ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO **Appellee**	:	**Case No. 2010-1406**
vs.	:	**Appeal taken from Hamilton County Court of Common Pleas**
MARK PICKENS, **Appellant**	:	**Case No. B-0905088**

MERIT BRIEF OF APPELLANT MARK PICKENS

THIS IS A CAPITAL CASE

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Statement of the Facts

Mark Pickens (D.O.B. 12/5/89) was indicted on April 8, 2009 in Hamilton County in Case No. B0905088. This was a six count indictment, involving the homicides of three persons. Count One involved the rape of Noelle Washington. This offense allegedly took place on May 31, 2009. Count Two involved Aggravated Murder with specifications including capital specifications O.R.C. 2903.01(A) for the death of Noelle Washington. Count Three involved Aggravated Murder with specifications including capital specifications O.R.C. 2903.01(C) for the death of Sha'railyn Wright, a person under thirteen years old. Count Four involved Aggravated Murder with specifications including capital specifications O.R.C. 2903.01(C) for the death of Anthony Jones III, a person under thirteen years old. Counts two through four allegedly took place on June 1, 2009.

Counts five and six are both the same charges, Having Weapons under Disability O.R.C. 2923.13(A)(3) on June 1, 2009. The disability is the charge of Possession of Drugs, from the Hamilton County Juvenile Court in Case No. 06/13099 on September 13, 2006.

The jury trial began on April 9, 2010, with jury excuses and concluded on April 29, 2010, and Mark Pickens was convicted as charge. Accordingly, the penalty phase of the trial was conducted, a phase in which the trial defense offers only a marginal amount of mitigation testimony. On May 4, 2010, the jury returned a recommendation of the death penalty on counts two, three, and four.

On June 1, 2010, Appellant was sentenced to the maximum terms permissible on each of the respective counts, including death by lethal injection on counts two, three, and four. The counts in count two, count three, and count four are to be served consecutively to each other, effectively executing the Appellant on three occasions. The remaining sentences were to be run

consecutively to each other, and consecutive to the sentences of death. Again, after execution of the Appellant on three occasions, he must serve the balance of years on the additional counts. The judge wrote his sentencing opinion on July 13, 2010. Appellant has filed a timely notice of appeal and stay of execution, and he is otherwise properly before the Ohio Supreme Court.

Trial Summary

On September 29, 2009, a hearing was held (T.p. 13) regarding non-evidentiary motions on the capital case. Appellant was also charged with an additional indictment, B 0903783, dated August 6, 2009. Appellant was charged in Count One, Attempt (Murder) under O.R.C. 2923.02(A) and gun specification. No name was stated in this count. Count Two involved Felonious Assault under O.R.C. 2903.11(A)(1) with gun specification on Anthony Jones. Count Three also involved Felonious Assault, under O.R.C. 2903.11(A)(2), with gun specification on Anthony Jones. Counts Four and Five are the same charges, Having weapons while under Disability, in violation of O.R.C. 2923.13(A)(3).

On October 5, 2009, this case was continued for plea and trial setting (T.p. 18) under the beginning of trial. After the conviction of the Appellant on the death penalty case, this case was dismissed on July 15, 2010. This case, which involved many of the lesser included elements of the capital case and duplicate charges was not dismissed, no motion filed, until after Appellant's conviction in the capital case.

One hundred and one pretrial motions were either resolved by agreement or argued on November 5, 2009 (T.p. 22 - 89). Some of which had decisions left pending until the jury selection was completed.

On December 1, 2010, discussions were held on remaining discovery and Motion to Suppress. Additional discussion concerning returning a witness from Ohio Department of

Correction was held. Original discussion under a Motion to Suppress Appellant's statement limited the use of Appellant's statement only after he asked for an attorney. Additional issues were raised under Motion to Suppress, whether an additional statement from Appellant to Montez Lee should be considered as he was an agent for the State of Ohio. Argument to quash Appellant's alleged statement to Montez Lee, an inmate with Hamilton County Justice Center, was denied after hearing. The Appellant's attorney submitted the motion without argument (T.p. 145).

An additional pretrial motion was argued concerning FORFEITURE BY WRONGDOING. Count One involved a rape offense which allegedly occurred on May 31, 2009, and reported by Noelle Washington against Appellant. The issue is whether enough evidence exists allowing the jury to decide on the facts of the charge although no testimony by alleged victim, only hearsay evidence. The State is arguing (T.p. 153) the Appellant purposely killed her to prevent her from returning to court as a witness/victim against Appellant in court. The argument was continued in progress from February 8, 2010, until March 25, 2010, at which time additional witnesses testified for the State. Arguments were made by both sides. The Court found by the preponderance of the evidence that the Defendant engaged in wrongdoing that resulted in the witness's unavailability for trial (T.p. 384).

Jury excuses were reviewed on March 22, 2010. Any additional pretrial motions were heard on March 31, 2010. One of the motions involved additional discovery which the defense did not receive, but the trial court overruled the motion to the benefit of the State (T.p. 393). Instructions to the jury and review of prospective jurors excuses began April 9, 2010. Voir dire was continued to April 14, 2010. During the voir dire of the jury, the defense counsel only used four out of six peremptory challenges (T.p. 992), but did use both peremptory challenges on the

alternates. The panel viewed the crime scene on April 14, 2010, after the State argued the issue of the defense attorneys riding on the bus.

Prior to opening statements on April 15, 2010, the defense raised an issue of a new motion filed that day to take a handwriting exemplar from State's witness Montez Lee. The court granted the motion but demanded the process of this procedure start immediately by defense expert. Prosecutor Katie Burroughs opened for the State of Ohio. Her presentation went through the proposed testimony of the plaintiff, in the same sequence that it would be presented. She originally described that Crystal Lewis, mother of the three year-old little girl, Sha'railyn Wright, was thirty minutes too late to save her daughter (T.p. 1096) and was the first person to find the deceased persons. She then referenced the history between the victim, Noelle Washington, and Appellant beginning in the fall of 2008. She proceeded through an emotional description of what she believes the evidence is going to show.

Afterwards, defense counsel A. Norman Aubin opened with a concession that Pickens did know Washington but that her statements made to officers the day prior to the homicides concerning the rape charges were totally inconsistent (T.p. 1121). He further warned the jury that all witnesses for the State had problems and not guilty should be the verdict. He did not address the penalty phase.

The first factual merits phase witness was Officer Victoria Wysel, the first officer on the scene, who discovered the triple homicide in apartment number one at 421 East 13th Street, Cincinnati, Ohio. She found nobody in the apartment, except the three victims. She did talk to two witnesses, Ms. Evans and Ms. Byers (T.p. 1135).

The second witness was Officer Mary Braun, who was the second officer on the scene. She secured the crime scene.

Witness number three was Officer Marian Jenkins, who was the first on the crime scene for the alleged rape that occurred on May 31, 2009. She talked to Noelle Washington about the rape (T.p. 1166 - 1184). She did not testify during the hearing - FORFEITURE BY WRONGDOING. After her testimony, discussion was held regarding witness Montez Lee, who testified in motion to suppress. Mr. Lee now admits he wrote the letter, which he had denied previously.

Officer Barb Mirlenbrink was the next witness to testify. She is assigned to the Criminalists Unit of Cincinnati Police Department (T.p. 1193 - 1253). She went to Appellant's apartment, Gateway Towers Apartments (Apt. 508). She searched the crime scene and took photographs of items in the apartment, including .45 caliber ammunition. She also processed Appellant's vehicle the next day.

The next witness for the State was Detective Bill Hilbert. He was assigned to interview Montez Lee on June 19. Detective Hilbert played a taped statement of the interview with Montez Lee. After the detective testified, there was a break for the day. There were arguments over discovery which the defense has still not received, including the taped statement of Mark Pickens, and others (T.p. 1284). Also, exhibits were moved into evidence with no objections by defense (T.p. 1275).

On April 19, 2010, the trial continued with an interview with Juror Carroll, who watches T.V. news. Defense counsel did not object. Again defense counsel raised the issues of telephone records not received after seven days in trial (T.p. 1294). The defense renewed objections to the non-disclosure of evidence until after the beginning of trial.

The next witness for the State was Detective Chris Schroder (T.p. 1385), Cincinnati Police Officer, working in personal crimes unit. He interviewed Noelle Washington on May 31,

2009 at 1:20p.m. concerning the rape allegation. The only injury noted was a little red mark on her lip (T.p. 1395). Defense counsel Mr. Ancona objected continuously to the officer's testimony pursuant to the original arguments on FORFEITURE BY WRONGDOING and the hearsay involved in this interview. The recording of the officer's interview with Noelle Washington was played for the jury (T.p. 1407 - 1535).

The case continued April 20th with the testimony of Jennifer Mercedes (T.p. 1550 - 1591) describing the content of text messages and the calls to the different telephone numbers as described earlier. The above telephone message and text exhibits were entered.

The State continued with the suspended testimony of Officer Schroder (T.p. 1591 - 1670), which was continued from the previous day after listening to the taped statement of Noelle Washington. The state then played an additional tape, a telephone call to the defendant from Noelle Washington, monitored by Officer Schroder in an attempt to have the defendant admit his guilt of the rape (T.p. 1595 - 1611). Defendant continually denied any allegations of rape. Defendant constantly denied having any sex with Noelle Washington on the date, May 31, 2009.

Cross-examination of Officer Schroder by Mr. Ancona (T.p. 1633 - 1636) emphasized that the statements of Noelle Washington that she was six months pregnant was a false statement. The State's following witness was Kathleen Ferrara (T.p. 1682 - 1742), who was the S.A.N.E. nurse at University Hospital that handled the sexual assault exam. Defense reviewed the statements made by Noelle Washington to this S.A.N.E. nurse (T.p. 1698). Noelle Washington did not make any statement regarding a gun in her statements to the nurse.

Officer Terry McGuffey (T.p. 1743 - 1751) followed as the State's next witness. He is a Cincinnati Police Officer assigned to Criminal Investigations Sections of Homicide Unity. He retrieved text messages from the various cell phones.

Officer Alice Stallcup testified next for the State (T.p. 1752 - 1791). Officer Stallcup is a member of the Cincinnati Police Criminalistics Division who also processed the crime scene, including the telephone communications. Officer Stallcup described the text messages between Crystal Thomas and Noelle Washington. Paula Papke testified next for the State (T.p. 1809 - 1838). She is the manager of Security Office of Cincinnati Bell, and testified regarding text messages of telephone numbers 513-498-8941 and 513-917-5269 for the dates of May 31, 2009, through June 1, 2009. She also described telephone number 615-525-6968 and messages located on that telephone.

After arguments on the possible testimony of Timeka Washington (T.p. 1839 - 1853), the State called their next witness, Derrick Lee (T.p. 1853 - 1870). He is the brother of Noelle Washington. His testimony again involved only hearsay statements by Noelle made to other family members.

Gwendolyn Washington, the mother of Noelle Washington, was the State's next witness (T.p. 1873 - 1914). Her testimony involved the conversation at the hospital with her daughter after she reported the rape. She eventually dropped her daughter at her house after leaving the hospital. Testimony described that Noelle had no keys to her apartment. The story she receives from her daughter concerning the rape was different than other statements (T.p. 1898) made by Noelle to other people.

The trial continued on April 22, 2010, with Tanisha Scott, Noelle Washington's cousin (T.p. 1931 - 1953). Again, this is another family member who is told by Noelle Washington that

she was raped. The defense attorneys objected continuously to all hearsay testimony of Noelle Washington.

Ronell Harris was next to testify (T.p. 1953 - 2017). This witness is an identity witness, who claims he saw the defendant on June 1, 2009. Objection made to the identification was made by the defense and lengthy arguments took place in chambers. The witness stated he saw Noelle and Mr. Pickens on 13th Street, standing under her first floor window. No children were seen out with them around 11:55p.m. The witness did not see a bike.

Cynthia Evans was the next witness (T.p. 2018 - 2070). She was sitting outside on 13th Street the night of June 1. She recognized Noelle, some guy and a baby. I.D. was described by this witness of a tall, thin, African-American male (T.p. 2030). The two people were arguing and having a disagreement but were not fighting. She did see the man and woman enter the building across the street. The witness later heard loud music and then the sounds of "pop, pop" twice and then nothing. The witness saw a young lady drove down the street, exit the car and enter the apartment. She then came out of the apartment screaming about her baby (T.p. 2033). This witness actually entered the apartment and discovered the dead bodies (T.p. 2035). A DVD of the interview of this witness on June 2, 2009, was played (T.p. 2039). During this interview (T.p. 2042), she places a three year-old girl with the two people. Someone turned on loud music in the area, but the witness did not know which direction. She saw a tall man leaving the apartment (T.p. 2047). The man looked like the same guy with whom Noelle Washington was arguing outside.

The next witness for the State was Jonda Palmer (T.p. 2075 - 2135). She refused to testify on the witness stand. There was a lengthy discussion with the witness by the court explaining to her the problems if she refuses. The court proceeded with the witness on the stand

and the prosecutor directs her in court identification of the defendant. The defense objected and requested a mistrial. The motion for a mistrial was overruled by Judge Martin after rebuking the prosecution because of his conduct (T.p. 2096 - 2097). The court then allows the prosecutor to stand behind the defendant for the identification. The witness continued testifying. She saw the defendant on May 31, 2009 about 5:00p.m. She testified that the defendant told her about the rape accusation (T.p. 2108) and she was to help with other girls to beat up the accuser. She saw a gun at this time on the Defendant's waistband of his pants. This witness also testified about text messages she received (T.p. 2112) from the defendant. On cross-examination (T.p. 2133), she admitted to currently taking psychotropic medication. This information was not disclosed to the defense previously.

The next witness for the State was Crystal Lewis (T.p. 2075 - 2196). She is the mother of the three year-old girl, Sha'railyn Wright, who was killed. She was also the person to arrive first at the scene of the triple homicide. She testified that she was a good friend of Noelle Washington. Noelle allegedly told her that she was done with the defendant. Ms. Lewis did receive a telephone call from Noelle in which she stated that defendant raped her and she has marks and bruises all over her body because "he beat me." The defense verbalized their continued objections to this hearsay evidence. One text message received on June 1 at night from Noelle Washington stated that she was asleep, just woke up (T.p. 2159 – 2160). This is different than testimony from outside witnesses. She did testify that music was playing when she arrived at 13th street, party ongoing (T.p. 2175).

On Friday, April 23, 2010, prior to the cross-examination of Crystal Lewis, trial counsel for the defendant, Mr. Ancona, renewed the objection to the FORFEITURE BY

WRONGDOING, with argument, reviewing previous witnesses. The court overruled the objection.

The next witness for the State of Ohio was Laura Chapman (T.p. 2197 – 2211). She was a girlfriend of defendant, who was with him on Sunday, May 31, 2009. She thought she spent the night with defendant and went to school in the morning. She and the defendant sent text messages to each other on June 1. Ms. Chapman testified that she received a telephone call from defendant at 11:56p.m. on the night of June 1. She also stated that she talked to the defendant after midnight.

The state called Officer Tim Watson next (T.p. 2212 – 2225). He works for Vortex Unit on a mountain bike. He rode his bike from 421 East 13th Street to the Gateway Towers Apartment Building. He described the length of the trips from one location to the other using different routes.

The next witness for the State was Officer Andrew Burger (T.p. 2225 – 2271). He is a criminalist for the Cincinnati Police Department. He went to the crime scene of 421 East 13th Street. Officer Burger was responsible for photographs of the crime scene and the collection of evidence. However, he did not collect any fingerprints, because he was told that the police had a suspect (T.p. 2262).

Montez Lee was the State's next witness (T.p. 2291 – 2357). Before his testimony, the defense attorneys argued the issue of favorable evidence of a prior conversation of Montez Lee (T.p. 2273 – 2289). All parties agreed to find a telephone call made by Montez Lee to a female. During Montez Lee's testimony, defense attorneys moved for mistrial (T.p. 2293). The defense motion was overruled. Defense attorneys had filed a motion in limine preventing this statement (T.p. 2300). The testimony of Lee began again. Mr. Lee was housed in the Hamilton County

Justice Center with the defendant. According to Mr. Lee, defendant did discuss this case with him (T.p. 2303). According to Mr. Lee, the defendant stated he had killed the woman and the babies. The witness did write a letter to defendant requesting not to put his name out there (as a "snitch") (T.p. 2306). Lee testified that the defendant stated he ran home. Mr. Lee also testified about a statement by the defendant about the shooting (T.p. 2314). The defense attorney reviewed promises made on this case and others. Mr. Lee did admit defendant is not a tall man, that he is a short man (T.p. 2343).

The next witness for the State was William Harry, a serologist of the Hamilton County Coroner's Office. He testified about DNA tests made on the rape kit. Analyzing the items submitted (T.p. 2381); the vaginal swabs matched Mark Pickens. The victim, Noelle Washington, had her own blood under her fingernails. The DNA on Noelle Washington's lip was her own DNA, not the defendant's. No blood was found on jacket.

The week began on Monday, April 26, 2010, with the testimony of Mike Trimpe of the Hamilton County Coroner's Office on gunshot residue (T.p. 2462). Prior to his testimony, argument was made regarding whether to allow Tamika Washington to testify (T.p. 2410 – 2430). Mr. Breyer of the Hamilton County Coroner's Office and Mr. Hastings for the Hamilton County Public Defender's Office argued this motion. The court overruled the motion. Mr. Trimpe took the stand, testified about hair samples collected, all of which were identified as Noelle Washington's. Next, he testified about gunshot residue. Mr. Trimpe did identify gunshot residue on the bike frame, bike handlebars and bike seat. He also found gunshot residue on the jacket. There is no time limit for gunshot residue.

An additional witness from Hamilton County Coroner's Office, John Heile, was called (T.p. 2462 – 2500). Mr. Heile is an expert in firearms. He testified about bullet fragments

recovered from the bodies. There was no gun recovered that shot bullets, but discussion involved jamming of bullets in the gun. The casings found at the crime scene match bullets found in defendant's residence. The bullets which killed the victims could have been fired by the same gun as bullets found from defendant's residence. However, no gun was ever found after the killings.

William Ralston was the next witness for the State (T.p. 2506 – 2561). Dr. Ralston is the Chief Deputy Coroner. His testimony described autopsies and cause of death of the three victims.

The next witness for the State was Layne Hurst (T.p. 2561 - 2626). He is the manager of Gateway Plaza Apartments where the defendant lived. He described the usage of the security cameras and identified the camera which showed the events in the hallway on May 31, 2009, between defendant and Noelle Washington. He also described the tapes which show defendant departing his apartment and returning to his apartment on June 1. The defense objected to the videos because the information that was spliced together was never relayed to defendant's attorneys nor did they have the opportunity to review all the tapes' full length (T.p. 2575). The judge asked to review the tapes and hearing was held in chambers. The defendant waived the possible continuance to review all tapes and the testimony continued. The witness was continued in progress to April 27, 2010.

The next to last witness is Detective Greg Gehring (T.p. 2633 – 2871) who has been in court throughout the proceeding. He is designated as the State's representative. This witness testified about the conversation with Noelle which the defense continuously objected to (T.p. 2647 – 2654). The defense raised the issue again of the State's failure to provide favorable evidence during the whole trial. The court overruled defendant's oral motion to prohibit

testimony on the admissibility of tests without notice to the defense. The defense objected to all the following testimony covering the clock adjustments on the videotapes.

The witness recorded a tape statement from the defendant. The State began asking questions concerning interviewing other suspects. Defense counsel objected and the judge conducted a hearing in chambers (T.p. 2667 – 2677). Defense objected as a *Brady* violation. The judge again ruled against defendant. The witness then played the statement made by the defendant. Prior to playing the tape, the defense counsel again objected to the testimony of Tamika Washington as wrongdoing by forfeiture, which the court overruled.

The taped interview with the defendant was played (T.p. 2690 – 2757). Defendant stated that he spent Sunday night with Laura (T.p. 2705) and she departed the next morning from his place. Defendant admitted that Noelle (T.p. 2713) was over his house, but took his telephone and left. Defendant denies (T.p. 2724) having sex with Noelle over the weekend. Defendant denied owning a firearm (T.p. 2749). The testimony continued by the detective.

Cross-examination of the detective by Mr. Ancona uncovered that no church music was playing that night (T.p. 2790). Further cross-examination revealed the two different stories told by eyewitness Ronell Harris (T.p. 2791 – 2792). Defendant denied having sex with Noelle on May 31 (T.p. 2797). The rape kit showed sex over a 72 hours span which means he could have had sex with her in the middle of the week which defendant revealed he had in his statement (T.p. 2777). Cross-examination revealed different explanations by Noelle for why she went to defendant's home (T.p. 2800). The pregnancy statement was dishonest, admitted by detective (T.p. 2802). Cross-examination continued about possible selling of drugs and involvement by Noelle (T.p. 2821). Only limited checking for fingerprints was conducted (T.p. 2825) because the suspect was already in hand. The defendant raised issues about Noelle - after filing rape

charges, she would exit apartment and talk to defendant outside, as alleged by witnesses (T.p. 2825). The detective was excused (T.p. 2871).

The final witness for the State was Tamika Washington (T.p. 2871 – 2890). She testified that Noelle Washington was going to move to Tennessee. The testimony involved her statement by the defendant (T.p. 2876 -) and was allowed by the court as evidence although defendant had never talked to her. Prior argument was made on this issue. Major text messages and other telephone calls allegedly from defendant were described by this witness (T.p. 2879). Mr. Ancona continuously objected to this testimony. The State's case closed. Defense's Rule 29 motion was denied and the evidence was admitted.

Closing arguments in the guilt phase began on April 28, 2010 (T.p. 2918). Prior to the beginning of closing (T.p. 2923), the judge instructed the defendant that he has a right to testify. The Defendant waived his right to testify (T.p. 2923). Ms. Burroughs began the State's opening portion of the closing argument (T.p. 2926). Mr. Ancona delivered the closing argument for the defendant (T.p. 2971). Mr. Tieger completed the closing argument for the State of Ohio (T.p. 3021). The judge then read the jury instructions to the jurors (T.p. 3048 - 3104).
The jury returned with a verdict on all counts on April 29, 2010. The full verdict on all counts were read (T.p. 3119 - 3129). The defendant was found guilty on all counts. The court scheduled the beginning of the penalty phase for May 4, 2010. On Friday, April 30, the alternate jurors were returned to court and agreed to accept the decision by the panel and return to penalty phase.

Defense counsel used Trevina Griffin (T.p. 3173) as witness for defendant in mitigation. Trevina Griffin is the mother of the defendant. Issues rose that the defendant's mother was fifteen years old when defendant was born and her mother was only fourteen years old when Ms.

Griffin was born. Ms. Griffin testified that defendant has three siblings. This is all that was used and no additional witnesses testified for the defense in mitigation.

Defendant did make an unsworn statement (T.p. 3176). Defendant denied his guilt, and problems arose in which members of the victims' family stormed out of the courtroom (T.p. 3177). There was no testimony on any other mitigating factors and the defense rested. Closing arguments began with Ms. Burroughs providing the opening portion of closing. Mr. Aubin (T.p. 3197) responded for the defendant and Mr. Ancona (T.p. 3205) finished the defense argument. During Mr. Tieger's final portion of the State's argument, many objections by defense counsel were raised about Mr. Tieger's closing argument including an "in chamber" discussion (T.p. 3232). Mr. Aubin moved for mistrial based on impermissible closing argument rebuttal for the prosecution (T.p. 3234). The motion was overruled.

The trial judge read jury instructions after the conclusion of closing arguments (T.p. 3239). On May 4, 2010, the verdicts were read in court (T.p. 3269 - 3272). The jury was then polled (T.p. 3274). The jury found the aggravating circumstances outweighed the mitigating factors on all three death penalty counts.

The sentence was issued by the judge on July 1, 2010 (T.p. 3297). Arguments were made by the defense alluding to the weakness of the State's evidence (T.p. 3298). The fact that the jury spent seventeen hours in deliberation in the guilt phase was emphasized (T.p. 3305). Defendant denied his guilt one last time in court (T.p. 3307). Mr. Tieger then responded (T.p. 3311). Judge Martin stated his findings on the record (T.p. 3317). In reviewing all mitigating factors presented, Judge Martin found the aggravating circumstances outweighed the mitigating factors (T.p. 3325). The judge imposed the penalty of death on all three counts (T.p. 3326).

After the sentence was imposed, the court allowed the State's witnesses to speak with all statements directed at the defendant (T.p. 3328 - 3331). The court read defendant his rights to appeal (T.p. 3334).

Proposition of Law No. 1

The trial court abused its discretion and erred by not providing the defendant with a proper capital murder case *voir dire* when the court allowed the prosecutor to ask prospective jurors in *voir dire* about specific mitigating factors of the defendant. It violates the accused's Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and Article One §§2, 5, 9, 10 and 16 of the State of Ohio Constitution.

I. PROSECUTION IMPROPERLY REFERENCES ACCUSED MITIGATING FACTORS DURING *VOIR DIRE*

During *voir dire*, the prosecution made the following comment:

> As far as Mr. Pickens goes, my understanding is he's around 20 years old or so now, and that he may have been around 19 or so around the time of these crimes. Do any of you feel because of his age --.

Defense counsel objected, moved for a mistrial, and noted that the "Prosecution can't put into the record a mitigating factor. They now put in a mitigating factor." (T.p. 699, 700) The trial court erroneously overruled the motion for mistrial and objection.

This Court has specifically held that "The parties are not entitled to ask about specific mitigating factors during *voir dire*." *State v. Wilson* (1996), 74 Ohio St.3d 381, 659 N.E.2d 292; *State v. Mundt*, 115 Ohio St.3d 22 (2007). This is exactly what the prosecutor placed in the mind of potential jurors - facts about Pickens' age which militated towards guilt and factors arguing incorrectly for the death penalty. The trial court even admitted as such by stating: ". . . You're not allowed to handicap the jury by way of his youth or any other factor. . . ." (T.p. 700)

Proposition of Law No. 2

An accused in a capital case has a due process right to a fair *voir dire* under the Fourteenth Amendment of the United States Constitution and under Article One, §§2, 5, 9, 10 and 16 of the State of Ohio Constitution. Where the trial court overrules the defendant's *Batson* challenge to the State of Ohio's use of multiple peremptory challenges for excusing minority members of the jury venire, it violates the defendant's due process rights to his prejudice.

The government cannot intentionally exercise a peremptory challenge to remove a prospective juror from the jury pool because of racial reasons. *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). There is a three-step procedure for evaluating claims of racial discrimination in peremptory challenges. First, the opponent of the strike must make a *prima facie* showing of discrimination. Second, the proponent of the strike must give a race-neutral explanation for the challenge. Third, the trial court must determine whether the opponent of the strike has proven purposeful racial discrimination. *Id.* At 96-98, 106 S.Ct at 1723-1724, 90 L.Ed.2d at 87-89; *State v. Hernandez*, 63 Ohio St.3d 577, 584 N.E.2d 1310 (1992). Where the record reveals no reasonable non-discriminatory reason for the State's peremptory challenge of an African-American member of the jury pool, an inference arises of racially discriminatory motivation which prejudices a defendant's right to a fair trial. *State v. Tuck*, 80 Ohio App.3d 721, 610 N.E.2d 591 (1992).

Mark Pickens is an African-American defendant who was convicted of capital murder with death penalty specification. The State of Ohio used a peremptory challenge to excuse prospective juror Hemphill who is African-American. (T.p. 969) Defense counsel objected under *Batson* grounds and indicated a *prima facie* showing of discrimination by the State. The prosecutor supplied a purported race-neutral explanation that "(1) juror Hemphill provided a "mixed" ambivalent answer about her feelings on the death penalty and that her answer was

"very anti-death penalty" and (2) that the juror graduated from law school but did not want to argue or win for a living, which was deemed "very odd" by the prosecutor." (T.p. 970, 971)

Defense counsel argued the State did not provide a race-neutral explanation for the strike of Hemphill, but rather the State did have a discriminatory motive for dismissing the juror. (T.p. 971, 972) Specifically, the defense pointed out that Hemphill provided an appropriate answer for the death penalty viewpoint, whereby she indicated the death penalty was appropriate in some murder cases, inappropriate in most murder cases. She also indicated the death penalty is infrequently used. (T.p. 727-732, 971, 972) The trial court incorrectly overruled the *Batson* objection since it is obvious from the record that prospective juror Hemphill provided perfectly appropriate answers in *voir dire* and in light of all the circumstances the State had an obvious discriminatory motive for removing a fair-minded African-American juror from the jury pool. (T.p. 972) The State also used two other peremptory challenges to remove prospective African-American jurors Hutchinson and Bell without providing a reasonable race-neutral explanation. This indicated the State used a pattern to exclude many African-Americans from the jury pool. (T.p. 982-991)

Proposition of Law No. 3

The trial court erred to Pickens' prejudice by permitting the State to engage in misconduct by failing to disclose discovery evidence in a timely manner, failing to disclose *Brady* material evidence in discovery and by allowing the prosecutor to make a prejudicial closing argument to the jury which deprived him of his due process right to a fair trial under the Fifth, Sixth, Eighth and Fourteenth Amendments under the United States Constitution and Article One, §§2, 9, and 16 of the Constitution of the State of Ohio.

I. STATE FAILS TO PROVIDE TIMELY DISCOVERY

In order to provide a defendant with a fair opportunity to defend himself at trial, Criminal Rule 16 states that upon proper written demand for discovery the prosecutor shall disclose and continue to disclose evidence of relevant written or recorded statements made by

the defendant. In order to protect an accused's due process rights, the prosecutor also has a duty to provide exculpatory evidence to the defendant so they can prepare their defense. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963); *State v. Johnston*, 39 Ohio St.3d 48, 529 N.E.2d 898 (1988); *State v. Moore*, 40 Ohio St.3d 63 (1988); *Kyles v. Whitley*, 514 U.S. 419, 150 S.Ct. 1555, 131 L.Ed.2d 490 (1995). The law is well settled that the prosecution's withholding of evidence favorable to the accused violates his due process right to a fair trial where the evidence is material to guilt or punishment, regardless of the prosecution intention to disclose or not disclose the information. In *Kyles*, the United States Supreme Court held that, although the prosecution was not aware of the undisclosed evidence, it was still subject to the *Brady* rule since it was in the hands of the police. *Id.*

When the State fails to abide by Criminal Rule 16, this Court has taken a strong stand in remedying the situation. In *State v. Parsons*, 6 Ohio St.3d 442, 453 N.E.2d 689 (1983), this Court laid out the test for imposing sanctions upon the prosecution for egregious discovery violations by stating that if the record demonstrates (1) the prosecutor's failure to disclose was willful, (2) that foreknowledge of the defendant's statement would have benefited the accused in the preparation of his defense, or that the accused was prejudiced by admission of the statement, the trial court can, in essence, exclude the evidence from being admitted. ***Id.*** Evidence is considered material if there is a reasonable probability that had the State disclosed the evidence to the defense, the result of the trial would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *See Johnston, supra.* It is important to note that a showing of materiality does not require the defendant to demonstrate that disclosure of the evidence would have resulted in acquittal, but rather, absent the exculpatory evidence the defendant did not receive a fair trial. *Kyles, supra.* All the defendant

is required to show is that the favorable evidence puts the case in a different light so as to undermine confidence in the outcome. Moreover, once an appellate court has found a due process error in the State's failure to disclose material evidence favorable to the accused, no need exists for further harmless error review. Finally, materiality is defined in terms of suppressed evidence considered collectively, not item by item. *Kyles, supra.*

The First District Court of Appeals reversed the defendant's conviction and recognized the sanctity of the *Brady* and *Kyles* rules by holding that the *Brady* rule applies equally to impeachment evidence, which if disclosed by the State and used properly by the defense, may make the difference between conviction and acquittal. *State v. Henderson* (1st Dist., June 9, 2000), 2000 Ohio App. Lexis 2451. The court stated that, "Due to the complete lack of physical evidence, the State's case consisted entirely of the testimony of two witnesses." Thus, the State's case turned entirely upon those witnesses' credibility. *Id. at 2.* The court observed that any undisclosed evidence that cast doubt upon their credibility could have had a substantial impact on the outcome of the trial. *Id.*

In this case, the prosecutor repeatedly failed to provide the defense with essential discovery upon the eve of trial or actually during trial. This was the case despite the fact that the State, including law enforcement, had had the evidence since well before trial. (T.p. 498) The State never indicated that it had any *Brady* exculpatory material before trial, which was incorrect and outrageous. (T.p. 499) It was evidenced by the State not providing the defense with audio included in the surveillance video tape of Pickens and Noelle Washington's physical encounter in the decedent's hallway. This would have provided exculpatory evidence of the conversation between Pickens and Washington. This was also evidenced by their very late disclosure of their intent to call jailhouse snitch convicted of murder, Montez Lee, as a star witness. (T.p. 499,

2276, 2277) This was favorable evidence because Montez Lee had no credibility as a witness due to his horrible record including a pending murder conviction in which he received a 13-year prison term in return for his testimony. (T.p. 499, 500) Other prosecution witnesses who had made inconsistent statements also were not discovered when it was obvious *Brady* exculpatory material. (T.p. 501, 502-509, 518-519) Moreover, it was totally improper for Detective Gehring to interview witnesses during the course of the trial. And this information and substance of interviews were not promptly disclosed to the defense. (T.p. 2275, 2276)

Once again, an absurd play on logic is somehow left to the prosecution to determine what is and what is not exculpatory evidence, rather than disclosing it all and letting an objective fact finder determine the necessity for disclosure. (T.p. 2277) Pickens was clearly prejudiced by this *Brady* discovery violation by not being given adequate time to review the evidence and investigate on his own before trial where he received the ultimate, harshest penalty possible, his death sentence.

II. PROSECUTORIAL MISCONDUCT DURING CLOSING ARGUMENT

The prosecutor violated Pickens' due process right to a fair trial by his improper statements during opening statement and closing argument. It has been consistently held that a defendant's conviction can be reversed for prosecutorial misconduct if a reviewing court finds that the prosecutor's remarks were improper and that they prejudicially affected the due process rights of the accused. *State v. Smith*, 14 Ohio St.3d 13, 470 N.E.2d 883 (1984); *State v. Freeman* (June 9, 2000), First District Court of Appeals, Case No. C 99 0213, unreported. It is clearly improper for the prosecutor to denigrate defense counsel or defense strategy. *Id.* It is also improper to misstate or mischaracterize the evidence presented at trial, *State v. Braxton*,

102 Ohio App.3d 28,656 N.E.2d 970 (1995), or to express personal opinions as to the credibility of their witness.

Where prosecutors "cross the line" and materially prejudice Appellant's right to fundamental fairness in a bifurcated capital proceeding, an objection by the defense is required. However, a curative instruction is inadequate to cure the inherent damage that has been done. The trial court is required to sustain such an objection and grant a new trial. Here, Mr. Pickens was prejudiced by the prosecutor's misconduct during opening statement and closing argument because this case involves the imposition of the ultimate penalty, a consequence rarely overturned by the judge, especially in Hamilton County.

In *State v. Fears*, 86 Ohio St.2d 329, 715 N.E.2d 136 (1999), a First District Court of Appeals case ultimately decided by the Ohio Supreme Court on September 8, 1999, the message that such conduct should and would no longer be tolerated reverberated loudly and clearly, voiced by both Chief Justice Moyer and by Associate Justice Pfeifer. In their dissenting opinion, citing *Berger v. United States*, 295 U.S. 78 (1935), Chief Justice Moyer stated that ". . . the role of the prosecutor is to ensure 'not that he will win the case, but that justice be done.'" Then, citing *State v. Depew*, 38 Ohio St.3d 275, 288, 528 N.E.2d 542, 556 (1988), Justice Pfeifer joined in, saying

> "Apparently, our increasing alarm in this regard (discovery of repeated specific incidents of prosecutorial misconduct originating from Hamilton County) has been less than successful. Time and time again, we see counsel misconduct which in many cases would appear to be grounds for reversal and the vacating of sentences."

It is respectfully submitted that the Court would honor the memory of Chief Justice Moyer by refusing to treat the instant recited misconducts as harmless error. Recited errors herein must be outcome-determinative. These should not be consequence-free events.

In this case, suggestions were made to the jury by prosecutors that jurors were allowed to consider as aggravating factors the nature and circumstances of the three homicides (as well as the inappropriately admitted Evid.R. 404(B) evidence). "Aggravating factors are statutory, and no other factors may appropriately be considered." *State v. Wogenstahl*, 75 Ohio St.3d 344, 345, 662 N.E.2d 311 (1996). This tactic is inherently inflammatory.

In opening statement, the prosecutor improperly misstated the evidence and engaged in speculation when she interpreted Noelle Washington's text message "K" as stating she would leave her apartment to go with Crystal Lewis. (T.p. 1115) There was no evidence other than "K." The second instance of prosecutorial misconduct during opening statement was when the prosecutor improperly told the jury it was their oath-sworn duty to convict Mr. Pickens when she stated:

> . . . There is only going to be one verdict you can return that would comport with the oaths you have taken as jurors and that is that this man right here is guilty of raping Noelle Washington . . . and then that he is guilty of aggravated murder. . . (T.p.1118)

Other gratuitous and inappropriate comments were made to the jury by the prosecution during closing argument, which met the definition of inappropriate "vouching." Counsel may not proffer their personal opinions as to what the evidence suggests, especially when this inflammatory tactic is woven together with a *Wogenstahl* violation.

In the present case, the prosecutor improperly "vouched" for his law enforcement witness when he stated:

> However, Detective Gehring is a 13-year veteran. He is young, he is smart, and ~~he is talented. And he is extremely competent to handle this case.~~ It is insulting to ask Detective Gehring, you needed a bike because that fits your theory. (T.p. 3041)

Defense counsel objected and the trial court sustained same to this erroneous and improper vouching comment. Counsel may not offer their personal opinion as a witness' credibility. The damage was done, however, since the evidence established the detective was inept and mishandled the investigation of this case.

The prosecutor also improperly referred to the fact that Mr. Pickens was represented by two public defender attorneys. (T.p. 3044, 3023) This is prejudicial and irrelevant because it infers he received less than effective representation if he had instead been represented by private counsel. This is true despite the prosecutor later spinning the comment to show that he believed there was competent representation. (T.p. 3022, 3023)

Thirdly, the prosecutor misstated and speculated on evidence not in the record when he said:

> . . . Only the defendant and Noelle Washington's DNA were on the sample. There was no mixture of any other male or female donor. She was not with anybody else after the rape because we know exactly what she had been doing. ...The reason that's critical in this case is that the semen was found on May 31. You are not going to find semen in the anal . . . . (T.p. 3029, 3043)

Defense counsel objected and trial court sustained the objection. However, this was still highly improper and prejudicial to Mr. Pickens because the jury heard these outrageous and speculative comments. The bell could not be unrung.

The prosecutor also committed reversible error in his rebuttal closing argument when he labeled Mr. Pickens a "killer" when he stated, "So, one killer to another, Pickens to Lee." (T.p. 3036) It was up to the jury to determine that allegation and the prosecutor may not influence the prejudice of the jury by outrageously demeaning comments about accused.

The prosecutor also improperly defined and, in reality, testified regarding Noelle Washington's tape comment:

Noelle: "So, when you nutted me, that's not going to be yours?

Prosecutor: Nutted is slang for ejaculated . . ."

(T.p. 3039) This interpretation was pure speculation and should have been objected to and stricken. Pickens was prejudiced because the prosecutor's unilateral definition of the term "nutted" went to the essence of the rape conviction.

The prosecutor also improperly denigrated defense counsel and the defense to Pickens' prejudice by stating, "Now, for him (Pickens) to tell Detective Gehring that he had no idea what that part was about is ludicrous. It is not sleep deprivation." (T.p. 3040) Counsel could not make such insulting and demeaning remarks comments without causing the jury to think negatively about the defendant.

The prosecutor once again improperly misstated and speculated on evidence not in the record when he stated:

> He goes over there, he uses her own keys to get in her apartment, they go outside, there is an argument, he sweet talks his way back in knowing full well what he is going to do. Because no Noelle Washington means no charges because there is no victim.

(T.p. 3047) These comments were totally speculative and misstated the evidence to Pickens' prejudice.

Finally, the prosecutor's most egregious misconduct occurred when he improperly commented on sentencing in the trial phase of the trial when stated, "This evidence is overwhelming. I would ask you to find him guilty. We will come back in a couple of days and figure out the appropriate penalty in the penalty phase of this trial." (T.p. 3047) Defense counsel objected and was sustained by the court. However, once again the damage was done to Pickens' prejudice when the jury heard the prosecutor demand and assume prematurely that a sentencing hearing take place.

Proposition of Law No. 4

Pickens' convictions and sentences are void and/or voidable since he was denied the effective assistance of counsel and due process guaranteed under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution and Section 10, Article I of the Ohio Constitution, §§1, 2, 5, 9, 10, 16 and 20 by defense counsel's errors during pre-trial, *voir dire*, trial phase, and sentencing phase of his capital murder trial.

The Sixth Amendment to the United States Constitution guarantees individuals who are criminally accused the right to counsel. *U.S. Constitution*, Amendment 6; *Gideon v. Wainright*, 372 U.S. 335, 83 S.Ct. 792 (1963). The right to counsel is the right to effective assistance of counsel. Counsel must provide objectively reasonable representation in light of the circumstances. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984); *State v. Lytle*, 48 Ohio St.2d 623 (1976); *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970). To prevail on a claim of ineffective assistance of counsel, one must show counsel acted unreasonably and, but for counsel's errors, there is a reasonable probability the result would have been different. *Strickland v. Washington, Supra at 687.*

When determining whether counsel was ineffective, courts apply the two-part test adopted by the United States Supreme Court in *Strickland v. Washington*. *Id.* A defendant alleging ineffective assistance of counsel must show counsel's performance was deficient, and as a result of the deficient performance, the defendant was prejudiced. *Id.* A deficient counsel "made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. *Id.* Counsel's representation must fall below an objective standard of reasonableness, meaning the defendant must measure his attorney's performance based upon prevailing professional norms. *Id.* Further, appellant must show a reasonable probability of a different result were it not for counsel's deficiency. *Id.*

The cumulative effect doctrine posits that a conviction should be reversed when multiple errors undermine the quality of the trial process. This doctrine applies to errors that may be

considered harmless in isolation. Thus, although courts make a strong presumption counsel's conduct falls within the wide range of reasonable professional assistance, the cumulative effect doctrine takes those errors which appear reasonable, look at them together, thereby creating a stronger ineffective assistance of counsel argument.

Defense counsel's errors resulted in a fundamentally unfair proceeding. While each error may be viewed harmless in isolation, the cumulative effect of counsel's errors support Pickens' counsel was ineffective. Counsel's errors resulted in Pickens' conviction and his ultimate sentence of death by the State of Ohio.

1. The first instance of trial counsel's ineffective assistance of counsel is when they failed to call alibi witness Trivena Griffin at trial to provide alibi of Pickens' whereabouts at time of the murder. Notice of alibi had been filed prior to trial. Had the alibi witness testified it would have indicated Pickens could not have committed the murders and the outcome of the trial would have been much different. Pickens was prejudiced by his trial counsel's ineffectiveness in this regard.

2. Trial counsel was also ineffective to Pickens' prejudice during *voir dire* when they failed to effectively question juror Michael Carroll about his pro-death penalty viewpoint. Juror Carroll constituted a pro-death penalty juror that should have been dismissed in order to assure Pickens had a fair trial. Juror Carroll gave several biased answers regarding favoritism for the death penalty and a racial bias against young black men. Leaving him on the jury was deficient and prejudicial. (T.p. 801, 802) See Post-Conviction Petition, A-83 - 104, Juror Questions.

It is well held that an accused has a due process right to have a jury composed of impartial people who are indifferent as guaranteed by the Sixth Amendment of the United States Constitution. *Morgan v. Illinois*, 504 U.S. 719 (1992). Specifically, the United States Supreme Court held:

> A juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do. Indeed, because such a juror has already formed an opinion on the merits, the presence or absence of either aggravating or mitigating circumstances is entirely irrelevant to such a juror. Therefore, based on the requirement of impartiality embodied in the Due Process Clause of the Fourteenth Amendment, a capital defendant may challenge for cause any prospective juror who maintains such views. If even one such juror is impaneled and the death sentence is imposed, the State is disentitled to execute the sentence.

Id. At 729.

3. Another critical instance of ineffectiveness of counsel occurred when trial counsel failed to use all their peremptory challenges authorized by law. This Court has clearly held that a capital defendant is prejudiced when defense counsel fails to use all their peremptory challenges. *State v. Trimble*, 122 Ohio St.3d 297 (2009). Counsel only used four out of the six peremptory challenges. (T.p. 992) Trial counsel's decision to impanel the jury without removing pro-death penalty Carroll was extremely deficient. Pickens was prejudiced because reviewing courts are reluctant to remedy *voir dire* errors as being trial strategy, thereby waiving them from appropriate appellate review. *See Strickland v. Washington, Supra*; *State v. Trimble, Supra*. It is submitted counsel's error in not using all their peremptory challenges constitutes plain error to Pickens' prejudice, since he was ultimately convicted by the pro-death penalty jury who recommended the death penalty in one of the closest factual death penalty cases in Hamilton County history.

4. The United States Supreme Court recognizes future adaptability to prison life as a specific mitigating factor for a jury to recommend a prison sentence, rather than death for a defendant. *Skipper v. South Carolina*, 476 U.S. 1 (1986); *State v. Simko*, 71 Ohio St.3d 483 (1994). In *Skipper*, the court noted that "A defendant's disposition to make a well-behaved and peaceful adjustment to life in prison is itself an aspect of his character that is by its nature

relevant to the sentencing determination. *Skipper*, 476 U.S. at 1. This included testimony of disinterested witnesses such as correction officers who would likely be unbiased and carry great weight in a sentencing recommendation for the jury. *Id.*

Pickens was provided ineffective assistance of counsel in the sentencing phase of the trial in several respects. First, defense counsel failed to present any mitigating evidence regarding Pickens' character, background covering Pickens' ability to adapt to confinement in prison. Trial counsel was clearly ineffective for failing to introduce mitigating evidence of Mr. Pickens' lack of future propensity to re-offend while incarcerated and ability to adapt to prison confinement.

5. It has long been recognized that there is a "critical interrelation" between expert psychological assistance and ineffective representation of counsel during the mitigation portion of the trial. In fact, the Sixth and Fourteenth Amendments to the United States Constitution, Section 39, Article II of the Ohio Constitution, Sup.R. 20 (III)(D), and O.R.C. §2929.02 guarantee a defendant in capital cases the use of a mental health expert. *Beavers v. Balkom*, 636 F.2d 114 (5th Cir. 1981). An expert psychologist is valuable in a death penalty case to assist the jury's analysis of technical medical information as it relates to an accused. *United States v. Griffith*, 118 F.3d 318 (5th Cir. 1997).

In this regard, a neuro-psychologist witness is instrumental in helping a jury understand behavior resulting from brain damage or abnormality. The defendant should have been examined for brain trauma risk factors which a neuropsychologist would have brought out to the jury, thereby possibly changing the outcome of the sentencing phase of the case. No more important venue for an expert psychologist would be to help a jury decide between either life or death for the defendant.

Mr. Pickens received ineffective assistance of counsel and his constitutional rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution, §§1, 2, 5, 9, 10, 16 and 20; Sup.R.20(III)(D) were violated to his prejudice when his trial counsel failed to present any expert psychological assistance during the mitigation sentencing phase of the trial.

Although defense counsel had psychiatric experts appointed to assist the jury understand his mental status, history, etc., they were never called as witnesses on Mark's behalf in the mitigation sentencing phase of the trial. There was no psychological testimony presented at Pickens' trial. This lack of an expert mitigation witness in a trial where a man's life was at stake is so ineffective that it is almost outrageous. Pickens was obviously prejudiced because the lack of expert psychological testimony prevented the jury from considering all relevant mitigating psychological evidence when reviewing and recommending a sentence of either life in prison without parole up to the ultimate penalty, death. See A-51, Post Conviction Petition, O.R.C. §2953.21, p 17-22. Defense Counsel were ineffective by failing to present viable and relevant mitigating evidence concerning Mark less than the death sentence ultimately recommended by the jury and imposed by the trial court. The jury simply did not have an opportunity to consider relevant mitigating factors in violation of Pickens' Sixth, Eighth, and Fourteenth Amendment rights. In sum, Mark Pickens was prejudiced by the complete lack of testimony from an expert psychological mental health witness. This assistance of the expert witness would have enabled the defense to present compelling mitigation evidence before the jury to explain Mark's character/history and forever humanize him.

6. Defense counsel made comments and vague arguments about residual doubt at both phases of the trial. However, they were ineffective to Pickens' prejudice because they failed to present any evidence to persuasively support their claim.

Proposition of Law No. 5

A capital defendant's death sentence is inappropriate where the mitigating circumstances raise reasonable doubt. O.R.C. §§ 2929.03, 2929.04; U.S. Const. amend. VIII and XIV; Ohio Const. art. I, §§ 9, 16.

A number of factors were raised concerning reasonable doubt as to the mandate of death for Mark Pickens based on testimony by defendant's mother, Trevina Griffin, and by his unsworn statement, including, but not limited to:

1. Defendant's young age of only 19 years old when he allegedly committed the offenses for which he was sentenced to death for the homicides of Noelle Washington, Sha'railyn Wright, and Anthony Jones III.
2. Defendant has a mother who loves him and she asked the court to spare his life (T.p. 3173 – 3176).

Proposition of Law No. 6

The mere fact that a defendant kills a person who had earlier sworn out a complaint against the defendant for an offense is insufficient to sustain a finding of guilt for the O.R.C. § 2929.04(A)(8) specification. The evidence must prove beyond a reasonable doubt that the defendant killed the victim because she had sworn out the earlier complaint.

The second specification to Count Two was alleged pursuant to O.R.C. § 2929.04(A)(8). Mr. Pickens was accused of killing Ms. Washington to prevent her from testifying against him in an alleged rape case or because she had filed the complaint. Specifically, the statute reads as follows:

> "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 a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding." O.R.C. § 2929.04(A)(8).

The argument on this case centers on the use of all hearsay evidence by Noelle Washington, including telephone messages, text messages, statements to the police, and the many statements to different witnesses from Noelle Washington. All the statements from all witnesses were allowed during trial over continuing objections by the defense. The motion for FORFEITURE BY WRONGDOING was held on March 19, 2010 (T.p. 152 – 244 and 282 – 384). The judge, after listening to testimony of witnesses Officer Jenkins (T.p. 156 – 173), Officer Schroder (T.p. 174 – 215), Tamika Washington (T.p. 215 – 231), Tanisha Scott (T.p. 232 – 243), Gwendolyn Washington (T.p. 282 – 288), Derrick Washington (T.p. 289 – 295), Crystal Lewis (T.p. 295 – 318) and Detective Gehring (T.p. 318 - 376). Arguments were made by both sides (State T.p. 377 – 381) (Defense T.p. 381 – 384). The judge granted the motion (T.p. 384). Part of the judge's finding (T.p. 384) stated:

> "So there are certainly questions raised as to whether the police officers at the time really believed her. They questioned her statement and tested her but that is not as much an issue as the fact that they have proven beyond almost any doubt, certainly by a preponderance at this point in time. You will be able to get into the evidence at trial . . ."

This statement is not proper. Once the improper statements are made in court by the witnesses the undoing of these alleged statements is too late. The major issues the defense raises during trial objecting to allowing the hearsay statements are the changes in

Noelle Washington's story. Detective Gehring admits during his testimony that she was dishonest about being six months pregnant and actually visiting doctors covering her pregnancy. She also told Detective Schroder (T.p. 1633 – 1636) in her interview that the defendant was the father of the unborn child. Additional discrepancies in her statements regarding what actions occurred in defendant's apartment and what was shown on the video in the hallway outside defendant's apartment. Noelle changed her story every time she talked to a different person (witness) or sent a text. These changes of story of the alleged rape are issues that the judge should have considered when deciding this motion.

Officer Marian Jenkins (T.p. 1166 – 1184) did not testify during the hearing on FORFEITURE BY WRONGDOING, but she was the first to interview Noelle after the alleged rape.

The defendant never admitted his guilt in the rape and his statement was not played during the hearing on the FORFEITURE BY WRONGDOING. The defendant denied the rape accusation in a telephone call from Noelle Washington observed by Detective Schroder (T.p. 1595 - 1611).

Defendant constantly denied having sex with Noelle Washington on the day of the alleged rape. He did admit in his statement to police that they had sex a couple days prior, but denies having sex on the date alleged.

A review of the evidence establishes that the complaint of rape was never filed or charges indicted at the time of the alleged offense. The evidence does not prove beyond a reasonable doubt that Mr. Pickens killed her for the reasons required by the statute. The fact that the victim of the homicide had a pending complaint against him at the time of her death is not proof beyond a reasonable doubt.

Sufficiency Standard

Under the Due Process Clause of the Fourteenth Amendment, a defendant in a criminal case is protected against conviction except upon proof beyond a reasonable doubt of every element necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364 (1970); *Davis v. United States*, 160 U.S. 469, 487-488 (1895). The United States Supreme Court set forth the standard for sufficiency review in *Jackson v. Virginia*, 433 U.S. 307 (1979). The reviewing court is to view all the evidence in the light most favorable to the prosecution. In doing so, the court must then determine whether any reasonable trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. The state must prove each and every element of the offense charged by evidence beyond a reasonable doubt in order to sustain a conviction. *State v. Jenks*, 61 Ohio St. 3d 259 (1991). Furthermore, "circumstantial evidence alone, if substantial and competent, may support a verdict and need not remove every reasonable hypothesis except that of guilt." *United States v. Talley*, 194 F.3d 758, 765 (6th Cir. 1999). However, if the judgment is not supported by "substantial and competent evidence" upon the record as a whole, the judgment must be reversed. See *United States v. Khalil*, 279 F.3d 358, 368 (6th Cir. 2002).

Case at Hand

The indictment in Count Two alleged under O.R.C. § 2929.04(A)(8) that Mr. Pickens killed Noelle Washington "to escape detection or apprehension or trial or punishment for another crime committed by him, to wit: rape."

The key to the O.R.C. § 2929.04(A)(8) statute is the intent of the perpetrator. Indeed, this Court has so stated on numerous occasions. In *State v. Conway*, 109 Ohio St.3d 412 (2006), this Court noted that the plain language of the statute requires only:

(1) that the victim was a witness to an offense and,

(2) that the *purpose* of killing the victim was to prevent the victim from testifying in a criminal proceeding.

(Emphasis added) See *State v. Yarbrough*, 95 Ohio St.3d 227 (2002).

Thus, the evidence must prove that the purpose of the killing was to prevent the witness from testifying. Here, there is no such testimony. The state simply tried to fashion a theory of retaliation toward her because of the rape complaint. That was just one of their theories to connect the homicide to a death specification. The evidence does not prove beyond a reasonable doubt that the appellant killed Noelle Washington in retaliation for filing the complaint.

Proposition of Law No. 7

The splicing of the DVDs located at Gateway Plaza Apartments of defendant leaving and returning to his apartment on May 31, June 1, and June 2 was improper and the evidence should not have been allowed.

The defense, after arguing the issue, allowed the showing of the tapes to the jury without reviewing all tapes. Witness Layne Hurst testified (T.p. 2569) that he submitted DVDs from outside and inside cameras. These cameras are security cameras for Gateway Plaza Apartment, where defendant has his apartment. He further testified that the police department themselves spliced together the tapes in an effort to make them better for viewing.

Objection was made by defense (T.p. 2570) and an extended argument occurred in chambers. The defense raised issue that no one notified them of the splicing (T.p. 2572). The State countered with the issue that defense can watch all the tapes. The State added that the

video is obvious that it was spliced (T.p. 2577). The fact that there were three cameras at least, the defense should have known (although the State never stated the issue).

The court decided to dismiss the jury and watch the spliced video (T.p. 2580). The State alleges that the early time of 10:44 is a few minutes off. The court reviewed the first DVD from May 31 encounter between the defendant and Noelle. The State is giving the narrative.

The defense raises the accuracy of video (T.p. 2588). The State claims the DVD showing different camera shots are only off two or three minutes (T.p. 2591). Again, the defense objected (T.p. 2593).

The court agreed to allow the playing but gave the defense the ability to cross-examine the witness (T.p. 2594). Mr. Ancona then makes a statement that the issue was explained to the defendant and that he wants to go forward.

The next day, Mr. Ancona again states that he wants to go forward (T.p. 2613). There is no record of the defense attorneys reviewing any of the full camera tapes to verify the spliced tape. Testimony proceeded which puts the defendant leaving and returning to his apartment at the times that the State claims he had the ability to shoot the victims and return, very damaging evidence.

Without the proper authentication of this video, this extremely damaging and prejudicial evidence was improperly admitted.

Proposition of Law No. 8

Ohio's death penalty law is unconstitutional. O.R.C. §§ 2903.01, 2929.02, 2929.021, 2929.022, 2929.023, 2929.03, 2929.04, and 2929.05 do not meet the prescribed constitutional requirements and are unconstitutional on their face and as applied to Mark Pickens. U.S. Const. amends. V, VI, VII, and XIV; Ohio Const. art. I, §§ 2, 9, 10, and 16. Further, Ohio's death penalty statute violates the United States' obligations under international law.

The Eighth Amendment to the Constitution and Article I, § 9 of the Ohio Constitution prohibit the infliction of cruel and unusual punishment. The Eighth Amendment's protections

are applicable to the states through the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660 (1962). Punishment that is "excessive" constitutes cruel and unusual punishment. *Coker v. Georgia*, 433 U.S. 584, 592 (1977). The underlying principle of governmental respect for human dignity is the Court's guideline to determine whether this statute is constitutional. See *Furman v. Georgia*, 408 U.S. 238, 282 (1972) (Brennan, J., concurring); *Rhodes v. Chapman*, 452 U.S. 337, 361 (1981); *Trop v. Dulles*, 356 U.S. 86, 100-101 (1958). The Ohio scheme offends this bedrock principle in the following ways:

1. Arbitrary and Unequal Punishment.

The Fourteenth Amendment's guarantee of equal protection requires similar treatment of similarly situated persons. This right extends to the protection against cruel and unusual punishment. *Furman*, 408 U.S. at 249 (Douglas, J., concurring). A death penalty imposed in violation of the equal protection guarantee is cruel and unusual punishment. See *Id.* Any arbitrary use of the death penalty also offends the Eighth Amendment. *Id.*

Ohio's capital punishment scheme allows imposition of the death penalty in an arbitrary or discriminatory manner in violation of *Furman* and its progeny. Prosecutors' virtually uncontrolled indictment discretion allows arbitrary and discriminatory imposition of the death penalty. Mandatory death penalty statutes were deemed fatally flawed because they lacked standards for imposition of a death sentence and therefore were removed from judicial review. See *Woodson v. North Carolina*, 428 U.S. 280 (1976). Prosecutors' uncontrolled discretion violates this requirement.

Furthermore, Ohio's system imposes death in a geographically discriminatory manner. Pickens' convictions and/or sentences are void or voidable because the death penalty is disproportionately imposed upon defendants who are racial minorities. This disparity exists in

Hamilton County and the State of Ohio. The disparity existed in Hamilton County, Ohio, at the time of Mark Pickens' capital murder trial.

Ohio's system imposes death in a racially discriminatory manner. African-Americans are much more likely to get the death penalty. While African-Americans are about 12% of Ohio's population in 2010, 79 or 50% of Ohio's death row inmates at this time are African-American. See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_PL_P1&prodType=table, visited May 23, 2011; Ohio Public Defender Commission Statistics, April 28, 2011, available at http://www.opd.ohio.gov/DP_ ResidentInfo/dp_ Proportionality.pdf; See generally the American Bar Association Report, submitted Sept. 2007, *Evaluating Fairness and Accuracy in State Death Penalty Systems: the Ohio Death Penalty Assessment Report*, pp. 351-367.

Ohio presently has 158 persons on death row. Of those, 79 are African-Americans and 71 are Caucasian (70 Caucasian males, 1 Caucasian female). This relatively small number of Caucasian inmates on Ohio's Death Row exists even though this class makes up approximately 84.0 percent of the state's population.

This disproportionality also exists on the Ohio county level. Of the 31 persons Hamilton County currently has on Ohio's Death Row, 9 are Caucasian and 20 are African-American. (1 person is Hispanic and 1 person is Middle Eastern) The relatively small number of Caucasians from Hamilton County on Ohio's Death Row exists even though this class of population makes up 71.3 percent of Hamilton County.

At the time of trial, Mr. Pickens, an African-American, was a resident of Hamilton County, and the victims were African-American and residents of Hamilton County.

As a result of this disproportionate imposition of the death penalty, Mr. Pickens' rights as guaranteed by the Fifth, Sixth, Eighth, and the due process and equal protections clauses of the Fourteenth Amendments of the United States Constitution and Section 10, Article I of the Ohio Constitution, §§ 2, 5, 9, 10, 16 were violated. *Furman v. Georgia*, 408 U.S. 238 (1972). According to a study by the American Bar Association, the chance of getting a death sentence in Hamilton County is 2.7 times higher than in the rest of the state. Further, a convicted killer from the Cincinnati area is 3.7 times more likely to be sentenced to die than a convicted killer from Cleveland and 6.2 times more likely than one from Columbus, the study found. Jon Craig and Sharon Coolidge, "Suspend Execution, Bar Group Urges Ohio," *Cincinnati Enquirer*, September 25, 2007.

Due process prohibits the taking of life unless the state can show legitimate and compelling state interests. *Commonwealth v. O'Neal*, 339 N.E.2d 676, 678 (Mass. 1975) (Tauro, C.J., concurring); *State v. Pierre*, 572 P.2d 1338 (Utah 1977) (Maughan, J., concurring and dissenting). Moreover, where fundamental rights are involved, personal liberties cannot be broadly stifled "when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960). To take a life by mandate, the State must show that it is the "least restrictive means" to a "compelling government end." *O'Neal*, 339 N.E.2d at 678.

The death penalty is neither the least restrictive nor an effective deterrent. Less restrictive means can effectively serve both isolation of the offender and retribution. Society's interests do not justify the death penalty.

2. Ohio's Statutory Death Penalty Scheme Violates International Law.

International law binds each of the states that comprise the United States. Ohio is bound

by international law whether found in treaty or in custom. Because the Ohio death penalty scheme violates international law, Pickens' capital convictions and sentences cannot stand.[1]

A. International Law Binds the State of Ohio

"International law is part of our law[.]" *Paquete Habana*, 175 U.S. 677, 700 (1900). A treaty made by the United States is the supreme law of the land. Article VI, U.S. Const. Where state law conflicts with international law, it is the state law that must yield. See *Zschernig v. Miller*, 389 U.S. 429, 440 (1968); *Clark v. Allen*, 331 U.S. 503, 508 (1947); *United States v. Pink*, 315 U.S. 203, 230 (1942); *Kansas v. Colorado*, 206 U.S. 46, 48 (1907); *Paquete Habana*, 175 U.S. at 700; *The Nereide*, 13 U.S. (9 Cranch) 388, 422 (1815); *Asakura v. Seattle*, 265 U.S. 332, 341 (1924). International law creates remediable rights for United States citizens. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2nd Cir. 1980); *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987).

B. Ohio's Obligations under International Charters, Treaties, and Conventions.

The United States' membership and participation in the United Nations (U.N.) and the Organization of American States (OAS) creates obligations in all fifty states. Through the U.N. Charter, the United States committed itself to promote and encourage respect for human rights and fundamental freedoms. Art. 1(3). The United States bound itself to promote human rights in cooperation with the U.N. Art. 55-56. The United States again proclaimed the fundamental rights of the individual when it became a member of the OAS. OAS Charter, Art. 3.

The U.N. has sought to achieve its goal of promoting human rights and fundamental freedoms through the creation of numerous treaties and conventions. The United States has ratified several of these including: the International Covenant on Civil and Political Rights

[1] *Medellin v. Texas*, 522 U.S. 491, does not address this issue. In *Medellin*, the Supreme Court simply found that the President did not have the authority to order the State of Texas to ignore state procedural bars in order to enforce an international court ruling.

(ICCPR) ratified in 1992, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) ratified in 1994, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) ratified in 1994. Ratification of these treaties by the United States expressed its willingness to be bound by these treaties. Under the Supremacy Clause, the ICCPR, the ICERD, and the CAT are the supreme laws of the land. As such, the United States must fulfill the obligations incurred through ratification. President Clinton reiterated the United States' need to fulfill its obligations under these conventions when he issued Executive Order 13107. In pertinent part, the Executive Order states:

> By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the United States pursuant to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and other relevant treaties concerned with the protection and promotion of human rights to which the United States now or may become a party in the future, it is hereby ordered as follows.
>
> Section 1. Implementation of Human Rights Obligations.
>
> (a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the ICERD.

Ohio is not fulfilling the United States' obligations under these conventions. Rather, Ohio's death penalty scheme violates each convention's requirements and thus must yield to the requirements of international law. (See discussion supra).

C. Ohio's Statutory Scheme Violates the ICCPR's and ICERD's Guarantees of Equal Protection and Due Process.

Both the ICCPR, ratified in 1992, and the ICERD, ratified in 1994, guarantee equal protection of the law. ICCPR Art. 2(1), 3, 14, 26; ICERD Art. 5(a). The ICCPR further guarantees due process via Articles 9 and 14, which includes numerous considerations: a fair hearing (Art. 14(1)), an independent and impartial tribunal (Art. 14(1)), the presumption of innocence (Art. 14(2)), adequate time and facilities for the preparation of a defense (Art. 14(3)(e)), legal assistance (Art. 14(3)(d), the opportunity to call and question witnesses (Art. 14(3)(e)), the protection against self-incrimination (Art. 14(3)(g)), and the protection against double jeopardy (Art. 14(7)). However, Ohio's statutory scheme fails to provide equal protection and due process to capital defendants as contemplated by the ICCPR and the ICERD.

Ohio's statutory scheme denies equal protection and due process in several ways. It allows for arbitrary and unequal treatment in punishment. (See discussion supra). Ohio's sentencing procedures are unreliable. (See discussion supra). Ohio's statutory scheme fails to provide individualized sentencing. (See discussion supra). Ohio's statutory scheme burdens a defendant's right to a jury. (See discussion supra). O.R.C. § 2929.04(B)(7) arbitrarily selects certain defendants who may be automatically eligible for death upon conviction. (See discussion supra). Ohio's proportionality and appropriateness review is wholly inadequate. (See discussion supra). As a result, Ohio's statutory scheme violates the ICCPR's and the ICERD's guarantees

of equal protection and due process. This is a direct violation of international law and of the Supremacy Clause of the Constitution.

D. Ohio's Statutory Scheme Violates the ICCPR's Protection against Arbitrary Execution.

The ICCPR speaks explicitly to the use of the death penalty. The ICCPR guarantees the right to life and provides that there shall be no arbitrary deprivation of life. Art. 6(1). It allows the imposition of the death penalty only for the most serious offenses. Art. 6(2). Juveniles and pregnant women are protected from the death penalty. Art. 6(5). Moreover, the ICCPR contemplates the abolition of the death penalty. Art 6(6).

However, several aspects of Ohio's statutory scheme allow for the arbitrary deprivation of life. Punishment is arbitrary and unequal. (See discussion supra). Ohio's sentencing procedures are unreliable. (See discussion supra). Ohio's statutory scheme lacks individualized sentencing. (See discussion supra). The (A)(7) aggravator maximizes the risk of arbitrary and capricious action by singling one class of murderers who are eligible automatically for the death penalty. (See discussion supra). The vagueness of O.R.C. §§ 2929.03(D)(1) and 2929.04 similarly render sentencing arbitrary and unreliable. (See discussion supra). Ohio's proportionality and appropriateness review fails to distinguish those who deserve death from those who do not. (See discussion supra). As a result, executions in Ohio result in the arbitrary deprivation of life and thus violate the ICCPR's death penalty protections. This is a direct violation of international law and a violation of the Supremacy Clause.

E. Ohio's Statutory Scheme Violates the ICERD's Protections against Race Discrimination.

The ICERD, speaking to racial discrimination, requires that each state take affirmative steps to end race discrimination at all levels. Art. 2. It requires action and does not allow states to sit idly by when confronted with practices that are racially discriminatory. However, Ohio's statutory scheme imposes the death penalty in a racially discriminatory manner. (See discussion supra). A scheme that sentences blacks and those who kill white victims more frequently and that disproportionately places African-Americans on death row is in violation of the ICERD. Ohio's failure to rectify this discrimination is a direct violation of international law and of the Supremacy Clause of the United States Constitution.

F. Ohio's Statutory Scheme Violates the ICCPR's and the CAT's Prohibitions against Cruel, Inhuman or Degrading Punishment.

The ICCPR prohibits subjecting any person to torture or to cruel, inhuman, or degrading treatment or punishment. Art. 7. Similarly, the CAT requires that the states take action to prevent torture, which includes any act by which severe mental or physical pain is intentionally inflicted on a person for the purpose of punishing him for an act committed. See Art. 1-2. As administered, Ohio's death penalty inflicts unnecessary pain and suffering, See *Cooey v. Strickland*, Case no. 2:04cv1156 (S.D. Ohio), in violation of both the ICCPR and the CAT. Thus, there is a violation of international law and the Supremacy Clause.

G. Ohio's Obligations Under the ICCPR, the ICERD, and the CAT are not Limited by the Reservations and Conditions Placed on These Conventions by the Senate.

While conditions, reservations, and understandings accompanied the United States' ratification of the ICCPR, the ICERD, and the CAT, those conditions, reservations, and understanding cannot stand for two reasons. Article II, § 2 of the United States Constitution provides for the advice and consent of two-thirds of the Senate when a treaty is adopted.

However, the Constitution makes no provision for the Senate to modify, condition, or make reservations to treaties. The Senate is not given the power to determine what aspects of a treaty the United States will follow. Its role is to simply advise and consent.

Thus, the Senate's inclusion of conditions and reservations in treaties goes beyond that role. The Senate picks and chooses which items of a treaty will bind the United States. This is the equivalent of the line item veto, which is unconstitutional. *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). The Supreme Court specifically spoke to the enumeration of the president's powers in the Constitution in finding that the president did not possess the power to issue line item vetoes. *Id.* If it is not listed, then the President lacks the power to do it. See *Id.* Similarly, the Constitution does not give the power to the Senate to make conditions and reservations, picking and choosing what aspects of a treaty will become law. Thus, the Senate lacks the power to do just that. Therefore, any conditions or reservations made by the Senate are unconstitutional. See *Id.*

The Vienna Convention on the Law of Treaties further restricts the Senate's imposition of reservations. It allows reservations unless: they are prohibited by the treaty, the treaty provides that only specified reservations, not including the reservation in question, may be made, or the reservation is incompatible with the object and purpose of the treaty. Art. 19(a)-(c). The ICCPR specifically precludes derogation of Articles 6-8, 11, 15-16, and 18. Under the Vienna Convention, the United States' reservations to these articles are invalid under the language of the treaty. See *Id.* Further, the ICCPR's purpose is to protect life and any reservation inconsistent with that purpose violates the Vienna Convention. Thus, the United States' reservations cannot stand under the Vienna Convention as well.

H. Ohio's Obligations Under the ICCPR are not Limited by the Senate's Declaration that it is not Self-Executing.

The Senate indicated that the ICCPR is not self-executing. However, the question of whether a treaty is self-executing is left to the judiciary. *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370 (7th Cir. 1985) (Restatement (Second) of Foreign Relations Law of the United States, Sec. 154(1) (1965)). It is the function of the courts to say what the law is. See *Marbury v. Madison*, 5 U.S. 137 (1803).

Further, requiring the passage of legislation to implement a treaty necessarily implicates the participation of the House of Representatives. By requiring legislation to implement a treaty, the House can effectively veto a treaty by refusing to pass the necessary legislation. However, Article 2, §2 excludes the House of Representatives from the treaty process. Therefore, declaring a treaty is not self-executing gives power to the House of Representatives not contemplated by the United States Constitution. Thus, any declaration that a treaty is not self-executing is unconstitutional. See *Clinton*, 524 U.S. at 438.

I. Ohio's Obligations under Customary International Law.

International law is not merely discerned in treaties, conventions, and covenants. International law "may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decision recognizing and enforcing that law." *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 160-161 (1820). Regardless of the source "international law is a part of our law[.]" *Paquete Habana*, 75 U.S. at 700.

The judiciary and commentators recognize the Universal Declaration of Human Rights

(DHR) as binding international law. The DHR "no longer fits into the dichotomy of 'binding treaty' against 'non-binding pronouncement,' but is rather an authoritative statement of the international community." *Filartiga*, 630 F.2d at 883 (internal citations omitted); See also William A. Schabas, The Death Penalty as Cruel Treatment and Torture (1996).

The DHR guarantees equal protection and due process (Art. 1, 2, 7, 11), recognizes the right to life (Art. 3), prohibits the use of torture or cruel, inhuman, or degrading punishment (Art. 5) and is largely reminiscent of the ICCPR. Each of the guarantees found in the DHR are violated by Ohio's statutory scheme. (See discussion supra). Thus, Ohio's statutory scheme violates customary international law as codified in the DHR and cannot stand.

However, the DHR is not alone in its codification of customary international law. *Smith* directs courts to look to "the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decision recognizing and enforcing that law" in ascertaining international law. 18 U.S. (5 Wheat.) at 160-161. Ohio should be cognizant of the fact that its statutory scheme violates numerous declarations and conventions drafted and adopted by the United Nations and the OAS, which may, because of the sheer number of countries that subscribe to them, codify customary international law. See *Id.* Included among these are:

1. The American Convention on Human Rights drafted by the OAS and entered into force in 1978. It provides numerous human rights guarantees, including: equal protection (Art. 1, 24), the right to life, (Art. 4(1)), prohibition against arbitrary deprivation of life (Art. 4(1)), imposition of the death penalty only for the most serious crimes (Art. 4(2)), no re-establishment of death penalty

once abolished (Art. 4(3)), prohibits torture, cruel, inhuman, or degrading punishment (Art. 5(2)), and guarantees the right to a fair trial (Art. 8).

2. The United Nations Declaration on the Elimination of All Forms of Racial Discrimination proclaimed by U.N. General Assembly Resolution 1904 (XVIII) in 1963. It prohibits racial discrimination and requires that states take affirmative action in ending racial discrimination.
3. The American Declaration of the Rights and Duties of Man adopted by the Ninth International Conference of American States in 1948. It includes numerous human rights guarantees: the right to life (Art. 1), equality before the law (Art. 2), the right to a fair trial (Art. 16), and due process (Art. 26).
4. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment adopted by the U.N. General Assembly in Resolution 3452 (XXX) in 1975. It prohibits torture, defined to include severe mental or physical pain intentionally inflicted by or at the instigation of a public official for a purpose including punishing him for an act he has committed, and requires that the states take action to prevent such actions. Art. 1, 4.
5. Safeguards Guaranteeing Protection for the Rights of Those Facing the Death Penalty adopted by the U.N. Economic and Social Council in Resolution 1984/50 in 1984. It provides numerous protections to those facing the death penalty, including: permitting capital punishment for only the most serious crimes, with the scope not going beyond intentional crimes with lethal or other extremely grave consequences (1), requiring that guilt be proved so as to

leave no room for an alternative explanation of the facts (4), due process, and the carrying out of the death penalty so as to inflict the minimum possible suffering (9).

6. The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty adopted and proclaimed by the U.N. General Assembly in Resolution 44/128 in 1989. This prohibits execution (Art. 1 (1)) and requires that states abolish the death penalty (Art. 1 (2))

These documents are drafted by the people *Smith* contemplates and are subscribed to by a substantial segment of the world. As such they are binding on the United States as customary international law. A comparison of the §§ 1-9 clearly demonstrates that Ohio's statutory scheme is in violation of customary international law.

Proposition of Law No. 9

A conviction based upon insufficient evidence is a deprivation of due process. U.S. Const. Amend. V & XIV; Ohio Const. Art. I, § 10.

Due process requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof." *Jackson v. Virginia* (1979), 443 U.S. 307, 316, 99 S.Ct. 2781, 2787. "The test for sufficiency of evidence is whether any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the elements of the crime beyond a reasonable doubt." *State v. Allen*, 73 Ohio St. 3d 626, 630, 653 N.E.2d 675, 682 (1995).

Mark Pickens was charged with the rape and aggravated murder of Noelle Washington. He was further charged with the aggravated murder of Sha'railyn Wright (a person under thirteen

years of age) and Anthony Jones III (a person under thirteen years of age). However, the State adduced insufficient evidence that Pickens committed any crime.

As authorized in the Statement of Facts, supra, the sexually-related encounter with Pickens and Washington did not exist on the date alleged. Pickens also denied raping her. As for the aggravated murders, nothing demonstrates that Pickens shot Noelle Washington, Sha'railyn Wright, or Anthony Jones III. The major testimony against Pickens involved all hearsay evidence allowed through FORFEITURE BY WRONGDOING. The statements made by Noelle Washington were inconsistent and were not sufficient to cause a guilty verdict against Pickens. Without the rape and the following FORFEITURE BY WRONGDOING, no sufficient evidence exists on these homicides.

Viewing the evidence in the light most favorable to the prosecution, there is insufficient evidence of the rape and aggravated murders of Noelle Washington, Sha'railyn Wright and Anthony Jones III.

Pickens' convictions for all offenses cannot stand.

Proposition of Law No. 10

Considered together, the cumulative errors set forth in Appellant's brief merit reversal.

If this Court determines that there were instances of error in this case, then it must determine the cumulative effect of these errors. *State v. Garner*, 74 Ohio St. 3d 49, 656 N.E. 2d 623 (1995). See also *State v. Williams*, 99 Ohio St. 3d 493, 794 N.E. 2d 27 (2003), and *State v. Brown*, 115 Ohio St. 3d 55, 69 -70, 873 N.E. 2d 858 (2007). Should this Court determine that there is more than one instance of error that does not merit reversal, this Court must then analyze the cumulative effect of the errors to determine whether Pickens' convictions and sentence should be reversed. Cumulative error committed during the trial court proceedings violated

Pickens' rights under the United States Constitution's Fifth, Sixth, Eighth, and Fourteenth Amendments, as well as applicable provisions in the Ohio Constitution.

Conclusion

For each of the foregoing reasons, Mark Pickens' convictions and sentences must be reversed, and remanded, for additional relief consistent with the court's written opinion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Merit Brief of Appellant Mark Pickens was forwarded by personal hand delivery to Joseph T. Deters and William E. Breyer, counsel for appellee, at their usual place of business on the filing date stamped hereon.

Daniel F. Burke, Jr.
Attorney for Appellant

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO
Appellee

vs.

MARK PICKENS,
Appellant

Case No. 10-1406

Appeal taken from Hamilton County
Court of Common Pleas
Case No. B-0905088

This is a death penalty case

Notice of Appeal of Appellant Mark Pickens

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO Appellee	)	Case No.
vs.	)	Appeal taken from Hamilton County Court of Common Pleas Case No. B-0905088
MARK PICKENS, Appellant	)	This is a death penalty case

Notice of Appeal

Appellant Mark Pickens hereby gives notice of appeal to the Supreme Court of Ohio from the decision and judgment entry of the Hamilton County Court of Common Pleas, entered on July 13, 2010. See Exhibit A. This is a capital case and the date of the offense is June 1, 2009. See Supreme Court Rule of Practice XIX, §1(A).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal was served upon Counsel for Appellee by regular U.S. Mail, this 9th day of August, 2010.

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Counsel for Appellant

Roger W. Kirk
Counsel for Appellant

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 07/01/2010
code: GJEI
judge: 207

ENTERED
JUL 06 2010

Judge: STEVEN E MARTIN

NO: B 0905088

STATE OF OHIO
VS.
MARK PICKENS

JUDGMENT ENTRY: SENTENCE: INCARCERATION

Defendant was present in open Court with Counsel **PERRY L ANCONA and A NORM AUBIN** on the **1st** day of **July 2010** for sentence.
The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and after trial by jury, the defendant has been found guilty of the offense(s) of:
count 1: RAPE, 2907-02A2/ORCN,F1
count 2: AGGRAVATED MURDER WITH SPECS #1, #2, & #3, 2903-01A/ORCN,CD
count 3: AGGRAVATED MURDER WITH SPECS #1, #2, & #3, 2903-01C/ORCN,CD
count 4: AGGRAVATED MURDER WITH SPECS #1, #2, & #3, 2903-01C/ORCN,CD
count 5: HAVING WEAPONS WHILE UNDER DISABILITY, 2923-13A3/ORCN,F3
count 6: HAVING WEAPONS WHILE UNDER DISABILITY, 2923-13A3/ORCN,F3

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned as follows:
count 1: CONFINEMENT: 10 Yrs DEPARTMENT OF CORRECTIONS

count 2: CONFINEMENT: DEPARTMENT OF CORRECTIONS DEATH BY LETHAL INJECTION

count 3: CONFINEMENT: DEPARTMENT OF CORRECTIONS DEATH BY LETHAL INJECTION

Defendant was notified of the right to appeal as required b

D88996758

A-4

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 07/01/2010
code: GJEI
judge: 207

ENTERED
JUL 06 2010

Judge: STEVEN E MARTIN

NO: B 0905088

STATE OF OHIO
VS.
MARK PICKENS

JUDGMENT ENTRY: SENTENCE: INCARCERATION

count 4: CONFINEMENT: DEPARTMENT OF CORRECTIONS
DEATH BY LETHAL INJECTION
CONFINEMENT ON SPECIFICATION #1: 3 Yrs DEPARTMENT OF CORRECTIONS
MANDATORY TERM TO BE SERVED CONSECUTIVELY TO THE SENTENCE IMPOSED IN UNDERLYING OFFENSE IN COUNT #4.

count 5: CONFINEMENT: 5 Yrs DEPARTMENT OF CORRECTIONS

THE SENTENCES IN COUNTS #2, #3, AND #4 ARE TO BE SERVED CONSECUTIVELY TO EACH OTHER.

THE SENTENCES IN COUNTS #1 AND #5 ARE TO BE SERVED CONSECUTIVELY TO EACH OTHER AND CONSECUTIVELY TO THE SENTENCES IN COUNTS #2, #3, AND #4.

COUNT #6 IS MERGED WITH COUNT #5 FOR THE PURPOSE OF SENTENCING.

SPECIFICATIONS #1 TO COUNTS #2 AND #3 ARE MERGED WITH SPECIFICATION #1 TO COUNT #4 FOR THE PURPOSE OF SENTENCING.

THE DEFENDANT IS TO RECEIVE CREDIT FOR THREE HUNDRED NINETY FOUR (394) DAYS TIME SERVED.

COURT COSTS WAIVED DUE TO AFFIDAVIT OF INDIGENCY.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL

Defendant was notified of the right to appeal as required by Crim. R 32(A)(2)

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 07/01/2010
code: GJEI
judge: 207

ENTERED
JUL 06 2010

Judge: STEVEN E MARTIN

NO: B 0905088

STATE OF OHIO
VS.
MARK PICKENS

JUDGMENT ENTRY: SENTENCE: INCARCERATION

CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

AS PART OF THE SENTENCE IN THIS CASE AS TO COUNT #1, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR FIVE (5) YEARS.

IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE (9) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT (50%) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE (12) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.

Defendant was notified of the right to appeal as required by Crim. R 32(A)(2)

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

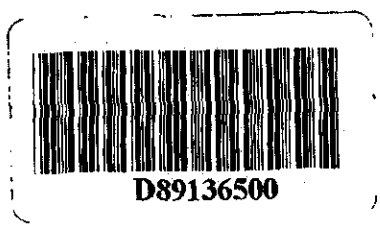
STATE OF OHIO	:	Case No. B-0905088
Plaintiff	:	(Judge Steven E. Martin)
vs.	:	
MARK PICKENS	:	SENTENCING OPINION R.C. 2929.03(F)
Defendant	:	

This opinion is rendered pursuant to Ohio Revised Code Section 2929.03(G).

On May 31, 2009, Mark Pickens raped Noelle Washington.

On June 1, 2009, Mark Pickens went to the home of Noelle Washington and murdered her to stop her from pursuing a rape charge against him. In Ms. Washington's apartment on June 1 was Ms. Washington's 9 month old child Anthony Jones III. Also present was Sha'Railyn Wright who was 3 years old who Noelle Washington was babysitting. Pickens shot and killed both children as well. The jury found this to be one course of conduct. The jury found Pickens to be the principal offender in these Aggravated Murders.

On August 4, 2009 the Hamilton County Grand Jury returned a six count indictment charging Mark Pickens as follows:



Count 1 – Rape
Count 2 – Aggravated Murder with specifications
Count 3 – Aggravated Murder with specifications
Count 4 – Aggravated Murder with specifications
Count 5 – Having Weapons While Under Disability
Count 6 – Having Weapons While Under Disability

Each count of Aggravated Murder had multiple specific capital specifications as well as a firearm specification. The Aggravated Murder counts related to the deaths by homicide on

June 1, 2009 of Noelle Washington (Count 2), Sha'Railyn Wright (Count 3) and Anthony Jones, III (Count 4).

After having been appointed Rule 20 certified counsel Perry Ancona and Norman Aubin, Pickens entered a plea of not guilty on August 7, 2010. After multiple pre-trial conferences and motion hearings, the case proceeded to trial on April 9, 2010.

On April 29, 2010, the jury returned verdicts of guilty as to all counts including each and every specification.

On May 4, 2010 the penalty phase of the trial began. The defense presented the testimony of defendant's mother, Trevina Griffin, in mitigation. The defendant also gave an unsworn statement. The defendant did not produce any other testimony whatsoever. It should be noted that at no time at any point in the trial was the defendant prohibited by the Court from calling any witness.

On May 4, 2010, after several hours of deliberation, the jury returned a sentencing recommendation of Death as to each of Counts 2, 3, and 4. The defendant, through counsel, refused any pre-sentence investigation or psychological evaluation. The case was set originally for sentencing on June 4, 2010 and moved to July 1, 2010 at the request of the Court because the Court needed additional time to review the testimony and the physical evidence. The Court requested sentencing memorandums from each party which were filed and are part of the record.

At the sentencing hearing on July 1, 2010 at 9 a.m., the defendant was afforded an opportunity to speak as well as to present any other mitigation. The Court also heard the arguments of counsel. No one except the Assistant Prosecuting Attorney spoke on behalf of the victims. The defendant as well as the attorneys answered a number of questions posed by

the Court. The case was then adjoined to allow the Court to consider the arguments of counsel and the statement of the defendant.

At 1 p.m. on July 1, 2010 the case reconvened and the Court announced the sentence as to Counts 2, 3, and 4. The Court then proceeded to hold a separate sentencing hearing on Counts 1 (Rape) and 5 (Having Weapons While Under Disability). The prosecution and the defense agreed that Counts 5 and 6 would merge. At this time several family members of the victims spoke. The defendant and his counsel, as well as the Assistant Prosecuting Attorney, were afforded an opportunity to speak. The Court considered what was said by counsel at this separate sentencing hearing and incorporated by reference the arguments of counsel and the statement of the defendant made earlier. The Court then sentenced the defendant to 10 years in prison on Count 1 and 5 years on Count 2 to run consecutively to each other and consecutively to the sentences in Counts 2, 3, and 4.

Count 2 - The Aggravated Murder of Noelle Washington

The defendant has been found guilty by the jury as follows:

Count 2 – The defendant was found guilty in Count 2 of the Aggravated Murder of Noelle Washington. The defendant was also convicted of 3 specifications to Count 2:

Specification 1 – The defendant, Mark Pickens, did have on or about his person, or under his control, a firearm while committing the offense of Aggravated Murder as alleged in Count 2.

Specification 2 – The defendant, Mark Pickens, did commit the offense for the purpose of escaping detection or apprehension or trial or punishment for another crime committed by him, to wit: Rape (R.C. 2929.04(A)(4)).

Specification 3 – The defendant, Mark Pickens, was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons. (R.C. 2929.04(A)(4)(5))

Specification 1 to Count 2 is commonly known as the 3 year mandatory incarceration gun specification and is not a capital specification or an aggravating circumstance. Specifications 2 and 3 to Count 2 are each a capital specification and each is an aggravating circumstance.

Count 3 - The Aggravated Murder of Sha'Railyn Wright

The defendant was found guilty in Count 3 of the Aggravated Murder of Sha'Railyn Wright. The defendant was also found guilty of 3 specifications to Count 3:

Specification 1 – The defendant, Mark Pickens, did have on or about his person, or under his control, a firearm while committing the offense of Aggravated Murder as alleged in Count 3.

Specification 2 – The defendant, Mark Pickens, was part of a course of conduct involving the purposeful killing of or attempt to kill 2 or more persons. (R.C. 2929.04(A)(5))

Specification 3 – The defendant, Mark Pickens, in the commission of the offense, purposefully caused the death of Sha'Railyn Wright, who was under thirteen years of age at the time of the commission of the offense, and that Mark Pickens was the principal offender in the commission of the offense. (R.C. 2929.04(A)(9))

Specification 1 to Count 3 is commonly known as the 3 year mandatory incarceration gun specification and is not a capital specification or an aggravating circumstance. Specifications 2 and 3 are each a capital specification and each is an aggravating circumstance.

Count 4 - The Aggravated Murder of Anthony Jones III

The defendant was convicted in Count 4 which was the Aggravated Murder of Anthony Jones III. The defendant was convicted of 3 specifications to Count 4:

Specification 1 – The defendant, Mark Pickens, did have on or about his person, or under his control, a firearm while committing the offense of Aggravated Murder.

Specification 2 – The defendant, Mark Pickens, was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons. (R.C. 2929.04(A)(5))

Specification 3 – The defendant, Mark Pickens, did in the commission of the offense, purposefully cause the death of Anthony Jones III, who was under thirteen years of age at the time of the commission of the offense, and that Mark Pickens was the principal offender in the commission of the offense. (R.C. 2929.04(A)(9))

Specification 1 to Count 4 is commonly known as the 3 year mandatory incarceration gun specification. Specification 2 and 3 are each a capital specification and each is an aggravating circumstance.

The Court considered each of Counts 2, 3, and 4 separately in deciding whether the aggravating circumstances outweighed the mitigating factors pertaining to each count beyond a reasonable doubt.

Counsel reviewed the verdict forms each time before they were submitted to the jury and after the verdicts were returned and found them to be in order at all times. The jury was polled each time and each juror stated that the verdicts as completed by the jury and read in open court were their true and accurate verdicts.

Mitigating Factors (2929.04(B)(1-7))

(1) Whether the victim of the offense induced or facilitated it (2929.04(B)(1)).

There is no evidence whatsoever in the record to support this as a mitigating factor with regard to any of the three victims.

(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 (2929.04(B)(2))

There is no evidence in the record to support this as a mitigating factor with regard to any of the three victims.

(3) Whether, at the time of committing the offense, the offender, because of 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.

There is no evidence in the record to support this as a mitigating factor with regard to any of the three victims. Specifically, the Court finds there is no indication in the record that the defendant was mentally impaired in any way. The defendant knew right from wrong. These homicides were each committed for a very specific purpose.

The Court offered to have the defendant psychologically examined by someone appointed by the Court which was refused. The Court has placed no restriction whatsoever on the defense to have the defendant be examined by an expert of their choosing.

(4) The youth of the offender (2929.04(B)(4)).

The defendant was 19 when he committed the Aggravated Murders set forth in Counts 2, 3, and 4. The Court gave the defendant's age some weight in mitigation. This is by far the most significant of the mitigating factors.

(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications (2929.04(B)(5)).

The parties agreed that as a juvenile the defendant was twice sent to the Ohio Department of Youth Services for incarceration. The parties also agreed that, as an adult, the defendant has one prior misdemeanor conviction for Unauthorized Use of Property. The Court gave the defendant's lack of a significant prior adult history of criminal convictions some weight even though he had been an adult only for a short time on June 1, 2009.

(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 (2929.04(B)(6)).

There is nothing in the record to support this as a mitigating factor with regard to any of the three victims. The defendant acted alone in committing the Aggravated Murders in Counts 2, 3, and 4.

(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death (2929.04(B)(7)).

The Court has examined the record several times and considered the following:

(A) Residual Doubt.

At the urging of the defendant, the Court, along with the jury, considered residual doubt as a mitigating factor. After a careful review of all the evidence and testimony,

the Court finds that there is no residual doubt in this case. As such, no weight is given to any claim of residual doubt. The Court finds that there is no doubt whatsoever that the defendant is guilty of the Aggravated Murders of Noelle Washington as alleged in Count 2, Sha'Railyn Wright as alleged in Count 3, and Anthony Jones III as alleged in Count 4. There is no doubt as well that the defendant is guilty of the specifications in each of Counts 2, 3, and 4.

(B) Mitigation placed in the record at the sentencing hearing.

(a) The defendant's mother, Trevina Griffin, testified that she was 16 when the defendant was born. She also testified that she had a difficult childhood. She did not say anything about the defendant's childhood. Ms. Griffin testified that she loves the defendant and asked the jury to spare his life. The Court gave Ms. Griffin's testimony some weight.

(b) The defendant, while consistently denying that he committed these offenses, expressed remorse for the deaths of the 3 victims and asked the jury to spare his life. The Court considered and gave some weight both to the unsworn statement of the defendant at the penalty phase of the trial as well as his statement at sentencing.

(C) The Court has also considered and given some weight to the sentencing memorandum filed by the defense as well as the arguments of counsel given on the morning of the July 1, 2010 sentencing hearing.

(D) The defendant completed his GED outside of being in a penal facility. While most people finish High School, it is the Court's experience that most criminal defendants that appear in Common Pleas Court do not. If these defendants get a GED, it is usually while they are incarcerated. The fact that the defendant got his GED

while he was not incarcerated is something to be considered in his favor as a mitigating factor and the Court has given it some weight even though it was not independently verified.

(E) The defendant stated that he does have some work history. He has worked for a Family Dollar store, the United States Postal Service, as well as at a temporary employment agency called Today's Staffing. The Court gave this some weight as a mitigating factor even though it was not independently verified.

(F) The defendant's post-conviction cooperation with law enforcement. The defendant, through counsel, indicated that since the jury verdicts he has given the police information on several criminal offenses. The assistant prosecuting attorney stated that his office would never use Mr. Pickens as a witness because of credibility issues. The extent of the defendant's cooperation is unclear. The Court has given it some weight but not very much.

(G) The nature and circumstances of the offenses were examined by the Court only to see whether they provided any mitigating factors. After a careful review the Court determines that there are no mitigating factors in the nature and circumstance of the offenses.

The fact that the defendant did not confess to the crimes charged in the indictment was not considered for any reason. The fact that the defendant asserted his rights to a jury trial and to confront his accusers is not considered for any purpose. Finally, the fact that the defendant currently has serious felony charges pending at this time was not considered for any purpose.

ANALYSIS

Prior to the sentencing on July 1, 2010, the Court reviewed all of the evidence in the case. The Court sat through the trial and examined the evidence then. After the jury verdict recommending death, the Court reviewed it's notes from the trial and the trial testimony as well as the physical evidence.

The Court considered all of the mitigating factors presented and examined the testimony and each piece of evidence looking for additional mitigating factors. The Court did not limit itself to only the mitigating factors presented by the defense.

The jury was given the same opportunity as the Court to examine the evidence in a search for any mitigating factor in favor of a life sentence as opposed to a death sentence. The Court examined the evidence as well as the testimony and could find no mitigating factors other than those listed above. The Court has not considered any aggravating circumstances for any of Counts 2, 3 or 4 except those found by the jury.

As stated before, the most significant mitigating factor is the defendant's age of 19 when he committed these offenses. The other mitigating factors do not carry much weight at all. Analyzing the case, the Court separately weighed all of the mitigating factors first against the aggravating circumstances in Count 2. The Court then performed the same analysis as to Count 3 and finally as to Count 4. All of the mitigating factors were weighed against the aggravating circumstances for each of Counts 2, 3, and 4 separately.

Upon consideration of the relevant evidence raised at trial, the testimony, the unsworn statement of the defendant, and the arguments of counsel, with regard to each of Counts 2, 3, and 4, the Court finds that the aggravating circumstances on each of Counts 2, 3, and 4 outweigh the mitigating factors, not only by proof beyond a reasonable doubt, but beyond any doubt.

The aggravating circumstances in each of Counts 2, 3, and 4 are very serious.

Regarding Count 2, defendant went into the home of Noelle Washington with a specific intent to kill her to avoid detection or trial on a charge of rape. This action strikes at the very heart of our system of law. In addition to murdering Noelle Washington, the defendant also executed Sha'Railyn Wright and Anthony Jones III in the same course of conduct.

Regarding Count 3, the defendant, in addition to killing Sha'Railyn Wright who was 3 years old, also was found to have killed two other people as part of a course of conduct.

Regarding Count 4, the defendant, in addition to committing the Aggravated Murder of Anthony Jones III who was 9 months old at the time, also was found to have killed two other people as part of a course of conduct.

Society has a right, in fact a duty, to punish harshly those who kill children as well as those who commit multiple homicides. These are not trivial aggravating circumstances. They strike at the heart of who we are as a society and the value we place on human life, especially young life.

In comparison, the Court finds the totality of the mitigation in this case when applied separately against each of Counts 2, 3, and 4 to be slight.

Even the defendant's youth, which is unquestionably the most significant mitigating factor, does not carry much weight. These murders were not a youthful impulsive series of acts. The murder of Noelle Washington was an intentional act committed for a specific purpose. The murders of Sha'Railyn Wright, age 3, and Anthony Jones III, age 9 months, were part of the same course of conduct. The defendant knew right from wrong. He was not impaired in any way.

The rest of the mitigating factors are slight and do not individually or collectively carry much weight. The extent and sincerity of the remorse expressed by the defendant is open to question. The fact that he has a mother who loves him, has obtained his GED and has some work history are all positive and are to be weighed in his favor but do not carry much weight. His lack of criminal record as an adult is offset somewhat by the fact that he has an extensive juvenile record and the fact that he had not been an adult very long on June 1, 2009. His post-trial cooperation with law enforcement is a very slight mitigating factor.

The mitigating factors that the Court identified when applied in their totality against the aggravating circumstances for each of the separate counts, pale in comparison to the gravity, weight and significance of those aggravating circumstances. There are no mitigating factors that apply solely to Count 2, Count 3, or Count 4. Each of Counts 2, 3, and 4 have been weighed separately against the entirety of the mitigating factors.

Specifically, the Court finds the mitigation with regard to each homicide to be slight and the weight of the aggravating circumstances for each homicide to be overwhelming.

Prior to sentencing the defendant on Counts 2, 3, and 4, the Court did not hear from or speak to the family or friends of any of the victims except what was elicited as testimony at trial. The Court did not speak to any of the jurors. The Court carefully weighed the law and all four sentencing options.

CONCLUSION

COUNT 2

As to Count 2, the Court accepts the recommendation of the jury. The defendant, Mark Pickens, is hereby sentenced to death for the Aggravated Murder of Noelle Washington.

COUNT 3

As to Count 3, the Court accepts the recommendation of the jury. The defendant, Mark Pickens, is hereby sentenced to death for the Aggravated Murder of Sha'Railyn Wright.

COUNT 4

As to Count 4, the Court accepts the recommendation of the jury. The defendant, Mark Pickens, is hereby sentenced to death for the Aggravated Murder of Anthony Jones III.

The sentences in Counts 2, 3, and 4 are to be served consecutively. The gun specification in Count 2 and 3 are merged with the gun specification in Count 4.

The Court did not in any way consider the cumulative effect of Pickens' having been convicted of Rape or Having Weapons While Under Disability. Each of Counts 2, 3, and 4 was considered separately and each aggravating circumstance on each count was considered only for that count. Each count was considered separately and independently.

The Court orders that the execution date of Mark Pickens shall be set for October 18, 2010 to be carried out by the appropriate authorities. This execution date shall be subject to further order by a court of competent jurisdiction. Mark Pickens shall be remanded to the appropriate Ohio prison institution to be held on death row pending his execution.

The Court has appointed Daniel F. Burke (0013836) and Roger W. Kirk (0024219) to serve as Appellate Counsel. Both Mr. Burke and Mr. Kirk are certified to handle this type of appeal.

The Court also orders that the Hamilton County Clerk of Courts shall deliver a copy of the entire case file to the Ohio Supreme Court.

Steven E. Martin, Judge

July 13, 2010

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PREAMBLE

We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

ARTICLE I: BILL OF RIGHTS

INALIENABLE RIGHTS.

§1 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.

(1851)

RIGHT TO ALTER, REFORM, OR ABOLISH GOVERNMENT, AND REPEAL SPECIAL PRIVILEGES.

§2 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.

(1851)

RIGHT TO ASSEMBLE.

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

(1851)

BEARING ARMS; STANDING ARMIES; MILITARY POWER.

§4 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.

(1851)

TRIAL BY JURY.

§5 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.

(1851, am. 1912)

SLAVERY AND INVOLUNTARY SERVITUDE.

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

(1851)

RIGHTS OF CONSCIENCE; EDUCATION; THE NECESSITY OF RELIGION AND KNOWLEDGE.

§7 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.

(1851)

WRIT OF HABEAS CORPUS.

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

(1851)

BAIL

§9 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 who 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

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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.

(1851, am. 1997)

TRIAL FOR CRIMES; WITNESS.

§10 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 witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and 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 the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

(1851, am. 1912)

RIGHTS OF VICTIMS OF CRIME.

§10a 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 officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(1994)

FREEDOM OF SPEECH; OF THE PRESS; OF LIBELS.

§11 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.

(1851)

TRANSPORTATION, ETC. FOR CRIME.

§12 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.

(1851)

QUARTERING TROOPS.

§13 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.

(1851)

SEARCH WARRANTS AND GENERAL WARRANTS.

§14 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 describ-

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ing the place to be searched and the person and things to be seized.

(1851)

NO IMPRISONMENT FOR DEBT.

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

(1851)

REDRESS FOR INJURY; DUE PROCESS.

§16 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 may be brought against the state, in such courts and in such manner, as may be provided by law.

(1851, am. 1912)

NO HEREDITARY PRIVILEGES.

§17 No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this State.

(1851)

SUSPENSION OF LAWS.

§18 No power of suspending laws shall ever be exercised, except by the General Assembly.

(1851)

EMINENT DOMAIN.

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

(1851)

DAMAGES FOR WRONGFUL DEATH.

§19a 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.

(1912)

PROTECT PRIVATE PROPERTY RIGHTS IN GROUND WATER, LAKES AND OTHER WATERCOURSES.

§19b. (A) The protection of the rights of Ohio's property owners, the protection of Ohio's natural resources, and the maintenance of the stability of Ohio's economy require the recognition and protection of property interests in ground water, lakes, and watercourses.

(B) The preservation of private property interests recognized under divisions (C) and (D) of this section shall be held inviolate, but subservient to the public welfare as provided in Section 19 of Article I of the Constitution.

(C) A property owner has a property interest in the reasonable use of the ground water underlying the property owner's land.

(D) An owner of riparian land has a property interest in the reasonable use of the water in a lake or watercourse located on or flowing through the owner's riparian land.

(E) Ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land shall not be held in trust by any governmental body. The state, and a political subdivision to the extent authorized by state law, may provide for the regulation of such waters. An owner of land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land.

(F) Nothing in this section affects the application of the public trust doctrine as it applies to Lake Erie or the navigable waters of the state.

(G) Nothing in Section 1e of Article II, Section 36 of Article II, Article VIII, Section 1 of Article X, Section 3 of Article XVIII, or Section 7 of Article XVIII of the Constitution shall impair or limit the rights established in this section.

(2008)

POWERS RESERVED TO THE PEOPLE.

§20 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.

(1851)

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.

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.

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.

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.

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.

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.

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 re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

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

Amendment IX

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

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.

AMENDMENT XI

Passed by Congress March 4, 1794. Ratified February 7, 1795.

Note: Article III, section 2, of the Constitution was modified by amendment 11.

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.

AMENDMENT XII

Passed by Congress December 9, 1803. Ratified June 15, 1804.

Note: A portion of Article II, section 1 of the Constitution was superseded by the 12th amendment.

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 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.

**Superseded by section 3 of the 20th amendment.*

AMENDMENT XIII

Passed by Congress January 31, 1865. Ratified December 6, 1865.

Note: A portion of Article IV, section 2, of the Constitution was superseded by the 13th amendment.

Section 1.
Neither slavery nor involuntary servitude, 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.

AMENDMENT XIV

Passed by Congress June 13, 1866. Ratified July 9, 1868.

Note: Article I, section 2, of the Constitution was modified by section 2 of the 14th amendment.

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.

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.

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.

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.

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

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.

Effective Date: 05-15-2002

2929.02 Murder penalties.

(A) Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.022, 2929.03, and 2929.04 of the Revised Code, except that no person who raises the matter of age pursuant to section 2929.023 of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B)(1) Except as otherwise provided in division (B)(2) or (3) of this section, whoever is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life.

(2) Except as otherwise provided in division (B)(3) of this section, if a person is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code, the victim of the offense was less than thirteen years of age, and 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, the court shall impose an indefinite prison term of thirty years to life pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(3) If a person is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code and also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(4) In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

(D)(1) In addition to any other sanctions imposed for a violation of section 2903.01 or 2903.02 of the Revised Code, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section 4510.02 of the Revised Code.

(2) As used in division (D) of this section, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

Effective Date: 07-29-1998; 04-04-2007; 2007 SB10 01-01-2008

2929.021 Notice to supreme court of indictment charging aggravated murder with aggravating circumstances.

(A) If an indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the clerk of the court in which the indictment is filed, within fifteen days after the day on which it is filed, shall file a notice with the supreme court indicating that the indictment was filed. The notice shall be in the form prescribed by the clerk of the supreme court and shall contain, for each charge of aggravated murder with a specification, at least the following information pertaining to the charge:

(1) The name of the person charged in the indictment or count in the indictment with aggravated murder with a specification;

(2) The docket number or numbers of the case or cases arising out of the charge, if available;

(3) The court in which the case or cases will be heard;

(4) The date on which the indictment was filed.

(B) If the indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the defendant pleads guilty or no contest to any offense in the case or if the indictment or any count in the indictment is dismissed, the clerk of the court in which the plea is entered or the indictment or count is dismissed shall file a notice with the supreme court indicating what action was taken in the case. The notice shall be filed within fifteen days after the plea is entered or the indictment or count is dismissed, shall be in the form prescribed by the clerk of the supreme court, and shall contain at least the following information:

(1) The name of the person who entered the guilty or no contest plea or who is named in the indictment or count that is dismissed;

(2) The docket numbers of the cases in which the guilty or no contest plea is entered or in which the indictment or count is dismissed;

(3) The sentence imposed on the offender in each case.

Effective Date: 10-19-1981

2929.022 Sentencing hearing - determining existence of aggravating circumstance.

(A) If an indictment or count in an indictment charging a defendant with aggravated murder contains a specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, the defendant may elect to have the panel of three judges, if the defendant waives trial by jury, or the trial judge, if the defendant is tried by jury, determine the existence of that aggravating circumstance at the sentencing hearing held pursuant to divisions (C) and (D) of section 2929.03 of the Revised Code.

(1) If the defendant does not elect to have the existence of the aggravating circumstance determined at the sentencing hearing, the defendant shall be tried on the charge of aggravated murder, on the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, and on any other specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code in a single trial as in any other criminal case in which a person is charged with aggravated murder and specifications.

(2) If the defendant does elect to have the existence of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code determined at the sentencing hearing, then, following a verdict of guilty of the charge of aggravated murder, the panel of three judges or the trial judge shall:

(a) Hold a sentencing hearing pursuant to division (B) of this section, unless required to do otherwise under division (A)(2)(b) of this section;

(b) If the offender raises the matter of age at trial pursuant to section 2929.023 of the Revised Code and is not found at trial to have been eighteen years of age or older at the time of the commission of the offense, conduct a hearing to determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. After conducting the hearing, the panel or judge shall proceed as follows:

(i) If that aggravating circumstance is proven beyond a reasonable doubt or if the defendant at trial was convicted of any other specification of an aggravating circumstance, the panel or judge shall impose sentence according to division (E) of section 2929.03 of the Revised Code.

(ii) If that aggravating circumstance is not proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance, except as otherwise provided in this division, the panel or judge shall impose sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender. If that aggravating circumstance is not proven beyond a reasonable doubt, the defendant at trial was not convicted of any other specification of an aggravating circumstance, the victim of the aggravated murder was less than thirteen years of age, and 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, the panel or judge 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) At the sentencing hearing, the panel of judges, if the defendant was tried by a panel of three judges, or the trial judge, if the defendant was tried by jury, shall, when required pursuant to division (A)(2) of this section, first determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven

beyond a reasonable doubt. If the panel of judges or the trial judge determines that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt or if they do not determine that the specification is proven beyond a reasonable doubt but the defendant at trial was convicted of a specification of any other aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge and trial jury shall impose sentence on the offender pursuant to division (D) of section 2929.03 and section 2929.04 of the Revised Code. If the panel of judges or the trial judge does not determine that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge shall terminate the sentencing hearing and impose sentence on the offender as follows:

(1) Subject to division (B)(2) of this section, the panel or judge shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(2) If the victim of the aggravated murder was less than thirteen years of age and 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, the panel or judge 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.

Effective Date: 10-19-1981; 2007 SB10 01-01-2008

2929.023 Raising the matter of age at trial.

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.

Effective Date: 10-19-1981

2929.03 Imposition of 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 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 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 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 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 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.

(G)(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.

Effective Date: 01-01-1997; 03-23-2005; 2007 SB10 01-01-2008

2929.04 Death penalty or imprisonment - aggravating and mitigating factors.

(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 a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding.

(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 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.

Effective Date: 05-15-2002

2929.05 Supreme court review upon appeal of sentence of death.

(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 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 commission of the aggravated murder for which the offender was sentenced and if the offender shows by a preponderance of the evidence that the offender was less than eighteen years of age at the time of the commission of the aggravated murder for which the offender was sentenced. The court is not required to hold a hearing on a motion filed pursuant to this division unless the court finds, based on the motion and any supporting information submitted by the defendant, any information submitted by the prosecuting attorney, and the record in the case, including any previous hearings and orders, probable cause to believe that the defendant was not eighteen years of age or older at the time of the commission of the aggravated murder for which the defendant was sentenced to death.

Effective Date: 07-29-1998

2947.23 Costs and jury fees - community service to pay judgment.

(A)(1) In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution, including any costs under section 2947.231 of the Revised Code, and render a judgment against the defendant for such costs. At the time the judge or magistrate imposes sentence, the judge or magistrate shall notify the defendant of both of the following:

(a) If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

(b) If the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.

(2) The following shall apply in all criminal cases:

(a) If a jury has been sworn at the trial of a case, the fees of the jurors shall be included in the costs, which shall be paid to the public treasury from which the jurors were paid.

(b) If a jury has not been sworn at the trial of a case because of a defendant's failure to appear without good cause, the costs incurred in summoning jurors for that particular trial may be included in the costs of prosecution. If the costs incurred in summoning jurors are assessed against the defendant, those costs shall be paid to the public treasury from which the jurors were paid.

(B) If a judge or magistrate has reason to believe that a defendant has failed to pay the judgment described in division (A) of this section or has failed to timely make payments towards that judgment under a payment schedule approved by the judge or magistrate, the judge or magistrate shall hold a hearing to determine whether to order the offender to perform community service for that failure. The judge or magistrate shall notify both the defendant and the prosecuting attorney of the place, time, and date of the hearing and shall give each an opportunity to present evidence. If, after the hearing, the judge or magistrate determines that the defendant has failed to pay the judgment or to timely make payments under the payment schedule and that imposition of community service for the failure is appropriate, the judge or magistrate may order the offender to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the judge or magistrate is satisfied that the offender is in compliance with the approved payment schedule. If the judge or magistrate orders the defendant to perform community service under this division, the defendant shall receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed shall reduce the judgment by that amount. Except for the credit and reduction provided in this division, ordering an offender to perform community service under this division does not lessen the amount of the judgment and does not preclude the state from taking any other action to execute the judgment.

(C) As used in this section, "specified hourly credit rate" means the wage rate that is specified in 26 U.S.C.A. 206(a)(1) under the federal Fair Labor Standards Act of 1938, that then is in effect,

and that an employer subject to that provision must pay per hour to each of the employer's employees who is subject to that provision.

Effective Date: 03-24-2003; 05-18-2005; 2008 HB283 09-12-2008

2949.22 Method of 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.

Effective Date: 11-21-2001

2953.21 Post conviction relief petition.

(A)(1)(a) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, and any person who has been convicted of a criminal offense that is a felony and who is an offender for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death, may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

(b) As used in division (A)(1)(a) of this section, "actual innocence" means that, had the results of the DNA testing conducted under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code been presented at trial, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted, or, if the person was sentenced to death, no reasonable factfinder would have found the petitioner guilty of the aggravating circumstance or circumstances the petitioner was found guilty of committing and that is or are the basis of that sentence of death.

(c) As used in divisions (A)(1)(a) and (b) of this section, "former section 2953.82 of the Revised Code" means section 2953.82 of the Revised Code as it existed prior to the effective date of this amendment.

(2) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.

(3) In a petition filed under division (A) of this section, a person who has been sentenced to death may ask the court to render void or voidable the judgment with respect to the conviction of aggravated murder or the specification of an aggravating circumstance or the sentence of death.

(4) A petitioner shall state in the original or amended petition filed under division (A) of this section all grounds for relief claimed by the petitioner. Except as provided in section 2953.23 of the Revised Code, any ground for relief that is not so stated in the petition is waived.

(5) If the petitioner in a petition filed under division (A) of this section was convicted of or pleaded guilty to a felony, the petition may include a claim that the petitioner was denied the equal protection of the laws in violation of the Ohio Constitution or the United States Constitution because the sentence imposed upon the petitioner for the felony was part of a consistent pattern

of disparity in sentencing by the judge who imposed the sentence, with regard to the petitioner's race, gender, ethnic background, or religion. If the supreme court adopts a rule requiring a court of common pleas to maintain information with regard to an offender's race, gender, ethnic background, or religion, the supporting evidence for the petition shall include, but shall not be limited to, a copy of that type of information relative to the petitioner's sentence and copies of that type of information relative to sentences that the same judge imposed upon other persons.

(B) The clerk of the court in which the petition is filed shall docket the petition and bring it promptly to the attention of the court. The clerk of the court in which the petition is filed immediately shall forward a copy of the petition to the prosecuting attorney of that county.

(C) The court shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal.

(D) Within ten days after the docketing of the petition, or within any further time that the court may fix for good cause shown, the prosecuting attorney shall respond by answer or motion. Within twenty days from the date the issues are raised, either party may move for summary judgment. The right to summary judgment shall appear on the face of the record.

(E) Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues even if a direct appeal of the case is pending. If the court notifies the parties that it has found grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court.

(F) At any time before the answer or motion is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings. The petitioner may amend the petition with leave of court at any time thereafter.

(G) If the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the petition. If no direct appeal of the case is pending and the court finds grounds for relief or if a pending direct appeal of the case has been remanded to the court pursuant to a request made pursuant to division (E) of this section and the court finds grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter a judgment that vacates and sets aside the judgment in question, and, in the case of a petitioner who is a prisoner in custody, shall discharge or resentence the petitioner or grant a new trial as the court determines appropriate. The court also may make supplementary orders to the relief granted, concerning such matters as rearraignment, retrial, custody, and bail. If the trial court's order granting the petition is reversed on appeal and if the direct appeal of the case has been remanded from an appellate court pursuant to a request under division (E) of this section, the appellate court reversing the order granting the petition shall notify the appellate court in which the direct appeal of the case was pending at the time of the remand of the reversal and remand of the trial court's order. Upon the reversal and remand of the trial court's order granting the petition, regardless of whether notice is sent or received, the direct appeal of the case that was remanded is reinstated.

(H) Upon the filing of a petition pursuant to division (A) of this section by a person sentenced to death, only the supreme court may stay execution of the sentence of death.

(I)(1) If a person sentenced to death intends to file a petition under this section, the court shall appoint counsel to represent the person upon a finding that the person is indigent and that the person either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject the appointment of counsel. The court may decline to appoint counsel for the person only upon a finding, after a hearing if necessary, that the person rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the person is not indigent.

(2) The court shall not appoint as counsel under division (I)(1) of this section an attorney who represented the petitioner at trial in the case to which the petition relates unless the person and the attorney expressly request the appointment. The court shall appoint as counsel under division (I)(1) of this section only an attorney who is certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed. The ineffectiveness or incompetence of counsel during proceedings under this section does not constitute grounds for relief in a proceeding under this section, in an appeal of any action under this section, or in an application to reopen a direct appeal.

(3) Division (I) of this section does not preclude attorneys who represent the state of Ohio from invoking the provisions of 28 U.S.C. 154 with respect to capital cases that were pending in federal habeas corpus proceedings prior to July 1, 1996, insofar as the petitioners in those cases were represented in proceedings under this section by one or more counsel appointed by the court under this section or section 120.06, 120.16, 120.26, or 120.33 of the Revised Code and those appointed counsel meet the requirements of division (I)(2) of this section.

(J) Subject to the appeal of a sentence for a felony that is authorized by section 2953.08 of the Revised Code, the remedy set forth in this section is the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case or to the validity of an adjudication of a child as a delinquent child for the commission of an act that would be a criminal offense if committed by an adult or the validity of a related order of disposition.

Amended by 128th General Assembly File No. 30, SB 77, § 1, eff. 7/6/2010.

Effective Date: 10-29-2003; 07-11-2006

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 character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, subject to the following exceptions:

(1) Character of accused. Evidence of a pertinent trait of 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 other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action 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.

[Effective: July 1, 1980; amended effectively July 1, 2007.]

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	Case No. B-0905088
Plaintiff-Respondent,	:	Judge Steven Martin
-vs-	:	POST-CONVICTION PETITION O.R.C. § 2953.21
MARK PICKENS,	:	
Defendant-Petitioner.	:	EVIDENTIARY HEARING REQUESTED ON ALL GROUNDS FOR RELIEF

CASE HISTORY

TRIAL: **Charge (include specifications)**	**Disposition**
Case No. B-0905088 Count 1 - Rape. 2907.02	Guilty: 10 years
Count 2 - Aggravated Murder . 2903.01(A) Specifications - (1) Firearm (2) Escaping Detection (3) Two or more Victims. 2929.04(A)(4)(5)	Guilty: Death
Count 3 - Aggravated Murder. 2903.01(A) Specification – (1) Firearm. 2941.141 (2) Two or more victims. 2929.04(A)(5) (3) Killing a minor. 2929.04(A)(9)	Guilty: Death
Count 4 - Aggravated Murder. 2903.01(C) Specification: (1) Firearm. 2941.145 (2) Two or more victims. 2929.04(A)(5) (3) Killing a minor. 2929.04(A)(9)	Guilty: Death
Count 5 - Weapons under disability 2923.14(A)(2)	Guilty: 5 years

Count 6 - Weapons under disability 2923.14(A)(3) Guilty: Counts 5 & 6 Merged

Date Sentenced: July 1, 2010

Name of Attorneys: Norman Aubin, Perry Ancona

Was this conviction the result of a (circle one): Guilty Plea No Contest **Trial**

If the conviction resulted in a trial, what was the length of the trial? The trial lasted from April 9, 2010 to May 4, 2010

Appeal to Court of Appeals

Number or citation: N/A

Appeal to Supreme Court of Ohio

Number or citation: 2010-1406
Disposition: Appellant's Brief due June 7, 2011
Name of Appellant's Attorneys: Daniel Burke
Name of Appellee's Attorneys: Roger Kirk

STATEMENT OF CASE AND FACTS

Mark Pickens was a teenager, only 19 years old, when he was sentenced to death for the murders of Noelle Washington, Anthony Jones II and Sha'Railyn Wright. Mark was barely old enough to be sentenced to death.

Mark was raised in an unstable household by his mother, Truvena Griffin, who was 15 years old when she became pregnant with Mark. Mark's father, Mark Sr., was 26 years old at the time. Truvena didn't know how to be a mother; she was only 15 years old and nobody had taken the time to help her become a parent. Mark Sr. was abusive toward her. Mark Sr.'s father told him to hit her because she had a smart mouth. Mark Sr.'s abuse resulted in Truvena having an emergency Caesarian section to deliver Mark.

Truvena asked her grandmother if she could come back and stay with her to get away from the abuse, but her grandmother told her "no", that she had to deal with it because he was her husband.

Mark Sr. and Truvena split up and Truvena later married Rodney Griffin Sr. He was also abusive to her. While they were married Rodney hit her, breaking her nose.

Truvena suffered, and still suffers, from severe depression. She was prescribed medication for depression and received therapy. Due to her depression, she is disabled and unable to work.

Truvena was abusive towards Mark. She would usually hit Mark with a belt and sometimes would whip him until he cried and stuttered. Once, she hit him in the face and from that, he has a scar.

Mark's maternal grandmother, Mattie, often kept Mark because of Truvena's abuse. Isiah Marshall, Truvena's brother, describes Truvena as "iffy" and "off." He recalls that when Mattie passed away, it was very hard on Mark.

According to Monica Marshall, Truvena's sister, Truvena was abusive to all of her children. Monica said that Mark had to grow up fast because Truvena is so lazy. She believes that Truvena is bipolar. Monica stated that all of Truvena's boyfriends were abusive and Mark saw that abuse.

When Mark was 14 years old, he was going to see his father who he had not seen in a long time and who was living in Florida. Two days before the visit, Mark's father was arrested for rape and has been in prison ever since.

Mark started boxing when he was 13 years old. Mark's first boxing coach was Tony Hyde. Tony stated that during his time training Mark, he became familiar with Truvena. He stated that Truvena was a "street person" or a "hustler."

Mark left the training program Tony was affiliated with and went with another coach, Levi Smith, to a new training location. Levi would sometimes take some of the kids who he trained to his home to give them extra supervision. Mark was one of those kids. Levi stated that Mark was a good kid; the problem was that his mother was Mark's worst enemy. Levi thought that Mark should stay under his supervision longer than he did, but Truvena resisted. Levi saw a decline in Mark's behavior when he left his supervision.

Truvena's inability to provide appropriate parental guidance to Mark led to some behavior problems. Mark spent time in the custody of the Department of Youth Services (DYS) for offenses such as drug possession and carrying a concealed weapon. In a Parole Release Report dated July 25, 2008, the parole officer noted that Mark's mother "coddles him and lies for

him." The report documented that Mark's family placed too much emphasis on his boxing and not on education or employment. Because his family did not emphasize the importance of education, Mark never graduated from high school

Mark was released from DYS custody for the last time on August 14, 2008, and placed on probation. After his release from DYS, Mark started to get his life together. According to a DYS Progress Report dated September 8, 2008, Mark applied for a job at Family Dollar on August 15, 2006 and was hired on August 20. Subsequent reports document that he was working long shifts. In October 2008, in notations in the Progress Report, both the probation officer and substance abuse case manager were pleased with Mark's progress. He was also making payments on his court fines. In November 2008, Mark successfully completed a substance abuse case management program.

On November 14, 2008, Mark was promoted to assistant manager at Family Dollar. He was working 12-hour shifts. He was rewarded with a gift card incentive from his probation officer. Mark also received his driver's license.

However, Mark lost his job in December of 2008, after to an incident where he was accused of eating some food items without paying for them. While Mark had an explanation for the incident, he was terminated from employment. Mark agreed voluntarily to repay Family Dollar.

On April 6, 2009, Mark was charged with theft of three boxes of Zip-Loc Bags valued at $6 from Family Dollar.

Mark had a final discharge from probation scheduled for May 11, 2009. At a meeting with his probation officer on April 8, 2009, Mark discussed his future plans. Mark was seeking

employment and focusing on attaining his GED. Specifically, Mark was planning on attending a vocational home health care program and was registering for another GED test date.

Mark appeared in municipal court on the morning on June 1, 2009, on the theft case of the Zip-Loc bags, where he waived counsel and pled to Unauthorized Use of Property, a fourth degree misdemeanor. He was sentenced to thirty days in jail suspended, a fine of $100, costs, restitution, one year of probation, one-hundred hours of community service and he was required to stay out of Family Dollar stores. On June 1, 2009, Mark left court and went to the probation department where he met with probation officer Sarah Willison at 11:47 a.m.. At this meeting, nothing about Mark's behavior seemed unusual to her; he was rather quiet.

The State's theory in the instant case was that Mark was upset with his sometime girlfriend Noelle Washington because the day prior to the homicides, May 31, 2009, they had an altercation that ultimately resulted in a rape charge being filed against Mark. Thus, Mark's demeanor on the morning of June 1 was especially important to demonstrate that he wasn't upset or acting bothered.

On the evening of June 1, 2009, Noelle Washington, Anthony Jones II, and Sha'Railyn Wright were killed. Trial counsel tried to show that Mark wasn't guilty of these crimes. However, because trial counsel did not conduct an adequate investigation, counsel did not present evidence about Mark's future plans from the DYS records and his demeanor with the adult probation officer that morning. This information would have been important for the jury to hear because it was inconsistent with the State's theory, that Mark was a calculating, cold-blooded killer. Mark's stated and documented future plans would never come to fruition if he was responsible for the deaths of three people.

This evidence would similarly have been important to present at the mitigation phase. The DYS records demonstrate Mark's ability to get along well in a structured environment and were relevant for the jury to consider when determining Mark's sentence. His demeanor the morning of his court hearing also could have created doubt about whether the death sentence was appropriate.

Additionally, evidence from Mark's boxing coaches would have supported his ability to function well in a structured environment. Mark exceled at boxing and under the guidance of his coaches. This information would have enabled the jurors to give weight to critical information when determining whether Mark should receive a life sentence.

Moreover, evidence of Mark's chaotic upbringing was not presented. Monica Marshall, Mark's maternal Aunt, described Truvena as being abusive to all of her children and hitting Mark with anything she could find. Monica stated that Truvena is responsible for the scar on Mark's face. Isiah Marshall, Mark's maternal Uncle, described Truvena as "iffy" and "off." Levi Smith, a boxing coach of Mark, discussed how Truvena is Mark's "worst enemy." Another boxing coach, Tony Hyde, described Truvena as a "street person" or "hustler."

Dr. Bob Stinson reviewed records and conducted an evaluation of Mark. Dr. Stinson found mitigating factors that should have been presented to the jury at Mark's mitigation hearing. For instance, Dr. Stinson found the lack of structure and consistency provided by Truvena during Mark's upbringing to be an important factor. Dr. Stinson determined that Mark was the victim of abuse. Dr. Stinson ascertained that mental illness in Mark's family and possible neurological impairment were factors that should have been explored with the jury.

Unfortunately, the only evidence presented at Mark's mitigation phase was three pages of testimony from his mother (Tr. 3173-3176) and his unsworn statement. Had information from a

skilled psychologist, family, and friends been presented, there is a reasonable likelihood that at least one juror would have voted for a life sentence. State. v. Brooks, 75 Ohio St. 3d 148, 162 (1996). Instead, the jury convicted Mark of all charges and sentenced him to death.

GROUNDS FOR RELIEF

First Ground for Relief

1. Petitioner incorporates each and every allegation contained in the preceding paragraphs as if fully written herein.

2. Petitioner Pickens' convictions and sentences are void and/or voidable because he was denied the effective assistance of counsel and due process during the voir dire phase of his capital trial when trial counsel failed to effectively question Juror Michael F. Carroll on his views about the death penalty. Petitioner's rights as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution, §§ 1, 2, 5, 9, 10, 16 and 20 were violated and he was thereby prejudiced. Strickland v. Washington, 466 U.S. 668 (1984).

3. In his juror questionnaire, Juror Carroll answered that the death penalty was "Appropriate with very few exceptions when someone has been murdered." Ex. A, p. 8.[1]

4. Juror Carroll described his views on the death penalty as "No problem" on his juror questionnaire. Id.

5. Juror Carroll checked a box on his juror questionnaire indicating that he agreed with the statement "The death penalty should **always** be used as the punishment for every murder." Id. at p. 9.

6. Juror Carroll also checked a box on his juror questionnaire agreeing with the following statements: "A person sentenced to death in Ohio will probably never be executed;" "Convicted criminals always get out of prison too soon;" and "The courts have made it too difficult to prosecute and convict criminals." Id.

[1] On May 13, 2011, the direct appeal attorneys filed Appellant's Motion to Supplement the Record with the juror questionnaires in the Ohio Supreme Court in case number 2010-1406. As of this date, the motion has not been ruled on.

7. Juror Carroll also checked a box on his juror questionnaire slightly agreeing with the statement, "People in prison have a better life than most of the taxpayers who pay for the prisons." Id.

8. Juror Carroll indicated on his juror questionnaire that he is uncomfortable being around "Young black men with their pants down to their knees." Id. at p. 12. Defense counsel did not question Juror Carroll about this view of his regarding African Americans which was especially important since Petitioner Pickens is African American.

9. During voir dire, defense counsel only asked Juror Carroll about his views on the death penalty one time. Juror Carroll stated that, "If they have committed a crime, that, as you say, meets the specifications, I wouldn't have any trouble at all [imposing the death penalty]." Tr. 801-802. This response by Juror Carroll clearly warranted further exploration by defense counsel.

10. Petitioner Pickens has a right to have a jury composed of people who "stand impartial and indifferent to the extent commanded by the Sixth Amendment." Morgan v. Illinois, 504 U.S. 719, 727 (1992).

11. "A juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do. Indeed, because such a juror has already formed an opinion on the merits, the presence or absence of either aggravating or mitigating circumstances is entirely irrelevant to such a juror. Therefore, based on the requirement of impartiality embodied in the Due Process Clause of the Fourteenth Amendment, a capital defendant may challenge for cause any prospective juror who maintains such views. If even one such juror is empaneled and the death sentence is imposed, the State is disentitled to execute the sentence." Id. at 729.

12. There is a longstanding right in American jurisprudence to question jurors about potential racial bias and defense counsel failed to exercise that right on behalf of their client by questioning Juror Carroll about his potential racial bias. Aldridge v. United States, 283 U.S. 308, 313 (1931). A failure to challenge for cause can constitute ineffective assistance of counsel, and Petitioner Pickens' counsel's failure to challenge for cause or even question Juror Carroll in this case violated his Sixth and Fourteenth Amendment rights. See Virgil v. Dretke, 446 F.3d 598, 601 (5th Cir. 2006).

13. Additionally, Pickens' counsel failed to exhaust their peremptory challenges. Out of six peremptory challenges available, counsel only used four. Tr. 992. "Decisions on the exercise of peremptory challenges are a part of trial strategy." State v. Trimble, 122 Ohio St. 3d 297, 311 (2009) citing State v. Goodwin, 84 Ohio St. 3d 331, 341 (1999). However, simply labeling a decision as strategic does not insulate it from being ineffective. The decision by Pickens' counsel not to excuse juror Carroll when they had two peremptory challenges remaining was deficient and Pickens' was prejudiced. Strickland v. Washington, 466 U.S. 668 (1984).

14. Petitioner Pickens supports this ground with evidence dehors the record that contains sufficient operative facts demonstrating trial counsel's ineffectiveness and the resultant prejudice. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

Attached Exhibit: A

Legal Authority Supporting this Ground for Relief: Strickland v. Washington, 466 U.S. 668 (1984); Morgan v. Illinois, 504 U.S. 719 (1992); Aldridge v. United States, 283 U.S. 308 (1931); Virgil v. Dretke, 446 F.3d 598, 601 (5th Cir. 2006); State v. Trimble, 122 Ohio St. 3d 297 (2009); State v. Goodwin, 84 Ohio St. 3d 331 (1999); State v. Jackson, 64 Ohio St. 2d 107 (1980); U.S. Const. Amends. V, VI, VIII and XIV; Section 10, Art. I of the Ohio Const. §§ 1, 2, 5, 9, 10, 16 and 20.

Second Ground for Relief

15. Petitioner incorporates each and every allegation contained in the preceding paragraphs as if fully written herein.

16. Petitioner Pickens' convictions and/or sentences are void or voidable because the death penalty is disproportionately meted out to those defendants who are racial minorities. This disparity exists in Hamilton County and the State of Ohio. The disparity existed in Hamilton County, Ohio, at the time of Petitioner's capital trial.

17. Ohio presently has 158 persons on death row. Of those, 79 are African-Americans and 71 are Caucasian (70 Caucasian males, 1 Caucasian female). Ex. B. This relatively small number of white inmates on Ohio's Death Row exists even though this class makes up 84.0 percent of the state's population. Ex. C.

18. This disproportionality also exists on the county level. Of the 31 persons Hamilton County currently has on Ohio's Death Row, 9 are white and 20 are African-American.[2] Ex. D. The comparatively small number of whites from Hamilton County on Ohio's Death Row exists even though this class of population makes up 71.3 percent of Hamilton County. Ex. E.

19. At the time of trial, Petitioner Pickens, an African American, was a resident of Hamilton County, and the victims were African American and residents of Hamilton County.

20. As a result of this disproportionate imposition, Petitioner Pickens' rights as guaranteed by the Fifth, Sixth, Eighth, and the due process and equal protections clauses of the Fourteenth Amendments of the United States Constitution and Section 10, Article I of the Ohio Constitution, §§ 2, 5, 9, 10, 16 were violated. Furman v. Georgia, 408 U.S. 238 (1972).

21. Petitioner Pickens supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate the disproportionate imposition of the death penalty on

[2] 1 person is Hispanic and 1 person is Middle Eastern.

him as a racial minority. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new sentencing hearing or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

Attached Exhibits: B, C, D and E.

Legal Authority Supporting this Ground for Relief: State v. Jackson, 64 Ohio St. 2d 107 (1980); U.S. Const. Amends. V, VI, VIII, and XIV; Section 10, Art. I of the Ohio Const., §§ 1, 2, 5, 9, 10, 16 and 20; Furman v. Georgia, 408 U.S. 238 (1972).

Third Ground for Relief:

22. Petitioner incorporates each and every allegation contained in the preceding paragraphs as if fully written herein.

23. Petitioner Pickens' sentences are void or voidable because he was denied the effective assistance of counsel in the mitigation phase of his capital trial as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and Section 10, Article I of the Ohio Constitution, §§ 1, 2, 5, 9, 10, 16 and 20 and he was thereby prejudiced. Strickland v. Washington, 466 U.S. 668, 686 (1984).

24. Defense counsel has a duty to investigate a capital defendant's background for mitigating factors. State v. Johnson, 24 Ohio St. 2d 87 (1986). It is only after a full investigation of all the mitigating circumstances that counsel can make an informed, tactical decision about which information would be helpful in the client's case. Id. at 90, citing, Pickens v. Lockhart, 714 F.2d 1455 (8th Cir. 1983); Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995); Hamblin v. Mitchell, 354 F.3d 482 (6th Cir. 2003); Wiggins v. Smith, 539 U.S. 510, 522 (2003).

25. Counsel failed to present the testimony of available and willing members of Petitioner's family and friends to the jury at the mitigation phase.

26. Monica Marshall, Mark's maternal aunt, stated in her affidavit that Mark's mother, Truvena, was "an abusive mom toward all of her children. She would hit Mark with whatever object she grabbed such as a hanger or a broom. The scar that is on Mark's face was caused by his Mom." Ex. F at ¶ 5. Monica recalled that "[a]t the age of 6 [Mark] was changing his siblings' diapers and mopping the floor." Id. at ¶ 8. She also "firmly believe[s] Truvena is bi-polar. Truvena can be very nice one moment and the next moment without any warning she

would go off." Id. at ¶ 12. Monica stated that if she had been asked to testify on Mark's behalf, she would have. Id. at ¶ 23.

27. Isiah Marshall, Mark's maternal uncle, stated in his affidavit that Truvena was "iffy" and "off." Ex. G at ¶ 5, 6. Isiah expressed that Mark enjoyed boxing and working. Id. at ¶ 11. Isiah stated he would have testified on Mark's behalf, if he had been asked. Id. at ¶ 15.

28. One of Mark's boxing coaches, Tony Hyde, started training Mark when he was 13 years old. Ex. H at ¶ 2. He stated that Mark got "whooped" but stuck it out and turned out to be a good fighter. Id. at ¶ 5. Tony said that Truvena was a "street person" or "hustler." Id. at ¶ 6. Tony was "absolutely shocked" when he learned that Mark was accused of these crimes. Id. at ¶ 8. Tony would have testified on Mark's behalf if he had been asked to do so. Id. at ¶ 9.

29. Another of Mark's boxing coaches, Levi Smith, also would have testified on Mark's behalf, if he had been asked. Ex. I at ¶ 10. Levi stated that he met Mark when he was 13 and coached him from about the age of 13 until he was 15 or 16. Id. at ¶ 2. Levi would take home some of the kids in the boxing program who needed extra supervision; Mark was one of those kids. Id. at ¶. Levi said that Mark's Mom was "[Marks] worst enemy." Id. at ¶ 6. Levi stated that Mark's Mom seemed to condone criminal behavior. Id. at ¶ 6. According to Levi, Mark was a good fighter and might have been a professional if he had stayed with it. Id. at ¶ 7.

30. Ronnie Griffin, one of Mark's younger brothers was willing to testify at Mark's trial. Ex. J at ¶ 6. Ronnie stated that "Mark is the best big brother I could have asked for." Id. at ¶ 2.

31. Counsel failed to adequately prepare Mark's mother, Truvena Griffin, for her testimony at the mitigation phase. Truvena's testimony encompassed barely three pages of trial transcript. Tr. 3173-3176. In Truvena's affidavit, more detail about both her and Mark's lives is covered. For example, she stated that "Sometimes [she] would whip Mark until he cried and stuttered."

Ex. K at ¶ 11. She also included pictures of Mark with two of his brothers. Ex. K at K-1, K-2. Both more comprehensive testimony from Truvena and the pictures would have helped to humanize Mark to the jury.

32. As a result of counsel's failure to completely investigate and prepare, counsel were unable to develop a complete social history for Petitioner Pickens. Not until a full investigation has been conducted can a defendant make a well-reasoned decision whether to present this testimony to the trier of fact. Defense counsel failed to present viable and relevant mitigating evidence for a sentence less than death. Kubat v. Thieret, 867 F.2d 351 (7th Cir. 1989). This type of testimony would have humanized Mark to the jury; showing that he was more than just the person they convicted of a triple homicide.

33. Defense counsel's deficient performance in representing Mark undermined confidence in the outcome of his capital trial. The trier of fact did not have an opportunity to consider relevant mitigating factors in violation of his Sixth, Eighth and Fourteenth Amendment rights. Petitioner Pickens supports this claim with evidence dehors the record that contains sufficient operative facts to demonstrate lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new mitigation hearing or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

Attached Exhibits: F, G, H, I, J, K, K-1 and K-2.

Legal Authority in Support of Ground for Relief: U.S. Const. Amends. V, VI, VIII and XIV; Section 10, Art. I of the Ohio Constitution, §§ 1, 2, 5, 9, 10, 16 and 20; Strickland v. Washington, 466 U.S. 668, 686 (1984), State v. Johnson, 24 Ohio St. 2d 87 (1986); Pickens v. Lockhart, 714 F.2d 1455 (8th Cir. 1983); Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995); Hamblin v. Mitchell, 354 F.3d 482 (6th Cir. 2003); Wiggins v. Smith, 539 U.S. 510, 522 (2003); Kubat v. Thieret, 867 F.2d 351 (7th Cir. 1989); State v. Jackson, 64 Ohio St. 2d 107, 111 (1980).

Fourth Ground for Relief:

34. Petitioner incorporates each and every allegation contained in the preceding paragraphs as if fully written herein.

35. Petitioner Pickens' sentences are void and/or voidable because he was denied effective assistance of counsel during the mitigation phase of his capital trial as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution, §§ 1, 2, 5, 9, 10, 16 and 20; Sup. R. 20 (III)(D), and he was thereby prejudiced. Strickland v. Washington, 466 U.S. 668 (1984); Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995); State v. Johnson, 24 Ohio St. 2d 87 (1986).

36. The Sixth and Fourteenth Amendments to the United States Constitution, Section 39, Article II of the Ohio Constitution, Sup. R. 20 (IV)(D) and O.R.C. § 2929.024 guarantee an accused in capital cases the use of experts. Ake v. Oklahoma, 470 U.S. 68 (1985).

37. There is a "particularly critical interrelation between expert psychological assistance and minimally effective representation of counsel." Beavers v. Balkom, 636 F.2d 114, 116 (5th Cir. 1981) (quoting United States v. Fessel, 531 F.2d 1275, 1279 (5th Cir. 1976)). Courts recognize that one of the expert's functions in any case is to translate technical and esoteric subject matter for the trier of fact. United States v. Griffith, 118 F.3d 318 (5th Cir. 1997); United States v. Walls, 70 F.3d 1323 (D.C. Cir. 1995). This is especially important in a capital case, where the trier is deciding whether the defendant should live or die.

38. There was no psychological testimony presented at Petitioner's trial. The lack of expert psychological testimony prevented the sentencer from considering relevant mitigating psychological evidence when deliberating on the sentence. Expert psychologist Dr. Bob Stinson stated that the psychologist consulted at trial "did not identify any mitigating factors from a

psychological perspective." However, Dr. Stinson's "evaluation revealed several important mitigating factors." Id. at ¶ 24.

39. Dr. Bob Stinson reviewed materials and conducted an interview of Mark. Based on this review, Dr. Stinson found mitigating factors that should have been presented, and expanded upon, to the jury. Ex. L at ¶ 17-17.7. These factors include:

- Mark's mother's young age when she gave birth to Mark;
- Mark's father absence;
- Mental illnesses in Mark's family;
- Domestic violence in the home;
- Abuse suffered by Mark;
- Lack of structure and consistency in Mark's life;
- Possible learning disability and neuropsychological impairment.

40. Dr. Stinson stated that "Research shows that children who grow up in a home in which the mother began bearing children as a teenager are more likely to be physically abused and at the same time the quality of the home is lower in emotional support." Id. at ¶ 18. Further, Dr. Stinson described that, "Mothers with depression, for example, express greater levels of negative emotions (i.e., hostility, irritability, sadness). These parenting attributes are risk factors that may be associated with disrupted attachment and developmental delays in language, attention, and social competence in exposed children." Id. at ¶ 29. Dr. Stinson participated in a telephone conversation with Mark's mother and she "impressed [him] as angry, irritable, self-centered, and lacking in insight and judgment." Id. at ¶ 32.

41. Dr. Stinson would have testified about the impact of the abuse and neglect suffered by Mark. Id. at ¶ 44. Additionally, Dr. Stinson would have informed the jury about the effect on a

child in Mark's situation where there was a lack of parental supervision and discipline. Id. at ¶ 49.

42. In Dr. Stinson's "professional opinion, ... there were substantial mitigating factors that were not discovered or testified to at Mark Pickens's trial." Id. at ¶ 59.

43. Dr. Stinson points out the importance of Mark being evaluated by a neuropsychologist. Notably, Mark has several risk factors for suffering from brain damage or abnormality. For example, Dr. Stinson point to Mark's mother's depression, physical abuse, Mark's boxing, and learning disability. Id. at ¶ 53.1-53.8.

44. Petitioner was prejudiced by the absence of testimony from a mental health expert. The assistance of a competent psychologist would have enabled counsel to present mitigation evidence to explain Mark's life and to humanize him.

45. Petitioner Pickens supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner should be granted a new mitigation hearing or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

Attached Exhibit: L

Legal Authority in Support of Ground for Relief: Strickland v. Washington, 466 U.S. 668 (1984); Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995); State v. Johnson, 24 Ohio St. 2d 87 (1986); U.S. Const. Amends. V, VI, VII and XIV; Section 10, Art. I of the Ohio Const. §§ 1, 2, 5, 9, 10, 16 and 20;; Sup. R. 20; O.R.C. § 2929.024; Ake v. Oklahoma, 470 U.S. 68 (1985); Beavers v. Balkom, 636 F.2d 114, 116 (5th Cir. 1981); United States v. Fessel, 531 F.2d 1275, 1279 (5th Cir. 1976); United States v. Griffith, 118 F.3d 318 (5th Cir. 1997); United States v. Walls, 70 F.3d 1323 (D.C. Cir. 1995); State v. Jackson, 64 Ohio St. 2d 107, 111 (1980).

Fifth Ground for Relief:

46. Petitioner incorporates each and every allegation contained in the preceding paragraphs as if fully written herein.

47. Petitioner Pickens' sentences are void and/or voidable because he was denied effective assistance of counsel during the mitigation phase of his capital trial as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution, §§ 1, 2, 5, 9, 10, 16 and 20; Sup. R. 20 (III)(D), and he was thereby prejudiced. Strickland v. Washington, 466 U.S. 668 (1984); Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995).

48. The Sixth and Fourteenth Amendments to the United States Constitution, Section 39, Article II of the Ohio Constitution; Sup. R. 20 (III)(D) and O.R.C. § 2929.024 guarantee an accused in capital cases the use of experts. Ake v. Oklahoma, 470 U.S. 68 (1985).

49. Defense counsel failed to move the trial court for appointment of a neuropsychologist to adequately prepare the defense case at Petitioner's trial. As a result, counsel's performance "fell below an objective standard of reasonableness." Strickland v. Washington, 466 U.S. 668 (1984); Ake v. Oklahoma, 470 U.S. 68 (1985).

50. There is a "particularly critical interrelation between expert psychological assistance and minimally effective representation of counsel." Beavers v. Balkom, 636 F.2d 114, 116 (5th Cir. 1981) (quoting United States v. Fessel, 531 F.2d 1275, 1279 (5th Cir. 1976)).

51. Evidence existed at the time of trial indicative of the need for neuropsychological testing.

52. Mark trained and competed in boxing. Mark's family members and boxing coaches discussed his boxing. Mark began boxing at the age of 13. Ex. H at ¶ 2. According to one of Mark's boxing coaches, Tony Hyde, "Mark got 'whooped' three out of five days." "Mark once

suffered a technical knock-out while training. Mark got his "bell rung" pretty good. Id. at ¶ 5. Coach Levi Smith stated that Mark would get jumped at school and would appear with scars and bruises that he assumed were from fights at school. Ex. I at ¶ 4. This information is important because of the blows to his head that Mark suffered. Ex. L at ¶ 53.4.

53. Dr. Stinson evaluated Mark and stated in his affidavit that Mark should have been evaluated for neurological or neuropsychological impairment. Id. at ¶ 58. Dr. Stinson also pointed to abuse suffered by both Mark and his mother while she was pregnant with him as support for the need for neuropsychological testing. Id. at ¶ 53.2, 53.3, 53.5. Dr. Stinson also stated that the discrepancy between Mark's verbal and performance IQ scores, along with his failing the GED exam several times are indicators of a possible learning disability. Id. at ¶ 53.6-53.8.

54. Dr. Barry Layton, Ph.D., expert in neuropsychology, reviewed materials concerning Mark. Based on his review, Dr. Layton stated that the records "are consistent with the likelihood that Mr. Pickens is affected by chronic effects of organic brain dysfunction and that he was so affected on June 1, 2009." Ex. M at p. 3.

55. Dr. Layton stated that "a neuropsychological evaluation is required to: 1. determine the existence of permanent organic brain impairment ... and; 2. detail any residual effects of organic brain impairment on cognition ..., behavior ... and emotional functioning." Id.

56. Counsel's failure to investigate, obtain, and utilize a neuropsychologist in this situation where an individual suffered blows to his head and physical abuse, and showed signs of having a learning disability cannot be characterized as a reasonable exercise of professional judgment. Strickland v. Washington, 466 U.S. 668 (1984). This type of expert would have assisted the trier of fact in understanding Petitioner and the effect this had on his perceptions and behavior.

Counsel, however, unreasonably failed to fully investigate and develop this issue even though available information demonstrated the need for this type of examination. Glenn v. Tate, 71 F.3d 1204, 1207 (6th Cir. 1995) (referring to counsel's failure to present evidence about defendant's history, character, background, and organic brain damage in mitigation); Padilla v. Kentucky, 130 S.Ct. 1473, 1482 (2010).

57. Defense counsel has a duty to adequately investigate a capital defendant's background for mitigating factors. State v. Johnson, 24 Ohio St. 2d 87 (1986). It is only after a full investigation of all the mitigating circumstances that counsel can make an informed, tactical decision about which information would be helpful in the client's case. Id. at 90, citing, Pickens v. Lockhart, 714 F.2d 1455 (8th Cir. 1983); Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995); Strickland v. Washington, 466 U.S. 668 (1984); Dickerson v. Bagley, 453 F.3d 690 (6th Cir. 2006); Hamblin v. Mitchell, 354 F.3d 482 (6th Cir. 2003); Wiggins v. Smith, 539 U.S. 510, 522 (2003).

58. Petitioner Pickens supports this ground with evidence dehors the record that contains sufficient operative facts to demonstrate lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new mitigation hearing or, at a minimum, discovery and an evidentiary hearing on this ground for relief.

Attached Exhibits: H, I, L and M.

Legal Authority in Support of Ground for Relief: U.S. Const. Amends. V, VI, VIII and XIV; Section 10, Art. I of the Ohio Const. §§ 1, 2, 5, 9, 10, 16 and 20; Sup. R. 20 (III)(D); O.R.C. § 2929.024; Strickland v. Washington, 466 U.S. 668 (1984); Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995); Ake v. Oklahoma, 470 U.S. 68 (1985); Beavers v. Balkom, 636 F.2d 114, 116 (5th Cir. 1981); United States v. Fessel, 531 F.2d 1275, 1279 (5th Cir. 1976); United States v. Griffith, 118 F.3d 318 (5th Cir. 1997); United States v. Walls, 70 F.3d 1323 (D.C. Cir. 1995); Padilla v. Kentucky, 130 S.Ct. 1473, 1482 (2010); State v. Johnson, 24 Ohio St. 2d 87 (1986); Pickens v. Lockhart, 714 F.2d 1455 (1983); Dickerson v. Bagley, 453 F.3d 690 (6th Cir. 2006); Hamblin v. Mitchell, 354 F.3d 482 (6th Cir. 2003); Wiggins v. Smith, 539 U.S. 510, 522 (2003); State v. Jackson, 64 Ohio St. 2d 107, 111 (1980).

Sixth Ground for Relief:

59. Petitioner incorporates each and every allegation contained in the preceding paragraphs as if fully written herein.

60. Petitioner Pickens' sentences are void and/or voidable because he was denied effective assistance of counsel during the sentencing phase of his capital trial as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution, §§ 2, 5, 9, 10, 16 and 20; and he was thereby prejudiced. Strickland v. Washington, 466 U.S. 668 (1984).

61. At Petitioner's capital trial, defense counsel failed to investigate, prepare, and present mitigating evidence regarding Petitioner's character, history and background, including his ability to adapt to confinement. Several times while he was a teenager, Petitioner was held in the custody of the Department of Youth Services. (DYS). Defense counsel did not introduce any testimony or records about his adaptability to the institutional setting. The jury never heard this important evidence, and thus, they were not able to consider Petitioner's ability to successfully adapt to prison life.

62. In support of this ground for relief, Petitioner appends, and fully incorporates herein by reference, DYS reports written by various probation officers and social workers at DYS. A review of these documents supports the fact that Petitioner was not violent while held in DYS. Defense counsel never presented these reports to the jury during Petitioner's mitigation hearing.

63. A DYS Reception Assessment Summary dated November 30, 2006, and signed by Sharon Kane, the social worker, describes some of Mark's behaviors. Under the "Comments" section, it reads "Mark presents as a cooperative youth with a pleasant mood and congruent affect. His thoughts are future oriented and appear WNL [within normal limits] in form and

content." Ex. N at page 3 of 6. In the ODYS Social Service Individual Contact Notes, on February 11, 2007, staff member Karen Lemons noted that, "Mark continues to be respectful and participates in group. However, recently he has not been as engaged in group and at times inattentive. This social worker has brought it to his attention. He was receptive to the corrective advice." Ex. O.

64. In a DYS Reception Assessment Summary dated November 16, 2007, Ms. Reid, the social worker, filled out a form regarding Mark. On the form it asks for "Behavior Observation" and Ms. Reid wrote "Mark follows the rules of the Institution and participates in both schedule[d] and volunteered programs. Mark appears to be quiet. He assists unit staff with chores when needed." Ex. P at p. 6 of 6.

65. In a DYS Youth Unified Case Plan dated February 29, 2008, social worker Kara Koenig reported about Mark's recommitment to DYS. She wrote "Since his return to IRJCF, Mark's behavior on the unit has been positive. He has received no YBIR's [Youth Behavior Incident Report] on the unit and has not been the subject of any AMS entries. Mark is always polite, cooperative and respectful of staff." Ex. Q at p. 1 of 4.

66. The United States Supreme Court recognizes future adaptability to prison life as a mitigating factor, as does the Ohio Supreme Court. Skipper v. South Carolina, 476 U.S.1 (1986); State v. Simko, 71 Ohio St. 3d 483 (1994). In its decision, the United States Supreme Court reasoned that "a defendant's disposition to make a well-behaved and peaceful adjustment to life in prison is itself an aspect of his character that is by its nature relevant to the sentencing determination." Skipper, 476 U.S. at 7. The Court further noted that, not only is the message important to the capital jury, but also, the messenger is vital when weighing the information. "The testimony of more disinterested witnesses – and, in particular, of jailers who would have no

particular reason to be favorably predisposed toward one of their charges – would quite naturally be given much greater weight by the jury." Id. at 8.

67. Defense counsel in a capital case has a duty to investigate all possible mitigating factors, including a thorough review of defendant's background. Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995). At Petitioner's trial, his counsel were ineffective for failing to introduce available mitigating evidence of his lack of future dangerousness while incarcerated, ability to adjust to confinement and ability to adjust his behavior when recommended.

68. The United States Constitution's Sixth Amendment guarantees criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). This right is violated when counsel's performance falls below an objective standard of reasonableness and the client is prejudiced by counsel's breach of duty. Id. at 690, 696.

69. Petitioner was prejudiced by his counsel's ineffectiveness. Defense Counsel's deficient performance in representing Petitioner undermines confidence in the outcome of his capital trial. As a result of trial counsel's ineffectiveness, Petitioner's rights guaranteed by the United States Constitution's Sixth, and Fourteenth Amendments were violated.

70. Petitioner supports this ground with evidence dehors the record that contains sufficient operative facts demonstrating the lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new mitigation phase hearing, or, in the alternative, the Court should order an evidentiary hearing and allow discovery on the issues presented in this ground for relief.

Supporting Exhibits: N, O, P and Q.

Legal Authority in Support of Ground for Relief: U.S. Const. Amends. V, VI, VIII and XIV; Section 10, Article I of the Ohio Const. §§ 1, 2, 5, 9, 10, 16 and 20; O.R.C. § 2929.024; Skipper v. South Carolina, 476 U.S. 1 (1986); State v. Simko, 71 Ohio St. 3d 483 (1994); Strickland v. Washington, 466 U.S. 668 (1984); Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995); State v. Jackson, 64 Ohio St. 2d 107 (1980).

Seventh Ground for Relief:

71. Petitioner incorporates each and every allegation contained in the preceding paragraphs as if fully written herein.

72. Petitioner Pickens' convictions and sentences are void and/or voidable because he was denied effective assistance of counsel during the culpability and sentencing phases of his capital trial as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution, §§ 1, 2, 5, 9, 10, 16, 20 and he was thereby prejudiced. Strickland v. Washington, 466 U.S. 668 (1984).

73. At Pickens' trial, defense counsel argued to the jury that Pickens did not commit the crimes. In opening statement at the culpability phase, defense counsel told the jury "In essence, he did not do this crime." Tr. 1120. In closing argument at the culpability phase, defense counsel told the jury, "You can't find a person guilty based on the evidence that has been presented by the prosecution coming from this witness stand." Tr. 3018. In opening statement at the sentencing phase, defense counsel told the jury, "You reached your verdict [of guilty] and although we disagree with it...". Tr. 3167. In closing argument at the sentencing phase, defense counsel told the jury, "He has always maintained his innocence ... we have been very clear, I hope, all throughout this case, up front with you, not trying to hide it or hide behind the ball that he is saying he didn't do it. Nothing has changed with his position." Tr. 3200, 3208.

74. Defense counsel's theory of the case was that Pickens' didn't commit the crimes. Once the jury convicted him of the crimes, defense counsel argued residual doubt by criticizing the testimony of the State's witnesses and the evidence from the culpability phase. Tr. 3213–3220. For example, defense counsel argued "[t]here was lot of conflicting evidence" Tr. 3213; "I brought out the fact that [Jonda Palmer] had mental illness" Tr. 3214; "[t]here [are] no

eyewitness[] ... This is a case that clearly leaves matters unresolved in certain aspects. There was plenty of questionable evidence. At the end of the day, at the end of the case there are still unresolved issues" Tr. 3217; "You need to keep on thinking about reasonable doubt in the penalty phase because it clearly exists. Consider once again, and I will mention these names for the last time; Jonda Palmer, Ronnell Harris, Cynthia Evans... Montez Lee, clearly not truthful. Noelle Washington. The investigation itself." Tr. 3219.

75. Given defense counsel's statements and arguments about residual doubt at both phases of the trial, they failed to present important evidence to support their claim.

76. On the morning of June 1, 2009, Mark appeared in Hamilton County Municipal Court on a criminal charge. Mark was charged with the theft of three boxes of Zip-Loc bags valued at $6. Ex. R. Mark waived counsel and pled to Unauthorized Use of Property, a fourth degree misdemeanor. He was sentenced to thirty days in jail suspended, a fine of $100, costs, restitution, one year of probation, one-hundred hours of community service and he was required to stay out of Family Dollar stores. Ex. S.

77. On June 1, 2009, Mark left court and went to the probation department where he met with probation officer Sarah Willison at 11:47 a.m.. At this meeting, nothing about Mark's behavior seemed unusual to her; he was rather quiet. Ex. T. Mark's demeanor was especially important because he and his sometime girlfriend, Noelle Washington, had an altercation the previous day that resulted in his being charged with rape. Tr. 2930. The State's theory of the case was that Mark committed the homicides because he was upset with her for filing the rape charge. Tr. 2946, 2951, 2961, 3034, 3045-47. The fact that Mark went to court and then to see his probation officer without any issue and without appearing upset, would have been important for the jury to

hear. This information would have buttressed defense counsel's assertion of residual doubt at both phases of the trial.

78. Additional evidence to support this assertion was found in the DYS records. At a meeting with his juvenile probation officer on April 8, 2009, Mark discussed his future plans. Mark was seeking employment and focusing on attaining his GED. Specifically, Mark was planning on attending a vocational home health care program and was also registering for another GED test date. Ex. U. It is inconsistent for a person who has documented future plans, like Mark had, to murder three people because that would certainly thwart those plans. This evidence, in conjunction with the other reasons defense counsel pointed out as residual doubt, was important to present to the jury.

79. Petitioner was prejudiced by his counsel's ineffectiveness. Defense Counsel's deficient performance in representing Petitioner undermines confidence in the outcome of his capital trial. As a result of trial counsel's ineffectiveness, Petitioner's rights guaranteed by the United States Constitution's Sixth and Fourteenth Amendments were violated. Strickland v. Washington, 466 U.S. 668, 690, 696 (1984).

80. Petitioner supports this ground with evidence dehors the record that contains sufficient operative facts demonstrating the lack of competent counsel and the prejudice resulting from counsel's ineffectiveness. State v. Jackson, 64 Ohio St. 2d 107, 111 (1980). Petitioner must be granted a new trial, mitigation phase hearing, or, in the alternative, the Court should order an evidentiary hearing and allow discovery on the issues presented in this ground for relief.

Supporting Exhibits: R, S, T and U.

Legal Authority in Support of Ground for Relief: U.S. Const. Amends. V, VI, VIII and XIV; Section 10, Art. I of the Ohio Const. §§ 1, 2, 5, 9, 10, 16, 20; O.R.C. § 2929.024; Strickland v. Washington, 466 U.S. 668 (1984); State v. Jackson, 64 Ohio St. 2d 107 (1980).

CONCLUSION

WHEREFORE, Petitioner, Mark Pickens, requests the following relief:

A. That this Court declares Mr. Pickens' judgment to be void or voidable and grant him a new trial based on the matters raised in the petition and supported by the attached exhibits;

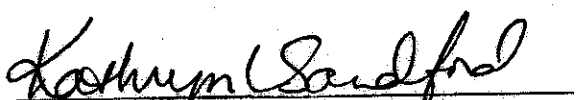
B. In the alternative, that this Court declare Mr. Pickens' death sentence to be void or voidable and grant him a new sentencing hearing based on the matters raised in this petition and supported by the attached exhibits;

C. If this Court is not inclined to grant a new trial or sentencing hearing to Mr. Pickens based on the matters raised in the post-conviction petition and supported by the attached exhibits, he requests that, after permitting him to pursue discovery, that this Court conduct an evidentiary hearing pursuant to Ohio Revised Code Ann. § 2953.21;

D. That this Court grant any further relief to which Mr. Pickens might be entitled.

Respectfully submitted,

OFFICE OF THE
OHIO PUBLIC DEFENDER



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Assistant State Public Defender

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(614) 466-5394
(614) 644-0708 Fax

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was hand delivered to Joseph Deters, Hamilton County Prosecuting Attorney, 230 E. Ninth Street, Suite 4000, Cincinnati, Ohio 45202, this 17th day of May, 2011.

Kathryn L. Sandford

KATHRYN L. SANDFORD - 0063985
Assistant State Public Defender

343588

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	Case No. B-0905088
Plaintiff-Respondent,	:	Judge Steven Martin
-vs-	:	POST-CONVICTION PETITION O.R.C. § 2953.21
MARK PICKENS,	:	
Defendant-Petitioner.	:	EVIDENTIARY HEARING REQUESTED ON ALL GROUNDS FOR RELIEF

APPENDIX TO MARK PICKENS' POST-CONVICTION PETITION

VOLUME I
(Exhibits A-U)

OFFICE OF THE
OHIO PUBLIC DEFENDER

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Counsel for Petitioner

INDEX TO POST-CONVICTION PETITION

12

JUROR QUESTIONNAIRE

JUROR NAME AND NUMBER Michael F. Arrow 379912

1. Age: 46

2. What is your gender? Male X Female ____

3. What is your race? (please circle)

   a) White/Caucasian b) Black/African American

   c) Hispanic/Latino d) Asian/Pacific Islander

   e) Other (please state) ____

4. If you have children, please list (include children not living with you):

Sex	Age	Does child live with you	Level of education	Occupation
F	37	NO	College	Human Resources
M	40	NO	College	Finance Manager
	Shannon			
	Brian			

5. Do you have any medical or physical condition that might make it difficult for you to serve as a juror? (Please include any hearing or eyesight problem.) Yes ____ No X

   Please describe: Heart (By Pass Surgery) Continue issues as a result of Prostate Surgery

6. Are you taking any medications that might make it difficult for you to serve as a juror?

   Yes ____ No X

7. Do you have any problems or areas of concern at home or at work that might interfere with your duties as a juror during trial? Yes ____ No X

   If yes, please describe: ____

EXHIBIT A

1

8. What type of area do you live in? (Please circle one.)
City ____ Suburb X Rural ____

9. How long have you lived at your present residence?
25 years

10. Do you own or rent? Own X Rent ____

11. List areas of past residence within the last ten years and indicate how long you lived in each location (you do not need to give addresses):
above

12. Where were you born? Cincinnati OH

13. Where were you raised? Cincinnati OH

14. Is English your first language? Yes X No ____
If no, what is your first language? ____

15. Do you have any difficulty:
Reading English? Yes ____ Sometimes ____ No X
Understanding spoken English? Yes ____ Sometimes ____ No X

16. Are you currently employed outside the home? Yes ____ No X
If so, by whom are you employed? —
Full or part-time? —
If part-time, how many hours per week? —
How long have you been so employed? —

17. What are your specific duties and responsibilities on the job? —

18. Do you have the authority to hire and fire employees or have a significant say in these decisions if someone else has the final word? Yes ____ No ____
N/A

19. If not currently employed outside the home, please check the category that applies to your employment status:

_____ Homemaker	_____ Student
_____ Unemployed-looking for work	X Retired
_____ Unemployed-not looking for work	_____ Disabled
_____ Other (please explain) _____	

20. If you are not currently employed outside the home, but were previously so employed, please describe your most recent form of employment, stating the name of your employer, whether you were employed full or part-time, when and for how long you were so employed: HEINZ CORPORATION - PACKAGE DESIGN - 10 years
KENNER TOY - PACKAGE DESIGN - 17 years

21. Please list your work experience over the past ten years and state when and for how long you were employed at each job. Please give a brief description of each job.
PACKAGING DEVELOPMENT FOR HEINZ - LAST 10 YEARS AND KENNER TOY - 17 YEARS PRIOR TO HEINZ

22. Have you ever worked in journalism or the news industry in any capacity?

Yes _____ No X

If yes, please state where and when you were so employed and give a brief description of your duties: _____

23. Do you have any close friends or relatives who either have worked or are currently working in journalism or in the news industry in any capacity? Yes _____ No X

If yes, please state where and when he or she was so employed and give a brief description of his or her duties: _____

24. Have you ever worked in a laboratory or in any medical research or testing facility?
Yes _____ No X

If yes, please describe your duties and when and for how long you were so employed:

_____

_____

25. Do you now work or have you ever worked in law enforcement or the security field (including federal, military, state, county, corrections, city, auxiliary, volunteer, etc.)?

Yes _____ No X

If yes, please describe the position(s) and dates in detail: _____

_____

_____

26. Have any of your relatives and/or close friends ever worked in law enforcement or the security field (including federal, military, state, county, corrections, city, auxiliary, volunteer, etc.)? Yes _____ No X

If yes, please describe in detail: _____

_____

_____

27. What is the highest grade in school that you completed? BACHELORS DEGREE - DESIGN

28. Please name any educational programs you have attended (vocational schools, certification programs, part-time study):

_____

_____

29. If you attended any schools or colleges after high school, please name the schools and colleges you attended, your major areas of study, and the field in which you obtained your degree(s):

UNIVERSITY OF CINCINNATI - INDUSTRIAL DESIGN - 1969

_____

_____

30. Are you currently in school? Yes _____ No X

If yes, which school and what are you studying? _____

_____

_____

31. Do you plan to attend school in the future? Yes ____ No X
If yes, where do you plan to go and what do you plan to study? ____

32. What special training or skills do you have? (Please include any technical, medical, psychology or scientific training and special skills acquired on the job.) ____
PHOTOGRAPHY

33. While in school, what was your favorite subject? MATH

34. What was your least favorite subject? ENGLISH - LIT

35. Do you have any legal training or have you taken any law course? Yes ____ No X
If yes, please explain: ____

36. Do you now own or have you ever owned a firearm? Yes ____ No X
If yes, what type of firearm and for what purpose did you own it? ____

37. Have you ever fired a handgun or rifle? Yes X No ____
If yes, please explain the type of gun and the circumstances under which you fired it: ____

38. Have you ever had any bad experiences with guns, such as having one pointed at you?
Yes X No ____
If yes, please explain AT A GAS STATION ONE POINTED AT ME. I

39. Have you ever served in the military? Yes ____ No X

If yes, please list: Branch of service: _____

Rank: _____ Dates of service: _____

40. Do you have combat experience? Yes ____ No X

If yes, please explain: _____

_____

_____

41. Were you ever involved in any way with military law enforcement, court martial or investigations? Yes ____ No X

If yes, please explain: _____

_____

_____

42. Was your spouse or significant other ever in the military? Yes ____ No X

If yes, what branch and when? _____

43. Please complete regarding your current spouse or partner:

Spouse/partner's place of birth? CINCINNATI OH

Spouse/partner's race or ethnic background? WHITE

Spouse/partner's current employment status? RETIRED

Spouse/partner's occupation? (If that person is retired, unemployed or disabled, what his or her occupation?) SECRETARY

By whom is he or she employed? NORTHWEST LOCAL SCHOOL DISTRICT

How long has he or she worked there? 17 YEARS

What is the last level of education he or she completed? (Please list any degrees he or she has.) SOME COLLEGE

_____

44. ~~What are/were your parents' (and/or step-parents') occupations? (If retired or deceased, what did they do?)~~

Mother HOUSEWIFE Step-Mother _____

Father TRAIN DISPATCHER Step-Father _____

45. Do you have any brothers or sisters with whom you were raised? Yes X No ____

If yes, please list:

Sex	Age	Occupation
M	57	Home Builder
M	55	Plastic Compunder
F	54	Administrative Assistant
F	41	Self Employed Own's Business

46. Have you ever been in a courtroom before? Yes X No ____

If yes, how many times and for what purpose(s)? Traffic Court - Traffic Violation

47. Have you or any family members or close friends ever sued or been sued in a civil action?

Yes ____ No X

If yes, please explain the nature of the dispute(s): ____

48. Have you ever served on a trial jury before? Yes ____ No X

For each time you have sat on a trial jury, please indicate whether it was a criminal case or a civil case:

Type of case	Year	Was a verdict reached? (Please DO NOT state the verdict

49. Have you ever served on a grand jury? Yes ____ No X

If yes, was it state or federal and when was it? ____

50. Have you ever been the foreperson of a trial jury or grand jury? Yes ____ No X

If yes, please state what type of case and when: ____

In this case, the defendant is presumed innocent. No issue about the potential penalty could possibly arise unless the government first proves beyond a reasonable doubt that the defendant is guilty of a capital murder crime. In any case where a *possible* punishment may be the death penalty, the law requires that jurors answer questions regarding their thoughts, feelings and opinions about the Death Penalty. You must not assume from any of the questions asked that the Defendant is in fact guilty of anything.

51. Please describe your views on the death penalty:

NO PROBLEM

52. Have you ever held a different view on the death penalty? Yes ____ No X

If "yes," what caused you to change your view?

53. Which of the following statements best reflects your view of using the death penalty (check one)?

- ☐ Appropriate in every case where someone has been murdered.
- ☒ Appropriate with very few exceptions where someone has been murdered.
- ☐ Appropriate in some murder cases, but inappropriate in most murder cases.
- ☐ Opposed with very few exceptions.
- ☐ Opposed in all cases.

54. DIRECTIONS: Place a check in one of the spaces next to each statement indicating your agreement and/or disagreement with the statement at the left.

Statement	Strongly Agree	Agree	Slightly Agree	Slightly Disagree	Disagree	Strongly Disagree
The death penalty should **never** be used as the punishment for any murder.					X	
The death penalty should **always** be used as the punishment for every murder.		X				
The death penalty should **sometimes** be used as the punishment in certain murder cases.		X				
Only a guilty person would object to a search of his or her home.						X
A person sentenced to death in Ohio will probably never be executed.		X				
It does not make any difference to me whether or not we have a death penalty in Ohio.					X	
Convicted criminals always get out of prison too soon.		X				
The testimony of law enforcement officers is not entitled to any greater or lesser impact merely because they are law enforcement officers.		X				
The courts have made it too difficult to prosecute and convict criminals.		X				
If the prosecution goes to the trouble to bring someone to trial, that person is probably guilty.					X	
People in prison have a better life than most of the taxpayers who pay for the prisons.			X			

55. A defendant in a criminal case has a right to testify and produce evidence, but a defendant does not have to testify or produce any evidence. Do you believe that a defendant in a criminal case should testify or produce some evidence to prove that he or she is not guilty?
Yes _____ No X

If yes, please explain why: NO SELF INCRIMINATION

56. Because this case has received some publicity, some of you may have heard or read something about this case at some time. It is vitally important that you truthfully answer the following questions concerning what you have learned about this case from the media.

Please indicate from what sources you have learned about this case (check as many as apply):

Television X Newspapers _____

Radio _____ Have had conversations with other people _____

Have overheard other people discuss it _____

Other _____ (Please specify)_____

57. Based on what you may have heard about this case, do you have an impression or opinion about what happened and who is responsible? Yes _____ No X

If "yes," please explain: _____

58. Do you know or are you acquainted with any persons in the following positions (if so, please check the appropriate boxes):

- ☐ The Judge
- ☐ The Bailiff
- ☐ The Clerk of Courts
- ☐ Other Employees in the Courthouse
- ☐ The County Prosecutor or an employee in that Office
- ☐ Law Enforcement Officers working in this County
- ☐ The Defense Attorneys or someone employed by them

(D) NOWE

59. Do you have a family member of close friend who works in the Legal System (e.g., lawyers, police officers, probation officers, federal agents, prison or jail guards or other institutional employees)?

Yes X No ____

If yes, what are their names and please describe how you know them: ____

JIM SULLIVAN- LAWYER- FRIEND

60. What are your opinions, if any, about prosecuting attorneys in general? ____

NO OPINION

61. What are your opinions, if any, about criminal defense attorneys in general? ____

NO OPINION

62. Since the deaths of Noelle Washington, Sha'railyn Wright and Anthony Jones, III, who do you think murdered them? Yes ____ No ____

If yes, please explain: I HAVE NO IDEA

63. Did you know Noelle Washington or Sha'railyn Wright or Anthony Jones, III or ever encountered any of them before they died? Yes ____ No X

If yes, please explain: ____

64. Do you know any of Noelle Washington or Sha'railyn Wright or Anthony Jones, III relatives? Yes ____ No X

If yes, please explain: ____

65. Do you know Mark Pickens? Yes ____ No X

If yes, please explain: _____

66. Do you know any of Mark Pickens' relatives? Yes ____ No X

If yes, please explain: _____

67. When you were growing up, what was the racial and ethnic make-up of your neighborhood?

WHITE

68. Is there any racial or ethnic group that you do not feel comfortable being around?

Yes X No ____

If yes, please explain: YOUNG BLACK MEN WITH THEIR PANTS DOWN TO THEIR KNEES

69. With respect to the issue of racial discrimination against African-Americans in our society, do you think it is:

A very serious problem X A somewhat serious problem ____

Not too serious ____ Not at all serious ____ Not a problem ____

70. Have you ever had a negative or frightening experience with a person of another race?

Yes X No ____

If yes, please explain the circumstances: AT A GAS STATION — BLACK MAN APPROACHED — "GIVE ME YOUR WALLET OR DIE RIGHT HERE"

71. Have you ever been exposed to persons who exhibited racial, sexual, religious and/or ethnic prejudice? Yes X No ____

If yes, please describe the experience: _____

72. Are you a member of any group or organization which is concerned with racial or ethnic issues? Yes ____ No X

If yes, please identify the groups: _____

_____

_____

73. Are you a member of any private club, civic, professional or fraternal organization which limits its membership on the basis of race, ethnic origin, gender or religion?

Yes ____ No X

If yes, please identify the group(s) or organization(s): _____

_____

_____

74. Do you feel that people are overly sensitive about racial and ethnic jokes?

Yes ____ No X

75. Do you identify with any religious or spiritual group, denomination, or set of teachings?

Yes X No ____

If yes, please provide the following information:

How active are you? ATTEND SERVICES

Have you ever held a position of responsibility in your religious community? No

76. Are you active in politics? Yes ____ No X

If yes, please explain: _____

_____

_____

77. Generally speaking, do you consider yourself to be (check one):

Very Conservative	____	Liberal	____
Conservative	X	Very Liberal	____
Moderate	____	Other	____

78. Have you ever consulted with an expert other than a medical doctor?

Yes ____ No X

If yes, please specify the type of expert and the purpose for which she or he was consulted:

_____

_____

_____

79. Are you familiar with psychological testing? Yes ____ No X

If yes, how do you feel about the validity of these tests? _____

_____

_____

80. Have you ever studied psychiatry, psychology, or any related subjects?

Yes ____ No X

If yes, please explain: _____

_____

_____

81. Have you, or any member of your family, or close friend ever consulted a psychiatrist or psychologist for professional services? Yes ____ No X

If yes, how did this consultation affect your opinion about the value of psychiatry or psychology? Please explain: _____

_____

_____

82. If not answered elsewhere, have you, or any member of your family, or a close friend ever received treatment for drug or alcohol use? Yes ____ No X

83. There is a wide range of opinions about psychologists, psychiatrists, counselors and therapists. Generally, how do you regard these professions? SOMEWHAT QUESTIONABLE

_____

_____

84. Do you know anyone who has a mental health problem? Yes ____ No X

If so, without violating your sense of the right to privacy, please briefly describe the situation: _____

_____

85. Do you think people are born with mental health problems or do they develop after birth or both?

Born with X After birth _____ Both _____

86. Do you have any specialized training or course work in medicine, science or biology?

Yes _____ No X

If yes, please describe: _____

87. Did you take science or math courses in college? Yes X No _____

If yes, what types of course(s) (e.g., biology, chemistry, physics, math): PHYSICS, MATH AND CHEMISTRY

88. Please check the answer which best describes how comfortable you usually feel dealing with mathematical concepts:

X Usually very comfortable

_____ Usually fairly comfortable

_____ Usually fairly uncomfortable

_____ Usually very uncomfortable

89. Have you ever taken any courses in statistics? Yes X No _____

If so, please state when and where: UNIVERSITY OF CINCINNATI CERCA 1967-68

90. Are you or have you been a member of Neighborhood Watch? Yes _____ No X

If yes, what was the nature of your involvement? _____

91. Do you have: (please check)

Security bars _____ Alarms X

Guard dog _____ Weapons for self-protection _____

92. Have you or anyone close to you ever had a negative experience with a person who was high on drugs or drunk? Yes ____ No X

If yes, please describe: _____

93. Do you belong to any group or organization which is concerned with drug or alcohol abuse? Yes ____ No X

If yes, please describe: _____

94. Do you belong to any group or organization which is concerned with crime prevention or victims' rights? Yes ____ No X

If yes, please describe: _____

95. Have you ever been a victim of a crime? Yes X No ____

If yes, how many times? TWICE

What type of crime(s)? STOLEN CAR AND ROBBERY (WALLET AT GAS STATION)

96. Did you or anyone else report it to the police? Yes X No ____

If no, why not? _____

97. Were you interviewed by police? Yes X No ____

98. Was the suspect caught? Yes ____ No X

99. Do you feel the job the police did on it was:

Satisfactory ____ Why? _____

Unsatisfactory X Why? NEVER CAUGHT EITHER ONE

100. Did you testify in court? Yes ____ No X

A-98

101. How has that experience affected your impressions about the criminal justice system?

SKEPTICAL

102. Other than answers you may have already given, have you had a good or positive experience with any police officers? Yes X No ____

Please explain and indicate the police agency involved: COLERAIN TWP, HAMILTON COUNTY POLICE & CINCINNATI

103. Other than answers you may have already given, have you had a bad or negative experience with any police officers? Yes ____ No X

Please explain and indicate the police agency involved: ____

104. In the past several years there has been much public discussion concerning the issue of crime in our society. Please describe your personal feelings about this issue.

IT IS HAMPERING ECONOMIC DEVELOPMENT OF THE WHOLE AREA.

105. What are your thoughts about whether the police carefully and completely investigate crimes?

PROBABLY NOT - NOT ENOUGH MANPOWER

106. Do you think that crime is:

Going up X Going down ____ Remaining the same ____

107. Do you feel that people convicted of crimes are treated:

Too leniently X Too harshly ____ Justly ____

108. What do you believe are the major causes of crime? DRUGS, LOW SCHOOLING BAD ECONOMY

109. Have you, or a member(s) of your family, or someone close to you ever been accused of or charged with a criminal offense? Yes ____ No X

If yes, how was this person related to you? ____

Were you (they) convicted? Yes ____ No X

How has that experience affected your impressions about the criminal justice system?

110. Have you ever visited or been inside a prison/jail? Yes X No ____

If yes, please explain the circumstances and describe how it made you feel: ____

HAMILTON COUNTY JAIL - TCAP

111. Have you ever spoken with someone who works at a prison/jail or an inmate in a prison/jail about their experiences? Yes X No X

If yes, please explain the circumstances: ____

112. Do you currently, or have you during the past five (5) years, done any volunteer work?

Yes ____ No X

If so, for what organization(s): ____

113. Are there any charities or political organizations to which you make donations?

Yes X No ____

If "yes," please explain: NATIONAL RIFLE ASSOCIATION, REPUBLICAN PARTY

114. What type of books do you prefer? (Example: non-fiction, historical, romance, espionage, mystery) ____

115. Do you read a newspaper on a regular basis?

Yes X No ____

If yes, which newspaper(s): ____

116. Do you read any magazines or periodicals on a regular basis?

Yes X No ____

If yes, which ones? MODEL RAILROADER, RIFLEMAN

117. Which television shows do you watch on a regular basis? NEWS, CNN, FOX, CBS,

118. Do you ever watch television programs that show real life police activities such as "Cops," "America's Most Wanted," or "Unsolved Mysteries"? Yes ____ No X

If yes, Very often ____ Occasionally ____ Almost never ____

119. When you have the time, what are your leisure time interests, hobbies, and activities?
MODEL RAILROADING & PHOTOGRAPHY

120. What, if any, groups or organizations do you belong to now or have you belonged to for a significant period of time in the past?

A. Now: NONE

B. Previously: NONE

121. Have you served as an officer in any one of these groups? Yes ____ No X

If yes, which group(s): ____

122. In what sorts of situations would you consider yourself to be --

A Leader: ____

A Follower: PARTICIPATOR

123. Is there any reason why, if you were the defendant, you would not want someone in your state of mind on the jury? Yes ____ No X

124. Apart from what you may have read or heard, do you have any personal knowledge of this case or the charges that have been referred to? Yes ____ No X

If the answer is yes to the above, please state what your personal knowledge consists of:

125. Do you know any of the other prospective Jurors in this case? Yes ____ No X

If yes, please explain:

_____

_____

_____

_____

126. If selected to serve as a juror on this case, the Court would order you not to read, listen to or watch any accounts of this case reported by television, radio or other news media. Will you have any difficulty following this order?

Yes ____ No X Do not know ____

127. If you are selected as a juror in this case, the Court would order you not to discuss this case with **anyone** unless and until permitted to do so by the Court. Will you have any difficulty in following this order?

Yes ____ No X Do not know ____

128. As a result of answering this Juror Questionnaire, have you started to form any opinions about this case? Yes X No ____

If yes, please explain: PROBABLY THE DEFENSE WILL PLEA

HE WAS ON DRUGS OR MENTALLY INCAPACITATED

_____

_____

129. Is there anything going on in your life either at home or at work that might make it difficult for you or distract you if your were seated as a juror in this case? Yes ____ No X

If "Yes", please explain:

_____

_____

_____

_____

130. Is there any matter not covered by this questionnaire that you think the attorneys or Court might want to know about when considering you as a juror in this case? _____

N/A

I DO HEREBY SOLEMNLY SWEAR OR AFFIRM THAT THE ANSWERS TO THE FOREGOING QUESTIONS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Date: 4-9-10

Signature: [signature]

A-104

EXTRA SHEET FOR COMPLETING ANSWERS IF NECESSARY
PLEASE INDICATE THE QUESTION NUMBER BY YOUR ANSWERS

DEATH PENALTY PROPORTIONALITY STATISTICS

Prepared by Brenda L. Swingle, Administrative Assistant, Death Penalty Division
Ohio Public Defender Office, April 28, 2011

Death Row Residents:	157	Females:	1	**TOTAL**	**158**
***Death-Sentenced Defendants:**	140	Females:	1	**TOTAL**	**141**

*Difference between figures is due to legal relief, but not final relief.

Race of Defendants:	African-American	79	Caucasian	70 M / 1 F
	Native American	1	Latino	3
	Other	4	**TOTAL**	**158**

****Race of Defendant - Victim:**	African-American - African-American	36
	African-American - African-American & Caucasian	4
	African-American - Caucasian	37
	African-American - Other	3
	Caucasian - Caucasian	63 M / 1 F
	Caucasian - African-American	4
	Caucasian - African-American & Caucasian	3
	Caucasian - Latino	1
	Latino - Caucasian	3
	Native American - Caucasian	1
	Other - Other	3
	Other - Caucasian	1
	****TOTAL**	**160**

**Reflects 2 death sentence cases for James Conway and for Donald Craig.

Executed Defendants:	Male	44
Race of Defendants:	African-American	17
	Causasian	27
Race of Defendant - Victim:	African-American - African-American	8
	African-American - African-American & Caucasian & Other	1
	African-American - African-American & Caucasian	1
	African-American - Caucasian	5
	African-American - Other	3
	Caucasian - African-American & Caucasian	1
	Caucasian -- Caucasian	26

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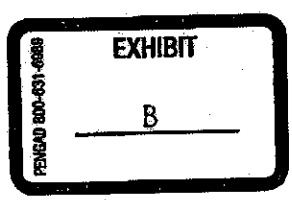

U.S. Census Bureau

American FactFinder

FACT SHEET

Ohio

2005-2009 American Community Survey 5-Year Estimates - what's this?
Data Profile Highlights:

Note: The following links are to data from the American Community Survey and the Population Estimates Program.

NOTE: Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

Social Characteristics - show more >>	Estimate	Percent	U.S.	Margin of Error	
Average household size	2.47	(X)	2.60	+/-0.01	map
Average family size	3.06	(X)	3.19	+/-0.01	
Population 25 years and over	7,671,550			+/-1,232	
High school graduate or higher	(X)	86.8	84.6%	(X)	map
Bachelor's degree or higher	(X)	23.6	27.5%	(X)	map
Civilian veterans (civilian population 18 years and over)	951,024	10.9	10.1%	+/-4,963	map
With a Disability	(X)	(X)	(X)	(X)	
Foreign born	417,240	3.6	12.4%	+/-5,459	map
Male, Now married, except separated (population 15 years and over)	2,339,025	52.5	52.3%	+/-12,964	
Female, Now married, except separated (population 15 years and over)	2,309,581	48.2	48.4%	+/-11,087	
Speak a language other than English at home (population 5 years and over)	659,205	6.1	19.6%	+/-6,677	map
Household population	11,200,037			*****	
Group quarters population	(X)	(X)	(X)	(X)	

Economic Characteristics - show more >>	Estimate	Percent	U.S.	Margin of Error	
In labor force (population 16 years and over)	5,899,737	65.0	65.0%	+/-9,652	map
Mean travel time to work in minutes (workers 16 years and over)	22.6	(X)	25.2	+/-0.1	map
Median household income (in 2009 inflation-adjusted dollars)	47,144	(X)	51,425	+/-158	map
Median family income (in 2009 inflation-adjusted dollars)	59,208	(X)	62,363	+/-239	map
Per capita income (in 2009 inflation-adjusted dollars)	24,830	(X)	27,041	+/-83	
Families below poverty level	(X)	10.0	9.9%	+/-0.1	
Individuals below poverty level	(X)	13.6	13.5%	+/-0.2	map

Housing Characteristics - show more >>	Estimate	Percent	U.S.	Margin of Error	
Total housing units	5,064,437			+/-683	
Occupied housing units	4,526,164	89.4	88.2%	+/-11,662	
Owner-occupied housing units	3,145,085	69.5	66.9%	3145085	
Renter-occupied housing units	1,381,079	30.5	33.1%	+/-7,600	
Vacant housing units	538,273	10.6	11.8%	+/-11,874	
Owner-occupied homes	3,145,085			+/-15,867	map
Median value (dollars)	134,500	(X)	185,400	+/-283	map
Median of selected monthly owner costs					
With a mortgage (dollars)	1,264	(X)	1,486	+/-3	map
Not mortgaged (dollars)	421	(X)	419	+/-2	

ACS Demographic Estimates - show more >>	Estimate	Percent	U.S.	Margin of Error	
Total population	11,511,658			*****	
Male	5,612,490	48.8	49.3%	+/-1,142	
Female	5,899,368	51.2	50.7%	+/-1,142	
Median age (years)	37.9	(X)	36.5	+/-0.1	map

EXHIBIT C

Under 5 years	741,280	6.4	6.9%	+/-603	
18 years and over	8,750,969	76.0	75.4%	+/-539	
65 years and over	1,563,082	13.6	12.6%	+/-752	
One race	11,318,752	98.3	97.8%	+/-3,626	
White	9,669,759	84.0	74.5%	+/-3,660	map
Black or African American	1,349,893	11.7	12.4%	+/-3,043	map
American Indian and Alaska Native	21,960	0.2	0.8%	+/-942	map
Asian	173,463	1.5	4.4%	+/-1,566	map
Native Hawaiian and Other Pacific Islander	2,870	0.0	0.1%	+/-504	map
Some other race	100,807	0.9	5.6%	+/-3,333	map
Two or more races	193,106	1.7	2.2%	+/-3,625	map
Hispanic or Latino (of any race)	301,340	2.6	15.1%	+/-200	

Source: U.S. Census Bureau, 2005-2009 American Community Survey

Explanation of Symbols:
'****' - The median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.
'*****' - The estimate is controlled. A statistical test for sampling variability is not appropriate.
'N' - Data for this geographic area cannot be displayed because the number of sample cases is too small.
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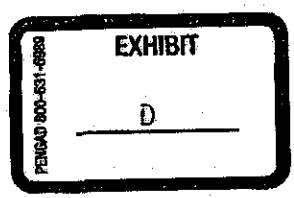
The letters PDF or symbol indicate a document is in the Portable Document Format (PDF). To view the file you will need the Adobe® Acrobat® Reader, which is available for free from the Adobe web site.

DEATH ROW RESIDENTS BY COUNTY (April 28, 2011)

Sentence Date	Defendant	Race, Sex and Age	County	Victim's Race
05-25-83	David Steffen	W-M-22	Hamilton	W
11-09-84	Daniel Lee Bedford	W-M-36	Hamilton	2W
08-08-85	Robert Van Hook	W-M-25	Hamilton	W
02-01-93	Timothy Dunlap	W-M-24	Hamilton	W
03-15-93	Jeffrey Wogenstahl	W-M-32	Hamilton	W
07-06-98	Gary Hughbanks	W-M-31	Hamilton	2W
08-27-98	Raymond Tibbetts	W-M-41	Hamilton	2W
10-13-99	Ralph Lynch	W-M-49	Hamilton	B
06-28-01	Patrick Leonard	W-M-31	Hamilton	W
05-06-88	Martin Rojas	O-M-29	Hamilton	W
10-16-98	Ahmad Fawzi Issa	O-M-28	Hamilton	O
09-05-90	Derrick Cook	B-M-34	Hamilton	W
11-03-83	Billy Joe Sowell	B-M-46	Hamilton	B
08-05-85	Jerome Henderson	B-M-26	Hamilton	B
01-26-90	Shawn Hawkins	B-M-21	Hamilton	2B
12-07-91	Genesis Hill	B-M-19	Hamilton	B
07-01-92	Tyrone Ballew	B-M-23	Hamilton	B
07-20-92	Cedric Carter	B-M-19	Hamilton	W
12-14-94	Lee Edward Moore Jr.	B-M-20	Hamilton	W
05-30-95	Bobby Shepphard	B-M-18	Hamilton	W
12-11-95	James D. O'Neal	B-M-41	Hamilton	B
03-06-96	Carlos Sanders	B-M-33	[1]Hamilton	W
11-06-96	Walter Raglin	B-M-19	Hamilton	W
01-09-97	Elwood Jones	B-M-44	Hamilton	W
12-10-97	Angelo Fears	B-M-23	Hamilton	B
06-01-98	Rayshawn Johnson	B-M-20	Hamilton	W
02-15-02	Stanley Fitzpatrick	B-M-34	Hamilton	3B
06-06-03	James Were	B-M-46	[2]Hamilton	W
09-20-07	Lamont Hunter	B-M-39	Hamilton	B
03-31-10	Anthony Kirkland	B-M-41	Hamilton	B/W
07-01-10	Mark Pickens	B-M-20	Hamilton	3B

343369/bls 5/11/11



U.S. Census Bureau

American FactFinder

FACT SHEET

Hamilton County, Ohio

2005-2009 American Community Survey 5-Year Estimates - what's this?
Data Profile Highlights:

Note: The following links are to data from the American Community Survey and the Population Estimates Program.

NOTE: Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

Social Characteristics - show more >>	Estimate	Percent	U.S.	Margin of Error	
Average household size	2.49	(X)	2.60	+/-0.01	map
Average family size	3.27	(X)	3.19	+/-0.03	
Population 25 years and over	564,293			+/-84	
High school graduate or higher	(X)	86.8	84.6%	(X)	map
Bachelor's degree or higher	(X)	31.7	27.5%	(X)	map
Civilian veterans (civilian population 18 years and over)	61,292	9.5	10.1%	+/-1,454	map
With a Disability	(X)	(X)	(X)	(X)	
Foreign born	35,675	4.2	12.4%	+/-1,479	map
Male, Now married, except separated (population 15 years and over)	146,705	45.5	52.3%	+/-1,975	
Female, Now married, except separated (population 15 years and over)	147,608	40.8	48.4%	+/-2,150	
Speak a language other than English at home (population 5 years and over)	46,198	5.8	19.6%	+/-1,724	map
Household population	831,401			+/-3,489	
Group quarters population	(X)	(X)	(X)	(X)	

Economic Characteristics - show more >>	Estimate	Percent	U.S.	Margin of Error	
In labor force (population 16 years and over)	442,722	65.8	65.0%	+/-3,349	map
Mean travel time to work in minutes (workers 16 years and over)	22.2	(X)	25.2	+/-0.2	map
Median household income (in 2009 inflation-adjusted dollars)	48,363	(X)	51,425	+/-550	map
Median family income (in 2009 inflation-adjusted dollars)	65,081	(X)	62,363	+/-806	map
Per capita income (in 2009 inflation-adjusted dollars)	27,968	(X)	27,041	+/-278	
Families below poverty level	(X)	10.4	9.9%	+/-0.4	
Individuals below poverty level	(X)	14.2	13.5%	+/-0.4	map

Housing Characteristics - show more >>	Estimate	Percent	U.S.	Margin of Error	
Total housing units	383,925			+/-1,411	
Occupied housing units	333,773	86.9	88.2%	+/-2,281	
Owner-occupied housing units	207,500	62.2	66.9%	+/-2,069	
Renter-occupied housing units	126,273	37.8	33.1%	+/-2,229	
Vacant housing units	50,152	13.1	11.8%	+/-2,004	
Owner-occupied homes	207,500			+/-2,069	map
Median value (dollars)	146,100	(X)	185,400	+/-1,047	map
Median of selected monthly owner costs					
With a mortgage (dollars)	1,369	(X)	1,486	+/-8	map
Not mortgaged (dollars)	488	(X)	419	+/-6	

ACS Demographic Estimates - show more >>	Estimate	Percent	U.S.	Margin of Error	
Total population	851,867			*****	
Male	407,687	47.9	49.3%	+/-93	
Female	444,180	52.1	50.7%	+/-93	
Median age (years)	36.8	(X)	36.5	+/-0.1	map

EXHIBIT E

PENGAD 800-631-6989

Under 5 years	56,878	6.7	6.9%	+/-114	
18 years and over	647,346	76.0	75.4%	+/-82	
65 years and over	114,513	13.4	12.6%	+/-69	
One race	836,128	98.2	97.8%	+/-1,441	
White	607,707	71.3	74.5%	+/-760	map
Black or African American	206,189	24.2	12.4%	+/-1,402	map
American Indian and Alaska Native	814	0.1	0.8%	+/-201	map
Asian	15,322	1.8	4.4%	+/-433	map
Native Hawaiian and Other Pacific Islander	507	0.1	0.1%	+/-280	map
Some other race	5,589	0.7	5.6%	+/-802	map
Two or more races	15,739	1.8	2.2%	+/-1,441	map
Hispanic or Latino (of any race)	16,151	1.9	15.1%	*****	

Source: U.S. Census Bureau, 2005-2009 American Community Survey

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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

State of Ohio,	:	
Appellee,	:	Judge Steven Martin
-vs-	:	
Mark Pickens,	:	Case No. B-0905088
Appellant.	:	**This is a death penalty case**

Affidavit of Monica Marshall

State of Ohio:)
) SS:
County of Hamilton)

I, Monica Marshall, after being duly sworn, state the following:

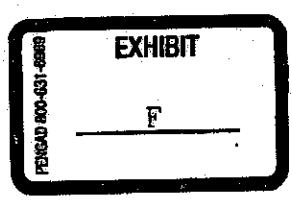
1) I am the maternal aunt of Mark Pickens.

2) Mark and I pretty much grew up together because when I was 15 years old I lived with Truvena, Mark's mom and my older sister, for a while. While I was living with Truvena, I was allowed to stay out late and drink alcohol which is why I never felt comfortable with my own children staying with Truvena. Truvena doesn't set rules for children.

3) Until my mother, Mattie, passed away due to colon cancer, I babysat Mark often. Mark has always been a very quiet and nice person who I just can't see being guilty of his current offense.

4) Mattie kept Mark often because Truvena was abusive. After Mattie passed away, Mark began to change because Mattie had been a protector for him. Mark was around 9 years old when Mattie passed away.

5) I'm hesitant to share information because I have a concern about retaliation from Truvena. However, I must say that Truvena was an abusive mom toward all of her children. She would hit Mark with whatever object she grabbed such as a hanger or a broom. The scar that is on Mark's face was caused by his mom. Truvena hit him with a broom after Truvena's boyfriend



told her that Mark followed him in the bathroom. The boyfriend assumed that meant that Mark was gay.

6) Out of 5 children, Truvena is the only who claims she was physically and sexually abused as a child. I don't believe anything Truvena says. Our mother was not only quiet but she was very laid back and never cussed. Even now, Truvena will talk about our mom in a negative way and say that she was never a mom to her. Truvena was emancipated and lived in several group homes because our mom could not deal with her behavior.

7) It has always been rumored that Truvena, as a young child, liked to "mess with" older men. My father told me that Truvena tried "messing with" him. He never told our mom because he didn't want to hurt her any more with stuff involving Truvena.

8) The hotline phone number 241-KIDS has been called on Truvena but when the agency workers came out, there were no marks on the kids so a case was never opened on the family. Mark had to grow up fast because his mom is so lazy. At the age of 6 he was changing his siblings' diapers and mopping the floor.

9) Truvena was most abusive when she was with Reggie, the father of one of Truvena's children. Once they broke up, Truvena became very smothering and protective of her children.

10) Truvena is very controlling of her children and had brainwashed them into believing they have no one else but her to depend on or that loved them.

11) I used to be very close to Mark up until a couple of years ago. The incident that led to Mark and me not speaking occurred a couple of years ago. Truvena was upset with me and came to my house and had Mark knock on the door and tell me that she wanted her shoes back. This caused Truvena and me to get into a heated argument. Mark began yelling at me telling me not to yell at his mom. I was surprised because Mark never raised his voice at me. He then told me if I didn't shut up he was going to punch me in the face. I was shocked and reminded him that I am his aunt. Moments later, he punched me in the stomach. Some time later, Mark called crying, very upset and said his mom told him to do it, "she gets in my head." He said he was sorry however, that incident changed our relationship.

12) I am not sure if Truvena has ever received counseling nor if she has ever been diagnosed with any mental health issues however, I firmly believe Truvena is bi-polar. Truvena can be very nice one moment and the next moment without any warning she would go off. I don't deal with her because Truvena has always been the one to keep trouble going within the family. She even will go as far as to talk about folks' kids; you don't do that. The last time I spoke with my sister Truvena was in August 2009. When Truvena calls me, I don't answer the phone because I don't want to deal with her.

13) Mark was always one to have more than one girlfriend and he always spoiled the girlfriends. I never saw or heard him get upset at a female. He is one that will walk away from arguments or trouble.

14) I believe Mark is scared of his mom but also loves his mom. If Mark had anything to do with the crime, I blame Truvena because of how she raised him.

15) Mark was picked on when he was younger because he was so quiet. Usually Mark doesn't talk to people who he doesn't know.

16) Mark later learned to box and became a very good boxer and received a lot of trophies for it. Even though he knew how to fight, he did not start fights.

17) Mark was not very close to his paternal relatives. I understand that Mark's Dad spent most of Mark's life in jail/prison. I heard that he is in prison serving a life sentence for murder and rape.

18) To my knowledge, Mark did not experience any problems while attending school but I am is not sure of what type of grades he received.

19) Mark did not have a father figure in his life and all of his mom's boyfriends were abusive towards Truvena. Mark often witnessed the abuse.

20) Mark is not one to talk about his problems, he keeps everything inside. When he was around 15 he ran away from home because he wanted to get away from his mom. Truvena gets really jealous when her children spend time around others.

21) Mark was not a drug user or seller although he served jail time for selling drugs. Supposedly, the drugs were his Mom's boyfriend's and Truvena had him take the fall for the boyfriend.

22) Truvena and her children received social security income but I am not sure why. To my knowledge, Mark has never received counseling for any reason.

23) If I had been asked to testify on Mark's behalf at his trial, I would have.

Further affiant sayeth naught.

Monica Marshall
MONICA MARSHALL

Sworn to and subscribed in my presence on this 13th day of April, 2011.

NOTARY PUBLIC

MARK ROUS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 8/26/13

A-114

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

State of Ohio,	:	
Appellee,	:	Judge Steven Martin
-vs-	:	
Mark Pickens,	:	Case No. B-0905088
Appellant.	:	**This is a death penalty case**

Affidavit of Isiah Marshall

State of Ohio:)
) SS:
County of Hamilton)

I, Isiah Marshall, after being duly sworn, state the following:

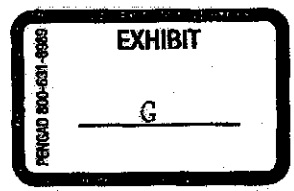
1) I am the maternal uncle of Mark Pickens.

2) I don't recall Mark being a problem at all when he was younger. He has always been very close to his mom and showed her great respect. Mark was also close to his brothers, especially his brother Michael.

3) I recall when my mother, Mark's grandmother, passed away. It really affected Mark, who was 8 or 9 years old at the time, because he was very close to her. Sometime after her passing, we would find Mark closed in the closet crying because she was no longer alive. However, Mark would never talk about what he was feeling. Mark was someone who would not talk about his feelings or problems; he was pretty quiet and laid back.

4) Mark was also close to my sister Monica and my brother Reggie. I really didn't know him to have very close friends. Mark hung out with his family.

5) I wasn't really close to my sister Truvena, she was "iffy." She wasn't the greatest mother, I feel that she could have done better in regards to putting boundaries on her children. It is my opinion that she allowed them to run the streets too much and gave them everything they wanted. My sister truly loves her children but I disagree with how she raised them.



6) When Truvena had children, she isolated herself even more from the family. I think she is "off." I can't explain why, but she is just "off."

7) My side of the family, and by that I mean my mother Mattie and my siblings, is not close to the rest of the family because they thought we were too poor. Because of this, my siblings and I spent time with each other and not with others in the family.

8) Mark's biological father and his father's family live in Florida. Even though Mark never had a relationship with his father, Mark's father's mother would send for him to stay with them during the summertime. Mark never talked about his time with his paternal side of the family.

9) The only male figure in Mark's life was his boxing coach. Mark wasn't close to any of his mom's boyfriends.

10) I believe that Mark went downhill after coming back home from serving time at DYS.

11) Mark really enjoyed boxing. I never went to see him fight but heard that he was really good at it. I'm not sure why he stopped boxing. Mark also enjoyed working and worked as often as he could. He seemed to maintain steady employment.

12) Mark had a lot of girlfriends because they thought he was cute and he was a very sharp dresser. He never talked about his relationships with any of his girlfriends but I know he never found it hard to get a girl.

13) I can't offer any details but I vaguely recall Mark getting stabbed before.

14) I didn't personally know Mark to drink or smoke weed.

15) If I had been asked to testify on Mark's behalf at his trial, I would have.

Further affiant sayeth naught.

ISIAH MARSHALL

Sworn to and subscribed in my presence on this 21st day of April, 2011.

NOTARY PUBLIC

MARK ROOKS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 10/21/13

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

State of Ohio,	:	
Appellee,	:	Judge Steven Martin
-vs-	:	
Mark Pickens,	:	Case No. B-0905088
Appellant.	:	**This is a death penalty case**

Affidavit of Tony Hyde

State of Ohio:)
) SS:
County of Hamilton)

I, Tony Hyde, after being duly sworn, state the following:

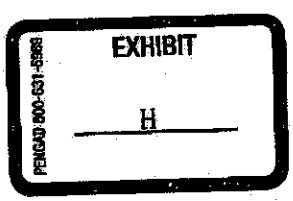
1) In 1997, I began volunteering with the boxing program at the Mt. Auburn Community recreational center located at 270 Southern Avenue, Cincinnati, Ohio.

2) Mark Pickens began training in the boxing program when Mark was 13. I was one of Mark's first coaches.

3) When Mark was about 15, he, along with some other young boxer, left the program at Mt. Auburn, and went with Coach Levi Smith to a new rec. center, Millville. At that point, I lost contact with Mark, though I occasionally saw him at boxing matches.

4) Mark wasn't a bad kid. Mark wanted to fit in with the other boxers, but sometimes he was extremely quiet and other times he was very vocal. Mark seemed to have a "split personality." I've had experience with persons who exhibit such dichotomous personalities; my son displayed similar confusing traits.

5) The boxing program trained the kids hard, and that first year or so of Mark's training, Mark got "whooped" three out of five days. Mark stuck it out, kept training, and eventually developed into a decent fighter. Mark once suffered a technical knock- out while training. Mark got his "bell rung" pretty good, and had a standing eight count, but that was the only time I can recall that Mark suffered such a condition.



6) Over the course of my time with Mark, I got to know Mark's mother, Truvena. She was a "street person" a "hustler," Truvena did what it took to put food on the table and a roof over her children's head. Though I cannot say with a high degree of certainty, it is my belief that Truvena sold drugs.

7) Mark loved his mother very much, and would do anything for her. Mark never spoke negatively about his mother.

8) I had not seen Mark for approximately three or four years when the shooting occurred. I learned about what Mark was accused of from Coach Smith. I was absolutely shocked.

9) If I had been asked to testify on Mark's behalf at his trial, I would have.

Further affiant sayeth naught.

Tony Hyde

TONY HYDE

Sworn to and subscribed in my presence on this 15th day of April, 2011.

Mark Rooks

NOTARY PUBLIC

NOTARIAL SEAL STATE OF OHIO

MARK ROOKS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 8/21/13

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

State of Ohio,	:	
Appellee,	:	Judge Steven Martin
-vs-	:	
Mark Pickens,	:	Case No. B-0905088
Appellant.	:	**This is a death penalty case**

Affidavit of Levi Smith

State of Ohio:)
) SS:
County of Hamilton)

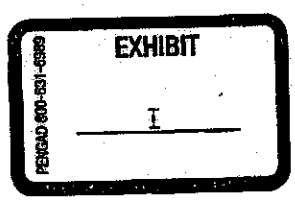
I, Levi Smith, after being duly sworn, state the following:

1) I began boxing while I was in the Air Force in 1971. For the past nine years I have been teaching kids and teenagers how to box through the Policeman's Athletic League in Cincinnati. I take children as young as six, and train them up until the time that they become professional fighters. My latest protégé is Adrian Broner who recently fought on HBO and won the Super Featherweight title. I don't receive any pay for my being a boxing coach.

2) I met Mark Pickens in 2004, when his mother brought him to the community center to learn to fight. Mark's mother said she was tired of him being beaten up at school. Mark was 13 when he began boxing, and 15 or 16 when he stopped.

3) Mark was being bullied at school, some kids were jealous of him because he wore nice clothing, and had a bit of spending money, something many area kids went without. Every now and then Mark would appear with fresh scars and bruises, ostensibly from fights at school, though I cannot be certain.

4) Mark was a quiet kid, I often had to twist his arm to get him to talk, but Mark did report to me that he was being picked on at school. When asked, Mark would say guys at school picked on him, without specifically saying who, or why he was being beaten up. Ms. Pickens once called me to report that Mark had been "jumped again." It may have happened 5 or 6 times.



5) From time to time I would take kids who needed extra supervision into my home to keep an eye on them. Mark was one such kid, along with the two friends he made while boxing: Darrius Brown, now deceased, and my grandson DeShawn Phillups.

6) Darrius was a greatly troubled teenager. Darrius attended a special school, and more than once jumped on a teacher. Both Darrius and Mark began to spiral out of control after quitting boxing and my guidance.

6) Mark was basically a good kid; his mother was the problem. In fact, Mark's mother was his worst enemy. I often spoke with Ms. Pickens about the need to keep Mark in the boxing program and in my home, but she wouldn't consent. I once spoke with Mark's mom about Mark's declining behavior, but she seemed to condone the behavior, or at least ignore it. She cursed me out at the end of the conversation.

7) At some point after Mark was no longer living with me, I observed him on a corner selling drugs, but the astounding thing was that Ms. Pickens was just up the street watching. Ms. Pickens seemed to condone her sons burgeoning drug dealing career, and did nothing to stop it. Ms. Pickens had a saying, "gotta get loot," referring to making money. I believe Mark may have been selling drugs to help his mother.

8) Mark was always respectful, but when he was on the street, he was a different person.

9) Mark was a good fighter and may have been a professional if he'd stuck with it.

10) If I had been asked to testify on Mark's behalf at his trial, I would have.

Further affiant sayeth naught.

LEVI SMITH

Sworn to and subscribed in my presence on this 21st day of April, 2011.

NOTARY PUBLIC

NOTARIAL SEAL STATE OF OHIO

MARK ROOKS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 12/21/13

A-120

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

State of Ohio,	:	
Appellee,	:	Judge Steven Martin
-vs-	:	
Mark Pickens,	:	Case No. B-0905088
Appellant.	:	**This is a death penalty case**

Affidavit of Ronnie Griffin Jr.

State of Ohio)
) SS:
County of Hamilton)

I, Ronnie Griffin Jr., after being duly sworn, state the following:

1) I am a younger brother of Mark Pickens. I am 6 years younger than Mark. I have 3 brothers, Mark is the oldest and I am the 2nd youngest.

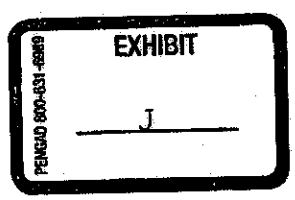
2) Of my brothers, I am closest to Mark. Mark is the best big brother I could have asked for.

3) Mark usually spent time by himself; he didn't hang around a lot of different people.

4) I saw Mark on the day and night the crime occurred. Mark's behavior on that day was normal; he was himself. Mark was outside of our mother's house on the porch talking with Tink that night. They were talking about girls, like they always did.

5) Mark didn't have any problem getting girls; he's very good-looking and girls liked him.

6) I would have been willing to testify at Mark's trial if it would have helped Mark to not go



to jail for the rest of his life.

Further affiant sayeth naught.

Ronnie Griffin Jr.

Sworn to and subscribed in my presence on this 9th day of May, 2011.

NOTARY PUBLIC

[redacted] 12/21/13

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

State of Ohio,	:	
Appellee,	:	Judge Steven Martin
-vs-	:	
Mark Pickens,	:	Case No. B-0905088
Appellant.	:	**This is a death penalty case**

Affidavit of Truvena Griffin

State of Ohio:)
) SS:
County of Hamilton)

I, Truvena Griffin, after being duly sworn, state the following:

1. I am the mother of Mark Pickens.

2. I became pregnant with Mark when I was 15. Mark's father, and my husband, Mark Pickens, Sr., was 26 at the time; we got married when I was 16. During the pregnancy, I developed gestational diabetes.

3. When I got pregnant with Mark, I had a bad relationship with my family. That relationship has not gotten better over the years. I didn't want to be around my family. I feel my family looks down on me, and my family has never been there for me.

4. I didn't know how to be a mother at first. My mom was 14 when she had me. When I had Mark, I didn't know how to wash clothes or cook. No one took the time to teach me how to be a parent.

5. Mark Pickens, Sr. hit me one time with a chair during the pregnancy. My husband's father told him to hit me because he said that I have a smart mouth. Mark Pickens, Sr. also pushed me down the steps, which caused me to get an emergency C-section to deliver Mark.

6. Because of the abuse, I asked my grandmother if I could come back home. My grandmother told me "no" - that Mark Sr. was my husband and I had to deal with it.

7. After my husband and I split up, I married Rodney Griffin, Sr. From 1997 until 2002, I lived with Rodney Griffin, who is the father of my second youngest son. He was also abusive to me. Once he hit me and broke my nose.

8. Rodney was emotionally abusive to Mark; he called Mark fat.

9. I think all the abuse I went through was hard on Mark. At least once, I remember Mark trying to protect me, but he was only a boy.

10. This was all very hard on me and my health, too. At one point, I gained a lot of weight and weighed 400 lbs. I gained 155 lbs. when I was pregnant with Mark. I was prescribed and took a medication for depression. I am disabled and unable to work because of my depression. Once, I spent time in University Hospital because of my depression but stayed for only 3 hours and then left on my own.

11. When I punished Mark, I usually did it by hitting him with my hand. Sometimes I would whip Mark until he cried and stuttered.

12. When Mark was 14, I agreed to let him go visit his father and his father's family in Florida. But two days before Mark was supposed to leave, his father got arrested and has been in prison ever since.

13. When Mark was older, he began boxing. I think the boxing was good for him. He would spend time at the recreation center with the other boxers and the coaches. Mark started doing pretty well and would travel to different places for competitions.

14. I attended many of his competitions. I missed Mark when he was gone at his boxing competitions. I felt alone during those times. I think Mark and I have always been very close. We used to hang out a lot, like going to out eat, shopping, going to the park, and things like that.

15. I noticed that Mark was getting really depressed, first when he went to Hillcrest and then when he went to DYS. He was also depressed when he lost his job at Family Dollar.

16. If the trial attorneys had asked me to tell this information to the jury during the mitigation, I would have said all this. I gave Mr. Ancona numerous pictures showing Mark with family and others. The two copies attached to my affidavit are examples of those pictures. The pictures show my sons Mark, Michael and Ronnie having fun together.

17. I did not feel that Mark's trial attorneys did a good job preparing me for my testimony.

Further affiant sayeth naught.

Truvena Griffin

Sworn to and subscribed in my presence on this 13th day of May, 2011.

NOTARY PUBLIC

NOTARIAL SEAL STATE OF OHIO

JESSICA LOVE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 11/8/13

EXHIBIT

K-1

PENRAD 800-451-6969

EXHIBIT

K-2

PENSAL 800-631-6989

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

State of Ohio,	:	
Appellee,	:	Judge Steven Martin
-vs-	:	
Mark Pickens,	:	Case No. B-0905088
Appellant.	:	**This is a death penalty case**

Affidavit of Dr. Bob Stinson

State of Ohio:)
) SS:
County of Franklin)

I, Dr. Bob Stinson, after being duly sworn, state the following:

I. Professional Background and Experience

1. I am a psychologist, licensed to practice psychology independently in the state of Ohio since 2000.

2. I obtained my Bachelor's Degree in Psychology from The Ohio State University in 1995 where I graduated Summa Cum Laude, with Honors in Arts and Sciences, and with Distinction in Psychology. I obtained my Doctorate of Psychology (Psy.D.) degree from Wright State University's School of Professional Psychology in 1999. I also obtained a Juris Doctor (J.D.) degree from Capital University Law School in January 2011, graduating Summa Cum Laude with concentrations in Dispute Resolution and Criminal Litigation, and I passed the February 2011 Ohio Bar Exam.

3. I am Board Certified in Forensic Psychology as a Diplomate of the American Board of Forensic Psychology (ABFP), a specialty Board of the American Board of Professional Psychology (ABPP). This Board certification follows an extensive continuing education and rigorous examination process. This credential is intended to signify the highest levels of expertise and practice in the field of forensic psychology. Currently, only 280 psychologists hold this distinction nationwide, only 15 of whom reside in Ohio.

4. I am Past President of the Central Ohio Psychological Association (COPA), and I am on the Ethics Committee of the Ohio Psychological Association (OPA). I am a member in good standing of a number of other professional associations, including the American Psychological Association and the American Psychology-Law Society.

5. I work full time at Twin Valley Behavioral Healthcare, which is an inpatient psychiatric hospital operated by the Ohio Department of Mental Health. I am an Active Full Member of the Medical Staff Organization with Psychology Privileges at Level III (Full Clinical Privileges), with additional Active Forensic Evaluation Privileges. At Twin Valley, I complete court ordered forensic evaluations, I serve on the Ethics committee, I supervise students and residents in training, and I testify in court.

6. I have a private practice, in which I specialize in clinical and forensic psychology. I provide psychological evaluations and have testified in court at the request of the court, prosecutors, and defense attorneys.

7. I have an Adjunct Assistant Professor appointment at The Ohio State University, Clinical Psychology Department. I have also had an Adjunct Faculty appointment with The Union Institute and University in Cincinnati, Ohio. I serve as a guest lecturer and have served as a clinical supervisor for Wright State University's School of Professional Psychology's APA-accredited pre-doctoral psychology internship program and post-doctoral fellowship program. I provide clinical and forensic supervision to advanced level doctorate students and post-doctorate residents.

8. I have attached my Curriculum Vita (CV) which contains a true and accurate copy of my specialized education, training, and clinical / forensic psychology experiences.

II. Purpose and Method of Evaluation in this Case

9. In this case, I was retained by Kathryn Sandford of the Office of the Ohio Public Defender to review certain transcripts, interview summaries, and other records in the above styled case, and to complete a clinical and forensic evaluation of Mr. Mark Pickens, the appellant. I was asked to provide a professional opinion as to whether, had I been called as an expert witness at trial, I could have and would have provided testimony based on empirical evidence and my specialized knowledge, skill, experience, training, and education that was not offered at trial and that would have been relevant, important, and helpful to the jury for mitigation purposes.

10. The following is a list of records that I reviewed:

10.1. Mark Pickens's school records, including records from Cincinnati Public Schools, P.A.C.E. High, Hillcrest Training School, and Harmony Community School.

10.2. Mark A. Pickens's records from the Ohio Department of Youth Services (DYS).

10.3. Summary of interview with Mark A. Pickens, the appellant, completed by Jessica Love on 9-17-09.

10.4. Summary of interview with Truvena Griffin, the appellant's mother, completed by Jessica Love on 9-22-09.

10.5. Summary of interview with Monica Marshall, the appellant's maternal aunt, completed by Jessica Love on 10-21-09.

10.6. Summary of interview with Florena Johnson, the appellant's maternal great grandmother, completed by Jessica Love on 10-22-09.

10.7. Summary of interview with Mario Miller, a friend of the appellant, completed by Jessica Love on 11-19-09.

10.8. Summary of interview with Isiah Marshall, the appellant's maternal uncle, completed by Jessica Love on 12-3-09.

10.9. Summary of interview with Ciara Rucker, an ex-girlfriend of the appellant, completed by Jessica Love on 12-17-09.

10.10. Summary of interview with Michael Pickens, the appellant's brother, completed by Jessica Love on 1-5-10.

10.11. Minnesota Multiphasic Personality Inventory – 2 (MMPI-2) Basic Service Report of Mark Pickens, dated 1-8-10.

10.12. Summary of telephone interview with Laura Chapman, an ex-girlfriend of the appellant, completed by Jessica Love on 3-22-10.

10.13. Transcript of Proceedings on Appeal, Case No. B-0905088, Volume 26, State of Ohio, Plaintiff v. Mark Pickens, Defendant, filed 9-23-10.

10.14. Summary of interview with Levi Smith, the appellant's past boxing coach, completed by Mark Rooks on 3-15-11.

11. I personally examined Mark Pickens for over 4 hours on 4-13-11.

12. I interviewed Truvena Pickens, the appellant's mother, by telephone on 4-21-11.

13. I also interviewed Nancy Schmidtgoessling, Ph.D., Psychologist, by telephone for approximately 10 minutes on 5-13-11 and another 30 minutes on 5-15-11. Dr. Schmidtgoessling was one of the mitigation psychologist at Mark Pickens's trial.

III. Mitigating Factors Identified at Trial

14. No psychologist was called to testify at the sentencing phase of Mark Pickens's trial.

15. When I talked to Dr. Schmidtgoessling, a mitigation psychologist at Mark Pickens's trial, she told me she did not identify any mitigating factors in Mark Pickens's case.

IV. Shortcomings of Mitigation Presentation at Trial

16. Forensic psychologists have expertise by knowledge, skill, experience, training, and education that allows them to offer testimony in the form of an opinion or otherwise, based on sufficient facts and data, produced from reliable principles and methods, applied reliably to the facts of the case in which the forensic psychologist is testifying.

17. It is important in capital sentencing evaluations for extended direct evaluations to take place between the defendant and the examining psychologist to allow, among other things: (1) the opportunity to identify the presence of any mental disorder or defect that might be of mitigating value; (2) the opportunity for sufficient trust to develop between the defendant and the psychologist for the defendant to disclose a history of trauma or other adverse experiences which may be anxiety laden, accompanied by shame, or otherwise not easily elicited (the importance of this point is further illuminated by empirical literature showing that a disproportionate number of capital defendants have suffered traumas in their past); (3) the opportunity to obtain a specific and detailed multi-generational family history, psychosocial history, medical history, and educational history as well as information about each traumatic or adverse experience and its subsequent life impact; (4) the opportunity to allow a reasonable basis of direct observation for conclusions; and (5) reliability of the psychological testimony before the jury.

18. Additionally, without the development of a comprehensive fact base regarding the defendant's life, the psychologist would have no basis for considering or testifying regarding psychological research relevant to the impact of the mitigating factors on the defendant's character and circumstances, depriving the jury of testimony that can be used to give additional weight and credibility to the identified mitigating factors.

19. Moreover, references to collateral sources are important in order to provide specific and detailed examples to the trier of fact, and also to support the credibility and accuracy of the information presented in mitigation, as well as the jury's appraisal of the thoroughness and professionalism of the psychologist—all of which affects the jury's weighing of mitigating factors.

20. In this case, Dr. Schmidtgoessling told me that she was hired as a mitigation psychologist at Mark Pickens's trial. She said she spent about four hours with Mark and much of that time was spent administering two psychological tests, rather than establishing rapport with and interviewing Mark. This is not nearly enough time to fully develop mitigation from a psychological perspective (see paragraph 17 above). Dr. Schmidtgoessling acknowledged the four hours she spent with Mark is less time than she would typically spend with a defendant in a mitigation case. She added that the plan was that she would interview Mark some more after talking to the attorneys on the case. But she never went back and interviewed Mark. She never identified any mitigating factors. And she never testified.

21. Furthermore, Dr. Schmidtgoessling told me that there was a mitigation specialist (Jessica Love) involved in Mark Pickens's trial. Among other things, mitigation specialists assist in developing the defendant's psychosocial history and identifying and locating reliable collateral contacts. Dr. Schmidtgoessling told me that other than a few minutes in which she and the mitigation specialist were both present in a meeting with Mark Pickens's trial attorneys, Dr. Schmidtgoessling "didn't really spend time with" the mitigation specialist. A psychologist hired for mitigation purposes should always consult with a mitigation specialist hired to work on the same case.

22. Dr. Schmidtgoessling also told me that it was her understanding that another psychologist had worked on Mark Pickens's case before Dr. Schmidtgoessling was hired. Dr. Schmidtgoessling said she reviewed this other psychologist's test results but she did not review any other notes of the psychologist or talk to that psychologist. She told me that she was not sure what else the other psychologist did related to the case. She also did not know what the other psychologist thought of Mark Pickens. She added that these things were never explained to her and she did not believe it was her place to ask.

23. Dr. Schmidtgoessling said she did not have any contact with Mark Pickens's mother or other family members.

24. Dr. Schmidtgoessling told me she did not identify any mitigating factors from a psychological perspective. Importantly, my evaluation revealed several important mitigating factors.

25. Insufficient time was spent prior to trial to fully develop mitigating psychological evidence in Mark Pickens's case. If the examining psychologist is not allowed or does not take sufficient opportunity to develop comprehensive historical, developmental, medical, educational, family, community, and neuropsychological data, the jury is deprived of the opportunity to consider or give weight to characteristics and circumstances of the defendant which could have significantly affected deliberations of a sentence of less than death.

26. In this case, the mitigation psychologist did not have the time or did not take the time necessary to develop mitigation in Mark Pickens's case. Not nearly enough time was spent with Mark to develop psychological mitigation. And important other sources, including a previous psychologist, Mark's mother, and the mitigation specialist assigned to the case, were never consulted for purposes of developing psychological mitigation. This led to a failure to discover and report information crucial to a mitigation presentation from a psychological perspective. As such, the jury was deprived of important and relevant mitigation testimony.

27. A forensic psychologist, or a person with similar expertise, should have testified in this case because (a) there are, in fact, psychological variables present in Mark Pickens's case that are mitigating factors, and (b) the nexus between the identified mitigating factors on the one hand, and human development applied to Mark Pickens on the other hand, is beyond the scope of knowledge of a lay person.

28. Expert testimony was necessary to present all the mitigating factors in Mark Pickens's case. Expert testimony was necessary to explain the existing mitigating factors as they relate to Mark Pickens's development and behavior. Expert testimony would have allowed the jury to properly weigh the mitigating factors against the aggravating circumstances. Without such expert testimony, the jury was not presented with all available mitigation and, therefore, did not have the opportunity to properly weigh the mitigating factors against the aggravating circumstances.

V. Scientific, Technical, Or Other Specialized Psychological Knowledge That Was Available In The Scientific Literature, Which Was Of Mitigating Value And Would Have Assisted The Jury In Understanding The Evidence And Weighing The Mitigating Factors Against The Aggravating Circumstances

29. Each of the following mitigating factors should have been discussed in light of the known scientific literature base and applied to Mark Pickens so the jury could properly understand the mitigating factors and properly weigh their mitigating value:

29.1. The young age of Mark Pickens's mother when she gave birth to Mark and the resultant inadequacy of her parenting.

29.2. The absence of Mark Pickens's father during Mark's developmental years.

29.3. The existence of mental illnesses in Mark's family and the impact on Mark's development.

29.4. Domestic violence that existed in Mark Pickens's home and the impact that has on a child's development.

29.5. The abuse that Mark Pickens endured and the impact abuse has on children like Mark.

29.6. The lack of structure and consistency in Mark Pickens's life and the effect that has on a child's development.

29.7. The possibility of a learning disability and/or neuropsychological impairment in Mark and the effect that can have on his development and behavior.

VI. Mother's Young Age

30. Research shows that children who grow up in a home in which the mother began bearing children as a teenager are more likely to be physically abused and at the same time the quality of the home is lower in emotional support. Both of these were true in the case of Mark Pickens. In fact, a Robin Hood Foundation special report on adolescent child bearing showed that sons of teen mothers are 2.7 times more likely to end up in prison.

31. In this case, Mark Pickens's mother gave birth to him when she was 16 years old; her own mother gave birth to her at the age of 14. When she gave birth to him, Mark's mother was still dealing with problems of her own, having reportedly been molested by an uncle at age five, which prompted her to act out, and resulted in numerous foster care placements.

32. Mark Pickens's mother said she felt unsupported by her own family because she got pregnant at such a young age. According to Mark's mother, Truvena Griffin, no one ever took the time to teach her about being a parent. At the time of Mark's birth, she did not even know how to wash clothes or cook.

33. Mark Pickens's paternal grandmother wanted to raise Mark because Mark's mother was so young, but Mark's mother would not allow this.

34. When Mark Pickens was about seven years old, his mother "took him away from his family," including maternal and paternal relatives. Family members commented that Mark was raised as if he did not have any extended family and his mother would get "jealous" if her kids wanted to spend time with other family members.

35. Mark Pickens's maternal grandmother died at the age of 39, when Mark was 8 or 9 years old. After that, Mark would go into a closet and cry "for no reason" and he would pee on his teddy bear. Mark's mother believed Mark was a young boy doing something gross and that is the reason he peed on the teddy bear. Given the temporal proximity to the loss of his grandmother and given that Mark was hiding in a closet and crying, Mark was likely exhibiting the emotional sequelae of having lost his grandmother.

36. Multiple family members noted that Mark Pickens's mother should have provided better boundaries for her children, as she did not set rules, she let them run the streets, and she took a permissive attitude toward drugs and alcohol.

37. Levi Smith, a past boxing coach of Mark Pickens, said that Mark's mother was Mark's "worst enemy." He noted that he spoke with Mark's mother once about Mark's decaying behavior, but she seemed to condone the behavior or at least ignore it. Reportedly, she cursed the coach out to end that conversation. The same coach said that Mark's mother used to watch him sell drugs and seemed to condone the behavior as she did nothing to stop it. The coach said Mark's mother used to have a saying: "Gotta get loot."

VII. Absence Of Father

38. Research has established that there are a number of risks associated with a father's absence from the home. Individuals who grow up in a home without a father are at increased risk for delinquency, school problems, drug and alcohol use, and criminal activity—to name a few.[1]

39. In this case, records document that Mark Pickens's parents separated when Mark was very young. Mark said his father left the family when Mark was five or six years old. Mark's mother said Mark's father was not involved in Mark's life after the separation.

40. When Mark Pickens was 14 years old, his mother agreed to send him to Florida to see his father who lived in Florida at the time. Two days prior to when Mark was supposed to see his father, the father was reportedly incarcerated for rape and is now serving a life sentence in prison.

VIII. Mental Illness In The Family

41. Factors pertaining to maternal mental illness (including severity and chronicity of symptoms, compliance with treatment, parent's level of adaptive functioning, and parent's level of insight) appear to be closely related to child outcomes in terms of enhancing resilience or risk. Research suggests that mental illness affects parenting behavior, which subsequently has a strong influence on child outcomes. Mothers with depression, for example, express greater levels of negative emotions (i.e., hostility, irritability, sadness). These parenting attributes are risk factors that may be associated with disrupted attachment and

[1] See Sampson, R.J. & Laub, J.H. (1994). Urban poverty and the family context of delinquency: A new look at structure and process in a classic study. *Child Development, 65,* 523-540. See also, Jenkins, P.H. (1995). School delinquency and school commitment. *Sociology of Education, 68,* 221-239. See also, Hill, M.A. & O'Neil, J. (1993). *Underclass behaviors in the United States: Measurement and analysis of determinants.* City University of New York, Baruch College. See also, Beck, A., Kline, S., & Greenfield, L. (September, 1988). Survey of youth in custody, 1987. *Bureau of Justice Statistics.* See also, Cornell, D. et al. (1987). Characteristics of adolescents charged with homicide. *Behavioral Sciences and the Law, 5,* 11-23. See also, U.S. Department of Health and Human Services (1993). National Center for Health Statistics, *Survey of Child Health.* Washington, D.C.

developmental delays in language, attention, and social competence in exposed children. The literature supports the association between parental mental illness and adverse childhood outcomes in terms of cognitive, emotional, social, and behavioral functioning. [2]

42. Mark Pickens's mother reported she has suffered from depression for most of her life. She received therapy for a number of years from various places and spent time in a psychiatric hospital. She was reportedly depressed and suicidal for a number of years. She has been on disability due to depression.

43. Other family members described Mark Pickens's mother as "iffy" and "off." She was described by family members as possibly having bipolar disorder because she can be nice one moment and then without any warning she will be "going off." Mark Pickens confirmed that his mother does that and he added, "It's like she's got two personalities."

44. I did not personally evaluate Mark Pickens's mother, but I did talk to her by telephone in the company of Mark's attorneys and Jessica Love (who was the trial phase mitigation specialist). Mark's mother abruptly hung up on three separate occasions. The first occasion occurred less than five minutes into the conversation. The second occasion occurred less than one minute into the conversation. And the third occasion occurred about a half hour into the conversation. In the time she was on the phone, Mark's mother ranted about things that were only tangentially related or that were completely unrelated to the inquiries that were being posed to her. She impressed me as angry, irritable, self-centered, and lacking in insight and judgment. She was prone to misinterpretations that exacerbated her foul mood, emotional lability, and impulsive reactions. Her speech was pressured and rambling. She was hostile and defensive. I found it impossible to reason with her.

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[2] Costea, G.O. (2011). Considering the Children of Parents with Mental Illness: Impact on Behavioral and Social Functioning. Available at: http://www.childadolescentbehavior.com/sample-articles/Considering-children-with-parents-with-mental-illness-impact-behavioral-social-functioning.aspx.

45. Mark Pickens's maternal great grandmother explained that Mark's father previously spent many years in a psychological center and she reported that he had an extensive mental health history.

46. Mark Pickens also told me that he believed one of his brothers was on "some type of disability" related to psychiatric problems and another brother used to take medications to help control his behaviors.

IX. Domestic Violence

47. The National Center for Victims of Crime reports that "perpetrators of domestic violence....have *learned* abusive, manipulative techniques and behaviors..." (emphasis added). Moreover, studies have shown that "Families under stress produce children under stress. If a spouse is being abused and there are children in the home, the children are affected by the abuse" physically and emotionally.

48. According to a report released from the United States Department of Health and Human Services, research shows that witnessing domestic violence may be as harmful to children as actually suffering the physical abuse. Studies suggest that young children can be overwhelmed by their exposure to violence, especially when both the victim and the perpetrator are well known and emotionally important to the child.

49. The Rochester Youth Development Study found that 78% of all youth exposed to spousal abuse, child abuse, and a climate of violence and hostility—like Mark Pickens was—went on to demonstrate serious youth violence.

50. Significantly, witnessing domestic violence also serves as a model to children as it pertains to how to cope with stress, tolerate frustrations, and solve problems later in life.

51. According to Mark Pickens's mother, Mark's mother and father had a verbally and physically abusive relationship. In fact, Mark's mother admitted that all the men she ever

dated were abusive toward her. Mark witnessed the abuse, sometimes grabbing his siblings and taking them to another room.

52. Reportedly, Mark Pickens's step dad, Rodney Griffin, was quite abusive, as well. He reportedly broke Mark's mother's nose when Mark was four years old.

53. Mark Pickens's step father reportedly used to get mad, take the family car, and force Mark's mother and the children to walk home from wherever they were at the time.

54. Mark Pickens's mother said she separated from her current husband, Rodney Griffin, in 2002 after an abusive incident which Mark observed.

X. Victim of Abuse

55. According to the American Psychological Association Presidential Task Force on Violence and the Family (1996), abused and neglected children may show a variety of initial and long-term psychological, emotional, physical, and cognitive effects, including the following: low self-esteem, depression, anger, exaggerated fears, suicidal feelings, poor concentration, regressive behavior, health problems, withdrawal, poor peer relations, acting out behaviors, anxiety disorders, sleep disturbance, lack of trust, secretive behaviors, overly rebellious behaviors, and drug and alcohol problems.

56. Research sponsored by the United States Department of Justice has shown the following as it relates to the impact of abuse and neglect on victims, such as Mark Pickens:

    56.1. Victims are 4.8 times more likely to be arrested as juveniles;

    56.2. Victims are 2 times more likely to be arrested as adults; and

    56.3. Victims are 3.1 times more likely to be arrested for a violent crime as an adult.

57. Mark Pickens's step father reportedly used to call Mark a "fat ass" and ridiculed him when he asked for food.

58. Mark Pickens's mother said at one point that she used to whip Mark to the point that he would stutter. On one occasion, when Mark was just five years old, she hit him with a belt, cutting his cheek with the belt buckle, which resulted in a scar on Mark's face that can be seen to this day. She said she did this because a male friend of hers said Mark was following him around the house, including into the bathroom, which meant Mark was going to be gay.

59. Family members explained that Mark's mother was abusive toward all her children and that she would hit Mark with whatever object she could grab, including hangers and brooms.

60. Mark was reportedly picked on and bullied by kids at school and in the neighborhood. Mark's mother took him to learn how to box so he would not be beat up anymore.

XI. Lack of Structure and Consistency.

61. It is well-established in the behavioral and social sciences literature that healthy child development requires structure, limit setting, and guidance through discipline. This fundamental tenet is supported by voluminous research. In the absence of parental limit setting, there is grave risk to psychological health and positive socialization. Children need order and external structures to develop internal structures and the capacity for self-guidance. When guidance is not provided, self-control does not develop and aggression can unfold. Children whose families fail to provide adequate supervision are more likely to exhibit delinquent behavior. Quite simply, lack of parental discipline contributes to aggressiveness and predisposes one to violence in the community.[3]

[3] See Cantelon, S.L. (1994). Family strengthening for high-risk youth. Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. *Fact Sheet #8.* See also, Friday, J.C. (1994). The psychological impact of violence in underserved communities. *Journal of Health Care for the Poor and Underserved, 6,* 403-409. See also, Patterson, G.R., DeBaryshe, B.D., & Ramsey, E. (1989). A developmental perspective on antisocial behavior. *American Psychologist, 44,* 329-335. Staub, E. (1996). See also, Cultural-societal roots of violence. *American Psychologist, 51,* 117-132.

62. Research has also established that residential mobility and lack of attachment to a school have adverse effects on children's development.

63. Multiple family members noted that Mark Pickens's mother should have provided better boundaries for her children, as she did not set rules, she let them run the streets, and she took a permissive attitude toward drugs and alcohol.

64. Mark attended two different preschools. He attended three different schools in first grade. He attended two different schools in second grade. In third grade, he attended two different schools, but had four different transitions (attending each school twice because of moves during the school year). He attended one school in 4th grade, two in 5th grade, one in 6th grade, two in 7th grade, and two in 8th grade. In all, Mark attended 12 different schools before he got to high school.

65. Notably, when incarcerated in the Ohio Department of Youth Services (DYS), where structure and consistency were imposed, Mark functioned relatively well and was frequently described in positive terms as it related to his behavior and adjustment.

XII. Possible Neuropsychological Impairment.

66. There are indications of neuropsychological deficits in Mark Pickens's case. National Institute of Mental Health (NIMH) funded neuroscience research is revealing brain mechanisms underlying impulsivity, mood instability, aggression, anger, and negative emotions. Studies suggest that people predisposed to impulsive aggression have impaired regulation of the neural circuits that modulate emotions. The amygdala, a structure deep inside the brain, is an important component of the circuit that regulates negative emotion. Areas in the front of the brain (prefrontal area) act to dampen the activity of the circuit. Recent brain imaging studies show that individual differences in the ability to activate regions of the prefrontal cortex thought to be involved in inhibitory activity predict the ability to suppress emotion. It would be important to have Mark Pickens evaluated by specialists in the field of neurology, neurophysiology, or neuropsychology to determine the existence of

brain dysfunction and/or neuropsychological deficits that would be consistent with a learning disorder, a cognitive disorder, an impulse control disorder, a neurological or neuropsychological disorder, and/or another mental illness or mental defect caused by neurological or neuropsychological impairment. Such disorders and defects would have mitigating value. Singularly and collectively, the following support the need for such an evaluation:

66.1. Research has shown neurobiological effects of maternal depression, including alterations in frontal lobe activity of preschool-age children that correlate with diminished empathy and behavioral problems.[4] Mark Pickens's mother has suffered from depression for much of her life. She has, in fact, been on disability and in a psychiatric hospital because of her depression.

66.2. According to Mark Pickens's mother, Truvena Griffin, Mark's father was physically abusive to the mother while she was pregnant with Mark, even choking her when she was pregnant, placing Mark at risk for neurological impairment.

66.3. When Mark Pickens's mother was nine months pregnant with Mark, her father-in-law told Mark's father that he needed to "beat her ass" because she was a smart mouth. According to Mark's mother, Truvena Griffin, Mark's father proceeded to push her down some stairs, causing Mark's head to drop and resulting in an emergency Cesarean section delivery.

66.4. Mark was a boxer for several years during his adolescence. He reported that on one occasion at age 14, he suffered a concussion, being knocked out while he was sparring. Obviously, he sustained other blows to his head as well.

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[4] Costea, G.O. (2011). Considering the Children of Parents with Mental Illness: Impact on Behavioral and Social Functioning. Available at: http://www.childadolescentbehavior.com/sample-articles/Considering-children-with-parents-with-mental-illness-impact-behavioral-social-functioning.aspx.

66.5. As noted elsewhere, Mark was reportedly the victim of physical abuse—at least one assault to the face being so severe that it left a permanent scar.

66.6. Mark Pickens showed evidence of learning problems, repeatedly failing proficiency tests in school and obtaining poor grades for much of his schooling.

66.7. Reportedly, Mark has attempted to obtain his GED and has reportedly passed all sections, but has not obtained a high enough average score to pass the test—another indicator of learning problems.

66.8. In January 2006, Mark Pickens's cognitive abilities were assessed and he was found to have a Performance IQ in the average range (standard score = 94), but a Verbal IQ and Full Scale IQ in the borderline range (standard scores = 79 and 85, respectively). On 1-8-10, Mark's cognitive abilities were assessed and he was again found to have a Performance IQ in the average range (standard score = 98), but a Verbal IQ and Full Scale IQ in the borderline and low average ranges (standard scores = 70 and 87, respectively). A significant difference between verbal and performance IQ, as was evidenced in Mark's case, is one indicator of a possible learning disability.

66.9. Mark Pickens's January 2006 psychological evaluation also identified problems with impulsivity, further raising concerns about neurological and/or neuropsychological deficits.

Conclusion / Summary

67. Research has shown that children who are exposed to the aforementioned factors and corruptive influences are more likely to experience psychological disorders, exhibit grief and loss reactions, have stunted moral development, show a pathological adaptation to violence, and ultimately identify with the aggressor.

68. The United States Department of Justice has found that there is a cumulative impact, meaning the larger the number of risk factors to which a youth is exposed, the greater the probability of violent behavior in the community. Mark Pickens was not exposed to just one or two risk factors, or even a few risk factors. He was chronically and repeatedly exposed to numerous significant risk factors.

69. It is my professional opinion, to a reasonable degree of psychological certainty, that there is a specialized scientific literature base bearing directly on the issues that were present in Mark Pickens's case. It is my professional opinion that information from that professional literature base could have and should have been presented at Mark Pickens's trial for its mitigating value. It is similarly my professional opinion that without the presentation of the information identified in this affidavit, the trier of fact was deprived of the opportunity to fully consider the history, character, and background of Mark Pickens in the weighing of the mitigating factors.

70. Had I been asked to testify to the contents of this affidavit at the capital trial of Mark Pickens, I would have done so.

71. Moreover, I would have strongly recommended that defense counsel employ an expert to assess for neurological or neuropsychological impairment, as there are indications that Mark Pickens may suffer from mild brain impairment.

72. It is my professional opinion, based on my education, training, and experience, that there were substantial mitigating factors that were not discovered and testified to at Mark Pickens's trial. A forensic psychologist should have identified the mitigating factors I have described above. Had a forensic psychologist testified at Mark Pickens's trial, the jury could have heard and weighed those mitigating factors. Because a psychologist did not testify at his trial, the jury was deprived of the opportunity to consider and give weight to those mitigating factors.

Further Affiant sayeth naught.

Bob Stinson, Psy.D., J.D., ABPP
Board Certified Forensic Psychologist

Sworn to and subscribed before me on this 16th day of May, 2011.

David J. Forman
Notary Public, State of Ohio
My Commission Expires 08-03-2014

Notary Public

A-147

BOB STINSON, PSY.D., J.D., ABPP

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Board Certified Forensic Psychologist

Primary Business Address:	**Twin Valley Behavioral Healthcare** **2200 West Broad Street** **Columbus, OH 43223** **(614) 752-0333 ext. 5124**
Preferred E-Mail Address:	**Stinson@StinsonPsychology.com**

Education

Doctor of Psychology	Psy.D. (Clinical Psychology), September 1999 Wright State University School of Professional Psychology Full APA Accreditation Dayton, Ohio
Juris Doctor	J.D. (Law), January 2011 Capital University Law School Summa Cum Laude Order of the Curia Criminal Litigation Concentration Dispute Resolution Concentration Columbus, Ohio
Bachelor of Science	B.S. in Psychology, June 1995 Summa Cum Laude With Honors in Liberal Arts With Distinction in Psychology Minor: Criminology and Criminal Justice The Ohio State University Columbus, Ohio
Deaf Studies	Studies in American Sign Language (ASL) and Deaf culture Sinclair Community College Dayton, Ohio

Special Credentials

License
- Ohio License Number 5715, September 22, 2000 – Present

Specialty Board Certification
- Board Certified Forensic Psychologist by the American Board of Professional Psychology (ABPP), April 2008 - Present

National Register
- National Register of Health Service Providers in Psychology, 2004 - Present

Hospital Privileges
- Twin Valley Behavioral Healthcare
  Active Full Member of the Medical Staff Organization
  Privilege Level III (Full Privileges)
  Additional Forensic Evaluation Privileges (Special Privileges)
  Member of the Ethics Committee (2009-Present)

University Affiliations
- The Ohio State University, Adjunct Assistant Professor, Dept. of Psychology; Pre-Doctoral Clinical Training Supervisor
- Wright State University School of Professional Psychology – Guest Lecturer; Clinical Training Supervisor
- Fielding Graduate University, Doctoral Program in Clinical Psychology, Clinical Training Supervisor (Inactive)
- Union Institute and Graduate School, Adjunct Faculty (Inactive)

Professional Affiliations

- Diplomate, American Board of Professional Psychology (ABPP)
- Fellow, American Academy of Forensic Psychology (AAFP)
- American Psychological Association (APA)
- The Division of School Psychology, Division 16 of the APA
- The Division of Psychologists in Public Service, Division 18 of the APA
- The American Psychology-Law Society, Division 41 of the APA
- Ohio Psychological Association (OPA) (Member, Ethics Committee)
- Past-President, Central Ohio Psychological Association (COPA)
- ~~American Bar Association (ABA) (Student Member)~~
- Criminal Justice Section of the American Bar Association (Student Member)
- Ohio State Bar Association (OSBA) (Student Member)

Committees / Advisory Boards

- Ethics Committee, Ohio Psychological Association (OPA) (2009-Present)
- Ethics Committee, Twin Valley Behavioral Healthcare Medical Staff (2009-Present)
- Ohio Mental Health and Deafness Advisory Council
- Wright State University SOPP Mental Health and Deafness Advisory Board
- Deaf Off Drugs and Alcohol (DODA) Statewide Steering Committee
- Wright State University SOPP – Academy of Psychology, Board of Directors (2007-Present)

Professional Experiences

Twin Valley Behavioral Healthcare-Columbus Campus July 1999-Present
Psychologist (Started as a Post-Doctoral Resident for one year)
Columbus, Ohio

Population:
- Multicultural male and female adult (and some adolescent) psychiatric inpatients who present with a broad variety of problems, including legal issues and severe DSM-IV-TR Axis I and Axis II psychopathology; civil & forensic patients

Responsibilities:
- Complete psychological evaluations.
- Complete intellectual, neuropsychological, personality, and forensic assessments.
- Conduct initial clinical risk assessments and risk assessment updates.
- Conduct individual and group psychotherapy.
- Provide psychological training supervision to pre- and post-doctoral residents, and master-level psychology assistants.
- Serve as a psychological consultant.
- Conduct research, publish articles, and provide community education.
- Consult other disciplines including medical, nursing, and social work.
- Serve as a member of various committees (including, for example, the Ethics committee, a competency to stand trial committee, an NGRI committee, a patient assaultiveness reduction committee, the HCR-20 Risk Assessment Implementation Committee, and a web development committee).
- Fulfill various administrative responsibilities.

Professional Experiences (Continued)

Bob Stinson, Psy.D., Inc. September 2000-Present
Private Practice, Psychologist, Specializing in Forensic Psychology
Westerville, Ohio

Population:
- Multicultural male and female adults and children/adolescents in need of clinical and/or forensic psychological evaluations.

Responsibilities:
- Provide psychological consultations to Courts, attorneys, and various Forensic Diagnostic Centers.
- Complete forensic evaluations (e.g., competency to stand trial, sanity, sexual offender risk assessments, sentencing evaluations, and other psycho-legal issues), including reviewing records, interviewing individuals, and psychologically testing and evaluating defendants.
- Write forensic reports.
- Provide expert testimony.

The Ohio School For the Deaf October 2001-Present
Contract Psychologist
Columbus, Ohio

Population:
- Deaf and Hard of Hearing children enrolled at the Ohio School for the Deaf or another school throughout the state of Ohio

Responsibilities:
- Provide and supervise the provision of psychological and psychoeducational evaluations as part of a multifactored evaluation (MFE) team.
- Provide psychological consultation to the multifactored evaluation team.
- Provide consultation / outreach services to parents and schools with deaf or hard of hearing students in the state of Ohio.

Professional Experiences (Continued)

Bureau of Disability Determination Jan. 2001 – Dec. 2004
Psychological Consultant
Columbus, OH

Population:
- Multicultural male and female adults and children applying for Title II and/or Title XVI disability benefits under the Social Security Act.

Responsibilities:
- Evaluated medical evidence to determine its adequacy for making disability determinations.
- Assessed the severity of impairments and described the functional capacities or limitations imposed by such impairments.
- Discussed with examiners and other staff members ways to resolve problems in getting evidence of record.
- Reviewed requests for consultative examinations to assured necessity and described alternatives as needed.
- Evaluated medical/psychological questions and made recommendations for improvement to obtain proper evidence.
- Discussed with staff members ways to improve relations with the medical profession, enlarge consultative examiner panels, and minimize processing time.
- Discussed with training staff ways to improve examiner understanding and use of medical evidence.
- Reviewed consultative reports for deficiencies in content and recommended ways to avoid deficient reports.
- Participated in vocational rehabilitation screening and referral processes
- Reviewed determinations to assure integrity of decisions based on medical evidence.
- Provided in-service and open-to-the-public trainings and seminars.

Columbus Colony Elderly Care Aug. 2001-Aug. 2003
Director and Supervisor of Psychological Services
Contract Psychologist
Westerville, Ohio

Population:
- Multicultural male and female deaf, deaf-blind, hearing, and hard of hearing nursing home residents

Responsibilities:
- Completed psychological evaluations and provide individual psychotherapy.
- Provided consultation and in-service training to nursing home staff members and administration.
- Developed, train, and supervise a mental health treatment team.

Professional Experiences (Continued)

Drs. Gibeau & Hrinko (Private Practice) September 1998-September 2000
Pre-Doctoral and Post-Doctoral Psychology Assistant
Springfield, Ohio
Clinical Hours: 8 hours per week

Population:
- Multicultural male and female child, adolescent, and adult outpatients who presented with a broad variety of psychological and emotional issues

Responsibilities:
- Completed psychological evaluations and assessments (including BVR, BDD, parental fitness, custody, and other forensic evaluations).
- Completed psychoeducational assessments and served as the psychology representative on multifactored evaluations (MFEs).
- Conducted individual and group psychotherapy.
- Developed and implemented an anger management group for the Clark County Juvenile Court.
- Provided community education.
- Served as a psychological consultant.

Wright State University, School of Professional Psychology September 1998-August 1999
Residency Program (Full APA Accreditation)
Pre-doctoral Psychology Resident
Dayton, Ohio
Hours: 40 hours per week; total hours = 2000

1st Rotation: Twin Valley Psychiatric System-Dayton Campus September 1998–February 1999
Rotation Hours: 40 hours per week; total hours = 1000

Population:
- Multicultural male and female adult psychiatric inpatients who presented with a broad variety of problems, including severe DSM-IV Axis I and Axis II psychopathology; civil and forensic patients

Responsibilities:
- Completed psychology section of multidisciplinary assessments.
- Conducted initial risk assessments and risk assessment updates.
- Participated in competency to stand trial and sanity evaluations.
- Developed and implemented a problem solving group.
- Participated as a member of a multidisciplinary treatment team.
- Wrote multidisciplinary treatment plans.
- Taught a section on psychotherapy to medical students.

Professional Experiences (Continued)

2nd Rotation: Ellis Human Development Institute March 1999-August 1999
Rotation Hours: 40 hours per week; total hours = 1000

Population:
- Multicultural male and female children, adolescents and adults who presented with a broad variety of outpatient problems

Responsibilities:
- Provided individual, couples, family, and group psychotherapy.
- Completed cognitive, personality, and academic assessments.
- Co-facilitated a domestic batterers group (PATH).
- Served as Resident On-Call.
- Supervised graduate level trainees.
- Participated in weekly staffings.

Center for Psychological Services, Wright State University September 1997-August 1998
Office of Disability Services, Wright State University
Pre-doctoral Psychology Trainee
Dayton, Ohio
Practicum Hours: 17 hours per week; total hours = 815

Population:
- Multicultural and diverse college students experiencing mood, anxiety, and adjustment disorders; academic difficulties and learning disabilities; drug and alcohol problems; relationship difficulties; gender identity issues; eating disorders; and/or personality disorders

Responsibilities:
- Conducted short and long term psychotherapy.
- Completed cognitive, personality, educational, and neuropsychological assessments.
- Co-facilitated a stress management and relaxation group.
- Provided psychoeducational presentations.
- Served as the psychological liaison and consultant with the athletic and recreation departments.
- On-call for crisis intervention; initial screenings, and consultations.

Professional Experiences (Continued)

Male Responsibility Program, Dayton Urban League May 1996-August 1998
Pre-doctoral Psychology Assistant, Student Supervisor
Dayton, Ohio
Practicum Hours: 4 hours per week; total hours = 300

Population:
- Adolescent males, primarily African American, experiencing behavioral problems; academic difficulties; learning disabilities; and mood, anxiety, and adjustment difficulties

Responsibilities:
- Supervised first and second year graduate students who participated in the tutorial portion of the Male Responsibility Program.
- Consulted other professionals, including school personnel.
- Co-developed a behavioral incentive program.
- Conducted individual and group counseling.
- Administered academic and psychological assessments.
- Engaged in research design, data collection, and data analysis.

London Correctional Institution, State Prison September 1996-August 1997
Pre-doctoral Psychology Trainee
London, Ohio
Practicum Hours: 17 hours per week; total hours = 860

Population:
- Multicultural male inmates presenting with personality disorders, anxiety disorders, adjustment disorders, psychotic disorders, sexual disorders, and substance-related disorders

Responsibilities:
- Developed and facilitated a weekly anger management group.
- Performed pre-parole evaluations and provided written reports.
- Consulted with and participated as a member of the Local Control Committee (overseeing a disciplinary segregation unit).
- Assisted in forensic evaluations (e.g., competency to be executed, competency to stand trial, and juvenile bind-over cases).
- Conducted short and long term individual psychotherapy.

Frederick A. White Health Center, Wright State University November 1996-January 1997
Pre-doctoral Psychology Trainee
Dayton, Ohio
Practicum Hours: Total hours = 25

Population:
- University students suspected of having a learning disability

Responsibilities:
- Completed learning disability assessments and reports.

Professional Experiences (Continued)

Mental Health and Deafness Program September 1995-June 1996
Pre-doctoral Psychology Assistant
Dayton, Ohio
Practicum Hours: 5 hours per week; total hours = 230 hours
Population:
- Deaf children and their families; presenting problems included adjustment disorders, hyperactivity, and behavioral problems

Responsibilities:
- Provided short and long term individual and family psychotherapy.
- Gained experience and supervision in working with deaf clients, their families, and sign language interpreters.

Suicide Prevention Services, North Central Mental Health Center September 1994-May 1995
Undergraduate Psychology Volunteer
Columbus, Ohio
Service Hours: 6 hours per week; total hours = 145 hours
Population:
- Individuals in the central Ohio community who phoned in to the crisis intervention hotline

Responsibilities:
- Completed 50 hours of instruction and training.
- Serviced a crisis intervention hot line.

Teaching Experiences

Union Institute and Graduate School, Adjunct Professor April 2002 – January 2008
Position: Adjunct Professor
Doctoral Committee Member
Clinical Supervisor
Courses: Social Bases of Behavior; Consultation and Supervision; Forensic Practicum; Dissertation Committee
Responsibilities: Served as a voting member of doctoral committees.
Read and responded to material presented by Union Institute learners.
Provided in-depth analysis of learner performance.
Assisted in guaranteeing the use of appropriate research methodologies.
Encouraged the acquisition of specific disciplinary knowledge.
Evaluated students and the Union Institute process.

Wright State University, School of Professional Psychology September. 1998-June 1999
Position: Teaching Assistant
Courses: Personality Assessment II: Rorschach Administration
Instructor: Eve M. Wolf, Ph.D.
Responsibilities: Provided individual tutorials as needed.
Taught sections on Rorschach Administration.
Evaluated students on their ability to validly administer the Rorschach.

Teaching Experiences (Continued)

Wright State University, School of Professional Psychology January 1998-March 1998

Position:	Teaching Assistant
Courses:	Behavioral Interventions II: Cognitive Therapy
Instructor:	Robert D. Friedberg, Ph.D.
Responsibilities:	Facilitated didactic and experiential review sessions with doctoral students.
	Presented selected class material to second year doctoral students.

Wright State University, School of Professional Psychology September 1997-December 1997

Position:	Teaching Assistant
Courses:	Behavioral and Social Learning Theories of Personality, Psychopathology and Psychotherapy
Instructor:	Robert D. Friedberg, Ph.D.
Responsibilities:	*Conducted didactic and experiential review sessions for second year doctoral students.*
	Responded to individual needs of students as requested

Honors and Awards

- Capital University Law School – Evening Honors Program, 2010 Keynote Speaker
- Presidential Merit Scholarship, Capital University Law School, 2008-2011
- Dean's Excellence Award, Capital University Law School, 2008-2011
- Excellence in General Practice of Psychology Award, WSU-SOPP, 1999
- Psychologists For Social Responsibility (PsySR) Peacework Award, 1997
- Phi Kappa Phi National Honorary
- Golden Key National Honor Society
- Phi Eta Sigma National Honor Society
- Alpha Lamda Delta National Honor Society
- Scarlet and Gray Academic Scholarship
- Ohio State University Arts and Science Honors Research Scholarship
- Alkire Memorial Research Scholarship

Scholarly Activities

Professional Publications:

Stinson, B., Gordish, L, & Burns, K. Avoiding the dual role conflict inherent in the forensic inpatient setting: Separating the role of treatment provider and forensic evaluator. Manuscript in preparation.

Stinson, B. The "gray-area defendant": Clarifying the procedures to determine competency. Manuscript in preparation.

Ignelzi, J., **Stinson, B.**, Raia, J., Osinowo, T., Ostrowski, L., Schwirian, J. (2007). Utilizing risk-of-violence findings for continuity of care. Psychiatric Services, 58, 452-454 (Best Practices Article).

Burns, K., Raia, J., & **Stinson, B.** (2002). Firearms risk management: In reply. Psychiatric Services, 53.

Sherman, M., Burns, K., Ignelzi, J., Raia, J., Lofton, V., Toland, D., **Stinson, B.**, Tilley, J., & Coon, T. (2001). Firearms risk management in psychiatric care: Innovative approaches. Psychiatric Services, 52, 1057-1061.

Barriga, A. Q., Landau, J. R., **Stinson, B. L.**, Liau, A. K., & Gibbs, J. C. (2000). Cognitive distortion and problem behaviors in adolescents. Criminal Justice and Behavior, 27, 36-56.

Stinson, B. L., Friedberg, R. D., Cusack, M. J., Page, R. A. (2000). Improving athletic performance and motivating athletes: One thought at a time. In L. VandeCreek (Ed.), Innovations in clinical practice: A source book (Volume 18). Sarasota, FL: Professional Resource Press.

Friedberg, R. D., Viglione, D. J., **Stinson, B. L.**, Beal, K. G., Fidaleo, R. A., Lovette, J., Street, G., Yerka, E., & Celeste, B. (1999). Perceptions of treatment helpfulness and depressive symptomology in psychiatric inpatients on a cognitive therapy unit. Journal of Rational-Emotive & Cognitive Behavior Therapy, 17, 33-50.

Stinson, B. L. (1997). The relationship between attributional style, athletic performance, and dropping out in college athletes: Implications for the recruiter, coach, athlete, and sport psychologist. Doctoral dissertation, Wright State University School of Professional Psychology, Dayton, OH.

Stinson, B. L. (1995). Relations between cognitive distortions and externalizing / internalizing behavioral disorders in anti-social youth. Undergraduate Honor's Thesis, The Ohio State University, Columbus, OH.

Presentations:

Ashbrook, R., Bowden, M., Imar, T., Levine, K., Mack, K., Shuman, J., **Stinson, B.**, & Swenson, E. (2010, November). The ethical and legal practice of psychology. Panel presentation at the Ohio Psychological Association Annual Convention, Columbus, OH (3.00 MCE Ethics Credits).

Ashbrook, R., Orcutt, M., Ross, R., **& Stinson, B.** (2010, August). The last work on ethics and professional conduct for Ohio psychologists. Presentation sponsored by the Central Ohio Psychological Association, Columbus, OH (3.00 MCE Ethics Credits).

Stinson, B. (2010, June). Practicing ethically in the university counseling center. Presentation to the Counseling and Consultation staff at The Ohio State University. Columbus, OH (3 Hours).

Stinson, B. (2010, May). Psychological testing in the Deaf community. Presentation at the National Association of Disability Examiners' (NADE) Great Lakes Regional Training Conference, Columbus, OH.

Stinson, B. (2009, October; 2009, June; 2009, April; 2009, January). WAIS-IV: Administration, scoring, and interpretation updates. Presentation sponsored by the Central Ohio Psychological Association, Columbus, OH (January and April 2009). Presentation Sponsored by the Dayton Area Psychological Association, Dayton, OH (June 2009). Presentation at the Ohio Psychological Association Annual Convention, Columbus, OH (3.00 MCE Credits).

Ashbrook, R., Bowden, M., Imar, T., Knapp-Brown, S., Mack, K., Schafer, M., **Stinson, B.**, Swenson, M., & Traver, M. (2009, October). Ethics Roundtable on Colleague Assistance: Prevention, Identification and Referral. Panel presentation at the Ohio Psychological Association Annual Convention, Columbus, OH (3.00 MCE Ethics Credits).

Stinson, B. (October, 2009). Ethics vignette: Inpatient hospitalization and patients' sexual behaviors. In-service presentation to the psychology staff at Twin Valley Behavioral Healthcare, Columbus, OH.

Ross, R., Smalldon, J., Broyles, J., & **Stinson, B.** (Moderator) (2009, April). Forensics 101 for non forensic psychologists. Presentation sponsored by the Central Ohio Psychological Association, Columbus, OH (3.00 MCE Ethics Credits).

Stinson, B. (2009, March; 2008, May). Introduction to forensic psychology with deaf defendants. Presentation to the Mental Health and Deafness program at Wright State University School of Professional Psychology, Dayton, OH.

Stinson, B. (2008, February). Introduction to forensic psychology. Presentation to first year graduate students at Wright State University – SOPP, Dayton, OH.

Presentations (Continued):

Stinson, B. (2009, February; 2008, February). The integration of clinical and forensic psychology: Private practice and beyond. Presentation to the Pre-Doctoral Psychology Interns at Wright State University – School of Professional Psychology, Dayton, OH.

Hoffman, R., Drogosz, L., Hammond, B., Scott-Johnson, B., **Stinson, B.** (2007, October). Opportunities for mental health professionals in a correctional setting. Presentation at the Annual Convention of the Ohio Psychological Association, Columbus, OH. (1.00 MCE Credit).

Stinson, B. (2007, March). Practicing ethically as a treatment provider and forensic evaluator in a behavioral healthcare organization. Presentation to the Medical Staff Organization of Twin Valley Behavioral Healthcare, Galloway, Ohio.

Stinson, B. (2006, August). Forensic evaluator and treatment provider: The irreconcilable conflict. Presentation at the 2006 Annual Forensic Conference sponsored by the Ohio Department of Mental Health and the Northeastern Ohio Universities College of Medicine, Huron, OH. (Contributed to 6.75 MCEs the first day).

Patel, R., & **Stinson, B.** (2006, April). Ethical decision making in forensic evaluations of deaf clients: A case study. Presentation to the Pre-Doctoral Residency Program at Wright State University School of Professional Psychology, Dayton, OH.

Stinson, B. (2006, February). Psychological evaluation instruments update: Vineland Adaptive Behavior Scale – 2nd Edition and the Bender Visual-Motor Gestalt Test – 2nd Edition. Presentation at the Ohio Rehabilitation Services Commission's Bureau of Disability Determination. (3.00 MCE Credits).

Stinson, B. (2006, February; 2005, February). Forensic and clinical issues: Inherent conflicts. Presentation to the Pre-Doctoral Residency Program at Wright State University School of Professional Psychology, Dayton, OH.

Stinson, B. (2004, December). The Validity Indicator Profile (VIP): Administration, scoring, and interpretation. In-Service training for the psychology staff at Twin Valley Behavioral Healthcare-Columbus Campus. Columbus, OH.

Stinson, B. (2004, June). Overview of understanding depression and preventing suicide. Presentation at the 2nd Annual Mental Health and Deafness Statewide Conference sponsored by CSD of Ohio and Statewide Mental Health and Deafness Advisory Council. Worthington, OH. (Contributed to 7.8 MCE Credits).

Stinson, B. (2004, May). Interpreting the new IQ scores: What happens when tests are revised? Presentation given at the Great Lakes Association of Disability Examiners (GLADE) Annual Regional Conference. Columbus, OH.

Presentations (Continued):

Stinson, B. (2004, March; February 2005; February 2006; March 2007). Forensic issues with deaf clients: An Overview for clinicians and interpreters. Presentation given to the Mental Health and Deafness Program at Wright State University School of Professional Psychology. Dayton, Ohio.

Stinson, B. (2004, February). Test of Memory Malingering (TOMM): Administration, scoring, and interpretation. In-Service training for the psychology staff at Twin Valley Behavioral Healthcare-Columbus Campus. Columbus, OH.

Stinson, B. (2003, March). Effectively Managing Your Stress. Presentation given to Montgomery County Special Educators Department. Kettering, OH.

Stinson, B. (2003, February; 2001, November; 2001, January; and 2000, June). Cognitive-Behavioral Treatment of Obsessive Compulsive Disorder. Scholarly presentation to the Pre-Doctoral Residency Program at Wright State University School of Professional Psychology as part of their Empirically Validated Treatment Seminar Series, Dayton, OH.

Raia, J., Haskins, K., **Stinson, B.**, & Pawlarczyk, D. (November, 2002). Mental status assessment & DSM-IV-TR diagnostic skills improvement conference. Sponsored by the Ohio Dept. of Mental Health and Twin Valley Behavioral Healthcare. Columbus, OH (6.0 MCEs).

Stinson, B. (July, 2002). Mental impairments: Understanding the language and statistics, and applying them to disability claims. Presentation to the Bureau of Disability Determination's disability examiner class. Columbus, OH.

Stinson, B., & Haskins, K. (April, 2002). Medical and psychological impairments updates: Critical disability determination issues. Columbus, OH (4.25 CLEs).

Stinson, B. (2002, January). Mental retardation and the Social Security Administration's Bureau of Disability Determination: Problem areas and issues. Columbus, OH.

Raia, J., **Stinson, B.**, Pawlarczyk, D., Matyi, C., DeMuth, D., Craft, L., Casterline, V., Gozs, J., Hollander, R., Kennedy, T. M., & Johnson, K. (2001, December). Quality assurance and performance improvement: Understanding quality assurance issues and applying improvement strategies at the Bureau of Disability Determination. Columbus, OH. (5.0).

Raia, J., Johnson, K., Craft, L., Gozs, J., Hollander, R., Kennedy, T., **Stinson, B.**, Demuth, D., Casterline V., & Pawlarczyk, D. (2001, May & June). Disability evaluations for mental impairments: How to accurately assess, test, and report mental evaluation findings. Presentation delivered to psychological consultants of the Social Security Administration's Bureau of Disability Determination, Columbus, OH (4.0 MCE Credits).

Stinson, B. (2000, August). A forensic system emerging.com. Poster presented at The Ohio Department of Mental Health's *A Forensic System Emerging: How Do We Survive In It* two-day conference, Columbus, OH.

Presentations (Continued):

Raia, J., Lofton, V., Toland, D., Coon, T., & **Stinson, B. L.** (1999, August). Firearms assessment, control and treatment process. Poster presented at The Ohio Department of Mental Health and the Northeastern Ohio Universities College of Medicine's *Working With Challenging Forensic Populations* two-day conference, Cambridge, OH.

Stinson, B. L., & Aronoff, J. (1998, November). Ethical and legal responsibilities when others are in peril: Who, when and how? Grand Rounds presentation delivered to the Wright State University School of Professional Psychology doctoral students and staff, Dayton, OH.

Friedberg, R. D., & **Stinson, B. L.** (1998, April). Focusing the mind's eye: Using cognitive strategies to enhance athletic performance. Presentation to Xenia City Schools faculty and staff, Xenia, OH.

Stinson, B. L. (1997, December). Sports, school, and holidays, oh my! How to handle all the stress. Presentation to the Wright State University Men's Basketball Team. Wright State University, Dayton, OH.

Stinson, B. L., & Page, R. (1997, November). To play or not to play: The relationship between causal attributional style and athletic performance in college athletes. Presentation delivered at the Ohio Psychological Association Fall Convention, Columbus, OH.

Stinson, B. L., & Klontz, B. T. (1997, November). The total package: Wellness for your body and mind! Presentation to Wright State University staff and students. Sponsored by Wright State University Center for Psychological Services and the Office of Campus Recreation, Dayton, OH.

Stinson, B. L. (1997, October). Stress and the college student: How to cope. Presentation to Wright State University Resident Services, Dayton, OH.

Stinson, B. L. (1997, September). Academics, athletics and stress: How to survive. Presentation delivered at the first annual RAIDER S.K.I.L.L.S. Student-Athlete Convention. Wright State University, Dayton, OH.

Stinson, B. L. (1997, September). Recovering from athletic injuries one thought at a time. Presentation delivered at the first annual RAIDER S.K.I.L.L.S. Student-Athlete Convention. Wright State University, Dayton, OH.

Stinson, B. L., & Friedberg, R. D. (1997, May). Show me the causes: The relationship between causal attributional style and athletic performance in college athletes. Poster session presented at the Scholarship Recognition Conference of the Honor Society of Phi Kappa Phi, Dayton, OH.

Stinson, B. L. (1996, October). Stress: How to live with and without it! Presentation delivered to Wright State University's varsity women's softball team, Dayton, OH.

Presentations (Continued):

Friedberg, R. D., & **Stinson, B. L.** (1996, July). If you build it...Learned optimism as a mental strategy for improving athletic performance. Presentation to Vandalia High School Athletic Program Vandalia, OH

Stinson, B. L., & Celeste, B. (1996, April). Stress management and athletics. Presentation delivered to the Wright State University Athletic Department, Dayton, OH.

Neuropsychology and Psychotherapy Services
of Cleveland
23811 Chagrin Blvd. Suite 307
Beachwood OH 44122
(216) 595-8900 FAX (216) 595-0088

Kathryn Sandford, Esq.
Assistant State Public Defender
250 East Broad Street
Suite 1400
Columbus, OH 43215

May 17, 2011

In regard to: Mark Pickens

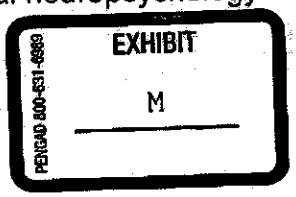
Dear Ms. Sandford,

At your request I have reviewed information you supplied on my request to determine if neuropsychological evaluation is required as a component in the death penalty appeal of Mark Pickens.

Background

I am a Psychologist, licensed to practice in the state of Ohio. I am board certified in Clinical Neuropsychology by the American Board of Professional Psychology. Clinical neuropsychologists are board certified specialty trained experts in diagnosing organic brain disorders and in determining the relationship between organic brain disorders and defects in emotion, behavioral control and cognition (thinking, memory, etc.)

I was a faculty member of Case Western Reserve University from 1987 until 2004. I was employed by in the Department of Physical Medicine and Rehabilitation (PM & R) at MetroHealth Medical Center from 1987-2002 and was the Director of the Division of Rehabilitation Psychology in that department from 2000-2002. Beginning in 2003, I have maintained a full time private practice in clinical neuropsychology.



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My training, background, research and clinical experience include neuropsychological evaluation of at least three thousand individuals.

Materials reviewed in preparation for this letter consist of records provided by the Office of the Ohio Public Defender. Records I determined in whole or in part to be relevant in determination for rationale of neuropsychological evaluation comprise:

1. Draft affidavit of forensic psychologist Dr. Bob Stinson.
2. Narrative report of psychological evaluation: Hamilton County Juvenile Court Clinic Services (1/5/2006).
3. Miscellaneous documents from Ohio Department of Youth Services.
4. Email to me from Kathryn Sandford, Esq. summarizing interview with boxing coach (see below).

Neuropsychological issues

The material cited above is consistent with a history of organic neurological (brain) disorder as the result of (possible) learning disorder and definitive trauma to the brain.

1. Possible learning disorder per psychological evaluation.

   Learning disorder is a term that refers to represents the expression of a developmental (usually congenital) neurological disorder.

   Learning disorders are well established to be a significant cause of emotional and behavioral pathology in childhood, adolescence and adulthood. The cause may be direct (i.e.as a result of the same organic neurological disorder that results in the learning disorder) and / or indirect (abuse by parents, peer rejection, defective self-esteem, etc.).

2. Traumatic brain injury (definitive per 'B' below):

   A. Physical abuse incurred in childhood. Abuse included multiple assaults to the head, e.g. with the buckle end of a belt.

B. At least one serious traumatic brain injury incurred as a boxer per Mr. Pickens' report of loss of consciousness following a punch to the head.

C. Excessive number of blows to the head as a boxer.

The number of blows to the head in boxing, football and hockey – including those that do not result in detectable concussions –is considered to be correlated to the extent of effects of organic brain damage with respect to impairments in emotion, cognition and behavioral control. That is, there is a cumulative effect on brain damage as a function of frequency of trauma to the head of any intensity.

Preliminary comments

The records I reviewed are consistent with the likelihood that Mr. Pickens is affected by chronic effects of organic brain dysfunction and that he was so affected on June 1, 2009, the date of the crimes that resulted in the convictions and death sentence. *Effects of brain dysfunction – particularly brain dysfunction resulting from trauma - frequently manifest as impairments in impulse control, in judgment, and in ability to regulate negative emotion.*

Therefore a neuropsychological evaluation is required to: 1. determine the existence of permanent organic brain impairment due to factors cited above (or due to any cause) and; 2. detail any residual effects of organic brain impairment on cognition (thinking, memory, ability to plan, etc.), behavior (including behavioral control) and emotional functioning.

A specialty trained neuropsychologist is required to conduct a competent neuropsychological evaluation.

Given the likelihood that organic brain damage existed at the time of the crimes that resulted in the death sentence, failure to obtain a neuropsychological evaluation and expert neuropsychological testimony at the time of trial and sentencing may have prevented the trial jury from access to critical information regarding a medical condition that may have proscribed the death penalty.

Neuropsychological examination and expert report therefore is obligatory as a component in the death penalty appeal.

As we have discussed, I am planning to examine Mr. Pickens and prepare an expert report based on my findings.

If I may be of further assistance in this matter please contact me at (216) 595 – 8900.

Barry S. Layton, Ph.D. (ABPP / ABCN)
Clinical Neuropsychology
Ohio License 3804

Ohio Department of Youth Services
Youth Unified Case Plan - 1
Reception Assessment Summary

RAS Create Date: 10/13/2006

General Information

Institution Assignment:

Transfer Date:

Youth Name: Pickens, Mark

DYS Number: 213086

Date of Birth: 12/5/1989

Age: 16

Sex: Male

Race: Black

Social Security #: 296-90-1620

Placement County:

Committing County: Hamilton County

Judge: Lipps, Thomas R.

Regional Office: CINCINNATI REGION

Parole Officer: unknown

Institution: SJCF-M

Social Worker: unknown

Commitment Date: 10/06/2006

Adm. Date to DYS: 10/12/2006

Institution Release Date: 00/00/0000

MSED: 03/02/2007

Midpoint: 12/02/2006

Presumptive Release Date: 03/02/2007

Presumptive Discharge Date: 00/00/0000

Report Completed On: 00/00/0000

Emergency Contact:

Name: Truvena Griffin

Relationship: Mother

Phone Number

Home: (513) 731-3033

Work: ( )

Committing Offenses

Offense Code	Description	Felony Level
2925.11AC4	Possession of Crack Cocaine	F4

LSI Risk by Level

Date Administered: 11/19/2006

1. Prior/Current Offenses:	2	M
2. Family Circumstances:	2	L
3. Education/Employment:	4	H
4. Peer Relations:	2	M
5. Substance Abuse:	1	M
6. Leisure/Recreation:	2	H
7. Personality/Behavior:	1	M
8. Attitude/Orientation:	1	M

Overall LSI Risk Level: 15

Very High ☐ High ☐

Moderate ☑ Low ☐

SOAT Clinical Estimate of Risk:

EXHIBIT N

PENCAD 800-631-6989

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Medical

Medical Problems? ☑ Yes ☐ No

If yes, List: refer to medical chart

Medication Currently Prescribed ? ☐ Yes ☑ No

If Yes, List:

History and/or current use of psychotropics? ☐ Yes ☑ No

If yes, List:

Drug Screen Results: ☐ Positive ☑ Negative

If Positive, List:

Comments: refer to medical chart

Allergies: ☐ Yes ☑ No

If yes, List: NKDA

Mental Health

Present Diagnostic Impressions:

Axis I: Disruptive Behavior Disorder NOS
Axis II: Dx Deferred

Past Diagnoses:

Disruptive Behavior Disorder NOS

Past Mental Health Treatment? ☐ Yes ☑ No

If yes, List:

Inpatient: None
Residential: Hillcrest - criminal behaviors
Outpatient: None

Psychotropic Medication
Past: None
Current: None

Family Mental Health History: None reported or documented.

KBIT Range: N/A

MRDD? ☐ Yes ☑ No

Significant Test Score:

WASI (1/06) - low average range of intellectual functioning

History of Suicide Attempts: ☐ Yes ☑ No **Status at CYC:** ☐ Observation ☐ Watch ☑ Not Applicable

History of Self-Injurious Behavior: ☐ Yes ☑ No

If yes, explain:

N/A

Special Needs:

MH Classification/Placement: No MH Classification or Placement
Placement Recommendation: General Population

Mental Health Recommendation:
Based upon the available information, this youth appears to require:
No follow up with Psychology at this time

Consideration for programming related to:
*Anger Management
*Abandonment Issues

PREA: N/A

Comments:

Presentation: Mark presents as a cooperative youth with a pleasant mood and congruent affect. His thoughts are future oriented and appear WNL in form and content.

Responsivity issues: Mark admits his offense and expresses some remorse. Mark formerly boxed, but quit in 2005. According to the DIR, it was at that time that he began to spend more time on the streets.

Significant Psychosocial Information: Mark lives with his mother and reports they have a positive relationship. He has no contact with his father, who is incarcerated for a rape offenes.

Behavioral alerts: History of Assault charges

Other Comments: Mark's prior charges include assault x 2, disorderly conduct, and CCW.

Interviewer: Kathryn Ingles, M.A., PAII

Supervisor: Daniel L. Davis, Ph.D. Ohio Psychology License 3063. Received and Signed 11/22/2006

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Family History

Legal Custodian: Tru[illegible] Griffin

Legal Custody Relationship: Mother

Placement Type: Home

Placement With Whom: Mother

Father's Name: Truvena Griffin

Mother's Name: Mark Pickens

Has Youth Been Adopted? ☐ Yes ☑ No **Adoption Age:** **Adoption Date:**

History of Family Abuse/Neglect? ☐ Yes ☑ No

Abuse Type: N/A

Abuse By Whom: N/A

Immediate Family Members Ever Incarcerated? ☑ Yes ☐ No

Is Youth a Parent? ☐ Yes ☑ No

Youth Children: N/A

Does Youth Have Legal Visitation Rights with Child(ren)? ☐ Yes ☐ No

Comments: Mark's father is currently incarcerated.

Education

Current Grade Level: Eleventh Grade

Currently, Special Education? ☐ Yes ☑ No

If Currently Special Education:

SBH: ☐

DH: ☐

SLD: ☐

Other: ☐ **List:**

Reading Level: 9.8 **Math Level:** 7.2

Test Administered: The CAT 14A was completed on 10/31/2006.

Education Placement Recommendations: The CAGP is 11th and AGP is 11th with 10.25 credits. He will be served in intervention curriculum in math and basic curriculum in all other areas. He is eligibe for Title I: CSI,MIP

Comments: His lexile score is 598/basic.(MH)

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Substance Abuse

JASAE Score: 8[illegible] TTA Score: 24

Family History of Substance: ☐ Yes ☑ No

If Yes, Explain:

Past Substance Abuse Treatment: ☐ Yes ☑ No

If Yes, List:

Comments: Mark Pickens is a 16 year old African American male. He was interviewed regarding JASAE results on October 23, 2006. He had a summary score of 8A and a TTA 24. He denies any substance use. The DIR does not report substance use. He had a DUL 1, SAR 0, and ASAM 0.5. Upon admittance to ODYS this youth tested negative for substance use.

The JASAE recommends this youth appears appropriate for SAE however, regarding this youth TTA it appears this youth had a strong inclination to respond to this survey in a favorable manner. As a result the report should be scrutinizes for under reporting. 1

Karen Goggins MCJ, LSW
October 23, 2006 2:11 pm

Religion

Religious Designation at Intake: NO PREFERENCE

Special Considerations: NA

Recreation

Areas of Interest: GAMES/ NATURE

Recommendations: EXPAND LEISURE SKILL KNOWLEDGE,PARTICIPATE IN COMMUNITY SERVICE

Security Threat Groups and Risk Factors

Active Affiliation? ☐ Yes ☑ No

Security Threat Group Affiliation: N/A

Comments: N/A

History Of AWOL? ☐ Yes ☑ No

History Of Firesetting? ☐ Yes ☑ No

History Of Weapon Use? ☐ Yes ☑ No

Cultural Ethnic Issues: N/A

Comments: N/A

Victim Information

Age of Victim: ☐ Unknown

Property Offense? ☐ Yes ☐ No

Sex of Victim: ☐ Male ☐ Female

Youth Knew Victim? ☐ Yes ☐ No

Assaultive Offense? ☐ Yes ☐ No

Sex Offense? ☐ Yes ☐ No

Physical Injury to Victim? ☐ Yes ☐ No

If Yes, List:

N/A

Victim Impact Statement Submitted? ☐ Yes ☐ No

Does Victim Request Notification of Status? ☐ Yes ☐ No ☐ Unknown

Journalized Court Requests

☑ Yes ☐ No

If Yes, please state:

Attend school everyday and mental health counseling.

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Placement Concerns

Institutional? ☐ Yes ☑ No

If Yes, List:

Regional? ☐ Yes ☑ No

If Yes, List:

Responsivity Factors/Youth Resiliencies/Recommendations

Start Time: 10:12am
End Time: 10:33am

Mark Pickens is a 16 year old African American male charged with Possession of Crack Cocaine. Mark reports that he has sold drugs for approximately one year.

Detention Credit: 40 days

LSI: Summary score 15
He scored high in the following domains: Education/employment and Leisure/recreation

Medical: Refer to medical charts

Mental Health:
Placement recommendation: General population
Mental health recommendation: No follow up with Psychology at this time
Consideration for programming related to: Anger management and Abandonment issues

PREA: NA

Education:
Current grade level: 11th
Reading level: 9.8
Math level: 7.2
Credits: 10.25

Substance abuse:
JASAE: 8A
TTA: 24
DUL: 1
SAR: 0
ASAM: 0.5
Recommendation: Substance Abuse Education

Social Worker recommendation for programming: Thinking for a Change, Victim Awareness, continue Education, learn a trade, and Substance Abuse Education

Report complete by:
Ms. Reid SWII
11/30/06
Cedar Unit

Social Worker Signature: _____ **Date:** _____

unknown

Shannon Kane, BSW, LSW 11/30/06

Family Contact	**Karen Lemons**	CHJCF
Present		
12/8/2006	Attempted family contact again at 513-731-3033. Line busy again. Will try again Monday morning.	
Individual Contact	**Karen Lemons**	CHJCF
Present		
12/8/2006	Intake interview - Mark is 17 years old, from Cincinnati, OH. Truvena Griffin (mom), confirmed address to be 7025 Glenmeadow Lane, Cincinnati, OH 45237. Phone number is 513-731-3033. 11th grader, in regular education classes. This is his correct grade. Possession of drugs is his committing offense (cocaine). A new charge. Indicates judge sentenced him to six months. First commitment to DYS. Has been in the DH and Hillcrest prior to DYS. Attempted to call mom at above number. Line was busy. Will attempt to call before writer leaves for the day.	
	Karen Lemons	CHJCF
Present		
12/7/2006	Interdisciplinary team - Mark came to team meeting and introduced himself to the team members.	
	Karen Lemons	CHJCF
Present		
12/5/2006	Mark arrived to CHJCF on 12/01/06. 17 year old black male from Cincinnati, OH.	

Signature/Position

EXHIBIT

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PENCAD 800-631-6989

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Signs and Symptoms of Chemical Dependency	**Karen Lemons**	CHJCF
Present		
12/15/2006	Group addressed recognizing signs and symptoms of chemical dependency of parents who use. Small Town Ecstacy, Getting High with Dad was used. Group is to identify the main point of the dvd, the father's behavior and how the group can relate to the behaviors of the father and the other main characters. Group addressed recognizing signs and symptoms of chemical dependency of parents who use. Small Town Ecstacy, Getting High with Dad was used. Group is to identify the main point of the dvd, the father's behavior and how the group can relate to the behaviors of the father and the other main characters.	
Individual Contact	**Karen Lemons**	CHJCF
Present		
12/15/2006	Report interview - education/employment and attitude/orientation domain of report. Mark indicates that he should be in 11th grade classes not 10th grade classes. His transcripts and graduations status report indicate that he should have 11th grade education placement. Mark sold drugs for about a year. Mark indicates that he wanted to sell. Mom does not work and the only income coming into the home is social security income. Mark is the oldest in home, three younger siblings 12, 10 and a newborn. Mark is 17. First time to ODYS. He has been in Hillcrest before for CCW for a six month period. He was on probation and did not complete probation. Mark does not like being here and this experience is going to make him work really hard to get off of parole. In reference to earning money, when he gets home, he plans to get a job because he does not want to return for any reason. Mark confirms placement will be with his mother at 7025 Glenmeadow Ln., Cincinnati, OH 45237.	
Family Contact	**Karen Lemons**	CHJCF
Present		
12/15/2006	Mr. Osula gave Mark a phone call to his mother at 513-731-3033 on 12/14/06. He was finally able to make contact with his mother.	
Signs and Symptoms of Chemical Dependency	**Karen Lemons**	CHJCF
Present		
12/14/2006	Group addressed children of alcoholics today in group. The Boy Wonder was used to address the issue of an alcoholic parent. Objectives addressed the pain and difficulty experienced by a young person living in a family in which there is a chemical dependency, understanding the hero role and other roles often taken on by children of chemically dependent parents, to realize the benefits of a peer support group in helping teenagers deal with chemically dependent parents and to recongize some positive steps as teenager can ake to live a healthy life despite his parent's chemical dependency.	
Signs and Symptoms of Chemical Dependency	**Karen Lemons**	CHJCF
Present		
12/11/2006	Group addressed signs and symptoms of chemical dependency and intervention. Used the video Brandon's intervention, after Mr. Osula discussed with the group dependency issues and intervention. Given a homework assignments which is due on Tuesday.	
Family Contact	**Karen Lemons**	CHJCF
Present		
12/11/2006	Attempted family contact again. (513) 731-3033. No contact made. Attempted call at approximately 3:35 p.m.	

Signature/Position

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Community Provider	**Karen Lemons**	CHJCF
Present		
1/26/2007	Mark participated in the Lighthouse Jobs re-entry program on 1/24/07.	
Family Contact	**Karen Lemons**	CHJCF
Present		
1/11/2007	Attempted to return Ms. Griffin's call @ 513-731-3033 to inform her that Mark does have 66. 10 on his books. No answer and no way to leave a message. Attempted call at 4:20 p.m.	
Community Provider	**Karen Lemons**	CHJCF
Present		
1/10/2007	Mark participated in the jobs re-entry program thru Lighthouse today.	
Victim Apology Letter	**Karen Lemons**	CHJCF
Present		
1/10/2007	Mark turned in his victim apology letter to SW for review before faxing to OVS.	
Introduction and Overview (T4C)	**Deborah Watkins**	CHJCF
Present		
1/5/2007	Second part of introduction T4C with review of Cognitive Man and the concept of T4C of how your thoughts/feelings/attitudes/beliefs lead to your actions. SW stressed the importance of social skills and the choice of practicing social skills.	
Introduction and Overview (T4C)	**Deborah Watkins**	CHJCF
Present		
1/4/2007	First part of introduction T4C using "Cognitive Man" model.	
Release Authority	**Karen Lemons**	CHJCF
Present		
12/28/2006	Individual contact with Mark for review of his presumptive release and discharge sheet. Mark approved PRD is March 2, 2007. He is required to address victim awareness issues and effect on community, apology letter to victim - copy to OVS. Substance abuse follow-up (JASAE 8A and TTA 24); Thinking for Change; maintain pro social. Mark indicated that he understood everything on the sheet after this writer explained to him who his victim might be, according to his charge and who his apology letter should go too.	
	Karen Lemons	CHJCF
Present		
12/19/2006	Group contact - group finished Small Town Ecstacy, Getting High with Dad. A group discussion took place after the film and each youth given an assignment to complete. Mark did complete his assignment.	

Signature/Position

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Release - Case Review **Karen Lemons** CHJCF

Present

1/30/2007 Mark has been approved for release. His approved date is 3/2/07. His PDD is 6 months from his release. Comments/Required Action reads as follow: There do not appear to be any significant barriers to release contingent upon no incidents of fights/assaults and continued active participation in all required programming including TFC.

The region needs to continue to the Jobs Reentry efforts initiated in the institution.

Understanding the Feelings of Others (T4C) **Deborah Watkins** CHJCF

Present

1/26/2007 Mark has been a positive participant in group, seems to be an independent thinker, respectful and has roleplayed.

Mark has completed the following T4C Social Skills groups to date:

1/2/07□Social Worker vacation
1/3/07□Social Worker leave
1/4/07□T4C Lesson 1 Introduction to Thinking for a Change and cognitive man visual aid utilized to help youth understand how their attitudes/beliefs/automatic thoughts/feelings lead to their actions.
1/5/07 □T4C Review of Lesson 1 and discussion of how their attitudes/beliefs/automatic thoughts/feelings lead to their actions. Thinking for a Change video addressing thinking errors also discussed.
1/9/07□T4C Lesson 2 Listening Skill discussed and role-played. Various □situations discussed to help youth understand how important listening skill will help youth make positive change in their social interactions with others.
1/10/07□T4C Review of Lesson 2 Listening skill (homework). Also video "The Fourth R" on responsibility discussed in relationship to identifying listening social skill used throughout the video.
1/11/07□Social Worker-leave
1/12/07□T4C Lesson 3 Asking a Question Skill discussed and role-played. Various situations discussed to help youth understand how important asking a question skill will help youth make positive change in their social interactions with others.
1/15/07□Holiday
1/16/07□T4C Lesson 4 Giving Feedback Skill discussed and role-played.
□Various situations discussed to help youth understand how important giving feedback skill will help youth make positive change in their social interactions with others.
1/17/07□T4C Lesson 4 Giving Feedback Skill continued discussions and roleplays. Various situations discussed to help youth understand how important giving feedback skill will help youth make positive change in their social interactions with others. Video "Increasing the Peace" addressed how positive feedback can be used in real life situations.
1/18/07□T4C Lesson 10 Knowing Your Feelings discussed particularly step one "Tune in to what is going on in your body that helps you know what you are feeling." Youth also discussed the importance of knowing their feelings to help improve their social interactions with others and make good choices.
1/23/07□T4C Lesson 10 Knowing Your Feelings discussed and role-played. Various situations discussed to help youth understand how important knowing your feelings will help youth make positive change in their social interactions with others. Youth encouraged to begin to identify their feelings on a daily basis and begin to express their feelings more often.
1/24/07□T4C Review of Lesson 10 Knowing Your Feelings. Video "Giving It" addressed how to express feelings in an appropriate manner particularly when angered/stressed.
1/25/07 □T4C Lesson 11 Understanding the Feelings of Others steps were discussed. Also watched video "Taking It" to address how to cope with one's own feelings and other's feelings to improve social interactions and problem solving.
1/26/07 □T4C Lesson 11 Understanding the Feelings of Others continued. Began roleplays. Also, T4C video "Overcoming Errors in Thinking" Part III that addresses how to change by focusing on your own thoughts/thinking errors. Also discussed how negative thinking may interfere with practicing appropriate social skills.

Signature/Position

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James Ballard CHJCF

Present

2/11/2007 Mark continues to be respectful and participates in group. However, recently he has not been as engaged in group and at times inattentive. This social worker has brought it to his attention. He was receptive to the corrective advice.

Mark has completed additional T4C Social Skills groups listed below:

1/26/07 □T4C Lesson 11 Understanding the Feelings of Others continued. Began roleplays. Also, T4C video "Overcoming Errors in Thinking" Part III that addresses how to change by focusing on your own thoughts/thinking errors. Also discussed how negative thinking may interfere with practicing appropriate social skills.
1/30/07□T4C Review of all Social Skill discussed. Roleplays completed using several skills. Youth understanding how many skills may be used together to problem solve or interact with others in an appropriate manner.
1/31/07□T4C Lesson 12 Responding to the Feelings of Others. Youth discussed skill steps and the importance of developing empathy for others. Youth are beginning to understand by developing empathy will help them to better understand and respond to the feelings of others in a positive manner.
2/1/07□T4C Review of Lesson 12 Responding to the Feelings of Others. Also, T4C video "Overcoming Errors in Thinking" Part III that addressed how to catch your thoughts before you act, catch the error and know where it leads you, have to be fed up to catch your thoughts. Youth discussed the difficulty in thinking before you act and positive thinking is needed to practice social skills in a positive manner.
2/2/07□T4C video "Overcoming Errors in Thinking" Part III continued that addressed how to catch your thoughts before you act, catch the error and know where it leads you, have to be fed up to catch your thoughts. Youth discussed the difficulty in thinking before you act and positive thinking is needed to practice social skills in a positive manner. Roleplays conducted using negative thinking and then positive thinking.
2/6/07 □T4C Lesson 13 Preparing for a Stressful Conversation skill steps discussed and role-played. Many youth admitted that they often do not prepare for a stressful conversation. Youth seem to understand that preparation would assist them in improving their interactions with others and problem solve in a positive manner. Also, Video 3 "Cage your Rage" on Positive Self-Talk was used to help youth better understand that positive thinking will be needed to successfully prepare for a stressful conversation.
2/7/07□T4C Lesson 14 Responding to Anger skill steps were discussed and role-played. Several youth admitted that they did not care about others' anger and often did not respond in a positive manner. Again empathy was discussed and self-motivation to want to get along better with others.
2/8/07 □T4C Review of Lesson 14 Responding to Anger and video 4 "Cage your Rage" addressed anger management skills of steering clear, time out, relaxation technique, self-talk and talking it out. Youth seem to better understand the importance of self-control and having the ability to get along with others when angered or faced with an angry person.
2/9/07□"Power Source" Book, Chapter on Anger: Dealing With It, section: "Unhealthy Releases, Releasing It Safely, Stopping Yourself in the Moment and Stopping Anger in its Track." Youth discussed the anger management skills of exercise, talk out your anger, writing, music and dance and meditation. All of these skills will assist youth in self-control and developing the skills to be able to respond to anger successfully.

Interdisciplinary Team Maintained **Karen Lemons** CHJCF

Present

2/1/2007 Mark will maintain a level 2. He will stay at this level because he is doing no work in his social studies class.

Individual Contact **Karen Lemons** CHJCF

Present

1/31/2007 Individual contact with Mark was to inform him of his approved prd. Mark is approved for release on 3/2/07. Mark was given a copy for his records.

Signature/Position

A-178

ODYS SOCIAL SERVICES INDIVIDUAL CONTACT NOTES:

Site CHJCF-Dorm B

213086 Pickens, Mark

Total Contacts 24

Type of Contact	Staff	
Release - Case Review	Karen Lemons	CHJCF

Present

2/27/2007 Pulled Mark's rules of parole and regional unified case plan. Mark is scheduled for release on 3/2/07 which is Friday. This writer and Mark will review the rules of parole and case plan, as well as get his signatures and then turn in the release packet to Ms. Colbert.

Signature/Position

A-179

hio Department of Youth Services
Youth Unified Case Plan - 1
Reception Assessment Summary

RAS Create Date: 09/21/2007

General Information

Institution Assignment:		Transfer Date:	
Youth Name:	Pickens, Mark	DYS Number:	213086
Date of Birth:	12/5/1989	Age:	17
Sex:	Male	Race:	Black
Social Security #:	296-90-1620	Placement County:	
Committing County:	Hamilton County	Judge:	Lipps, Thomas R.
Regional Office:	CINCINNATI REGION	Parole Officer:	unknown
Institution:	SJCF-M	Social Worker:	unknown
Commitment Date:	10/06/2006	Adm. Date to DYS: 09/20/2007	Institution Release Date: 00/00/0000
MSED:	08/14/2008	Midpoint: 02/13/2008	Presumptive Release Date: 08/14/2008
Presumptive Discharge Date:	00/00/0000		Report Completed On: 00/00/0000

Emergency Contact:
Name: Griffin, Truvena — Relationship: Mother
Phone Number
Home: (513) 552-1206 — Work: ( )

Committing Offenses

Offense Code	Description	Felony Level
2925.11AC4	Possession of Crack Cocaine	F4
2923.16	Improperly Handling Firearms In a Motor Vehicle	F4
2923.12	Carrying a Concealed Weapon	F4

LSI Risk by Level

Date Administered: 10/10/2007

1. Prior/Current Offenses:	3	H
2. Family Circumstances:	3	M
3. Education/Employment:	1	M
4. Peer Relations:	4	H
5. Substance Abuse:	0	L
6. Leisure/Recreation:	3	H
7. Personality/Behavior:	0	L
8. Attitude/Orientation:	1	M

Overall LSI Risk Level: 15

Very High ☐ High ☐
Moderate ☑ Low ☐

SOAT Clinical Estimate of Risk:

EXHIBIT P

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Medical

Medical Problems? ☑ Yes ☐ No

If yes, List: refer to medical chart

Medication Currently Prescribed ? ☐ Yes ☑ No

If Yes, List:

History and/or current use of psychotropics? ☐ Yes ☑ No

If yes, List:

Drug Screen Results: ☐ Positive ☑ Negative

If Positive, List:

Comments: refer to medical chart

Allergies: ☐ Yes ☑ No

If yes, List:

Mental Health

Present Diagnostic Impressions:

Axis I: Conduct Disorder
Axis II: Dx Deferred

Past Diagnoses:

Axis I: Disruptive Behavior Disorder NOS
Axis II: Dx Deferred

Past Mental Health Treatment? ☑ Yes ☐ No

If yes, List:

Inpatient: None
Residential: Hillcrest - criminal behaviors
Outpatient: None

Psychotropic Medication
Past: None
Current: None

Family Mental Health History: None reported or documented.

KBIT Range:

MRDD? ☐ Yes ☑ No

Significant Test Score:

WASI (1/06) - low average range of intellectual functioning

History of Suicide Attempts: ☐ Yes ☑ No **Status at CYC:** ☐ Observation ☐ Watch ☐ Not Applicable

History of Self-Injurious Behavior: ☐ Yes ☑ No

If yes, explain:

Special Needs:

MH Classification/Placement: No MH Classification or Placement
Placement Recommendation: General Population

Mental Health Recommendation:
Based upon the available information, this youth appears to require:
No follow up with Psychology at this time

Consideration for programming related to:
*Anger Management
*Abandonment Issues

PREA: N/A

Comments:

Presentation: Mark presents as a cooperative youth with a pleasant mood and congruent affect. His thoughts are future oriented and appear WNL in form and content.

Responsivity Issues: Mark admits his offense and expresses some remorse. Mark formerly boxed, but quit in 2005. According to the DIR, it was at that time that he began to spend more time on the streets.

Significant Psychosocial Information: Mark lives with his mother and reports they have a positive relationship. He has no contact with his father, who is incarcerated for a rape offense.

Behavioral alerts: History of Assault charges

Other Comments: Mark's prior charges include assault x 2, disorderly conduct, and CCW.

Interviewer: Presentation: Mark presents as a cooperative youth with a pleasant mood and congruent affect. His thoughts are future oriented and appear WNL in form and content.

Responsivity Issues: Mark admits his offense and expresses some remorse. Mark formerly boxed, but quit in 2005. According to the DIR, it was at that time that he began to spend more time on the streets.

Significant Psychosocial Information: Mark lives with his mother and reports they have a positive relationship. He has no contact with his father, who is incarcerated for a rape offense.

Behavioral alerts: History of Assault charges

Other Comments: Mark's prior charges include assault x 2, disorderly conduct, and CCW.

Interviewer: Joshua Childers, Psy.D. License #6274 11/09/07

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Family History

Legal Custodian: Truena Griffen

Legal Custody Relationship: Mother

Placement Type:

Placement With Whom:

Father's Name: Mark Pickens

Mother's Name: Truena Griffen

Has Youth Been Adopted? ☐ Yes ☑ No **Adoption Age:** **Adoption Date:**

History of Family Abuse/Neglect? ☐ Yes ☑ No

Abuse Type:

Abuse By Whom:

Immediate Family Members Ever Incarcerated? ☑ Yes ☐ No

Is Youth a Parent? ☐ Yes ☑ No

Youth Children:

Does Youth Have Legal Visitation Rights with Child(ren)? ☐ Yes ☑ No

Comments: youth reported father is incarcerated in out of state prison

Education

Current Grade Level: Eleventh Grade

Currently, Special Education? ☐ Yes ☑ No

If Currently Special Education:

SBH: ☐

DH: ☐

SLD: ☐

Other: ☐ **List:**

Reading Level: 6.4 **Math Level:** 9.5

Test Administered: CAT 15A completed 10/11/2007.

Education Placement Recommendations: CAGP is 12th grade. AGP is eleventh grade (14.25 credits). Basic math curriculum; intervention for all others.

Comments: His Lexile score is 794/Basic.(mt)

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Substance Abuse

JASAE Score: 88 TTA Score: 24

Family History of Substance: ☐ Yes ☑ No

If Yes, Explain:

Past Substance Abuse Treatment: ☐ Yes ☑ No

If Yes, List:

Comments: Mark was released to parole on March 2, 2007. He was jailed/detained on July 3, 2007. He was noted as a re-commit on parole on September 20, 2007. He was not re-administered the JASAE due to his previous results contine to be valid.

Mark Pickens is a 16 year old African American male. He was interviewed regarding JASAE results on October 23, 2006. He had a summary score of 8A and a TTA 24. He denies any substance use. The DIR does not report substance use. He had a DUI 1, SAR 0, and ASAM 0.5. Upon admittance to ODYS this youth tested negative for substance use.

The JASAE recommends this youth appears appropriate for SAE however, regarding this youth TTA it appears this youth had a strong inclination to respond to this survey in a favorable manner. As a result the report should be scrutinizes for under reporting. 1

Karen Goggins MCJ, LSW
October 23, 2006 2:11 pm

Karen Goggins MCJ, LSW

Religion

Religious Designation at Intake: No Preference

Special Considerations: NA

Recreation

Areas of Interest: Sports/Adventure

Recommendations: Expaind Leisure Skill Knowledge, Participate in Community Services

Security Threat Groups and Risk Factors

Active Affiliation? ☐ Yes ☑ No

Security Threat Group Affiliation:

Comments: na

History Of AWOL? ☐ Yes ☑ No

History Of Firesetting? ☐ Yes ☑ No

History Of Weapon Use? ☑ Yes ☐ No

Cultural Ethnic Issues:

Comments: current offense is weapon related

Victim Information

Age of Victim: ☐ Unknown

Youth Knew Victim? ☐ Yes ☑ No

Property Offense? ☐ Yes ☑ No

Assaultive Offense? ☐ Yes ☑ No

Sex of Victim: ☐ Male ☐ Female

Sex Offense? ☐ Yes ☑ No

Physical Injury to Victim? ☐ Yes ☑ No

If Yes, List:

Victim Impact Statement Submitted? ☐ Yes ☑ No

Does Victim Request Notification of Status? ☐ Yes ☐ No ☑ Unknown

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Journalized Court Requests

☐ Yes ☑ No

If Yes, please state:

Placement Concerns

Institutional? ☐ Yes ☑ No

If Yes, List:

Regional? ☐ Yes ☐ No

If Yes, List:

Responsivity Factors/Youth Resiliencies/Recommendations

Start Time: 11:13am
End Time: 11:42am

Mark Pickens is a 17 year old African American male charged with Improperly Handling Firearms in a Motor Vehicle F4 and Carrying a Concealed Weapon F4. This is Mark's second time in Department of Youth Services. Mark admits that he was in a car where a weapon was found. Mark denies that the gun was his own. Mark had violated his parole on at least one occasion prior to these adjudications for five traffic violations.

Mark has received to following charges: CCW, Disorderly Conduct, Aggravated Robbery, Assault (on three occasions), and Aggravated Menacing. He has spent time in his detention center for these charges.

Detention Credit: 38 days

Behavior Observation: Based on the information gathered from the Youth Consequence Log, AMS/YBIR report, unit/education staff, Mark follows the rules of the institution and participates in both schedule and volunteered programs. Mark appears to be quiet. He assists unit staff with chores when needed. Mark received visits, mail and telephone call through the Social Workers Office (due to a block on the family telephone).

LSI: Summary score 15
He scored high in the following domains: Prior/Current Offense; Peer Relations; Leisure/Recreation

Medical: Refer to medical chart

Mental Health:
Placement recommendation: General population
Mental Health recommendation: No follow up with Psychology at this time
Consideration for programming related to: Anger Management and Abandonment Issues

PREA: NA

Education:
Current Grade Level: 11th
Reading Level: 6.4
Math Level: 9.5
Credits: 14.25

Substance Abuse:
JASAE: 8A
TTA: 24
DUL: 1
SAR: 0
ASAM: 0.5
**His JASAE was not re-administered due to his previous results continue to be valid.
Recommendation: Substance Abuse Education

Social Worker recommendation for programming: Thinking for A Change; Anger Management; continue Education, substance abuse education and establishing a mentor

Report completed by:
Ms. Reid SWII
11/16/07
Cedar Unit

Social Worker Signature: Ms. Reid SWII Date: 11/16/07
unknown
Shannon Kane, BSW, LSW 11/19/07
* not verified for accuracy

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OH DEPARTMENT OF YOUTH SERV S
YOUTH UNIFIED CASE PLAN
INSTITUTION: IRJCF 11.27.07

Youth Name: PICKENS, MARK DYS#: 213086

Youth Strengths/assets: Mark is consistently cooperative and polite.
Youth difficulties/barriers: Mark admits that he needs to take school more seriously.

Supervisor approval: Nancy Rosia, 3/12/08

TYPE OF REPORT: Initial/Progress REPORTING PERIOD: 01/31/08-02/29/08
Report Completed By: Kara Koenig, MSSA, LSW
Date: 02/29/08

Summary of overall behavior and progress in identified domain areas:

Mark was released to parole on 03/02/07. His parole was revoked on 09/20/07 and he was recommitted to DYS. He is currently serving a minimum of 13 months for Improperly Handling Firearms in a Motor Vehicle (F4) and Carrying a Concealed Weapon (F4). Regarding his committing offense, Mark states that he did not know the gun was in the car; his mother reportedly bought the car at auction not knowing the gun was in it. He stated that he is glad it was him who got stopped with the gun in the car rather than his mother because she is an adult and would get more time. In talking about his first committing offense, Mark states that the crack cocaine was not his but that his mother wanted him to plead guilty so he would not get more time.

Mark states that this commitment is different than his first one. He reports that he has taken this sentence as an opportunity to do some thinking. Mark states that unlike when he was initially paroled, he does not want to be on the streets anymore. He now wants to get a good job and be successful.

Mark arrived at IRJCF again on 11/27/07. He was initially placed on the intake/orientation unit and arrived on his current general population living unit on 01/24/08.

Since his return to IRJCF, Mark's behavior on the unit has been positive. He has received no YBIR's on the unit and has not been the subject of any AMS entries. Mark is always polite, cooperative and respectful of staff.

Mark is currently enrolled in the 11th grade at Indian River High School. He is enrolled in three GED classes – English, Science, and Social Studies. Mark's grades and teacher's comments follow:

EXHIBIT
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OH DEPARTMENT OF YOUTH SERVICES
YOUTH UNIFIED CASE PLAN
INSTITUTION: IRJCF 11.27.07

Youth Name: PICKENS, MARK DYS#: 213086

Framing and Roofing	B	"Attempts to understand assignments. Puts forth good effort."
GED English	D	"Is respectful of staff and other youth. Is sleeping in class. Does not stay on task. Needs to improve effort."
GED Science	F	"Does not use class time wisely."
GED Social Studies	B	

Mark explains that he sleeps in class sometimes because he has difficulty sleeping at night; he can't get comfortable on his bed. Given Mark's current grades, it is doubtful he will be referred for the GED test any time soon. Note, Mark states that his science grade is not accurate, saying he has had a substitute in that class and his assignments have not been graded for two weeks.

Mark has received one YBIR in school – for horseplay.

Mark will work on issues related to victim empathy and decision making skills both individually with his social worker and in group.

Mark receives mail from his mother and enjoys talking to her on the phone. His mother has not visited him since his arrival at IRJCF.

Release Authority/Court requirements:

- Maintain pro-social behavior; follow all institutional rules and avoid significant incidents
- Address committing offenses, victim empathy, and harm to community
- Improve decision-making skills
- Work on education

Special Concerns (Mental health, medication, placement, etc...) none at this time

Emergency contact (name and phone #): Truvena Griffin, 513-254-6525
Relationship: Mother

Youth placement (name and address):
Phone #:

OF DEPARTMENT OF YOUTH SERVICES
YOUTH UNIFIED CASE PLAN
INSTITUTION: IRJCF 11.27.07

Youth Name: PICKENS, MARK DYS#: 213086

Domain: Education
Risk Level: Moderate

Short-Term Youth Responsibilities:
Mark will attend all classes, with no unexcused absences. He will be attentive in class and complete all assignments in a thorough and timely manner. Mark will be respectful of all school staff.

Description of Services/Staff Responsibilities:
Mark will receive all appropriate educational services. His teachers will regularly monitor his progress and report it to his Social Worker. Mark's GED teachers will advise when he is ready to take the GED. Social Worker will regularly communicate with Mark's teachers to remain informed of his progress.

Domain: Peer Relations
Risk Level: High

Short-Term Youth Responsibilities:
Mark will associate with positive peers, avoiding the negative. He will manage conflict with peers in an appropriate manner. Mark will address problematic peer interactions with his Social Worker.

Description of Services/Staff Responsibilities:
Mark will be praised for appropriate and pro-social behavior and interaction with peers. He will be given the opportunity to process difficult peer interactions with his Social Worker.

Domain: Leisure/Recreation

Risk Level: High

Short-Term Youth Responsibilities:
Mark will actively participate in all activities of interest during large-muscle recreation and leisure time. He will identify positive recreational activities in which to engage upon his release to the community.

Description of Services/Staff Responsibilities:
Recreation staff will provide at least one hour of large-muscle recreation each day and leisure activities as scheduled.

OH DEPARTMENT OF YOUTH SERV S
YOUTH UNIFIED CASE PLAN
INSTITUTION: IRJCF 11.27.07

Youth Name: PICKENS, MARK DYS#: 213086

Domain: Attitude/Accountability
Risk Level: Moderate

Short-Term Youth Responsibilities:
Mark will write an essay regarding the harm caused by his committing offense. He will address issues related to his offense and victim empathy with his Social Worker, both individually and in group.

Description of Services/Staff Responsibilities:
Social Worker will work with Mark regarding issues related to his offense and victim empathy. Social Worker will read Mark's essay related to the harm caused by his offense and provide feedback to him.

2913.02 THEFT [M1] [F5] [F4] [F3] [F2]

CASE NO. C9B10898

COMPLAINT
HAMILTON COUNTY MUNICIPAL COURT

STATE OF OHIO vs. MARK PICKENS (Name)

ARRESTED

711 DERRICK TURNBOW (Address)

CINCINNATI OH 45214

THE DEFENDANT HEREIN WAS PHYSICALLY ARRESTED DATE

P.O. P. NAPIER being first duly cautioned and sworn, deposes and says that,

MARK PICKENS on or about 4/6/09, in Hamilton County, State of Ohio, with the purpose to deprive * FAMILY DOLLAR thereof, did knowingly ** OBTAIN

*** 3 BOXES OF ZIP-LOCK BAGS &C

**** WITHOUT CONSENT OF OWNER

***** A M1 degree, contrary to and in violation of Section 2913.02 of the Revised Code of Ohio.

The complainant states that this complaint is based on ARRESTED REMOVING LISTED ITEMS FROM FAMILY DOLLAR

Sworn to and subscribed before me this 4/6/09

NOTARY PUBLIC STATE OF

Notary Public/ Deputy Clerk/ Judge

PATRICIA M. CLANCY (Clerk of Hamilton County Municipal Court)

By (Deputy Clerk)

P960 (Complainant)

D 1 (Address)

C/O 45214

INSERT ONE OF THE FOLLOWING

* insert owner's name

** "obtain" or "exert control over"

*** describe the property including dollar amount if applicable, describe services including dollar amount

**** "without the consent of (owner) (person authorized to give consent) "beyond the scope of the (express) (implied) consent of (owner) (person authorized to give consent) "by deception" or "threat"

***** [M1] if the value of the property or service is less than $500.

[F5] if the value of the property or service is more than $500, but less than $5,000. Or if the victim is an elderly person or a disabled adult or if the property is a credit card, printed form for a check or other negotiable instrument which identifies the drawer, maker, or account, a motor vehicle license plate/ temporary license placard or sticker, or blank certificate of title.

[F4] if the value of the property or service is more than $5,000 but less than, $100,000 or if the victim is an elderly person or a disabled adult and the loss of property or service is $500 or more but less than $5,000 or if the property is a firearm or dangerous ordnance or a motor vehicle. Or if the property stolen is any dangerous drug.

[F3] if the value of the property or service is more than $100,000 or if the property stolen is any dangerous drug and the offender has been previously convicted of a felony drug abuse. Or if the victim is an elderly person or a disabled adult and the value of the loss is $5,000 or more but less than $25,000

[F2] if the value of the property or service is more than $25,000 and the victim is an elderly person or a disabled adult

PENCAD 800-631-6989 EXHIBIT R

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CLERK'S USE ONLY	
INITIALS	
PAYMENT DATE	
RECEIPT NO	
FINE	
COSTS	
CONCAR	
WIT FEES	
JURY FEES	
P D FEES	
LIP FEE	
BMV FEE	
TOTAL PAID	

HAMILTON COUNTY MUNICIPAL COURT PAGE. ____
JOURNAL ENTRY - **MITTIMUS**
PRE-ROLL. **BERNAT/RICHARD**
ACTIVATE DATE. 04/07/2009

CASE: **/09/CRB/10898** COMM CONTROL VIOL · _____

DEFENDANT· **PICKENS/MARK**
CTLNO. **2449526** TICKET.
SEC. VIOL· **2913-02 ORCN**
CHARGE. **THEFT** **M1F5**
ARREST DATE. **04/06/2009**
JMS_NUMBER.
SEX· **M** DOB **12/05/1989**
DEF COUNSEL.
PROS WIT. **NAPIER/PO**

TO THE SHERIFF OF HAMILTON COUNTY, GREETINGS Where as, the above defendant was arrested and charged with the above section number For good cause shown, the defendant is ordered to give bail in the sum indicated below You are, therefore, commanded to receive the defendant into your custody until the trial date, or until he/she gives bail as ordered Or, whereas, the above defendant, having been tried and convicted of said charge(s) is sentenced, as indicated below Therefore, we command you to receive the defendant into your custody, there to remain until he/she has fully executed the terms of the sentence, or until otherwise discharged by due course of law

DATE	ACTION	SIGNATURE OF JUDGE/MAGISTRATE
04/07/2009 12:30 pm	JCA **Arraignment - Probable cause to hold demonstrated ( )YES ( )NO** **OR/ $_____ Unsecured bond per Crim.R.46(A)(1)** **$_____ Bond @10% per Crim.R.46(A)(2) or (3)** **$_____ Secured Bond per Crim.R.46(A)(3) Only** **Conditions:**	**BERRY/TED**
	NG RAC W/C Jay & Littner	
____	/09/CRB/10898 PICKENS/MARK PC DHUN COURT DATE:04/20/09 AT 9:00 AM IN ROOM 154 COURTHOUSE	
4/20/09	RAC N.J.T. S.S	
____	/09/CRB/10898 PICKENS/MARK NJ ERCA COURT DATE:05/13/09 AT 9:00 AM IN ROOM 154 COURTHOUSE	
Date	The decision of the magistrate is adopted and the recommended sentence is entered as the judgment of the court.	Judge

EXHIBIT
S

A-191

HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO

CITY OF CINCINNATI
STATE OF OHIO

Case No. 98CRB 10898

-vs-

M. Pickens
Defendant

WAIVER OF COUNSEL

The judge has explained, and I understand that:

1. I have a constitutional right to have a lawyer for all proceedings in this case.
2. If I am unable to hire a private lawyer, the court will assign a lawyer from the public defender's office to represent me at no cost to me, even if I intend to plead guilty.
3. I have a right to a reasonable continuance in the proceedings to get a lawyer.

The judge has warned me that although I am not required to have a lawyer, there may be defenses to the charges against me that I am not aware of because I am not trained in the law. The judge is not permitted to give me any legal advice.

Having been advised of my right to a lawyer and the potential negative consequences of representing myself, I nevertheless give up my right to be represented by a lawyer at the present time and choose to represent myself.

M Pickens
Defendant

APPROVED AND FILED
FOR JOURNALIZATION

Date _____

John F. Litton
Judge/Magistrate

ENTERED

Date _____

Minute _____

FILE COPY

A-192

CLERK'S USE ONLY	
INITIALS	
PAYMENT DATE	
RECEIPT NO	
FINE	100.00
COSTS	91.00
CONCAR	
WIT FEES	6.00
JURY FEES	
P D FEES	
LIP FEE	
BMV FEE	
TOTAL PAID	

HAMILTON COUNTY MUNICIPAL COURT — PAGE ____
JOURNAL ENTRY - MITTIMUS

PRE-ROLL **BERNAT/RICHARD**
ACTIVATE DATE. 04/07/2009

CASE **/09/CRB/10898** COMM. CONTROL VIOL.. _____

DEFENDANT. **PICKENS/MARK**
CTLNO. **2449526** TICKET
SEC VIOL. **2913-02 ORCN**
CHARGE. **THEFT** **M1F5**
ARREST DATE. **04/06/2009**
JMS_NUMBER.
SEX. **M** DOB **12/05/1989**
DEF. COUNSEL. **TRANTER/TERRY/WILLIAM**
PROS WIT: **NAPIER/PO**

TO THE SHERIFF OF HAMILTON COUNTY, GREETINGS Where as, the above defendant was arrested and charged with the above section number For good cause shown, the defendant is ordered to give bail in the sum indicated below You are, therefore, commanded to receive the defendant into your custody until the trial date, or until he/she gives bail as ordered Or, whereas, the above defendant, having been tried and convicted of said charge(s) is sentenced, as indicated below Therefore, we command you to receive the defendant into your custody, there to remain until he/she has fully executed the terms of the sentence, or until otherwise discharged by due course of law

DATE	ACTION	SIGNATURE OF JUDGE/MAGISTRATE
05/13/2009	RAC for N.J.T. S.B	
	/09/CRB/10898 PICKENS/MARK NJ KCOR COURT DATE:06/01/09 AT 9:00 AM IN ROOM 154 COURTHOUSE Time Pravi... of P.C. 2945.71 et. seq. extended 5/13/09 6-1-09	
6-1-09	Appeal & Warrant Cre 1-4 2913.04. G/G Commit 30 Fine 100.00 Stay out of Family Dollar Stores Suspend 30 Pay Costs 1 yr Probation 90 Days Com. NCTI 100 Hrs C.S.	
Date	The decision of the magistrate is adopted and the recommended sentence is entered as the judgment of the court.	JUDGE

A-193

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

State of Ohio,	:	
Appellee,	:	Judge Steven Martin
-vs-	:	
Mark Pickens,	:	Case No. B-0905088
Appellant.	:	**This is a death penalty case**

Affidavit of Jessica Love

State of Ohio:)
) SS:
County of Franklin)

I, Jessica Love, after being duly sworn, state the following:

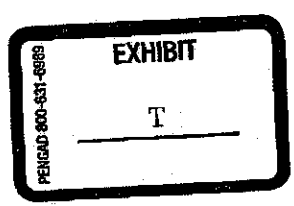
1) I am a mitigation specialist/investigator with the Ohio Public Defender's Office. I investigate issues for the mitigation phase of a capital trial and/or the trial phase of a capital trial.

2) I was assigned to work on the trial of State v. Mark Pickens as the mitigation specialist. I worked with the attorneys on the case, Perry Ancona and Norm Aubin.

3) Following Mr. Pickens' conviction and sentence of death, I was assigned to work on his post-conviction case.

4) During my investigation for the post-conviction petition, I spoke with Sarah Willison. Ms. Willison was the last adult probation officer to speak with Mr. Pickens prior to his arrest on June 1, 2009.

5) Ms. Willison told me that she remembered meeting with Mr. Pickens on June 1, 2009, at 11:47 a.m.. She recalled that this was the first time she met with Mr. Pickens and that he was really quiet and nothing stood out to her regarding his behavior or demeanor. She stated that Mr. Pickens and Noelle Washington were charged with the same offense but received different sentences; Ms. Washington received a much lighter sentence.



6) Ms. Willison asked her supervisor whether she could sign an affidavit stating this information. She was told that she was not allowed to sign such an affidavit and that any future communication from me should go through Michael Watson, Chief Probation Officer.

Further affiant sayeth naught.

JESSICA LOVE

Sworn to and subscribed in my presence on this 16th day of May, 2011.

NOTARY PUBLIC

KELLY HEIBY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 11-5-2013

A-195

OHIO DEPARTMENT OF YOUTH SERVICES
YOUTH UNIFIED CASE PLAN
CINCINNATI REGION

YOUTH'S NAME: Mark Pickens DYS#: 213086

ACTUAL RELEASE DATE: 8/14/08 PDD: 5/11/09

REPORT SUBMITTED BY: Joseph Schutte

Supervisor approval: Jerry Glascock, Acting JPSS Date: 4-9-09

Date Submitted: 4/8/09 Reporting Period: 3/14/09 to 4/14/09

Type of Report: Progress

Supervision Level: Moderate

Required Sex Offender Registrant? ☒No ☐Yes Date Registered:

Summary of overall behavior and progress in identified domain areas:

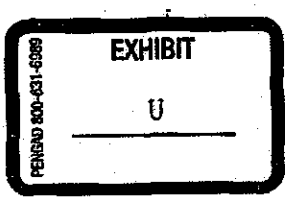
DOMAIN #1: OFFENSE HISTORY
The youth has had no further law enforcement contact during his time on parole, nor have any parole violations been filed since his release.

DOMAIN #2: FAMILY CIRCUMSTANCES
N/A

DOMAIN #3: EDUCATION/EMPLOYMENT
The youth remains unemployed. He continues to seek employment at local temporary agencies, but is now focused on earning his GED so that he can go on to learn a trade. The youth took his GED test through Cincinnati State on 3/11/09 and 3/12/09. He failed to obtain a passing score by ten points. The youth is now in the processing of registering for another test date. The youth has made plans to attend a vocational home health care program. His mother states that the youth has found a CNA Program that does not require a GED prior to enrollment. The youth is scheduled to begin this program on 4/28/09.

DOMAIN #4: PEER RELATIONS
Both the youth and his mother report that he is avoids negative peers. He spends a lot of time with family, and has an especially close relationship with his youngest brother.

DOMAIN #5: SUBSTANCE ABUSE
Domain Completed. The youth's case was successfully closed by his TASC case manager, Angie Hudson in late November, 2008.



DOMAIN #6: LEISURE/RECREATION
The youth continues to box at the Millvale Gym. Prior to his ODYS commitment, he had established himself a successful amateur boxer. The youth plans to attend his vocational program in the morning and box in the evenings.

DOMAIN #7: PERSONALITY/BEHAVIOR
N/A

DOMAIN #8: ATTITUDE/ACCOUNTABILITY
The youth completed his 20 hours of community service in January, 2009. He made an effort to pay his fines when he was working at Family Dollar. However, looking back he understands that this effort should have been stronger, since he had a steady income at that time.

SPECIAL CONCERNS:

Chronology of Case Contacts

Date	Code	Name of Person(s) and Title(s) Contacted /Agency or Location Represented
3/11/09	HV/CC	Home visit. Met with mother. Youth taking GED test today and tomorrow at Cinti. State. Youth has also enrolled in a home health care provider course at Great Oaks. The program is two weeks long. Youth has been taking his little brother to the park.
3/11/09	HV/NC	Youth not home, taking GED test.
3/18/09	HV/NC	Attempted HV. Youth not home. Left card.
3/20/09	OV	Youth in office. Got a TB test done for home health program. Youth tool GED test at Cincinnati State on Wed. and Thurs. last week. Still unable to secure employment.
3/27/09	OV	Met with youth in office. Got GED test results back. Got a 440. Did not pass. Can try again in 20 days. Youth to get help with Reading Comprehension in the mean time. Youth given info on nursing program at Great Oaks. Youth claims that no one there will call him back.
4/2/09	HV/NC	Attempted HV, no answer at door.
4/3/09	OV	Youth in office. Talked to Great Oaks. He must have his GED before he can enroll in the program. Youth waiting to take GED test again late in April. Will call JPO with a date. Youth applied online at Target, McDonalds, and Kmart. Youth advised of job fair on 4/4/09 in Northside. Youth also instructed to try Super Jobs.
4/7/09	HV/NC	Youth not home.
4/7/09	HV/CC	Spoke with mother. Youth has went to Super Jobs. He has also found a CAN program tat does not require a GED. She will have him bring info. on Friday. She wants to help him with court fines, but owes chills support still from his time at DYS.
4/7/09	PC/CC	Spoke with Dan Laurence -LYS advised him of youth's discharge set for 5/11/09.

Typist: JH 4-9-09

Respectfully submitted,

OFFICE OF THE
OHIO PUBLIC DEFENDER

KATHRYN L. SANDFORD - 0063985
Assistant State Public Defender

Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 644-0708 Fax

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **APPENDIX TO MARK PICKENS' POST-CONVICTION PETITION** (Volume I) was hand delivered to Joseph Deters, Hamilton County Prosecuting Attorney, 230 E. Ninth Street, Suite 4000, Cincinnati, Ohio 45202, this 17th day of May, 2011.

KATHRYN L. SANDFORD – 0063985
Counsel for Petitioner