr. Neyland said he did not date because his father did not allow that. He indicated that he never really has dated. However, as an adult he thought he had a number of female friends, but no one that was significant. He indicated that he has been unable to find someone and added "my security is my job." He would like to meet someone "normal, with good sense, cooperative, can communicate, not be sneaky." He said he had never been married. He recalled that there had been an accusation that he had fathered a child. He stated that he appeared in court and was agreeable to a paternity test. However, the woman and child did not appear for testing and then the mother said she did not want the test. Mr. Neyland recalled that the people at the place of testing then said, "So obviously the baby is not yours!" and then they laughed at him.

Current Support System:

Prior to his arrest Mr. Neyland said that he was spending "24/7" in his truck. However, he said he did have an address for mail in Perrysburg. He related, "My job is my home. Everything I did was my work. Anything I do had to do with my work." He reported no friends. He said that he talked with family and others but there was no one he could depend on. He reported no membership in any social group, club, church or organization. He then added that he tried to build his own support system. He talked about starting an "artificial support system," but somehow people had "sabotaged" what he was doing. Mr. Neyland then did not want to talk any further about this topic.

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Academic History:
Mr. Neyland said that he had attended Macomber Whitney Vocational School and had participated in carpentry and machine shop the first two years there. However, he reportedly missed too many days and school officials made him go to Scott High School. He said he graduated from there in 1982. He recalled some school suspensions for "missing days." Mr. Neyland initially indicated little relationship with teachers. Then he recalled a Mrs. Wyland "gave me an art class. She paid for me to go to the museum on Saturday. I enjoyed it. My parents did not pick it up" so he did not continue with art classes at the museum. Mr. Neyland further recalled that when in the old West End Junior High School he played bass in a string quartet, but none of his family ever came to any performance. He said his mother transported his bass home once. He said he had to carry the bass the five or six miles back and forth to school. He commented, "It was bigger than me." He reported that his grades in high school were "abysmal" primarily due to poor attendance. He did not play any school sports and his parents discouraged extracurricular activities, so he did not do any. Mr. Neyland said he was never in any special classes and he never repeated any grades. He recalled that the school was not going to graduate him, but his Army recruiter interceded because Mr. Neyland reportedly received the highest military entrance scores of anyone from his school. He related that he would from time to time see a woman who organized reunions for his high school class and that she would tell him about having had a reunion, but she never invited him to come to a reunion.

Military History:
Mr. Neyland said he enlisted in the US Army in June 1982 following high school graduation. He said he "signed a nondisclosure statement" and could not further discuss his military history. Material from the prosecutor indicated that Mr. Neyland was in the US Army from March 1987 to May 1988. He was said to have deserted from the Army and then returned for discipline for that offense. It was reported that Mr. Neyland was "Discharged for the good of the Service," and he was not allowed to finish his service time and was not allowed to be in the Army Reserves. Mr. Neyland said that the dates listed for his service time are wrong, but he would not further elaborate.

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Employment History:
Mr. Neyland said that he had primarily worked as a truck driver for multiple employers over the years. He added that he has "always collected unemployment." He stated that he had worked for Liberty Trucking for four years. He indicated that he was supposed to be fired from Liberty Trucking. Mr. Neyland talked about an unemployment dispute in which he represented himself to the 6th US District Court of Appeals where he said he finally prevailed. He reported he never was involved with the Bureau of Vocational Rehabilitation, did not have Welfare in his name but did receive food stamps, and never had a Worker's Compensation claim. He indicated he had not received any Social Security monies.

Substance Abuse History:
Mr. Neyland reported that he never had a habit of smoking cigarettes, never inhaled the fumes the volatile fumes of substances such a glue, spray paint or paint stripper, and he did not use marijuana, cocaine, PCP, ketamines, ecstasy, LSD, heroin or misuse prescription medications. He said that he occasionally drank alcoholic beverages, but he did not think he ever had a problem with his use of alcohol. He stated that he had never been referred for drug or alcohol treatment programming or rehabilitation.

Legal History:
Mr. Neyland indicated that he had several appearances in juvenile court. He explained, "I was a child. I don't know why I was there. I did not know what the problem was. My mother did not tell me what the problem was and I did not discuss it with her. I have no idea why I was there." From the description given earlier by Mr. Neyland of he and his mother both having attorney representation, it is possible that the "problem" involved unruly behavior and an impasse regarding this behavior between Mr. Neyland and his mother.

As an adult Mr. Neyland reported a problem with three bad checks related to a time period when his bank was taken over by another bank. He also talked about an incident of a theft of his identity in 1999. He said someone filed for Social Security using his name and Social Security number. He also talked about a 1999 incident when someone attacked him with a knife. He said the judge asked him what happened and when he gave his account he was given thirty days in jail for contempt of court.

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Records received from the prosecutor's office included Incident Reports from the Lucas County Sheriff's Office: in October 1997 related to three warrants from Toledo for passing bad checks for which Mr. Neyland was turned over to the Toledo Police; June 7, 1999 related to warrants from Toledo for passing bad checks for which Mr. Neyland was taken to the Safety Building and issued a summons; a June 7, 1999 incident in which Mr. Neyland was the victim of aggravated menacing; a June 21, 1999 warrant service on three counts of passing bad checks for which Mr. Neyland was booked into the Lucas County Jail; a May 12, 2000complaint of telephone harassment for which the reporting person was advised to contact the Maumee Court; a September 11, 2000 report by Mr. Neyland regarding stolen property. There was no other report of a criminal history.

Medical History:
Mr. Neyland reported no history of surgery, major illness, seizure, fit or convulsion, loss of consciousness, or broken bones. He said he once burned his hand working on a car taking an engine down. He said he was hospitalized for a day or two for this injury. He said he did not require skin grafting for this injury. He reported no chronic medical condition. Mr. Neyland reported that he is not currently taking any medication of any kind.

Mental Health History:
Mr. Neyland reported that he had never been psychiatrically hospitalized prior to this court ordered hospitalization for evaluation. He also reported no form of out patient mental or behavioral health treatment. He did not recall the Work Release encounter with Dr. Holly, and he insisted that he had not seen anybody for such an evaluation.
Dr. Alice Holly reported she saw Mr. Neyland on July 7, 1999. In a Work Release/Court Diagnostic and Treatment Center Clinical Note, Dr. Holly noted Mr. Neyland "reported no hx [history] of mental illness or problems. He denied ever being treated for such problems. He denied any current symptoms." Mr. Neyland was reported to show "loose associations, tangential thinking, grandiosity and paranoid ideation." Dr. Holly concluded: "It is likely this is long standing, chronic, & ego syntonic (he sees it as normal)." She surmised that "he has apparently gotten by well enough to not have mandatory tx" [treatment]. Dr. Holly concluded: "I doubt seriously if he will voluntarily admit to tx" [treatment]. Mr. Neyland was advised of services available at the Court Diagnostic and Treatment Center, but

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Mr. Neyland reported he was not interested. It was thought that Mr. Neyland would be able to follow work release policies but "will be seen as odd or annoying." It was concluded that Mr. Neyland was not amenable to treatment.

Hospital Course:
During the course of this hospitalization the focus has been on evaluation of mental status and competency to stand trial criteria. Mr. Neyland has had individual attention in terms of discussing court procedures, the roles and functions of court personnel and competency related information. He has been included in various groups to improve social supports, increase knowledge of community resources and improve his leisure skills. He has not been prescribed any psychotropic medications. He has been able to follow the unit rules, maintain his own living space and complete activities of daily living. Mr. Neyland has been able to interact with other patients and staff in a friendly manner and he has not had any conflicts with anyone.

There was a recent issue related to his use of the telephone where he was reported to have placed calls to his former employer which caused considerable concern to the employer. As a result Mr. Neyland's calls are now monitored.

Psychological Test Results:
As part of this evaluation Mr. Neyland was asked to complete a Minnesota Multiphasic Personality Inventory-2 (MMPI-2). The MMPI-2 is a broad-band test designed to assess a number of the major patterns of personality and emotional disorders. An eighth grade reading level is recommended, as is a satisfactory degree of cooperation and commitment to the task of completing the inventory. The test provides internal checks to assess if these general requirements have been satisfied. The MMPI-2 provides objective scores and profiles determined from well-documented national norms.

In terms of the validity of the MMPI-2 results, Mr. Neyland answered the test questions by claiming to be unrealistically virtuous. This test-taking attitude to an extent compromises the validity of the test results and indicates an unwillingness or inability on the part of Mr. Neyland to disclose personal information. This pattern of uncooperativeness may be due to conscious distortion to present himself in a favorable light, lack of psychological

sophistication or a rigid neurotic adjustment. He also demonstrated a level of defensiveness such that he admitted to few psychological problems. As a result his content scale scores may well under represent his actual problems. Overall, he presented himself as being very serene in his approach to life. His answers suggest that he would like to be viewed as having no problems or pressures. His answers also demonstrated a naïve response set of claiming goodness in all people.

Clinically, Mr. Neyland has not admitted to many psychological symptoms or problems. His test answers have resulted in a profile that is within the normal range, suggesting that he considers his present adjustment to be adequate. However, Mr. Neyland did report some personality characteristics that may result in maladaptation under conditions of stress. These characteristics were dissatisfaction, self-punitiveness, tension, and a tendency toward low moods. It may also be that mistrust, questioning the motives of others, and externalization of blame could be important in his symptom pattern. The profile resulting from Mr. Neyland's answers is very unusual for someone in a psychiatric inpatient setting. There is a possibility that he is underreporting symptoms or concealing symptoms at this time.

Mr. Neyland's MMIP-2 answers suggest a rather limited range of cultural interests and that he tends to prefer stereotyped masculine activities to literary and artistic pursuits or introspective experiences. Interpersonally, he may be somewhat intolerant and insensitive.

He indicated an average interest in being with others and that he is not socially isolated or withdrawn. Mr. Neyland meets and talks with other people with relative ease and is not overly anxious at social gatherings. This has been his general presentation on the unit in the hospital.

In that Mr. Neyland's clinical profile is within normal limits. Therefore, no diagnosis is suggested.

Mental Status Information:
Mr. Neyland presented as a tall man of medium build who was appropriately, casually dressed for his age and the season. He said he was 70 and1/2 inches tall and weighed 242 pounds. He thought he had lost a few pounds

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because he received limited portions at meals. Mr. Neyland had a full, uncared for, graying beard and hair that is also beginning to grey and was a bit long. His hairline was beginning to recede. There were no observed tattoos, body piercings or scars and Mr. Neyland said there were none. Eye contact was frequent and for the most part appropriate though there was some mild, very brief staring or piercing looks. He was initially somewhat contentious and there seemed to be some underlying hostility as well as guardedness, tension and caution. Over time he seemed to become somewhat less tense and more interactive. Mr. Neyland was quite controlling, yet he made it clear that he intended to cooperate with the examination and he overtly did so.

Speech was normal in rate, rhythm, volume and at times briefly rather intense. There was no oddity, peculiarity, mannerism or defect. At times Mr. Neyland seemed to be reaching for vocabulary with which he was not entirely comfortable. However, he was quite articulate and could be easily understood. He periodically, spontaneously offered additional information without having to be asked to do so.

Upon inquiry, Mr. Neyland indicated that he was not having any problems with his feelings or emotions. He said that he would sleep five to six hours in each twenty-four period of time. He reported no problem with his appetite. He indicated that he did not care for the food he was served and that portions were less than he would like. He indicated that when driving his truck he preferred to stop at restaurants that offered buffets. Mr. Neyland indicated that he did not have any difficulty with symptoms of depression such a difficulty with sleep, appetite, fatigue, energy loss, feelings of worthlessness, helplessness, hopelessness or guilt, or problems with thinking, concentrating or indecisiveness, or difficulty with irritability, crying or thoughts plans or urges for suicide or homicide. He further indicated that he did not have difficulty with anger or managing angry feelings. He also indicated that he had never had an episode of mania. Mr. Neyland added, "I try to insulate myself as much as I can" and he related that he tries "to put a barrier around me as much as possible."

Mr. Neyland said that he did not have problems with anxiety. He thought that he controlled any feelings of anxiety "by working." He believed that he had never had a panic attack when that condition was described to him. He further indicated that he had never had a traumatic experience when that was defined for him.

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When asked if he ever had any problems with hearing or seeing things that others present could not also see or hear, Mr. Neyland said he had not. There was nothing in his speech or behavior during this examination that suggested the presence of pathological sensory misperceptions such as auditory or visual hallucinations. He further indicated no problems with his sense of smell, taste or touch.

Mr. Neyland said he did not think he had any problems with his thinking. However, he indicated that he had a stack of unemployment forms saying he was fired and that "other people think there is something wrong with my thinking." He then digressed and talked about how his father had said to him "after having problem after problem with employment, that there was 'no reason you could be having that number of problems'." He said he had no communication with his father. However, he said that his father "told me I am Black." He then said that the "military did a background investigation and said I was Caucasian of Hispanic origin." However, he didn't know what to make of this because he had problems like he was Black and there was discrimination. He said when he talked with his father about race his father told him he was an American. He then would not talk further about this.

Mr. Neyland expressed his thoughts in a clear, organized, linear, goal directed manner and there was no evidence of thought process difficulty. He also did not evidence any indication of a thought content difficulty such as somatic, grandiose, or paranoid delusional (fixed, false belief) thinking. He indicated no ideas of reference and reported no thought blocking, insertion, withdrawal or broadcasting. He believed that he alone was responsible for his thoughts and behaviors. There was no current evidence of obsessions or compulsions.

Cognitive functioning was assessed using The Neurobehavioral Cognitive Status Examination (COGNISTAT). The COGNISTAT is designed to rapidly assess intellectual functioning in five major ability areas: language, constructional ability, memory, calculation skills, and reasoning/judgment. Language has four separate subsections: spontaneous speech, comprehension, repetition, and naming. Reasoning has two subsections: similarities and judgment. More general factors (level of consciousness, attention and orientation) are assessed independently.

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On the COGNISTAT Mr. Neyland was alert and well oriented. He reported his whole full name and age. He understood that he was a patient in a psychiatric hospital in Columbus, Ohio for a court ordered evaluation. He correctly cited the date and day of the week. He did not estimate time within one hour; instead he underestimated the amount of time that had elapsed.

On a brief challenge to attention and auditory memory he was able to inconsistently repeat back a six digit number. However, Mr. Neyland appeared to be reasonably attentive and he was able to track a topic of conversation.

In terms of language functions he was able to describe a picture he was shown in some detail. Mr. Neyland easily completed a three part verbal instruction. He was able to correctly repeat back sentences read to him. He had no difficulty naming familiar objects. There were no noted difficulties with expressive or receptive language.

Memory functions were intact. Mr. Neyland could recall four words immediately and after nine minutes of intervening conversation and tasks he could recall three of the four words. He was able to choose the forth word from as list of three words. Mr. Neyland was able to provide a sequential account of events in his life including some dates for important life events.

He made an initial error when asked to determine the product of a single and a double digit number. However he successfully determined answers mentally to arithmetic problems requiring addition, subtraction and division. He did not appear to have any difficulty with simple mental arithmetic.

In the area of reasoning Mr. Neyland was able to say how two words were similar or alike. He was also able to provide abstract interpretations for familiar sayings. He had some difficulty interpreting and correctly responding to hypothetical situations. The problem was that he wanted to make the situations more complicated than need be and he resisted responding to situations that he felt would never happen to him, thus over-personalizing the situation.

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Overall Mr. Neyland's performance on the COGNISTAT was within the average range. Based on his vocabulary, use of concepts and fund of information he is estimated as being of at least average to high average intelligence.

Competency to Stand Trial Criteria:
Mr. Neyland was evaluated using both a structured competence assessment instrument, the MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) and a semi-structured clinical interview. The MacCAT-CA is a 22-item structured interview for the pretrial assessment of adjudicative competence. This instrument uses a vignette format and objectively scored questions to standardize the measurement of three competence-related abilities: Understanding (capacity for factual understanding of the legal system and the adjudication process); Reasoning (ability to distinguish more relevant from less relevant factual information and ability to reason about the two legal options; pleading guilty or not guilty); and Appreciation (capacity to understand his or her own legal situation and circumstances).

In the area of Understanding Mr. Neyland's score of 14 correct out of a possible 16 suggested minimal or no impairment. That is, he demonstrated a good capacity for factual understanding of the legal system and the adjudication process. On the Reasoning section he had a score of 4 out of a possible 16 suggesting clinically significant impairment and serious difficulty distinguishing relevant from less relevant factual information and difficulty in reasoning about the legal options of pleading guilty or not guilty. However, these very low scores are a result of Mr. Neyland being unwilling to cooperate with the assessment procedure. First he was given pairs of facts about the legal situation given in the vignette and asked which fact he thought it would be more important to tell the defense attorney. First, he disputed that a given fact was not to his way of thinking a fact. That is, he said that what a person thought was not a fact. He continued debating the questions, giving them his own idiosyncratic interpretations, sometimes refusing to answer the question or otherwise seeming to try to trivialize the exercise. Next, he was asked what he thought the man in the vignette should do; plead guilty or plead not guilty. He felt he did not want to advise another person about what they should do in a legal situation. He was then asked in general what were some of the advantages of pleading guilty and of pleading not guilty. Somehow, Mr. Neyland thought that such a question violated his rights and he refused to answer the question. Thus, he obtained a low score.

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Similarly, on the Appreciation section where Mr. Neyland was asked some questions about his own legal situation such as whether he thought he would be treated fairly by the legal system, whether he thought his lawyer would help him more, less or about the same as lawyers usually help people in trouble with the law, and whether he, compared to others facing charges like his, would be more likely, less likely or just as likely to tell everything to his lawyer, he for the most part refused to answer the questions asked. He basically refused to consider his legal situation compared to others in a similar legal situation. Thus, Mr. Neyland's low scores are much more reflective of his characterological difficulties than of an inability to reason or appreciate his own legal situation and circumstances. However, it was clear that Mr. Neyland likely will be a very difficult defendant with whom to reason. He predictably will debate endlessly innumerable differences that do not make a difference and be very reluctant to deal with the real core issues of his defense.

Next, Mr. Neyland was asked to identify the charges against him. He stated that he had "two aggravated murders." He defined murder as "a person killed another person." He understood that his charges were very serious and accepted that they were special felonies. At first Mr. Neyland said that he was unaware that there were specifications to his charges. However, when we consulted his indictment, he acknowledged that there were specifications for a death penalty and for a firearm. There followed a discussion about specifications and that in general specifications would mean an enhanced penalty was expected, which in this case was death. Mr. Neyland understood that, if he were to be convicted as charged, the penalty would be chosen from a list including death, life imprisonment without parole, life with parole after 20 years, life with parole after 25 years, or life with parole after 30 years. He was able to answer questions of who, what, when and where related to his charges. Because of his concerns about his 5th Amendment rights, he was not asked to relate his thoughts, feelings, motivations, perceptions and behaviors prior to, during and after the time period encompassing the alleged offenses.

However, Mr. Neyland insisted that he was capable of giving such an account to his attorneys. He reported that he had fully reviewed his "800 pages of discovery" and given his notes on each to his attorney. He was informed that I would be asking his attorney whether he had informed his attorney about the facts of his case. Mr. Scott indicated

that, indeed, Mr. Neyland had presented him with many notes related to his review of the discovery. The attorney further confirmed the examiner's prediction that Mr. Neyland had been very active in raising questions about his discovery materials and that he had predominantly focused on facts and issues that were not core and on differences that did not make a difference.

Mr. Neyland identified the pleas available to him as "guilty, not guilty, and no contest." He stated that a plea of guilty with respect to the charges against a person meant "they did it" and a plea of not guilty meant "didn't do it." He described a no contest plea as meaning "not disputing fact, not saying guilty but not arguing the facts." When inquiry was made about his understanding of a plea of not guilty by reason of insanity, Mr. Neyland said it meant "somebody had a problem that day." With considerable reluctance he said that insane meant that there were "mental" problems. Mr. Neyland had some initial difficulty understanding the consequences of the available pleas. However, after discussion of these he easily understood that if a defendant pleaded guilty the Court would proceed to sentencing, that a not guilty plea would result in a trial and a no contest plea would result in sentencing. He was able to comprehend that if a defendant was successful with a not guilty by reason of insanity defense that the defendant would receive mental health treatment with Court oversight.

He was asked about the procedure of plea bargaining. Mr. Neyland said a plea bargain was when somebody got a lesser charge. He agreed for it to be a bargain each side had to gain something. He said the prosecutor would get a conviction and the defendant would get a lesser charge. He was aware that the plea bargain was made between the prosecutor and the defense. He understood that to take advantage of a plea bargain the defendant would have to plea guilty to something. Mr. Neyland identified the rights given up, if one plea bargained and pleaded guilty, would be the right to a "trial." He thought plea bargaining could be beneficial to a guilty defendant in that he would receive a lesser charge and a lesser penalty. He thought that an innocent person would not want to plea bargain.

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Mr. Neyland was asked to identify those people who would have to be in the courtroom in order to make a decision about his case. He identified the "judge, prosecutor, defense attorney, jury, and witnesses." He also understood that he would need to be present. He said that the role of the judge in the courtroom was "to make sure there is a fair trial, make sure the jury only has evidence pertaining to the case." He knew that if he were found guilty the judge would sentence him and that if he were found not guilty he would be released. The fact that a death penalty case could be heard by a jury or a three judge panel was discussed as was the fact that jurors on a death penalty jury would be death qualified. Mr. Neyland said that the job of the jury was to "hear evidence and witnesses." He believed that there were twelve people on a jury and that potential jurors would be randomly selected from a "pool of registered voters." He understood that the decision of the jury had to be unanimous. He said the prosecutor wanted to "get a conviction" and represented "the State of Ohio and the victims." Mr. Neyland indicated that it would be the job of his attorneys, Mr. Scott and Mr. Cimerman, "to make sure my rights are protected," represent the defendant and advise about rights and trial strategies... Mr. Neyland identified himself as the defendant. He said during trial he was going to make notes of what people say and let his attorneys know what I thought about what was happening. He agreed that he could inform his attorneys if a witness said something that was incorrect. However, he said he had already done that and his attorney did not do anything. He said that witnesses are summoned to "tell what they know about." He understood that witnesses had to have been present as the time of the crime or know something special about what happened. He was aware that there were factual witnesses and expert witnesses and that expert witnesses were different in that they could express opinions within their field of expertise. He said that evidence was "gathered at the scene of a crime" and would be "used at trial" to "get a conviction." He agreed that evidence could also favor the defendant.

Mr. Neyland indicated that he had met with his attorneys and that he had most often talked with Mr. Scott. He was asked if he trusted his attorneys. Mr. Neyland answered "I think they will do their job and there is malpractice if they do not do their job, just as doctors can be found to malpractice." He was asked if he thought he could testify if his attorneys advised him to do so. Mr. Neyland very forcefully indicated that he would not testify and that he would not make any statement at any time. Mr. Neyland indicated that he knew how a defendant was expected to

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behave in the courtroom and he related that he "will not interfere with the process." He was asked what he would do if his attorney told him that he was simply arguing about a difference that did not make a difference. He said that he could accept that. He insisted that he would assist his attorneys. Mr. Neyland has reasonable decisional capacity. That is, he can take in information that attorneys may offer to him about his legal situation, process that information and then utilize that information to make a decision about the conduct of his defense. However, it may at times be difficult for his attorneys to get Mr. Neyland to focus on what they think is important verses what he thinks is important. Mr. Neyland appears to have reasonably good stress tolerance as it relates to his ability to withstand the stress of a lengthy trial.

Diagnosis:

Axis I: **Clinical Disorders; Other Conditions that May be a Focus of Clinical Attention**

No diagnosis

Axis II: Personality Disorders; Mental Retardation

Personality Disorder, Not otherwise Specified with Schizoid, Paranoid, and Narcissistic Traits

Axis III: **General Medical Conditions**

No known medical problem

Clinical Discussion:

Mr. Neyland has reported that he grew up in the old West End of Toledo in an intact family of twelve where the father worked two jobs, one of which was as a pastor and the mother worked as a nurse. He described himself as being distant from family members and not having anyone upon whom he could depend. His parents divorced when he was 14 and he then lived with his mother, then with an uncle and finally with his father. He began working as an early teen and his work has become his identity and his security. He graduated high school and volunteered for the Army. He remained secretive about his military history. His vocational history has been mostly as a truck driver. He has never married, and he did not know he fathered any children. He reported no significant substance abuse

history. His juvenile legal history likely was limited to unruliness. His adult legal history has involved passing bad checks. Medically, he reported seriously burning his hand. He indicated no mental health history.

During his stay at Twin Valley Behavioral Healthcare-Columbus Campus Mr. Neyland had not been given any psychotropic medications and he has not evidenced any signs or symptoms of a serious mental illness. That is, there has been no manifestation of signs or symptoms of a psychosis or schizophrenia, of major depression or mania, or of a posttraumatic stress disorder or severe anxiety. While it is possible that Mr. Neyland could have a delusional disorder, the content of which was not tapped or discovered during this hospitalization, no good evidence of such a disorder has been identified. However, there were indications of characterological difficulties that have been identified as a personality disorder not otherwise specified with schizoid, paranoid, narcissistic and antisocial traits.

Personality traits are enduring patterns of perceiving, relating to, and thinking about the environment and oneself that are exhibited in a wide range of social and personal contexts. Only when personality traits are inflexible and maladaptive and cause significant functional impairment or subjective distress do they constitute personality disorders. The essential feature of a personality disorder is an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture and is manifested in at least two of the following areas: cognition, affectivity, interpersonal functioning, or impulse control. This enduring pattern is inflexible and pervasive across a broad range of personal and social situations and leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning. The pattern is stable and of long duration, and its onset can be traced back to at least to adolescence or early adulthood. A paranoid personality disorder is a pattern of distrust and suspiciousness such that others' motives are interpreted as malevolent and presents in Mr. Neyland with traits of: suspects, without sufficient basis, that others are exploiting, harming, or deceiving him; is reluctant to confide in others because of unwarranted fear that the information will be used maliciously against him; reads hidden demeaning or threatening meanings into benign remarks or events. A schizoid personality disorder is a pattern of detachment from social relationships and a restricted range of emotional expression and manifests in Mr. Neyland with traits of: neither desires nor enjoys close relationships, including

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being part of a family; almost always chooses solitary activities; lacks close friends or confidants other than first-degree relatives; shows emotional coldness, detachment, or flattened affectivity. A narcissistic personality disorder is a pattern of grandiosity, need for admiration and lack of empathy and is shown in Mr. Neyland with traits of: a sense of entitlement, i.e., unreasonable expectations of especially favorable treatment or automatic compliance with his expectations; a grandiose sense of self-importance; lacks empathy: is unwilling to recognize or identify with the feelings and needs of others; shows arrogant, haughty behaviors or attitudes.

Forensic Opinions:
It is my opinion with reasonable psychological certainty that Calvin C. Neyland is not mentally ill. As discussed above, during this brief hospitalization for evaluation purposes. Mr. Neyland has not evidenced any signs or symptoms of a serious mental illness. However, he does display characterological difficulties that have been described by a diagnosis of personality disorder not otherwise specified.

It is also my opinion with reasonable psychological certainty that Calvin C. Neyland is not mentally retarded. There was nothing in Mr. Neyland's reported history that suggested he was of sub average intellect. He reported graduating high school in regular classes, entering the military with very high entrance scores, and having a successful career as a truck driver. There was nothing during this evaluation if him that suggested below average intellectual functioning.

Further it is my opinion with reasonable psychological certainty that Calvin C. Neyland is capable of understand the nature and objective of the proceedings against him. He is well aware of the charges against him and of the behaviors that constitute those charges. He knew the possible penalties if convicted as charged. He could answer questions of who, what, when and where regarding the charges against him. He comprehended the concepts of guilt and innocence and he was aware of the adversarial nature of legal proceedings. Mr. Neyland was knowledgeable about the roles and functions of the primary individuals who play an important role in a court hearing or a trial. He understood the pleas available to him and he was reasonably conversant regarding the usual consequences of making each plea. He demonstrated a basic understanding of the procedure of plea bargaining.

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Moreover, it is my opinion with reasonable psychological certainty that Calvin C. Neyland is capable of assisting in his own legal defense should he choose to do so. He indicated a willingness to cooperate with his attorneys and to trust that they will do what they are supposed to do. He has reasonable decisional capacity. He is aware of the behavior expected of a defendant in a courtroom and he indicated he "will not interfere with the process." He is capable of informing his attorneys about his thoughts, feelings, motivations, perceptions and behaviors prior to, during and after the time period encompassing the alleged offenses should he choose to do so. However, it is likely that Mr. Neyland's attorneys will find him an extremely challenging defendant because of his personality traits. It will likely take quite some period of time, if ever, for Mr. Neyland to openly interact with his attorneys. He is very controlling and he is likely to raise many issues that are based in differences that do not make a difference. He will be defensive, guarded, cautious and challenging.

Thus, in summary conclusion, it is my opinion within reasonable psychological certainty, in accordance with Ohio Revised Code Section 2945.371 (G) (3) that Calvin C. Neyland in not mentally ill or mentally retarded and that he is capable of understanding the nature and objective of the proceedings against him and of assisting in his own legal defense, should he choose to do so.

Kristen E. Haskins, Psy.D.
Clinical and Forensic Psychologist

2-1-08
Date

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Barbra A. Bergman, Ph.D.
Forensic Psychology Services

March 10, 2008

The Honorable Robert C. Pollex
Wood County Common Pleas Court
One Courthouse Square
Bowling Green, OH 43402

Re: Calvin C. Neyland
CCN: 2007-CR-0359

Dear Judge Pollex,

Enclosed is my report reference the Competency to Stand Trial evaluation of Calvin C. Neyland.

If you have any concerns or questions, please call me at (937) 361-8554.

Sincerely,

Barbra A. Bergman, Ph.D.

Barbra A. Bergman, Ph.D.
Clinical and Forensic Psychologist

BAB/mad

Barbra A. Bergman, Ph.D.
Forensic Psychology Services

FORENSIC EVALUATION
COMPETENCY TO STAND TRIAL

NAME:	Calvin C. Neyland
DOB:	1/30/64 (44 years)
COURT:	Wood County Court of Common Pleas
JUDGE:	The Honorable Robert C. Pollex
CASE NUMBER:	2007-CR-0359
CHARGES:	2 counts Aggravated Murder with Specifications
O.R.C. CODE:	2945.371(G)(3)
DEFENSE ATTORNEY:	Scott A. Hicks
PROSECUTOR:	Gwen Howe-Gebers
EXAMINER:	Barbra A. Bergman, Ph.D.

DATES OF EVALUATION:

2/16/08	Review of Discovery Packet sent by Prosecutor (2 hours)
2/17/08	Clinical Interview with Defendant (1 hour)
3/6/08	Review of Medical Records and Psychological Test Results (1 ½ hours)

INFORMATION REVIEWED:

1. Forensic Evaluation – Competency to Stand Trial – Court Diagnostic and Treatment Center: Thomas G. Sherman, M.D. (12/4/07).
2. Forensic Evaluation – Competency to Stand Trial – Timothy B. Moritz Forensic Unit (TBMFU): Kristen Haskins, Psy.D. (1/22/08).
3. Psychological Test Results (COGNISTAT and MMPI-2).
4. Medical Records – TBMFU.
5. Medical Records – Wood County Justice Center, Mental Health Department.
6. Telephone Consultations – Prosecutor and Defense Attorney.
7. Ohio Bureau of Criminal Identification and Investigation – Investigative Report – 08/08/07 Crime Scene Examination/Homicide: S/A Daniel Winterich (8/20/07) and Douglas Smith (V), Thomas Lazar (V), & Calvin Neyland (S): S/A David Winterich (8/14/07).
8. Perrysburg Township Police – Supplemental Reports: Monica Gottfried 8/8/07, 8/17/07, and 2/13/08 and James Gross 8/8/07.
9. State of Michigan – Affidavit for Search Warrant.

10. Search Warrants for motel room and for storage shed and inventories of property seized.
11. Photographs of storage sheds.
12. Photographs of handwritten notes.
13. E-mail messages: Lori and Robb Gates.

DATE OF REPORT: 3/10/08

REFERRAL

Mr. Neyland was referred for a Second Opinion Evaluation by the Honorable Robert C. Pollex, Judge of the Wood County Common Pleas Court, pursuant to O.RC. 2945.371(G)(3), Competency to Stand Trial.

Mr. Neyland was clinically interviewed in the Wood County Justice Center on 2/17/08 for approximately one hour.

Prior to evaluation, the purpose, parameters, and limits of confidentiality of the evaluation were explained to Mr. Neyland. Although he indicated comprehension of the information presented, he refused to sign an Informed Participation Statement form, because he considered a second Competency Evaluation to be unnecessary, since he had already been evaluated as Competent to Stand Trial.

BACKGROUND INFORMATION

Background information was presented in the forensic reports submitted by both examiners who previously examined Mr. Neyland. Because the defendant was not willing to submit to a formal Competency to Stand Trial Evaluation presently, he did not provide the undersigned examiner with any social history or background information.

Nothing in the historical information provided by Mr. Neyland to Drs. Sherman and Haskins was significant in regard to Competency to Stand Trial issues. It is noted that he has no previous history of mental health problems or of mental health treatment, although there is some evidence of maladjustment in his lifestyle, including previous criminal history.

MENTAL STATUS EXAMINATION

Mr. Neyland was a very large, physically imposing African-American male, dressed in jail clothing. Although hygiene was adequate, his full/untrimmed beard and ungroomed hair created the impression of his being disheveled. Mr. Neyland was very verbal and provided only information which he deemed "helpful," while refusing to answer most questions and several times stating: "I have the right to remain silent." His interactions with the examiner were

condescending and he endeavored to maintain control of the interview process by irritably refusing to answer most questions posed by the examiner and by presenting essentially a monologue of information which he considers important to the case, as well as delivering critical judgements regarding the court proceedings and the criminal justice process that has thus far transpired. At various points in the hour-long contact, Mr. Neyland demanded to read the examiner's notes. He concluded the contact by hand-writing a "statement" about his participation in the evaluation and the officer in the control room photocopied it at Mr. Neyland's request (see attached).

Mr. Neyland was fully oriented (time, place, person, and situation) and was aware of his circumstances. He expressed his thoughts in a logical, coherent, goal-directed manner, with no sign of formal thought disorder of form or content (i.e. delusions). Although thought processes were intact, thought content was characterized by Mr. Neyland's personalized (at times distorted) interpretations and views of the current situation. His views were quite rigid and unyielding to corrective information, which Mr. Neyland tended to dismiss in a condescending and irritated manner.

Mr. Neyland's attention was very focused and his concentration was sustained. His mood was irritable, but controlled. Affect expressed was bland, with lack of animation other than irritability (when he was interrupted or even mildly challenged).

Mr. Neyland denied gross distortions of perception (i.e. hallucinations) and did not display any behavior indicative of responding to internal stimuli.

Mr. Neyland's recent and remote memory functions appeared to be intact for sequence and detail and his level of intellectual functioning was estimated (based on manner of verbal expression, ability to abstract, educational background, and results of cognitive assessment conducted by Dr. Haskins) to be in the average to above-average range.

Mr. Neyland's judgement appears to be poor, due to striking egocentricity, narcissism, and inflexible/rigid views which inhibit him from being able to consider alternative approaches/views and consequences of choices, in addition to lack of concern about the reactions and judgements of others. Likewise, insight into his own behavior is limited by extreme self-centeredness.

In summary, present examination indicates that Mr. Neyland's mental status reflects a severe personality disorder, but there is no evidence of a major mental disorder (mental illness). The diagnoses indicated are:

Axis I	No disorder
Axis II	Personality Disorder NOS, with Paranoid, Schizoid, Narcissistic, and Obsessive features

CLINICAL INTERVIEW

Mr. Neyland refused to cooperate with a formal Competency evaluation, because there had already been an evaluation done which opined that he was competent. Also, Mr. Neyland stated several times: "I have a right to remain silent." However, he stated that he did want to tell the examiner some things that he believes are important to the present situation. Mr. Neyland then proceeded to essentially deliver a one hour long monologue, allowing few questions.

Mr. Neyland presented his "evidence" for his competency and the fact that he is not mentally ill: he has been driving a truck for 20 years, he has been scrutinized by the public, his logs are in order, a drug screen would be negative, he is always on time and goes where he is supposed to go, he earned $85,000 (gross) from 7/1/06 to 1/2007. He stated: "Someone who is psychotic would not be able to stick to a plan."

Mr. Neyland also detailed his complaints about his attorney, saying: "He wants to go in the direction that he wants to go in." By that, Mr. Neyland meant that the lawyer is not focusing on what Mr. Neyland thinks is important. He believes that he will have grounds for an appeal if the attorney is found to be incompetent due to not representing Mr. Neyland in the manner that he dictates.

Mr. Neyland also explained that the company (for which he was working) was treating him in an unfair, unethical manner. He pointed-out that they could not fire him, because there was a contract. Also, he said that the company did not always have a load for him on the return trip, so he had to get on the computer and find his own load. In addition, Mr. Neyland discussed a disagreement he had with company administrators about an accident he had with his truck – he said that the truck was repaired the same day and the insurance covered it, but the company administrators were insisting that he owed the company $3,500.

Mr. Neyland detailed some Discovery that he wants the attorney to obtain: DNA test results of a hair sample found in one victim's hand, a 9-1-1 tape, crime scene photos. Mr. Neyland complained that his attorney is only focusing on Discovery evidence that is unfavorable to him and will not obtain Discovery that is favorable to him.

Mr. Neyland was concerned about a 1099 form from his old employer, which he believes was sent to the wrong address. He considers this income tax fraud or mail fraud. He believes that the company did not pay him all that he earned and instead put part of his pay into a maintenance fund.

Mr. Neyland is concerned about delays in the criminal justice process caused by the mental health evaluations. He is concerned that if too much time passes, he might lose access to

crucial information and witness' memories will fade. Then, he would not be able to get a fair trial.

Mr. Neyland also complained about his treatment at the hospital. He reported that he had an EKG, but they took him to a seclusion room to conduct the test, while other patients had the test conducted in their own room. Mr. Neyland thought that the hospital staff may have been hoping to provoke uncontrolled behavior on his part, so they could give emergency medications, since he refused to agree to take any medication. He also said that the psychologist was asking him strange questions just to "see what I would do." He acknowledged that the question asked by the psychologist "What does 'Don't cry over spilled milk' mean?" was a metaphor, but Mr. Neyland did not think that it applied in any way to his case, so he would not answer the question.

Mr. Neyland said: "There's too many people accusing me of being someone I am not. There's reality and there's someone's imagination. I do my job – I am on time – I am where I'm supposed to be – that's who I am."

RESULTS OF PSYCHOLOGICAL TESTING

The results of the Neurobehavioral Cognitive Status Examination (COGNISTAT), a brief screening of cognitive functions and the results of the Minnesota Multiphasic Personality Inventory - 2 (MMPI-2) administered by Kristen Haskins, Psy.D. in February 2008 were reviewed. The test results were obtained by Court Order, since Mr. Neyland refused to sign authorization for release of information.

COGNISTAT

Results of the COGNISTAT indicated cognitive functioning in the average range. (An observation of Mr. Neyland's style of responding during administration of the portion of the COGNISTAT involving judgements based on hypothetical situations was quite diagnostic of his rigid, self-centered, at times literal thinking style – which characterizes his approach to all problems – not just his response to the current court case. Despite average intelligence, he was not able to easily interpret and make responses to simple hypothetical situations, because he over-personalized them and said that those particular situations would never happen to him and thus dismissed them as legitimate questions).

MMPI-2

Inspection of the configuration of scores on the Validity Scales of the MMPI-2 indicates that Mr. Neyland responded to test items in an extremely defensive response style, with a concentrated effort to present himself as super rational, normal, and balanced. Mr. Neyland responded in such a way as to deny even the most common human faults and failings. His response style

indicates that he is a person who is likely seen by others as self-righteous and uncompromising. While Mr. Neyland likely is convinced that he is "right" about most things, he has no self-awareness and is not aware of the impact that he has on others.

Because of his rigid response style and extreme defensiveness, the Personality Profile represented by the scores on the Clinical Scales does not genuinely reflect Mr. Neyland's problems or his personality, since any problems are denied or greatly minimized.

Despite the lack of useful data in the Personality Profile, the character style reflected in the Validity Scale scores is consistent with other sources of observations of Mr. Neyland's personality, character flaws, and interpersonal style.

COLLATERAL INFORMATION

Timothy B. Moritz Forensic Unit (TBMFU)

The medical record for TBMFU was reviewed. In general, it appears that various clinicians viewed Mr. Neyland differently. Some interpreted his distinctive manner as evidence of paranoia and others viewed his manner as evidence of a personality disorder.

A review of the daily Progress Notes (1/3/08 – 1/30/08) indicated that there was no evidence of psychosis observed in Mr. Neyland's behavior during the hospitalization and he was not prescribed any medication. Although he tended to be guarded and to isolate himself in his room, he was cooperative and pleasant when interacting with most staff. He did not participate in therapeutic activities, but he did spend time in common areas on the unit watching TV, working crossword puzzles, and assembling jigsaw puzzles with staff and other patients. He denied experiencing any symptoms of psychiatric disorder. He did make an unauthorized phone call to his former employer and his phone calls were thereafter supervised.

The admitting diagnoses were:

AXIS I: Rule Out Psychotic Disorder NOS
AXIS II: Paranoid Personality Traits vs. Disorder

The discharge diagnoses were:

AXIS I: No Diagnosis on Axis I (i.e. no mental illness)
AXIS II: Personality Disorder NOS

The attending psychiatrist noted in his Discharge Summary that Mr. Neyland appeared to be very bright and articulate and closely followed news events. He was quite talkative about subjects that he enjoyed, such as his trucking experiences. While he was guarded when discussing his legal case and a few other subjects (i.e. military history), he was open and willing

to talk about other subjects. The psychiatrist interpreted Mr. Neyland's guardedness as being due to a combination of his personality disorder and self-protection given the seriousness of the charges. He viewed Mr. Neyland's personality disorder as having features of paranoid, schizoid, and narcissistic traits.

Wood County Justice Center – Mental Health Department

Mr. Neyland has been regularly interviewed by mental health staff from the time of his initial incarceration.

On 8/9/07, an initial evaluation indicated that Mr. Neyland appeared to be depressed (because of the charges), but he was not referred to psychiatric services.

Mr. Neyland was interviewed briefly to check mental status on 8/10, 8/13, 8/20, 8/24, 8/31, 9/13, 9/18, 9/24, 10/2, 10/26, 11/1, 12/28, 1/2, 2/1, 2/6, and 2/22. At no time did he display symptoms of a mental disorder, according to the records.

Defense Counsel

Scott Hicks, Mr. Neyland's defense attorney, was interviewed regarding his work with his client. Mr. Hicks reported that it has not been possible to get anything meaningful from Mr. Neyland when discussing Discovery material, as he tends to focus on irrelevant or meaningless details and essentially "misses the big picture."

Mr. Hicks also said that Mr. Neyland calls him and leaves very lengthy messages on the voicemail. His thoughts seem coherent, but he rambles about minor details in the paperwork (i.e. a typographical error) as being highly significant for his defense.

Mr. Hicks remarked that talking to Mr. Neyland is "like wading through mud up to my hips." He does not listen to what the attorneys tell him about what is important to the case. Mr. Hicks stated that Mr. Neyland is "oblivious to the evidentiary issues." He is very upset about Mr. Hicks ordering competency evaluations.

Mr. Hicks portrayed Mr. Neyland as "persistent and demanding, but not threatening." He said that Mr. Neyland is "no help at all in preparing the case for defense."

COMPETENCY SCREENING INTERVIEW

Because Mr. Neyland refused to participate in a formal Competency Screening Interview, a detailed examination was not conducted regarding his understanding of the seriousness of the charges or his understanding of the nature and objectives of the legal proceedings. It is noted, however, that Mr. Neyland did cooperate fully with the Competency to Stand Trial evaluation conducted by Kristen Haskins, Psy.D., when he was at the Timothy B. Moritz Forensic Unit.

Based on the results of Dr. Haskins' assessment of competency criteria, Mr. Neyland had an adequate fund of legal information and a factual understanding of the legal issues and procedures.

Dr. Haskins' Competency to Stand Trial evaluation included both the use of a structured instrument: MacArthur Competence Assessment Tool – Criminal Adjudication (MacCAT-CA) and a semi-structured clinical interview.

Mr. Neyland's performance on the MacCAT-CA was variable. On a section assessing factual understanding, he demonstrated no impairment. However, on sections of the instrument designed to evaluate Reasoning (about legal situations) and Appreciation (of his own personal legal situation), Mr. Neyland scored very low, because he basically refused to follow directions (i.e. to respond to hypothetical situations) and instead argued in a literal manner about "non issues," thus subverting the purpose of the assessment. Thus, the idiosyncratic interpretation of the assessment items and the nonproductive arguments presented by Mr. Neyland during the MacCAT-CA assessment are representative of the problems that his attorney is likely to encounter in enlisting Mr. Neyland's participation in constructing a defense strategy.

On the other hand, during the semi-structured interview conducted by Dr. Haskins, Mr. Neyland was able to identify the specific charges, the meaning of the charges, the nature of the associated specifications, and the possible penalties. Mr. Neyland reported that he had reviewed the discovery packet provided by his lawyer and made notes about questions. Mr. Neyland was able to identify available pleas and the implications of different pleas. Mr. Neyland was able to discuss various aspects/implications of a plea bargain. Mr. Neyland demonstrated comprehension of the roles and functions of key Court officials and comprehension of the adversarial process.

Previous Forensic Evaluations

Two previous evaluations were conducted: Thomas Sherman, M.D. of the Court Diagnostic and Treatment Center in Toledo evaluated Mr. Neyland on 12/4/07 and Kristen Haskins, Psy.D. of TBMFU evaluated Mr. Neyland on 1/22/08.

Dr. Sherman assessed Mr. Neyland as "friendly and always on guard." Dr. Sherman viewed Mr. Neyland as displaying speech and thinking that was "stilted if not overtly paranoid" and as displaying peculiar reasoning. Dr. Sherman also reported that "His speech and thinking never displayed the obvious disorganization seen in acute worsening of mental illness." He was not responding to internal stimuli (i.e. hallucinations) according to Dr. Sherman, but he was so guarded that he could not cooperate with examination of his role as defendant. Dr. Sherman did assess Mr. Neyland as having an "objective understanding of the adversarial process." Dr. Sherman diagnosed Mr. Neyland with Delusional Disorder, Persecutory Type, Rule Out

Schizophrenia, Paranoid Type. He opined that Mr. Neyland was incapable of understanding the nature and objectives of the proceedings and of assisting in his defense.

Dr. Haskins examined Mr. Neyland for 4 hours. She concluded that Mr. Neyland was not mentally ill – based on both her psychological assessment and on the observations of other staff at TBMFU. Dr. Haskins opined that, although Mr. Neyland is not mentally ill and is capable of assisting his attorneys if he chooses to do so, he will likely be defensive, guarded, cautious, and challenging (to represent) due to his personality traits.

SUMMARY

Present evaluation indicates that Mr. Neyland is not mentally ill, but that he is a strikingly narcissistic, disaffiliated man, who presents as being chronically on guard, expecting to be mistreated or manipulated by others. He presents as rigid and narrow-minded in his thinking, having difficulty seeing things from other points of view. The aforementioned characteristics render Mr. Neyland a very "difficult" individual from the point of view of most people and especially from the point of view of his attorneys, who experience their interactions with Mr. Neyland as frustrating and lacking in meaningful dialogue. Mr. Neyland has thus far insisted on focusing on irrelevant and/or inconsequential details as defense strategy, while his attorneys have attempted to direct him to critical legal issues. Thus, Mr. Neyland is angry with the attorneys, who he views as "derailing the process" by asking for more mental health evaluations, by not obtaining Discovery (which Mr. Neyland views as important), and by not focusing on issues that he deems crucial.

Present evaluation indicates that previous assessments of comprehension of legal information relevant to trial competency revealed Mr. Neyland as fully aware of the nature and significance of the charges and aware of the nature and procedures of the trial process. He is able to focus his attention and to concentrate for lengthy periods of time and is able to express his own thoughts and viewpoints in a coherent manner when he chooses to do so.

OPINION

On the basis of the present evaluation, the following opinions are offered within a reasonable degree of psychological certainty:

1. Presently, Mr. Neyland demonstrates no symptoms that would constitute a "mental illness" and he is not "mentally retarded," as specified in O.R.C. 2945.371(G)(3).

2. Presently, Mr. Neyland is capable of comprehending the nature and seriousness of the charges against him.

3. Presently, Mr. Neyland is capable of comprehending the nature and objectives of the proceedings against him.

4. Presently, Mr. Neyland is capable of consulting with his attorneys. He is, however, likely to be a very difficult client, due to the features of his personality disorder and his interpersonal style.

5. Presently, Mr. Neyland is capable of participating in legal proceedings in a meaningful manner.

In conclusion, based on the present evaluation, it is the opinion of the undersigned psychologist, within a reasonable degree of psychological certainty, that Mr. Neyland does not meet criteria under Ohio Law to be adjudicated Incompetent to Stand Trial.

Respectfully Submitted,

Barbra A. Bergman, PhD

Barbra A. Bergman, Ph.D.
Clinical/Forensic Psychologist

2/17/08 11:30 a.m. - 12:25 p.m.

I did speak to Dr Bergman concerning an additional mental health evaluation.

At the end of our conversation she stated that my attorneys had requested the evaluation conducted today.

The reason why is they may have not been satisfied with Twin Valley Behavioral Health Care's (Timothy B. Moritz Forensic Unit.) Opinions

I exercised my right to remain silent. I stated this several times.

I did give information I thought would be helpful

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Hearing of 12/11/2007, pages 14-17

MS. HOWE-GEBERS: No, Your Honor.

THE DEFENDANT: Excuse me. May I be allowed to speak?

THE COURT: Yes. Mr. Neyland.

THE DEFENDANT: What was the results of the original competency exam? 11:40:3

THE COURT: The competency exam has indicated that you were not competent to stand trial at this time, and the State is asking for another opinion on that. So the Court is going to order that another evaluation be done. 11:40:5 I'm going to order that that be done at Northcoast, and that they report prior to February 12 at 9 a.m., the results of their evaluation. The Court has --

THE DEFENDANT: Excuse me, Judge.

THE COURT: One second and I'm going to come back to you. 11:41:1

THE DEFENDANT: Okay.

THE COURT: One second. The Court has determined that since this was a motion from the defense that the Court will still toll the time for speedy trial purposes, 11:41:2 and the defendant is so advised, until that date to obtain this report. At that time we will proceed with the competency evaluation.

Mr. Neyland, have you talked to your attorney about whether you should say anything on the record here today? 11:41:4

THE DEFENDANT: They have not advised me. But along those lines --

THE COURT: If they have not advised you, then I want you to consult with them right now.

(Attorney-client discussion held.) 11:32:2

THE DEFENDANT: I'm having a problem as far as getting information. As you stated earlier, my defense attorney Cimerman is the one that requested a competency test, not the Court. In private I indicated to Mr. Cimerman and Mr. Hicks -- and these are my two attorneys from the public 11:42:2 defender's office.

THE COURT: That's correct.

THE DEFENDANT: I indicated to them that there is nothing in my behavior in 43 years that indicates that I have any behavior problems. I have been a self-employed 11:42:3 contractor. I have been in public basically 24 hours, 7 days a week driving a vehicle cross country. I repeat again, 24 hours, 7 days a week, driving a vehicle cross country. I am under observation by the public and law enforcement.

THE COURT: Well, I am not a psychologist, 11:43:0 neither are your attorneys. And they have a duty to raise the issue, and both sides have raised the issue, for the record to show a total defense on your behalf. And that's just one aspect of that defense.

I suggest to you if you feel that strongly that way 11:43:2

that when you're being evaluated -- and obviously you need to take the advice of your attorney, not the Court -- that you need to indicate that feeling to the evaluator because the Court is going to rely on that evaluator and that evaluation.

THE DEFENDANT: Can I say another thing? 11:43:3

THE COURT: Hang on.

THE DEFENDANT: Judge?

THE COURT: For your own protection I want to advise you --

THE WITNESS: Judge, I -- 11:43:5

THE COURT: One more second.

THE DEFENDANT: I might be able, I might have to defend myself because I am not getting cooperation that I need from the public defender's office.

And my credibility right now, I have 800 pages of 11:43:5 prosecution here. I have no, I have nothing for discovery for the public defender's office. I have 800 pages from October from the prosecution's office, and I read the 800 pages. There is a credibility problem with every witness in here.

THE COURT: Again, you have a right to 11:44:2 remain silent.

THE DEFENDANT: But I didn't finish what I wanted to say.

THE COURT: Before you say anything more, you have a right to remain silent. Anything you say could be 11:44:3

used against you.

(Attorney-client discussion held.)

THE DEFENDANT: I haven't said anything about the case.

THE COURT: All right. Well, at this point I encourage you to work with your attorneys. I realize that everyone in your circumstance is nervous about their representation; but in view of the reports that I have received, I would strongly encourage you to not not consider that. And I don't really want you to continue to talk on the record because you will potentially incriminate yourself. And I think from your -- 11:44:4 11:45:0

THE WITNESS: My Sixth Amendment rights --

THE COURT: Let me finish here.

THE DEFENDANT: My Sixth Amendment rights have been violated. 11:45:1

THE COURT: Anything further from the State at this time?

MS. HOWE-GEBERS: Nothing further.

THE COURT: Mr. Cimerman. 11:45:2

MR. CIMERMAN: Nothing further.

THE COURT: All right. This hearing is terminated.

(Proceedings concluded at 11:45 a.m.)

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State of Ohio v. Calvin Neyland, Jr.

Hearing of 08/05/2007, pages 4-12

course, we have to maintain the jury intact and you don't want to risk exposure to publicity in the newspapers or running into somebody who might contaminate them. So it has to be done quickly.

We have attempted in the course of our representation to communicate this to Mr. Neyland in terms of the need to prepare now for the possibility of a mitigation hearing. Toward that end we have had the Court appropriate funds for the hiring of Dr. Wayne Graves, forensic psychologist, who is well-experienced in assisting in capital litigation for the defense. We also have received funding to compensate Kelly Hieby, a mitigation specialist from the State Public Defender Office. Also obviously myself and Mr. Hicks would be actively involved in preparing for mitigation along with the investigator for the Wood County Public Defender's, office Beth Ann Crum. I would indicate to the Court that as of today's date Mr. Graves, Ms. Hieby, Ms. Crum, myself and Mr. Hicks have met with Mr. Neyland in an attempt to get this case focused on preparation for what we believe is a strong possibility of mitigation phase, and Mr. Neyland has consistently refused to cooperate in those efforts.

THE DEFENDANT: May I interrupt you at this point?

MR. CIMERMAN: Let me finish.

THE COURT: We'll give you plenty of chance

to say something.

THE DEFENDANT: I appreciate that.

MR. CIMERMAN: Your Honor, that is our problem in terms of representing Mr. Neyland. That's our problem. I don't anticipate that the Court can in any way fashion an order that would compel Mr. Neyland to do what is in his best interest. However, being experienced in these cases, it's also not uncommon that after a defendant is in prison, whether it be on a death case or, in my cases I've been lucky not to have anybody executed, I've had no problems with any of my clients that have been unfortunate enough to have received death sentencing, and out of 30 cases I believe there's only two, but you receive lawsuits from inmates who have nothing but time on their hands. And I don't want to be facing a lawsuit five years down the road filed by Mr. Neyland claiming that we were ineffective because we did not do our best to prepare for trial and/or mitigation when in fact at this point in time he is being completely uncooperative and resists any attempts to get this train on the tracks. So I just want to make that clear for the record.

THE COURT: All right. Mr. Neyland is it Neyland or Neyland? I never know which way to pronounce it.

THE DEFENDANT: Lots of people say Neyland, Neyland.

THE COURT: How do you prefer?

THE DEFENDANT: In my family you have different people that say it different ways. Just like in the old days, if you said it a different way you might spell it a different way but they would be still related.

THE COURT: First of all, I want to tell you, and you know we do have a court reporter in here, and anything you say could be used against you. The point of the meeting is not to get you to say anything that's going to harm you or cause you any problem. We're just here because counsel have asked for this opportunity without any prosecutor here or the public here to address this issue with you. So now is your chance to say anything.

But I do want to say, you have the right to remain silent, anything you did say could be used against you. Although, I probably would seal the transcript here.

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(The following is Page 7 through Page 13, Sealed portion of proceedings held on August 5, 2008, ex-parte proceeding in re: Wood County Common Pleas Court, Court 1, State of Ohio v. Calvin Neyland, Jr., Case No. 2007-CR-0359.)

THE COURT: I don't know since it is an in-chambers conversation, but I just want to warn you that those are your rights.

With that said, you seem to want to respond to what Mr. Cimerman said. I'm not going to stand in between this relationship, as he indicated. I have to be impartial and not favor one side or the other. And obviously if I got in the middle of this to any degree, it would appear I was favoring the defense side over the prosecution side. And I don't want to do that and I can't do that, to be fair to you. 13:34:2

THE DEFENDANT: In that case I wouldn't want to speak against my attorneys, but give him the opportunity to do whatever in his conscience he feels his conscience needs, you know. If he's afraid of what his prior actions may cause at a later date, he has the opportunity to remove hisself (sic).

THE COURT: Sure. But what about your cooperation? We're here to talk about you.

THE DEFENDANT: That's what I was going to say. What is the lady's name from the public defender's office?

MR. CIMERMAN: Beth Ann? Kelly Hieby. 13:35:0

THE DEFENDANT: How do you spell that?

MR. CIMERMAN: H-i-e-b-y.

THE DEFENDANT: Could you get me her name or write her name down for me because she didn't identify herself as to what her name was. But I did talk to Kelly Hieby for approximately two hours or so. And she told me what I told her didn't have anything to do with mitigation. So what you said is incorrect. 13:35:2

You've given me a rash of problems. You came down to the jail and you raised your voice while in the midst of talking to me in the video conference room. And I was in full view of all of the inmates through the windows, and they're looking at you, your expression and redness of your face. And I've had problems in the cell area where I am placed. People take what you do and what my case involves and they put two and two together and come up with whatever they want to come up with. I have people moved from other parts of the jail to where I'm located. They already have their own personal ideas from watching you interact with me. You see what I'm saying. That's the reason why I got up the first time and removed myself from the video courtroom back to my cell when you did that. 13:35:5 13:36:1 13:36:4

The next time when you came out here just a couple of days ago while I was talking to you, telling you what I thought was important for the case, you said "so". I 13:36:5

continued to talk, and you said "I don't care". That's your opinion. I'm a grown person, you're a grown person, you're a grown person. What do you want me to do?

THE COURT: I guess they're wanting you to meet with Mr. Graves, for one. Are you willing to do that? 13:37:1

THE DEFENDANT: I already spoke to Mr. Graves. And I told him before I met Kelly Hieby, I told him I don't have anything to say for mitigation. Then I thought maybe I was wrong so I talked to Kelly Hieby, told Kelly Hieby, what I thought was important for the case. What did Kelly Hieby say? 13:37:3
"That's not mitigation."

MR. CIMERMAN: I would indicate that Mr. Neyland has refused to sign any releases for information to gather records that we would need to adequately prepare for mitigation. I don't think he was denied that. 13:37:5

THE DEFENDANT: Let's get something straight here. You guys have been talking to me for a year. I've been coming to court for a year. You haven't prepared anything for the defense for a whole year I've been sitting in jail. You don't have nothing for discovery. 13:38:1

THE COURT: Well, I don't want to get this into a debate. Mr. Hicks, do you want to add anything to what has been said?

MR. HICKS: No. I mean, what Adrian has indicated has been the case up to this point. 13:38:2

THE DEFENDANT: That's your opinion or is that a fact?

THE COURT: I just asked for his opinion or his feelings. That's fine. The thing is, there's more than one expert. So cooperating with one for part of the time doesn't really help unless you cooperate with all these folks. How are they going to defend you, how can they defend you? You have just said they're not preparing a defense, and you're not letting them. 13:38:4

THE DEFENDANT: They've told me that mitigation is after you're found guilty, tough mitigation phase, they have not prepared anything for the trial for a whole year to go to trial to present to the jury. I'm sitting at the arraignment, I'm getting his attention trying to tell him what the witnesses are saying and he's ignoring me. I'm trying to give him information. He doesn't know anything about what happened at the scene nor do I. But if I think somebody is lying, I need to indicate to him. And you're trying to tell me I'm not cooperating. 13:38:5 13:39:1

I did that when the psychologist came from Columbus. You were sitting next to me when Gwen Howe-Gebers asked Dr. Smith what is the difference between a psychiatrist and a psychologist. Dr. Smith gave an answer. I pulled him on his sleeve here, Mr. Hicks. She gave a answer to what's the difference between a psychiatrist and a psychologist. During 13:39:3 13:40:0

his chance to examine the witness, he doesn't bring that up.

THE COURT: Well, these are your lawyers, they have a lot of experience.

THE DEFENDANT: Exactly. I can only do anything with whatever they want to do. 13:40:2

THE COURT: I think you have to rely on thirty years of experience. These are very good attorneys. I can't find anyone that would represent you better, to be honest with you. I'm just letting you know that. Mr. Cimerman, anything you want to place on the record, 13:40:3 anything else we should try to cover here?

MR. CIMERMAN: No, Your Honor.

THE COURT: I guess I would encourage you, Mr. Neyland, to meet with whoever, whatever phase because they're right, we're not going to take a break. If you were 13:40:4 found guilty, and hopefully you won't be, if you were found guilty they need to be ready to go to the next phase because we have to use the same jury, as the law permits.

THE DEFENDANT: We can't even impeach the witnesses statements from the arraignment. Detective Gross, 13:41:0 he indicated --

THE COURT: There were no witnesses at arraignment, so I don't know what you're talking about. The arraignment is where you entered your plea.

THE DEFENDANT: In Perrysburg Municipal Court. 13:41:1

THE COURT: That's the preliminary hearing.

THE DEFENDANT: Detective Gross says he placed evidence tape on both of the passenger door and the driver door on the tractor. I've been telling Mr. Hicks, that's information they have. They have 31 motions. One of the 31 motions is the ability to impeach witness testimony. I gave them that information. Does he write it down, does he put it somewhere, put it in a record? No. Everything that I told him about Tad White, these are things that I keep telling him over and over again. They tell me "so" and "I don't care". 13:41:3

THE COURT: Well, some things are --

THE DEFENDANT: You're trying to tell me I'm impeding the progress. And when I tell them information, they say "so" and "I don't care". How am I impeding the progress?

THE COURT: They're the ones that are the attorneys and know what is important and not. How many trials have you tried? 13:42:2

THE DEFENDANT: I'm not a serial killer and I'm not a murderer.

THE COURT: I'm going to end this discussion. Thank you. I'm going to end this discussion. 13:42:3

(End of Sealed portion of transcript.)

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Hearing of 08/25/2007, page 44

THE COURT: From the defense standpoint, either Mr. Hicks or Mr. Cimerman?

MR. CIMERMAN: Your Honor, again, at this point it is anticipated the major purposes of these Wednesday afternoon meetings would be to deal with jury excuses and/or deferments. Those, of course, would be dealt with on the record. However, there will be no need to go into open court on the record. We'll discuss that with Mr. Neyland and decide whether or not he feels a need to be present. 12:04:1

THE DEFENDANT: I do feel a need to be present. I already told Mr. Hicks. 12:04:3

THE COURT: Do you wish to place that on the record that you would like to be present?

THE DEFENDANT: I would like to be present, yes, thank you. 12:04:4

THE COURT: I would ask you to confer with your attorneys about that and we'll still leave that subject to later determination after you've had a chance to talk to them. Anything else counsel wish to place on the record at this time? 12:04:5

MR. CIMERMAN: No, Your Honor.

MS. BAKER: No, Your Honor.

THE COURT: All right then. As far as I understand, we will not have any further pretrials for the record other than those meetings to determine the excuses 12:05:0

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going to need more questionnaires unless you're telling us we need to take a break.

DEPUTY GARWOOD: On this next juror, she is friends with my wife. She sees my wife once a week if not twice a week and she knows other deputies. 16:20:1

THE COURT: Thank you for bringing that up. We'll inquire into that.

THE DEFENDANT: How did you know that?

DEPUTY GARWOOD: I saw her number out in the hallway. 16:20:4

(Juror number 51 enters the jury room.)

THE COURT: Good afternoon. How are you?

JUROR 51: Good.

THE COURT: You're juror number 51?

JUROR 51: I am. 16:21:4

THE COURT: Thank you for your patience in our getting to you here. You filled out a questionnaire earlier. You were sworn in to tell the truth. Are these responses in your questionnaire truthful to the best of your abilities? 16:21:5

JUROR 51: Uh-huh.

THE COURT: In there you indicated that you've read some articles about the shooting and that some were from *The Sentinel*, some from *The Blade* and some from the news; is that right? 16:22:1

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questionnaire. Are your responses in this questionnaire truthful to the best of your ability?

JUROR 109: Yes.

THE COURT: Okay.

JUROR 109: When I filled out question number two, I think that was, yes, I stated that a co-worker's husband worked with Mr. Lazar. It wasn't until after I got in the courtroom I realized I had the wrong person. I was talking about Mr. Calvin, a co-worker's husband used to work with him. I made a name mistake. I apologize. 11:13:3

THE DEFENDANT: Who would that person be, Mr. Calvin? I'm Calvin.

THE COURT: Go ahead. You can answer.

JUROR 109: Carl Schliedeck.

THE COURT: Let's not go any further with that. Do you think you could put aside that information? Obviously if you were a juror in this case you would have to decide the case on the basis of the evidence alone, and the Court would so instruct you and to set aside anything you might have heard with anyone involved. Do you think you could do that? 11:14:0

JUROR 109: Yes.

THE COURT: And do you think you could be fair and impartial in making that decision?

JUROR 109: Yes. 11:14:1

State of Ohio v. Calvin Neyland, Jr.

Tr. Vol. 3, pages 527-29, 606-07, 649-53

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(In-court proceedings resumed on October 23, 2008, at 8:30 a.m. All counsel present.)

THE COURT: If you just want to turn your chairs right around the tables. 08:36:5

For the record, we're in the courtroom on Case Number 07-CR-359. The prospective jurors are being assembled. I have to use this a lot today. They're being brought to the jury assembly room. We have a motion that the defendant filed that I would like to address at this time. I think we 08:37:1 indicated that we would do so this morning. The Court has received the motion and reviewed it. I don't know if counsel wants to argue it or Mr. Neyland?

THE DEFENDANT: Your Honor, may I ask a question? 08:37:3

THE COURT: Yes.

THE DEFENDANT: The pages that you have available in front of you, what all are the pages you have?

THE COURT: I have the motion. Would you present that? 08:37:4

THE DEFENDANT: I don't have a copy in front of me. That's why I need to know. I asked my attorney if they have a copy, they didn't have a copy. Thank you.

This is not the full motion. Could you return that back to the judge, please? Thank you. I need to bring the 08:38:0

full motion with me this afternoon. I do not have it with me.

THE COURT: Would you like us to wait until then?

THE DEFENDANT: Yes, thank you, I would appreciate it. 08:38:1

THE COURT: Any objection?

MS. HOWE-GEBERS: No objection from the State.

THE COURT: I have quite a few pages here. I've got ten pages. 08:38:2

THE DEFENDANT: If you notice, Your Honor, the second page it says three A?

THE COURT: Uh-huh.

THE DEFENDANT: That means that there is 1, 2, 3; that is three A, three B, three C, all the way to three H. 08:38:3 Actually there is eight other pages before that. That is an addendum to Motion 44.

THE COURT: All right. I will review this part. If you bring the other part this afternoon, maybe towards the end of the afternoon we'll address that. Anything 08:38:5 else?

MS. HOWE-GEBERS: When he brings that, the State would like to, because we have the same copy I believe that the Court does, we would like to have another copy before we're able to respond to Mr. Neyland's motion. 08:39:0

THE COURT: Once it's here I'll have Kelly make copies, then we'll address it.

THE DEFENDANT: May I make another note?

THE COURT: Yes.

THE DEFENDANT: The corrections that needed to be made, I made them in handwriting because I thought the defense would computerize it. I did it in handwriting, rough draft, and I made some pronunciation -- not pronunciation but the writing of words, like constitution was spelled wrong in several places, and I have two places that have the wrong dates. 08:39:2 08:39:4

THE COURT: Well, go ahead and correct those when you get them. This is in handwriting as well, I should note for the record. That's fine. The Court will accept it in handwriting. 08:39:5

Any other preliminary matters? Probably a few minutes yet before we have the jury ready. We'll be ready shortly. If my voice holds out, we'll make it. Anything else?

MR. HICKS: No, Your Honor. 08:40:1

(Recess taken at 8:40 a.m. to 9:06 a.m.)

THE COURT: We have had a number of letters that, well, four letters for juror number 14 and one letter for juror 53 that we need to consider. I'm going to ask Kelly to fill you in. Then I would like to get your reactions as to 09:06:4

a witness --

JUROR 31: No.

MS. HOWE-GEBERS: -- if they can't remember a 100 percent?

PROSPECTIVE JUROR: No, I wouldn't. 11:18:5

MS. HOWE-GEBERS: Anything that I have talked about so far that you have thought about as we've gone on in time and want to add anything to the discussion, the reasonable doubt, the circumstantial?

JUROR 31: No, not at all. It's been 11:19:0 informative and helpful.

MS. HOWE-GEBERS: Thank you. Now, the defendant in this case is African-American.

THE DEFENDANT: Correction. Would you like to?

THE COURT: How would you like to be 11:19:2 referred to?

THE DEFENDANT: When I was raised by my parents, they told me that I was African-American or black. After serving in the military and my background investigation from my job, I was told that I was white Caucasian of Hispanic 11:19:4 origin, and every six months I would receive a printout with my religion, age, date of birth, Social Security, and my race code. I would change it back to black African-American. After five years, and I changed it three times, they finally told me to stop changing it. 11:20:0

THE COURT: Is there a way you would like to be referred?

THE DEFENDANT: Page 290 in the B.A.T.F. forms in the 806 pages of the prosecution's discovery, the B.A.T.F. states white/Caucasian of Hispanic origin. 11:20:2

THE COURT: Thank you.

THE DEFENDANT: You're welcome.

THE COURT: You may continue to inquire any way you wish.

MS. HOWE-GEBERS: Given the nationality or race of the defendant, can everyone if chosen as a juror, agree to keep an open mind and be fair and impartial to the defendant? 11:20:3

Does anyone have a problem with that, anyone? If you'll raise your hand or stand.

PROSPECTIVE JURORS: (No verbal response.)

MS. HOWE-GEBERS: And there are some of you who have served in the military. How many have served in the military?

PROSPECTIVE JURORS: (Jurors indicating.)

MS. HOWE-GEBERS: Those of you that have served in the military, how many of you own guns? 11:21:0

PROSPECTIVE JURORS: (Juror indicating.)

MS. HOWE-GEBERS: Juror number 97, how long were you in the military?

JUROR 97: Two and a half years. I was in 11:21:2

of property issues. And with that in mind I would like to hear from the State first.

MS. HOWE-GEBERS: Your Honor, I believe since it's Defendant's motion if we can inquire from the Defendant as to his motion so the State is better able to respond. 14:13:4

THE COURT: All right. And, Mr. Neyland, I have here your motions. Are you seeking to have this property returned to you or are you seeking to have it suppressed so that it can't be used into evidence? Without being overly technical about it, what is it you want in these motions? 14:14:1

THE DEFENDANT: The property that is already in evidence I would like it to remain in evidence until the end of the trial.

THE COURT: Okay. And then at the conclusion, I know you had some personal belongings, let's say 14:14:3 weapons and things in your truck, is that what you're trying to do with these motions, have that returned to you when this is done?

THE DEFENDANT: I had one weapon in the truck that was a handgun, a Ruger nine-millimeter. 14:14:4

THE COURT: I don't want to talk about what the property is.

THE DEFENDANT: All right.

THE COURT: What is it you're trying to seek with the motion is what I'm trying to get at. 14:14:5

THE DEFENDANT: I would like the property to be available to be released at the end of the trial.

THE COURT: And that's your sole goal in bringing this at this time; is that right?

THE DEFENDANT: That is my sole purpose at this time. 14:15:0

THE COURT: You did raise other issues in there concerning the search warrants and the grand jury process and some evidence. Obviously the trial is for the purpose of deciding whether -- you've raised some truthfulness issues as to the witnesses, and that's what the trial is for. And we would be glad to obviously consider those. That's what the trial is all about. So I was confused a little bit as to what you were asking. But you're totally asking for just property to be returned after the trial; is that right? 14:15:2 14:15:4

THE DEFENDANT: The first page, if I'm allowed to read that first paragraph?

THE COURT: Yes.

THE DEFENDANT: The defendant through counsel respectfully requests this Court to take into consideration Perrysburg Township Police Department's operational jurisdiction when personal property seized is viewed as evidence. 14:15:5

THE COURT: Okay, I understand, that part makes me think that you are trying to suppress the evidence 14:16:1

they seized.

THE WITNESS: No, I do not request suppression. It specifically states there through counsel. My counsel knows the legal aspect of the issues that are raised here. I do not. 14:16:3

THE COURT: Okay. Why don't you have a seat. Let me hear from either counsel. Do either counsel want to add anything to what's been said?

MR. CIMERMAN: Your Honor, I would simply note it is an addendum to motion number 44 which was requesting for return of property. Apparently that's what Mr. Neyland is seeking, and we would leave it at that. I think the Court properly notes that some of the issues raised in the addendum or addendums appear to be factual issues that will be resolved at trial. 14:16:3 14:16:5

THE COURT: Very well. Thank you. Mr. Neyland, before we hear from the State.

THE DEFENDANT: As far as the issues that are not relating to the property.

THE COURT: Yes. 14:17:0

THE DEFENDANT: Would you like me to make a note of those for the record?

THE COURT: No, you don't need to. I've read it. Anything you want to say about that?

THE DEFENDANT: No. I don't want to make any 14:17:1

verbal statements. I only wanted to have factual information placed into the record, that I had read this information based on the prosecution's discovery. Everything that I placed in the record here in my own handwriting is available in the 806 pages of the prosecution's discovery. 14:17:3

THE COURT: Okay. All right. Thank you.

THE DEFENDANT: You're welcome.

THE COURT: Let me hear from the State.

MS. HOWE-GEBERS: Thank you, Your Honor. Your Honor, since it is labeled addendum to Motion 44, release of 14:17:4 property, the State has formally previously responded to number 44, which is a release of property. We did previously release some of the items requested, one item requested by the defendant. The other items will be used for the presentation of the State's case, therefore, cannot be released. 14:18:1

Some of the wording of the addendum, the State interprets it more to the weight of the evidence rather to the admissibility. Some of the facts that the defendant speaks of, that's how we are treating it. Those issues will arise throughout the trial. 14:18:3

And as Mr. Cimerman has indicated, those issues, the State assumes will be taken care of throughout the trial as evidence is presented. So we just stand by our original response that those items are necessary at this time, and we do not intend on returning those personal items at this point 14:18:4

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Detective Gross and Wharton both testified to those.

MS. HOWE-GEBERS: 16-A and B we are not offering.

Then, Your Honor, casings 17 through 29, Dan Winterich and Todd Wharton both spoke of and identified. We would be offering all of those. 15:10:1

THE COURT: 17 through 29, correct?

MS. HOWE-GEBERS: Yes.

THE COURT: Any objection to those?

MR. CIMERMAN: No, Your Honor.

THE DEFENDANT: Can I make a note, Your Honor? 15:10:2

THE COURT: Yes.

THE DEFENDANT: On the BCI&I report that I received that I read on my own there is no bullet for the white Buick, the hood. There is only a bullet recovered from Tomm Lazar's neck. But today there was a bullet for the hood placed in evidence. 15:10:3

THE COURT: All right. Does the State want to respond to that at all?

THE DEFENDANT: While the State is doing that judge, can I make another note? 15:11:2

THE COURT: Yes.

THE DEFENDANT: The second magazine that Todd Wharton said that he disassembled, it was a welded magazine. That is the second magazine that was in the holster. That is concealed behind the back right-hand draw holster. That has a 15:11:4

welded magazine and it could not be disassembled. If it was damaged in any way, it would have to be discarded.

THE COURT: Thank you.

THE DEFENDANT: You're welcome.

THE COURT: All right. Anything further from the State on 17 through 29? 15:12:0

MS. HOWE-GEBERS: Your Honor, it is on there. Number 28, it would be State's Exhibit 28. It is on the submission sheet on State's Exhibit 79 as item number 13. State's Exhibit 76, it is indicated one fired bullet, number 13, scene number 13. So it is on there. 15:12:2

THE DEFENDANT: I am talking about the BCI&I report that was submitted with the supplemental.

THE COURT: Okay.

THE DEFENDANT: Not the report that was submitted to -- 15:12:4

THE COURT: They just have to disclose it once. They don't have to disclose it in everything. All right. The Court will admit 17 through 29, and noting the objection of the defendant. 15:12:5

Number 30 was the bullet from Mr. Lazar that was testified to both by the coroner and Mr. Winterich. That's being offered, I assume?

MS. HOWE-GEBERS: Yes, it is, Your Honor. And it was also testified to by Agent Wharton. 15:13:1

recall right. Are you offering that?

MS. HOWE-GEBERS: We are, Your Honor.

THE COURT: Any objection to that?

MR. CIMERMAN: No, Your Honor.

MS. HOWE-GEBERS: 39 and 39-A were testified by Detective Gross. We would be offering both of those. 15:14:5

THE COURT: All right.

THE DEFENDANT: Your Honor, can I make a statement?

THE COURT: Yes. 15:14:5

THE DEFENDANT: When I was in the hotel room or the motel room, I had the televisions on Channel 13. I had a flat screen on the desk on channel 13. And originally I had the motel television on Channel 11 before I changed it to CNN. And scrolling along the bottom of the screen was my name and truck 634. It didn't have four digits. It had 634 and a Pennsylvania plate number. And at that time reading that I was a wanted person, I went up to the front desk of the motel, I got an envelope and a stamp from the owner to write a note to my cousin because I was afraid that if something happened to me on the way to my turning myself in, if something physically happened to me where I became deceased, I was going to mail that letter en route to turn myself in so they would know what happened and that I was alive before I had turned myself in, and where they could recover my personal property 15:15:2 15:15:5 15:16:1

and mail.

THE COURT: I understand what you're saying. That's not really relevant as to what we're doing right now.

THE DEFENDANT: I just wanted to --

THE COURT: If you wish to testify, you may do so, but I would advise against it on that particular point. Obviously you need to confer with your attorneys. I will admit 39 and 39-A. 15:16:2

Number 40 latent lifts from the 9-millimeter, testified to by Mr. Wharton. I assume you're offering that? 15:16:4

MS. HOWE-GEBERS: Yes, Your Honor.

THE COURT: Any objection?

MR. CIMERMAN: No, Your Honor.

THE COURT: 41 likewise the shell casing found in the office. 15:17:0

MS. HOWE-GEBERS: Yes, Your Honor.

THE COURT: Any objection?

MR. CIMERMAN: No.

THE COURT: I don't recall the keys.

MS. HOWE-GEBERS: Your Honor, 42, 42-A, 42-B, 43, 43-A, 43-B, that whole page we are not offering nor was it testified to. 15:17:0

THE COURT: That concurs with my notes 42 all the way down including 46-D, we are not asking nor are we offering. 15:17:3

THE COURT: The Court will admit those, exclusive of those three pages.

MS. HOWE-GEBERS: We can take those three off.

THE DEFENDANT: Your Honor?

THE COURT: Yes, sir. 15:24:2

THE DEFENDANT: May I ask a question?

THE COURT: Yes.

THE DEFENDANT: The tan fanny pack not only did it have sets of keys, it had a passport in there and additional identification and credit cards, but I don't see any of that in the inventory for evidence. 15:24:3

THE COURT: Let us be come back to that. I thought I saw it somewhere. We'll come back to that.

THE DEFENDANT: Thank you.

THE COURT: 61 and 62 are paperwork from the desk of the victims. Are you seeking to admit that? 15:24:5

MS. HOWE-GEBERS: I'm sorry, Your Honor, 61 and 62, we are offering those. Detective Gottfried testified to both of those as did Agent Winterich; in identifying photographs he indicated where he had taken those photographs from. 15:25:1

MR. CIMERMAN: No objection.

THE COURT: Those will be admitted. The Lock-it-Up storage documents, 63, identified by Tammy White?

MS. HOWE-GEBERS: We would be offering those, Your 15:25:3

THE COURT: I think that was objected to previously, was it not?

MR. HICKS: That's correct, Judge. We continue that objection on the same grounds.

THE DEFENDANT: Which number is that? 15:35:3

THE COURT: 173. All right. The Court will admit 173, noting the objection from the defense. 174.

MS. HOWE-GEBERS: We are not offering the photo of the shirt since we are offering the shirt itself. 175, 176, 177, 178, 179, 180, 181, we are offering. 15:35:5

THE DEFENDANT: Can I make a note for the record?

THE COURT: Yes.

THE DEFENDANT: 176, the testimony by the Monroe County Sheriff department disputed Detective Gross's statement. My own observation was Detective Gross placed evidence tape on the tractor driver's door from my vantage point, but I could not see the other side of the tractor. But I would make a note that the Monroe County Sheriff Department said that the Monroe CSI placed the tape on the driver's door and the passenger door and room number four that disputes Detective Gross's testimony. 15:36:0 15:36:3

THE COURT: I understand. You need to address that with your counsel, and we'll note that for the record. Thank you. 15:36:5

THE DEFENDANT: Thank you.

THE COURT: We are down to, I think, 182, is that right? I'm admitting I forgot to cover for the record, I'm admitting 175 through 181. Now, 182.

MS. HOWE-GEBERS: We are not offering 182, Your Honor. 15:37:0

THE COURT: And 183.

MS. HOWE-GEBERS: Exhibit 183 we are offering.

THE COURT: Did someone identify that? I missed that one. 15:37:1

MS. HOWE-GEBERS: Agent Williamson.

MR. CIMERMAN: No objection, Judge.

THE COURT: All right. That will be admitted.

MS. HOWE-GEBERS: 184 we are not offering. 185, we are offering. 15:37:2

THE COURT: That's the photo of the rounds of the magazines.

MR. CIMERMAN: No objection.

THE COURT: There was quite a bit of testimony. I will admit that. 15:37:3

MS. HOWE-GEBERS: 186 we are not offering. 187 we are offering.

MR. HICKS: No objection.

MR. CIMERMAN: No objection. 15:37:4

MS. HOWE-GEBERS: Yes, Your Honor.

THE DEFENDANT: Can I make another quick statement?

THE COURT: Yes.

THE DEFENDANT: As far as the prior calculation and design is concerned, when you look at the storage facility the access codes, I had never, I hadn't been in the storage facility for approximately maybe two and a half to three months nor was I in the facility that week or that day of August 8th, 2007. So nothing in those facilities or those storage lockers was within my access. 15:43:2 15:43:8

THE COURT: To get that information in front of the jury you would have to testify. And your attorneys would have to advise you that if you testified that you would have to be cross-examined. This will be subject to cross-examination, so I want you to confer with your attorneys about that. 15:44:1

THE DEFENDANT: I understand, Your Honor.

THE COURT: And I'll note that for the record. 15:44:2

THE DEFENDANT: The Tammy White of the Williams Road Lock-It-Up storage in Perrysburg?

THE COURT: Yes.

THE DEFENDANT: She testified that when she was cross-examined by Attorney Hicks that she was not aware or she 15:44:3

couldn't off the top of her head say when was the last time the defendant had access to the facility. So that kind of like opened the door for that to be entered if it was to be obtained.

THE COURT: I'm not sure that's really relevant to the proceedings. It does pertain to the testimony, but I'm not sure it would affect the credibility of that witness or be relevant to the issues. But, again, I'll note your statement of that for the record at this time, and again advise you that you have the right to testify but you also have the right to remain silent and not testify. And you need to confer with your attorneys about that. There are some risks associated with testifying. All right. The State I understand now is resting; is that correct? 15:44:5 15:45:1

MS. HOWE-GEBERS: After the admission of those we would be resting, yes. And we would ask to do that formally again tomorrow in front of the jury. 15:45:3

THE COURT: Yes, of course. And the defense, do you want to be heard at this time of or do you want to confer with your client a little bit? 15:45:4

MR. CIMERMAN: Your Honor, we would make a motion for a judgment of acquittal pursuant to Rule 29 without argument.

THE COURT: All right. Does the State want to argue it? 15:45:5

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should it get to that, he has the right to make an unsworn statement. So in representing himself it's probably going to be just one long unsworn statement. And unlike in a trial phase where it might be subject to being objected to because he's testifying and not subject to cross-examination, it's probably permissible in the mitigation phase. 08:39:4

THE COURT: And I understand that.

MS. HOWE-GEBERS: Although, we will do some research on it. I believe that, if at any point, that would be the more appropriate phase for him to represent himself, certainly not today. 08:39:5

THE COURT: Yes.

MR. CIMERMAN: We'll talk to him.

THE COURT: Thank you.

(In-chambers discussion concluded at 8:40 a.m.)

(In-court proceedings resumed at 8:50 a.m. outside the presence of the jury.)

THE COURT: You may be seated please. All right. Excuse my voice. From our last discussion yesterday when we recessed for the evening, we were ready to proceed with closing arguments and jury instructions, and I have been informed this morning by the deputies and by defense counsel that Mr. Neyland wishes to address the Court. Mr. Neyland, do you want to proceed what would you like to tell me? 08:51:4

THE DEFENDANT: Thank you, Your Honor. The 08:52:0

first question I need to ask you is I understand that the addendum to Motion 44 was not filed in a timely manner. There is some information from the witnesses that was testified to on the witness stand that is included in the addendum, and I would like to only address that during a presentation. I would like to mount my own defense from the defense table and counsel with counsel's assistance. I am not requesting to be a witness. I'm not a witness. I am introducing myself to the jury because they do not have any background information, personal background information, family background information, and I have no defense witnesses. 08:52:3 08:52:5

THE COURT: All right. Well, just so you understand, the issue you raised in there I initially ruled was filed too late. But then after seeing the evidence on the search warrants and whether there was probable cause, the Court ruled on the merits of it, meaning, I also went on to rule on that. 08:53:1

Now, you have preserved that for the record so-to-speak. You don't need to do anything more. If the appellate Court agrees with you, the conviction, if there were one, could be reversed. That's up to you. If there were no conviction then obviously there wouldn't be a problem. So your addressing it, first of all, it wouldn't be relevant, it's a legal issue not an issue that the jury would decide to begin with. Now, I know you're not a lawyer so you don't 08:53:3 08:53:5

necessarily understand that.

THE DEFENDANT: The jury only has the information of the witness testimony on the witness stand. And there is discrepancies in the 806 pages of the witness statements that I would like to read. I am not going out of bounds from the witness statements that are in the 806 pages of discovery versus the witness statements on the witness stand. There is some discrepancies that are not available to the jury at this time. They are not aware of it. 08:54:1

THE COURT: The only way that you could personally address those would be on the witness stand. Even if you were pro se, in order to get those before the jury, you would need to be in the witness stand, sworn in and subject to cross-examination. 08:54:3

THE DEFENDANT: I could, I would be sworn in. I can be sworn in. 08:54:5

THE COURT: Well, but you just said that you don't want to be subjected to cross-examination.

THE DEFENDANT: Your Honor --

THE COURT: Just let me explain something to you. If you testify and then when the State came around to cross-examine you, you refused to answer questions or you didn't follow the instructions of the Court, then I would be stuck with striking any of your testimony and the jury would disregard it anyway. 08:55:0 08:55:2

THE DEFENDANT: Your Honor, you just said pro se. Pro se would mean in my own defense as my own defense attorney. That is pro se.

THE COURT: I understand. Well, all through the trial -- and I was going to do it now just when we began here -- I always advise the jury that attorneys' statements are not to be considered by the jury. They're to be decided solely on the basis evidence meaning witness chair testimony. They can't consider your statements as a pro se attorney. It doesn't make it any different. If you're pro se, you're representing yourself, it doesn't mean you can make a statement from the defense table and have the jury consider it. In fact I tell them to disregard it, remember? I'm going to do this for the attorneys and the prosecutor when we start closing arguments. I'm going to tell them that they can't consider that, that they have to decide it on the evidence, that merely the arguments are there to assist them in their logical evaluation of the evidence.

THE DEFENDANT: Your Honor, I have another issue that I would like to address.

THE COURT: Okay.

THE DEFENDANT: That is Court cases involving me and not involving me, which would not require cross-examination. I would like to read these court cases into the record. They involve me and previous employers.

THE COURT: Well, that would be more appropriate for the next phase of the trial if we were to get there. How does that pertain to your guilt or innocence of this charge?

THE DEFENDANT: There is a course of conduct, the employers have had a course of conduct for years and years and years. I've been a truck driver off and on for 20 years, and there's been a consistent course of conduct with the employers that have been addressed in court cases that have involved me that would be relevant that I have presented to my attorneys for them to present, and they have not done so. I have also --

THE COURT: Hang on, before you go on. I assume you've not done that because it's not relevant to this proceeding; is that correct?

MR. CIMERMAN: Relevancy, and it would require Mr. Neyland to take the witness stand to be properly admitted.

THE COURT: Go ahead, Mr. Neyland. These are certain things the jury can't consider. That's my job is to make sure they only hear things they can consider. You're taking a huge risk of trying to put in things that aren't permitted anyway and then exposing yourself to cross-examination where the State can ask you about all these things. Is that your request?

THE DEFENDANT: I don't understand how I could

be cross-examined for someone else's false testimony on the witness stand when this is in the 806 pages of discovery that they have totally wrong. I am doing a Wikipedia, I'm doing a Northern Light search, I'm doing an Alta Vista, I'm doing a Creepy Crawler, Google search. In my mind all night long I'm referencing words and cross-referencing witness statements with the 806 pages of information that I had that I read, and there are some glaring discrepancies. 08:58:4

And I could give an example. Officer Galimberti in his 806 page, in the 806 pages of discovery Galimberti wrote in a written statement that Michigan, Monroe County CSI placed evidence tape on the passenger door and the driver's door in room number four. Then when I looked at the pictures last night, the tape on the doors, the passenger door and the driver's door is different from the evidence tape that is on room number four. 08:59:0 08:59:4

THE COURT: Well, let's presume that's true. What difference does that have? It was secured. There is evidence tape there to secure it. There is no legal issue there. You can say, yes, you may be right, let's say you're right. Then the Court or the law would say, so what, it was taped so that they could be sure that no one got into it, no one put something in there. So who put it there? What would that matter? 09:00:0

THE DEFENDANT: The problem is the condition of 09:00:2

the evidence when it was recovered from the vehicle. The BCI&I investigator said, and that is in the August 16th, 2007, Perrysburg Municipal Court testimony, he testified that the weapon was unloaded, magazine on the floor. The pictures verify the BCI&I investigator's report. I did not have pictures available to verify that. I only had Detective Gross' witness statement. And his witness statement was that the weapon was loaded. This brings up the possibility of tampering with evidence along with the discrepancies between Galimberti of Michigan Monroe County Sheriff's Department stating that Monroe County CSI placed the tape on the doors, and Mr. Gross or Detective Gross from Perrysburg Township saying that he placed the tape on the passenger door, the driver's door in room number four. Then I have different types of evidence tape.

THE COURT: First of all, the time for bringing that up, that was during their examination. Secondly, it's not really relevant to this proceeding. And this kind of illustrates that you're not prepared to represent yourself because you don't understand those distinctions. So I'm going to deny your request to represent yourself pro se. You had one option.

THE DEFENDANT: Could I quickly?

THE COURT: Yes.

THE DEFENDANT: I have pages after pages after

pages of notes that I was writing while the defense had the opportunity to cross-examine, exam the witnesses and the opportunity for the defense counsel to take my notes and use them when I offered them, they were not taken to the podium. So that is the reason why I decided after last night and the last conversation, the back and forth between the Judge, the prosecution and the defense, I said that there is some problems with the witness statements that need to be brought to light. 09:02:

THE COURT: Well, there again, they did, I noticed that they were paying attention to you when you offered points. I'm sure they determined that they just weren't proper issues because you don't understand what is a proper issue before the Court. So, again, I'm going to deny your request to represent yourself. You can testify, but you would have to take the stand. And I don't recommend you do that because the State is going to be able to have cross-examination of you, and there's not going to be any way you can avoid that. 09:03:1 09:03:3

And secondly these issues that you're trying to raise, you're not going to be able to do it as a witness. There are other ways of doing that. And your attorneys understand that. There's techniques of cross-examination. You bringing in independent evidence that you're testifying to that you see inconsistencies is not permitted. You're going 09:03:4 09:04:0

to have to testify as to facts only.

THE DEFENDANT: These are facts. This is not independent. This is not my version.

THE COURT: I understand.

THE DEFENDANT: This is only from discovery. 09:04:1

THE COURT: I understand.

THE DEFENDANT: It's not my version.

THE COURT: Well, you've made your record for purposes of record. You've raised these issues, and the Court is denying your request at this time. 09:04:2

Now, we're going to proceed to bringing in the jury and we're going to need you -- you've raised these issues, the Court has ruled against you, and you're going to have to be appropriate and listen. And I'm going to have your attorneys argue the closing arguments. The only option you have is if 09:04:5 you want to testify, but your attorneys have recommended against it.

THE DEFENDANT: I would be unable to testify without the witness statements because I am unable to verify consistently what the discrepancies are between the witness 09:05:0 statements and what they have repeatedly shown. Like, to give you an example, Tony Arent, he is consistently over time elaborating and adding more information to his statements that could only be given to him from some other source.

THE COURT: I understand. And the kind of 09:05:2

statement you're making now is what closing arguments are for, and let's let your attorneys do that because they have a better understanding of what is relevant. That's what closing arguments are for, not testimony. All right. We're going to take a short recess, then we'll bring in the jury. 09:05:4

THE BAILIFF: All rise. Court is in recess.

(Recess taken at 9:05 a.m.)

(Jury trial proceedings resume at 9:15 a.m.)

THE COURT: You may be seated please. Good morning, ladies and gentlemen. Since the afternoon when you last left, the State's evidence has been dealt with and ruled on and evidence has been admitted. At this time it's the Court's understanding that the State would be resting; is that correct? 09:16:5

MS. BAKER: Yes, Your Honor. 09:17:1

THE COURT: Anything else you wish to add?

MS. BAKER: Just that we ask that the exhibits that we talked about yesterday be admitted, and then the State would formally rest.

THE COURT: All right. Any objection from the defense? 09:17:3

MR. CIMERMAN: No, Your Honor.

THE COURT: The Court will admit the exhibits that were discussed yesterday. And you're resting then at that point; is that correct? 09:17:4

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THE COURT: All right. And then you would be reserving the rest of your evidence for rebuttal; is that right?

MS. HOWE-GEBERS: That is correct.

THE COURT: Would you anticipate calling any witnesses prior to the defense? 08:46:5

MS. HOWE-GEBERS: No.

THE COURT: And then from the defense, how many witnesses would you be calling this morning?

MR. CIMERMAN: Your Honor, we have one witness. 08:47:0

THE COURT: Does the defendant wish to take the stand and testify under oath or does he wish to make a statement that's not under oath?

MR. CIMERMAN: Your Honor? 08:47:2

THE DEFENDANT: I have a statement, Your Honor.

THE COURT: Okay.

THE DEFENDANT: And I'd like to make a comment --

THE COURT: Yes. 08:47:2

THE DEFENDANT: -- about the evidence.

THE COURT: Well, hang on one second. Mr. Cimerman, do you want to finish?

MR. CIMERMAN: Your Honor, Mr. Neyland has indicated consistently he did not want to take the witness 08:47:3

stand and subject himself to cross-examination. Apparently now he wants to make an unsworn statement. I don't know if he realizes that is to be done before the jury.

THE COURT: Do you understand that, Mr. Neyland? You have the right to make that statement, you would not be subject to cross-examination, but it would not be a sworn statement and the prosecutor can comment on that to the jury. And you would have to make that statement in front of the jury. Do you understand that? 08:47:4

THE DEFENDANT: Yes, Your Honor. 08:48:0

THE COURT: That's what you wish to do at some point?

THE DEFENDANT: Yes. I have some information to put into the record before the jury comes in, as far as the evidence is concerned. 08:48:0

THE COURT: All right. You may proceed.

THE DEFENDANT: Can I read my statement into the record and do it before the jury?

THE COURT: That would probably be advisable. 08:48:1

THE DEFENDANT: So they know what I will say so they can give me some feedback.

THE COURT: Okay.

THE DEFENDANT: All of the evidence that was available to the prosecution and the defense was not 08:48:2

presented during the case in front of the jury for their decision making process.

For example, there was two sets of footprints that I have photos from the crime scene. And my footprint was not, or, the shoe prints or swabbing that I had on that day was not presented during the evidence as elimination or as the boot prints of one of the two boot prints that was presented. 08:48:5

And in my addendum to Motion 44 I noted that there was a blond hair or light colored hair in black and white photos that was wrapped around Douglas Smith's right hand and there was some hair in his left hand. And that was not presented by the defense. This indicates that there may have been other assailants at the crime scene. 08:49:1

In addition to that, the surfaces of the crime scene was never dusted for fingerprints. The desk drawers were pulled out, the file cabinets were opened and there was items on the floor. But there was never any fingerprint dusting done for the crime scene. And that was not brought up by the defense counsel. And I had brought that up to these -- these different things to the defense, and they had not done so. 08:49:4 08:50:1

There is another thing that I would like to put into the record. And that is, the prosecution's witnesses were available to the defense and they could have been brought back and re-questioned as witnesses for the defense. That would have gave the defense the opportunity to take my notes 08:50:3

that I cross-referenced. The night prior to the jury's verdict, I cross-referenced Wikipedia, AltaVista search, Northern Light search, all types of search, Mamma search, Dogpile search, Metasearch. I'm doing these all in my mind and from my notes. The handwritten statements to the police, 08:51:0
the witness statements on the stand, there are glaring discrepancies that would have been brought up by defense if they had used the prosecution's witnesses as defense witnesses. And I'm sure that they could have done that because they had the witness list available to them. 08:51:2

THE COURT: All right. We'll note that for the record. What is your statement that you wish to make to the jury because at this point we can't argue to the jury any issues about the trial.

THE DEFENDANT: That wasn't for the jury. 08:51:3

THE COURT: I understand.

THE DEFENDANT: Okay. I'll read my statement now.

THE COURT: Thank you.

THE DEFENDANT: In order for the scales of 08:51:4
justice to remain balanced all court findings, in parenthesis, decisions, must be based on the rule of law, underlined, on the motions.

All cases are subject to judicial review. This is a murder trial. All evidence must be presented. The evidence 08:52:0

that in all probability will convict the defendant and the evidence that could possibly exonerate the defendant, neither the prosecution nor defense presented the evidence in its totality during these Court proceedings in order for the scales of justice to remain balanced. It is not the Court's 08:52:2
responsibility to tell the prosecution or defense how to present the case, examine the witnesses or cross-examine the witnesses.

This case will be appealed. I will appeal the jury's verdict and the Court's sentencing based on my 08:52:3
statement placed into the record today.

THE COURT: All right. You might want to confer with your attorneys about the advisability of this statement, but thank you for putting that in. You would be able to make your statement, your unsworn statement before 08:52:5
the jury during the defense side of the case later on, okay. Anything further from the defense as to what you anticipate doing or anything other preliminary issues there?

MR. CIMERMAN: Your Honor, I would indicate that we have marked for identification Defendant's Exhibits E 08:53:0
through L. Defendant's Exhibits E through K are photographs previously identified during the State's case in chief. I don't have the identification tab for how they were marked in their case; but I think the State will stipulate that these are the same photographs that we utilized during their case 08:53:3

hearing on competency that was held early on in these proceedings. I would also note that she was not a psychologist who was designated by the Court to conduct an evaluation. We were unaware of her involvement in the case until she was called to the stand. 08:56:5

Certainly the issue before the Court at that time is significantly different than the issue before the jury today. And we would ask the Court that her testimony be excluded, in that the party against whom the testimony being offered does not have the same motive to develop testimony today as we would have had back in the competency hearing themselves. 08:57:1

THE DEFENDANT: Can I speak, Your Honor?

THE COURT: Just very briefly.

THE DEFENDANT: I disagree with my counsel's statement. I was sent down to Twin Valley for twenty days evaluation. 08:57:2 They evaluated me every fifteen minutes. That's three-hour shifts, the first shift, second shift and third shift, and even while I was asleep. So she would have information that would be of great value in regards to me being competent to stand trial. I was found competent to stand trial. 08:57:5 I am in the trial phase. And I spoke to my attorneys and I told them that I disagreed with them filing, after I was found competent to stand trial, to have me reevaluated.

THE COURT: All right. Thank you. I'm 08:58:1

MR. CIMERMAN: At this time, Your Honor, Mr. Neyland would like to make an unsworn statement to the jury.

THE COURT: All right. Mr. Neyland?

THE DEFENDANT: May I approach the podium? 09:30:3

THE COURT: Yes, you may.

THE DEFENDANT: That's in order to use the microphone so everyone can hear me.

I have to address some misrepresentations based on assumptions. And I cannot read people's minds, but I do know 09:30:5 what happened when I was held in the Wood County Justice Center. On several occasions there were inmates that approached my door, I was alone in my cell, I was held in a two-man cell area, and they yelled through the door, "Osama bin Ladin." They didn't say you're Osama Bin Ladin. They 09:31:2 didn't say anything except for "Osama Bin Ladin" on several occasions. The reason why I'm bringing that up is one of my very good friends, a witness here for the Court case, his name was Ram Singh, he owned the motel, Silver Blue Motel in Temperance, Michigan, 8239 Telegraph Road. Mr. Singh is a 09:31:4 Hindu, he's Hindu. He's from India, he is not Muslim. I am not Muslim. I was raised Christian. I am a Christian. My dad owned two churches, or, not owned but he pastored two churches, one in Spencer Township, Ohio, that's near the Toledo Express Airport in Monclova Township, 180th Air 09:32:2

National Guard wing.

This is just a little background. I'm the third oldest of ten children. I'm the oldest son. I'm 44 years old, never married, no children.

I have had two paternity tests against me. The 09:32:4
prosecution placed into the record a case from Kansas. That case was dismissed in the State of Ohio. I wanted that to be placed into the record so there wouldn't be any assumptions that I was a person that would try to get away with not paying child support. 09:33:0

There's some other things. My name is Calvin, Jr. I was named after my father. I was born and raised in Toledo. I was born at Toledo Hospital in Toledo. My dad was a pathologist for Toledo Hospital. He was not a forensic pathologist. He was a pathologist for surgeons and doctors, 09:33:3
where he would slice tumors or skin grafts and put them in paraffin wax to be placed on microscope slides for the doctors to examine to determine whether or not a tumor was benign or malignant. My mom was a registered nurse for the State of Ohio. She was a visiting nurse. She would visit 09:34:0
invalids, old people or just anybody basically that the State of Ohio said she was to visit.

Let's see. I was a driver for 20 years off and on. Prior to being a driver I served in the military six years. And what the prosecution failed to tell you, under Ohio 09:34:3

Revised Code they did not charge me with carrying a concealed weapon because during the time that I was in the military, one of the military occupations specialties required for me to carry a concealed weapon on my person. And I did work with the MPs. I was an auxiliary, which would be called a special police where I rode with the military police on assignments on the post or to apprehend members of the service off post or in states around the country. 09:34:5

I'm going to read into the record a statement or an overall of the case because I really do believe that the case was not presented in its full totality. And I don't want to admonish the jury, I don't want to admonish the prosecution, and I'm not going to make any inflammatory comments in front of you towards my defense counsel. I'm going to take the statement and I'm going to read it at this time. This is not evidence. This is a statement. 09:35:2 09:35:5

In order for the scales of justice to remain balanced, all Court's findings, in parenthesis, decisions, must be based on the rule of law, not on motions, underlined, all cases are subject to judicial review. This is a murder trial. All evidence must be presented, the evidence that in all probability will convict the defendant and evidence that could possibly exonerate the defendant. Neither the prosecution nor the defense presented the evidence in its totality during these court proceedings. 09:36:1 09:36:4

In order for the scales of justice to remain balanced, it is not the Court's responsibility to tell the prosecution or defense how to present the case, examining witnesses or cross-examine witnesses.

This case will be appealed. I will appeal the jury's verdict and the Court's sentencing based on my statement placed into the record today. 09:37:0

And I have an additional statement that I did not read earlier to the Court. At this time I, as the defendant, request that all evidence collected or not collected be preserved for the appellate court phase. 09:37:2

And I would like to read into the record some court cases that I was personally involved in so you would have some idea of what type of person I am. I'm not the type of person that would just jump off the gun and do, you know, just half-cocked, just do anything that just comes to mind. 09:37:4

The first case is the State of Ohio, Attorney General State of Ohio, Ohio Job and Family Services, Sixth District Court of Appeals, and this was versus Calvin C. Neyland, Jr. And I acted as my own attorney and I won that case. I was awarded $7,500 for the year of unemployment that I was previously denied. 09:38:1

The second case I would like to read into the record that I was personally involved in was the State of Ohio, I mean, the State of Indiana, Indiana Department of Labor 09:38:3

versus a trucking company in the State of Indiana, CAT was the parent company. I don't have the name of the owner-operator company. KAT was out of Chesterton, Indiana. And I was awarded a reimbursement of my last week's wages that was held, or, withheld from me. That's all I have to say. Thank you. 09:39:0

THE COURT: Thank you. I want to caution the jury that the defendant is permitted to make a statement that is not under oath, and that's what he has just elected to do. That is the statement that you have heard. Since it was not under oath he is not subject to cross-examination on that statement. And the Court will give you further instructions on how to treat that at a later time. 09:39:1

Does the defense wish to call your witness at this time or do you want to take a short recess or are you prepared to proceed? 09:39:3

MR. CIMERMAN: Your Honor, if we could have a short recess, five minutes.

THE COURT: All right. We'll take a short recess and then receive the defense witness. Again, remember not to discuss the case. 09:39:4

THE BAILIFF: All rise. Court is in recess.

(Recess taken from 9:40 a.m. to 9:50 a.m.)

THE COURT: You may be seated please. Are there any other preliminary matters before we bring the jury 09:50:3

Mr. Neyland do you have an opinion to a reasonable degree of psychiatric certainty as to whether or not Mr. Neyland would have been amenable to receiving the medication for treatment purposes?

A Ordinarily, the sicker a person is, the better the outcome. A person who has a single delusion, such as someone says Madonna is in love with me, those are a little bit more difficult to treat. But an individual such as Mr. Neyland would be amenable to treatment, at least to the point that he would be able to function better.

Q But as to his amenability, willingness to receive medication?

A He would have never done it.

MR. CIMERMAN: Let me have a moment, Judge.

THE COURT: Sure.

(Discussion held off the record.)

MR. CIMERMAN: Nothing further.

THE DEFENDANT: Your Honor, I would like to examine the witness.

MR. CIMERMAN: Nothing further, Your Honor.

THE DEFENDANT: I would like to examine the witness.

THE COURT: No, you may not. State, cross.

MS. BAKER: Thank you, Your Honor.

- - -

MR. CIMERMAN: Dr. Sherman is excused?

THE COURT: Yes, I'll excuse him unless you need him any further.

MS. HOWE-GEBERS: No.

THE COURT: All right. Thank you.

(Sidebar discussion concluded.)

THE DEFENDANT: Your Honor?

THE COURT: One second. I am going to give you a chance. You might want to confer with your attorney a second while we release the doctor here. Doctor, thank you very much for your testimony. You're free to go at this point.

THE WITNESS: Thank you.

THE COURT: After conferring with counsel, does he still wish to make a statement to the jury?

THE DEFENDANT: Yes, Your Honor, I would like to make a statement.

THE COURT: Ladies and gentlemen, the defense is not going to call any further witnesses. The defendant is given this opportunity to supplement his statements that he previously made. Again, remember, this is not under oath and it's not subject to cross-examination.

Do you wish to make it there or do you want to come up to the podium?

THE DEFENDANT: I'd like to approach the

podium.

THE COURT: Could you do that? Thanks. You may proceed.

THE DEFENDANT: My request originally was to examine the witness. The Judge would not allow me to do that. I made that request to the defense counsel. 11:02:3

There are some important things that I would like to make a note of. I wanted Dr. Sherman to observe me while I made a statement to the Court, and then I would have asked him to make an observation in Court as to what he witnessed. 11:03:0

First of all, a psychotic person does not have a train of thought. I'm not a psychiatrist, I'm not a psychologist.

I made $175,000 in 12 months. I have tax forms to prove it. From July the 1st of 2006 to January or December the 31st of 2006, I made $85,558. A psychotic person doesn't have that memory, wouldn't be able to remember the numbers. 11:03:2

From January the 1st of 2007 to August the 8th of 2007, I made approximately $86,000. And at this time, I would like to dispute Lori Runzo's statement, she said they paid me my final paycheck. August the 8th was a Wednesday. August the 10th was a Friday. She said that they paid me the last trip from Phoenix Arizona to Vermillion, Ohio. That was the load that I found on my own through the Internet. I had access to the Internet and national brokers, so I could get 11:04:0 11:04:3

my own loads if the company at any time said they didn't have any loads available. A psychotic person cannot do that.

I was a dedicated driver for Great Lakes Windows. And a customer that I was dedicated to was Penguin Windows out of Vancouver, Washington. And just to give you a short summary of what is required in order to be dedicated, it approximately -- the travel time approximately from Walbridge, Ohio, to Vancouver, Washington is five days. I would take five days from Walbridge to Vancouver, Washington. I would take a day and a half, two days off. I would stay in a hotel. Sometimes I would stay in a hotel, sometimes I would stay in my truck. If I have a load or if I didn't have a load, I would search the Internet to find out if there was any loads in the area. And if Doug told me there wasn't any loads available, I would find anywhere from six to ten loads, and it didn't matter where the loads were. There was other drivers there that sometimes on occasions would tell me that Doug didn't have any loads available for us and we would sit there one day, two days, three days. As an independent contractor, you cannot make money sitting. We get paid every two weeks. Our pay period is every two weeks. If you miss a pay period then you would be missing 30 days. You would take another 30 days from that date to the next pay period to get paid. I don't know anybody that can do that intermittently, you know, over time.

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11:06:1

But just to give you an idea of what happened prior to August the 8th, there was a load available out of Everette, Washington, UPS supply chain. The load was Comcast cable boxes to be delivered to Maryland. A psychotic person would not be able to remember that. Here it is 2008, this happened in August of 2007. Doug did not tell me about that load. I did not know anything about that load. 11:06:4

We had a driver here named Mr. Lynch from Texas. He said in his Court record, his Court testimony, he stated that Calvin found his own load. That wasn't my load. That was another driver's load. I found three other driver's loads. But every time I would find a load for other drivers, after Doug was saying there wasn't any loads available, all the sudden they would have loads available. But I was still sitting there. So I found, I took, out of the list of loads I found one that was $4,300. Normally I would make $2,800, $3,400, return trip. I found a $4,300 load. I drove 1,500 miles to get that load from Vancouver, Washington. I drove all the way down to Phoenix, Arizona, to get somebody else's load that they wanted to go to Phoenix, Arizona. I didn't want to go to Phoenix, Arizona. So I drove down there and I got the load. But that's just one incident where I'm trying to make a point that a psychotic person would not be able to accomplish that nor would they be able to remember it nor would they be able to plan that. 11:07:1 11:07:3 11:07:5 11:08:1

There is another thing that I need to tell you about the Court case. And that is Anthony Arent said that on the dock I called employees bitches. We have three supervisors that were witnesses here but no employees. Then in Anthony Arent's 911 call, he said there is some black guy out here shooting. Now, if Anthony Arent was having problems with me, would he not recognize who the person was that was outside shooting? This is his exact words in the 911 call; "there is some black guy out there shooting, close the fuckin' door." A psychotic person wouldn't be able to remember that. That happened days ago. Why the jury did not hear that, why the jury did not make a note of that, I have no idea. 11:08:4 11:09:1

Douglas Smith made the 911 call. Douglas Smith at no time stated the person's name. Did the jury hear that? At no time did Douglas Smith in his 911 call say the person's name. 11:09:3

I was supposed to be there in the office. I was supposed to be there for me, but there was paperwork on the desk. Wouldn't a person that was not psychotic that can make a plan retrieve that paperwork and take it with them? 11:10:0

Let's look at it a different way. Would you say that if the defendant was at the scene, would they have already presented that information to him that day of August the 8th?

Okay. Let's make another analogy. During the jury 11:10:2

selection process the prosecution made a statement about DNA. A psychotic person wouldn't remember this. She said, this is not a television show, this is not CSI, we don't use DNA during murder investigations, or in this murder trial we won't be using DNA. But they spoke of DNA on the witness 11:10:5
stand. Why do I say that? My clothes did not have any blood splatters on them. My clothes were not tested for gun powder residue. This I know because it was not presented. But you did not get a chance to see or the evidence was not presented to you showing blood splattered evidence at the crime scene. 11:11:1
I have the crime scene photos. The jury was not presented with Douglas Smith's hands, with what seemed to be blond hair wrapped around his fingers. The jury did not get to see that. That was not presented. I don't have blond hair. I have, I have an afro, I have curly hair. I am what some 11:11:4
people would say a black African- American.

THE COURT: Mr. Neyland, I apologize for interrupting you but we're not here to retry the case at this point in time, so we need you to keep the statement confined to the issues before the Court, which is sentencing. Could 11:12:0
you wrap up pretty quick here?

THE DEFENDANT: I'm going to finish with Mr. -- or, Dr. Sherman.

THE COURT: Yes.

THE DEFENDANT: Dr. Sherman said that I told 11:12:1

him that someone had entered an apartment where I lived and accessed the answering machine. Okay. Well, this is based on fact, not assumptions or not make believe. I called 911. I reported it to the Toledo Police that when I parked my tractor at 1943 Summit Street in Toledo -- I'm not a 11:12:4
psychotic person so I remember this, this is back in the Nineties -- parked my tractor outside. There was a man that exited my apartment building, ran down the balcony, down the back stairs. And he, this is the honest to God truth, he jumped over the privacy fence. And the privacy fence is this 11:13:0
high. I'm six feet. I cannot jump over a privacy fence. When I told Dr. Sherman it was the old answering machine that I had, a little micro cassette recorder in it, micro cassette tape, and the old answering machines would number the voice mails that how many times you would have somebody leave a 11:13:3
message. And I didn't immediately look at my answer machine. The answering machine was on the counter that separated the front room and the kitchen area. What I did notice was my VCR was hot, the television was hot. And this is, I'm basing my observations on reality. 11:14:0

And I wanted to say that because I was a trained observer in the military. That was one of my classes that I had to take for military occupation specialty. So I don't want to make any observations based on any innuendo, rumor or something somebody told you. 11:14:2

Anyway, the police told me, was the apartment broken into? And I said, no, the door wasn't broken into and the door was unlocked. This person just ran out of my apartment. And they go, well, your apartment wasn't broken into because there is no forced entry. So no officer came to take the report, and that was the end of it. So when I hung up the phone, then I noticed that the answering machine was on. I had been gone probably two and a half, three weeks driving a tractor. 11:14:

I was a trainer for Gunther's, which means I train other drivers. Trucking companies would not allow drivers to train other drivers if they're psychotic. It is a requirement by DOT that drivers never have at any time ever have mental illness. So from 1999 to 2008 I was a driver. 11:15:0

Basically I think they get the picture. I don't need to go any further. 11:15:3

THE COURT: Very well. Thank you, Mr. Neyland.

THE DEFENDANT: Thank you.

THE COURT: All right. Does the defense have any other witnesses to call at this time? 11:15:4

MR. CIMERMAN: No, Your Honor.

THE COURT: We've already admitted the exhibits. So you will be resting; is that correct?

MR. CIMERMAN: I believe all the exhibits have 11:15:5

to conform his conduct to the requirements of the law.

And we would submit to you, ladies and gentlemen, that that is the entitled to great weight, that we shouldn't be killing the mentally ill.

We submit to you ladies and gentlemen, that when we 16:21:5
fairly consider all the mitigation evidence you've heard today and weigh it against the aggravating circumstances that you cannot say beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors in this case.

And, again, we're not going to insult your 16:22:1
intelligence. We didn't do it during the trial phase, we're not going to do it now. We're not asking nor do we expect a sentence of life imprisonment with parole eligibility after 25 years, we don't expect parole eligibility after 30 years. We're asking you to return a verdict that places Calvin 16:22:3
Neyland in prison for the rest of his life without the possibility of parole. Thank you very much.

THE DEFENDANT: Your Honor, may I correct my military service record information?

THE COURT: No, you may not. You need to 16:22:5
be seated. I'm sorry. All right. And on behalf of the State, Ms. Howe-Gebers on rebuttal.

MS. HOWE-GEBERS: Again, let me just discuss some of the things that Mr. Cimerman noted.

The employment history. You will have those 16:23:2

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don't come around very often.

I talked to my priest, or my mom did, and one thing I said in my eulogy that him and a couple other people from church wanted me to read was that my dad died in an unfair fight. And I truly believe that to this day. And he could pretty much handle any situation you put in front of him. I mean he almost chopped his thumb off one time and he survived that. 12:00:0

Spending time with my father was great. And trying to be him has not been great because I know nobody could ever be my father. So thank you, Judge. 12:00:1

THE COURT: Thank you. Any other statements?

MS. HOWE-GEBERS: No, Your Honor.

THE COURT: Let me ask the prosecutor, do you want to address the issue of the firearm specification or do you want to deal with that later? 12:00:3

MS. HOWE-GEBERS: We can deal with that later, Your Honor.

THE COURT: All right. 12:00:4

Now, does the defense have anything further at this time? I'm going to ask the defendant if he wants to address the Court. Does the defendant wish to address the Court, Mr. Neyland?

THE DEFENDANT: Am I allowed to use the 12:00:5

microphone for everyone to hear me?

THE COURT: Why don't we pull the microphone over for him, if we could.

THE DEFENDANT: I would like to thank the Court for allowing me to make a statement. I'm just going to give a short synopsis or a snapshot of what I think has transpired up until now. And it's really amazing to me. I didn't have any information about Douglas Smith, I didn't know Douglas Smith personally until after I received the court case information. I found out things about him. I didn't know anything about Tomm Lazar. I had never met Tomm Lazar. I found out information about Tomm Lazar after I received the Court case after I was accused as a suspect.

But I'm going to change the subject for just a second. All the males in my family from the Civil War to World War II, Korea, I think my family skipped Vietnam, we didn't have any family members in Vietnam that I know of. There was a lot of things in our family that we wouldn't talk about. But I'm a veteran. And the information that is in the probation record is incorrect.

I entered the service two weeks after graduating from Jessup W. Scott High School. I did not max the ASVAB, as was in the probation department

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12:02:58

statement. I don't know why every time I say something people don't, they get it mixed up or confused. They can't get it right what I've been saying. I got a very, very, very high score. I didn't max the test. I didn't have enough credits to graduate. I was taken days off 12:03:2
from school because I was a crew chief at McDonald's where I trained people to work. And I told the McDonald's at night, my mom did not agree with me staying out late at night and walking through the neighborhood home. And in Toledo at that time it was a 12:03:4
very, very nice city.

I had a paper route for the Toledo Blade when I was twelve years old. My dad had paper routes for my brothers and sisters. I had nine other brothers and sisters. I'm the third oldest. I would collect the 12:04:0
money for the paper route and I would have anywhere from $125 to $200. And this was on a Friday. I could walk around through the neighborhood with that money, bring it home, give it to my mom and dad. Nobody ever bothered me. Everybody knew that I was a paper boy. 12:04:2
And on occasion there was wrong people that I delivered to that would renege on paying me, like they would not pay me for a week, two weeks, three weeks.

And as far as the personality disorder is concerned, my dad taught me to make my own decisions. 12:04:4

And I have done that from the time that I had the paper route until now. He has always told me to make my own decisions. When those adults reneged on paying me a week, two weeks, three weeks, my dad said, "It is up to you." My dad didn't go to these people's addresses and say, hey, you're not paying my son, would you please pay him for the papers, he's delivered the papers. And this was even, this was even for a fireman that worked for the Toledo Police Department, the fire department for the City of Toledo. I will never forget his daughter was named Lynn Landry. We both went to elementary school on Page Street, St. Mary's. It was a private parochial Catholic school. That was one of the families that every now and then they wouldn't pay me. And my dad would give me the opportunity to make the decision of whether or not I could just stop delivering papers. 12:05:0 12:05:2 12:05:4

I'm going through time and I'm explaining why through my personal history there is no -- there is not a lot of friends, not a lot of girlfriends, no children. All of the jobs that I've ever had, and that includes military jobs, I was given responsibility. There was people of higher rank, of higher rank than me. I would be in charge of telling them things. I'm not assigned over them, but I am basically working on my own, and I give them information that they need to do their job. 12:06:1 12:06:4

I didn't have a supervisor in the military for that job. So this was basically how I've always operated. I've always operated on my own, and I've made my own decisions. And this is how my dad raised me. But as far as the military is concerned and the family, 12:07:0
I will tell you a quick little thing about my dad.

My dad road the train through Hiroshima and Nagasaki. That was the only mode of transportation that you could get through the two cities after they were bombed by the big boy and little boy atomic bombs. They 12:07:2
had like a little cow catcher or a shovel that they welded onto the front of the train. My dad told me that when they got off of the train, there was a building with a little snapshot of the person that had been standing next to the wall. It was a lady in a kimono. 12:07:5
That was the last second of her life, the flash, the 5,000 degrees and her on the side of the wall. So I'm just using that as a scenario to give you an idea of how I feel about August the 8th.

I exercised my right to remain silent, the 12:08:2
Fifth Amendment of the United States. And that does not mean that I am guilty even at this stage.

I am allowed to appeal the Court's decision and the verdict and the sentencing. And as far as I can look in the record -- and I don't want this to be a 12:08:5

surprise to the families at a later date because for my dad to tell me that he got off the train and saw a picture of a lady on the side of the wall at the last second of her life, that's very -- I don't, I didn't know how to take that. But he could only tell me what he saw, he couldn't explain how he felt. But I don't want the families to feel the same way I felt when my dad told me about that scenario. 12:09:1

The Court case as it is written, as the transcripts are written and the witness testimonies, it will not withstand the scrutiny of a higher Court. 12:09:3

I sat here and I watched the jurors during the whole proceedings. And I am not sure from observing them that they are aware of the total idea or the total realm, if you put everything together, what actually happened. 12:10:0

I cannot say that I know what happened August the 8th. But I can tell you from facts that Douglas Smith and Tomm Lazar are not here to take responsibility for what they did prior to August the 8th and what led to August 8th. 12:10:2

And just to give the families an idea, July the 13th, on my cell phone record, I sat in a lawn chair outside Douglas Smith's office. I was not arguing with Douglas Smith. I didn't have too much to say to Douglas 12:10:4

Smith. I waited for the mail. That is the purpose of me waiting outside Douglas Smith's office. That was July the 13th of 2007. I have my phone record here. I called Liberty Transportation.

And by the way, Liberty Transportation, crossed 12:11:0
out. What is Liberty Transportation crossed out? What does that mean? Is it some type of subliminal message? Liberty crossed out on the logo on the side of the truck and Pennsylvania, Philadelphia, is the Liberty Bell? I never even thought about that until I'm sitting in jail. 12:11:3
And I have plenty of time to think about what's going on and I have pictures of the truck. Liberty Transportation, Transportation, Incorporated, it's not crossed out. Liberty is crossed out. What type of subliminal message is that? Is that some kind of 12:11:4
marketing scheme? I don't know.

It's not really important. But from my standpoint, and my brothers being veterans and serving in Desert Storm and being in Somalia where our boys were slaughtered, it makes me wonder. Well, in my own mind 12:12:0
this is how I look at the situation.

This case is a perfect test case scenario. This is the perfect reason why we have government, to govern people so there is not chaos and pandaemonium in the streets. 12:12:2

Just watching the jury, they did not listen to the whole case. What did they come up with? Death. They cannot place me at Liberty Transportation at 7171 Reuthinger Road. The law enforcement in the State of Ohio did not see me. They did not see my tractor. Law 12:12:5
enforcement in Michigan at the time of the phone call at 2:58 p.m., from 3 p.m. to 3:30 p.m., Chief Hines of Erie Township Police Department viewed or saw the truck with Officer Konopka. The jury did not hear that. They did not want to hear that. I don't have a time machine. I 12:13:2
could not possibly be in two places at once.

But back to my family and them being veterans, and then I'm going to close because I don't want to make this really painful for the families. Before the lunch room was blown up in the green center or the green zone 12:13:4
in Iraq -- and my brother was stationed there, he's a captain in the Air Force -- he told me that every day that he was in Iraq, in the morning and at night before he went to bed he read or said a prayer. And that is, "Yea, though I walk through the valley of the shadow of 12:14:0
death, I will fear no evil."

And I really thought that was interesting that my brother said that at my mom's funeral because that's how I have lived my life. I don't live my life in fear and I fear no man. But I will tell you what my dad told 12:14:2

me. "Vengeance is mine sayeth the Lord, and that is the double-edged sword." That's all I have to say, Your Honor.

THE COURT: Thank you. And does the defense have anything further at this time? 12:14:4

MR. CIMERMAN: No, Your Honor.

THE COURT: There are certain findings that the Court must make in arriving at a sentence. The Court finds that the aggravating circumstance as found by the jury unanimously and beyond a reasonable doubt 12:14:5 outweighs the mitigating factors in this case.

The mitigating factors that the Court has found to have been established are: One, the lack of significant criminal record of the defendant, which was a statutory ground under 2929.04(B) of the Revised Code; 12:15:1 two, other findings, mitigating factors which are in the general other category under 2929.04(B)(7) and as argued by defense counsel, the second mitigating factor being history of employment, relatively successful employment, although, fairly frequently termination or resigning. 12:15:5 And thirdly the personality disorder consisting largely of paranoia that was testified to by pretty much all of the evaluators under the competency. Those three are the mitigating factors that the Court has looked at and nonetheless finds that those are outweighed by the 12:16:1