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SLIP OPINION NO. 2026-OHIO-3190

THE STATE OF OHIO, APPELLEE, v. BRINKMAN, APPELLANT.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Brinkman*, Slip Opinion No. 2026-Ohio-3190.]

Criminal law—Aggravated murders—Convictions and death sentences affirmed.

(No. 2023-0891—Submitted August 19, 2025—Decided August 20, 2026.)

APPEAL from the Court of Common Pleas of Cuyahoga County,
No. CR-17-618342-A.

FISCHER, J., authored the opinion of the court, which KENNEDY, C.J., and DEWINE, DETERS, HAWKINS, and SHANAHAN, JJ., joined. BRUNNER, J., concurred in part and dissented in part, with an opinion.

FISCHER, J.

{¶ 1} This is an appeal of right from aggravated-murder convictions and death sentences.

INTRODUCTION

{¶ 2} On June 10, 2017, appellant, George Brinkman Jr., murdered his friend Suzanne and her adult daughters, Taylor and Kylie, in their home in North Royalton. On June 13, Brinkman surrendered to police and confessed to the murders.

{¶ 3} In November 2018, a three-judge panel of the Cuyahoga County Court of Common Pleas accepted Brinkman’s guilty plea to, and found Brinkman guilty beyond a reasonable doubt of, six counts of aggravated murder, with accompanying capital specifications, one count of aggravated burglary, three counts of kidnapping, and three counts of gross abuse of a corpse. After the mitigation hearing, the three-judge panel sentenced Brinkman to death for each victim.

{¶ 4} On appeal, we held that the three-judge panel failed to strictly comply with Crim.R. 11(C)(2)(c) when it did not advise Brinkman at the time he entered his guilty plea that he was waiving his rights to confront the witnesses against him and to have appellee, the State of Ohio, prove his guilt beyond a reasonable doubt. *State v. Brinkman*, 2021-Ohio-2473, ¶ 16. Because he did not have a “full understanding” that by pleading guilty, he would be waiving those two constitutional rights, *id.*, citing *State v. Ballard*, 66 Ohio St.2d 473, 478 (1981), we vacated Brinkman’s convictions and death sentences, *id.* at ¶ 23.

{¶ 5} Brinkman’s case was remanded to the common pleas court for new proceedings. *Id.* After a new presiding judge was assigned, Brinkman’s attorneys informed the court that Brinkman intended to waive his right to a jury trial and enter a guilty plea to the amended indictment.¹

1. On remand, the trial court granted the State’s motion to amend the indictment “to delete surplusage in the course of conduct specification under [R.C.] 292[9].04(A)(5) and in each of the felony murder specifications under [R.C.] 2929.04(A)(7) in Counts 1 through 6.” The amended indictment charged Brinkman with six counts of aggravated murder: Counts 1, 3, and 5 charged him with purposely, and with prior calculation and design, causing the death of Suzanne, Taylor, and

{¶ 6} On November 9, 2022, Brinkman entered a guilty plea to the amended indictment, which a new three-judge panel (“the panel”) accepted. On November 9 and 10, the State presented its evidence on each count and capital specification to the panel. On November 14, the panel found Brinkman guilty beyond a reasonable doubt of all counts and capital specifications contained in the amended indictment. After a mitigation hearing, the panel sentenced Brinkman to death for each victim, a total of three death sentences.

{¶ 7} Brinkman now appeals as of right and raises 22 propositions of law, each of which we overrule. After conducting an independent review, we conclude that although some mitigating factors exist, the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt as to each of the three aggravated murders. We further conclude that each death sentence is appropriate and proportionate with respect to other capital cases involving similar aggravating circumstances. Therefore, we affirm all three death sentences.

RELEVANT FACTS

{¶ 8} On June 9, 2017, the day before the murders, Brinkman purchased ammunition and a knife from a Walmart store. On the morning of June 10, the day of the murders, he purchased a knife sharpener, a razor, cargo pants, a work shirt, and a backpack from another Walmart store and withdrew \$1,600 from his bank account. Records of text messages sent between Brinkman and Suzanne from that

Kylie, respectively, in violation of R.C. 2903.01(A), and Counts 2, 4, and 6 charged him with purposely causing the death of Suzanne, Taylor, and Kylie, respectively, while committing or attempting to commit or while fleeing immediately after committing or attempting to commit aggravated burglary and/or kidnapping in violation of R.C. 2903.01(B). Counts 1 through 6 contained capital specifications under R.C. 2929.04(A)(5) for “the purposeful killing of or attempt to kill two or more persons” and under R.C. 2929.04(A)(7) for committing each aggravated murder while he was committing, attempting to commit, or fleeing immediately after committing or attempting to commit aggravated burglary and kidnapping “and either [he] 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.”

morning reveal that Brinkman asked if he could come over to Suzanne's house specifically while her daughters were absent.

{¶ 9} Suzanne's boyfriend, Scott Plymale, stopped by Suzanne's house around 4:30 p.m. on June 10 to give her a flower bouquet. When he arrived, Plymale noticed that Suzanne's and her daughters' cars were there and that Brinkman's van was backed up to a front window. Plymale knocked on Suzanne's front door, but no one answered, so he left the flowers on the porch.

{¶ 10} Taylor's boyfriend, Dale Koster, called Plymale on June 11 and said that Taylor had not shown up for their date the previous night. Koster said that he was at Suzanne's house and was knocking on the door but that no one was answering even though all their cars were there. Koster used a screwdriver to force the front door open. Upon entering, Koster called Plymale again and said that he saw the flowers that Plymale had left for Suzanne lying on a table right inside the front door. Koster eventually opened a bedroom door and told Plymale that he saw a body. Plymale told Koster to leave the house, and Plymale called 9-1-1.

{¶ 11} A responding police officer found the bodies of Suzanne and her daughters face down on the bed in a first-floor bedroom. Upon entering the bedroom, the officer first found the body of a "female lying on the left side of [the] bed . . . with an arm hanging off the bed with clear lividity as though it had been deceased for some time." The officer then noticed the outlines of two more bodies face down underneath blankets on the bed.

{¶ 12} Police focused on Brinkman as a suspect after interviewing Plymale and Koster. Police first contacted Brinkman on June 12; he said that he knew about the murders and agreed to come into the police station. However, Brinkman did not show up at the police station. Meanwhile, police issued a "be on the look out" or "BOLO" alert for Brinkman and his van.

{¶ 13} Investigators eventually located Brinkman in Brunswick, Ohio, at the house of his friend Amy Szijarto. While Brinkman and Szijarto were

conversing, unbeknownst to them, a team of law-enforcement personnel had arrived outside the house. The team entered the house and safely led Szijarto out the front door, but Brinkman retreated to the house's second floor, where he sequestered himself. An eight-hour standoff ensued, which lasted until about 5:30 a.m. on June 13, when police finally arrested Brinkman.

{¶ 14} Brinkman was transported to the police station, where he waived his *Miranda* rights. That afternoon during law enforcement's questioning, Brinkman denied any involvement in the murders of Suzanne and her daughters. But later that night, during a smoke break, Brinkman volunteered: "For the sake of the family, you have the right guy."

{¶ 15} Police re-Mirandized Brinkman before he confessed to committing the murders. According to Brinkman's account, he specifically arranged to visit with Suzanne on June 10 while her daughters were absent. At first, Suzanne and Brinkman were simply talking, but he then began to assault her. Brandishing a knife, Brinkman took Suzanne to a first-floor bedroom and threw her onto the bed. Around that time, Suzanne's daughters came home. Threatening them with the knife, Brinkman ordered Taylor and Kylie to lie down on the bed next to their mother. Brinkman had Kylie zip tie the hands of her mother and sister to the bed frame, and Brinkman then put zip ties around Kylie's hands. All three women were initially restrained while lying on their backs. But starting with Suzanne, and then Taylor and Kylie, Brinkman removed their restraints, had them each turn onto their stomach, and restrained them with zip ties and a roll of duct tape. As he instructed Taylor to turn over, he said, "I don't want you screaming, I'm not going to hurt you." Throughout the commotion, Suzanne was yelling insults at Brinkman, and at some point, he "took the knife to her," stabbing the back of her neck and then the side of her throat, because, in his words, he was "looking just to hit the artery." Taylor and Kylie began to scream when Brinkman murdered Suzanne. At some point, Taylor broke free, but Brinkman was able to duct-tape and zip-tie her hands.

Brinkman then jumped on Taylor and “put her face in the pillow” until she stopped breathing. When Kylie tried to move and get up, Brinkman wrapped a power cord around her neck and strangled her “until she stopped moving.”

{¶ 16} Autopsies were conducted by a deputy medical examiner from the Cuyahoga County Medical Examiner’s Office, who testified that Suzanne died from “[s]harp force injuries of [her] head, neck, and extremities with vascular, airway, and soft tissue injuries.” Taylor’s cause of death was asphyxia, and Kylie’s cause of death was asphyxia with cervical compression. Taylor had abrasions and contusions on her head, trunk, and extremities, and Kylie had abrasions on her neck and contusions on her bilateral lower extremities. In Kylie’s case, the deputy medical examiner noted that some of the “hair from her anterior scalp had been pulled out by the roots.” The deputy medical examiner testified that there was a hemorrhage in the inside of Kylie’s neck, which was evidence of some struggle.

{¶ 17} Brinkman’s DNA was recovered from the front door’s interior handle, Suzanne’s left wrist, Kylie’s wrists, and several items in the bedroom. Investigators recovered a power cord and zip ties from Suzanne’s bedroom and discovered a large amount of Suzanne’s hair on top of a suitcase that was outside her bedroom.

ISSUES ON APPEAL

{¶ 18} On appeal, Brinkman raises 22 propositions of law. The analysis section of this opinion groups related propositions of law for easier discussion. Accordingly, some propositions of law are addressed out of order.

{¶ 19} The first five propositions of law allege various defects in the proceedings that Brinkman says require reversal. Brinkman argues that the panel erred when it sentenced him to death without making the necessary findings that the aggravating circumstances outweighed the mitigating factors under R.C. 2929.03(D)(3) (No. 1), shifted the burden to Brinkman to prove that the mitigating factors outweighed the aggravating circumstances (No. 2), refused to grant expert

status or give mitigating weight to two of Brinkman's mitigation witnesses (No. 3), granted the State's rebuttal witness expert status when that witness's conception of mitigation was contrary to controlling law and his expert opinions were flawed (No. 4), and allowed and considered overly emotional testimony of four victim-impact witnesses (No. 5).

{¶ 20} The next grouping of Brinkman's propositions of law relates to his plea hearing. He challenges the sufficiency of the capital indictment (No. 20), adequacy of the guilty-plea and jury-waiver colloquies (Nos. 18 and 19, respectively), admission of gruesome photographs (No. 15), and sufficiency of the evidence as to his aggravated-burglary conviction and the associated R.C. 2929.04(A)(7) felony-murder capital specifications predicated on aggravated burglary attached to Counts 1 through 6 (No. 6).

{¶ 21} The next grouping relates to alleged errors that occurred during the mitigation hearing. Brinkman challenges the panel's weighing process (Nos. 8, 9, and 12), sentencing opinion (No. 7), merger analysis (No. 16), and proportionality analysis (Nos. 10 and 11), and he challenges the constitutionality of Ohio's death-penalty scheme (Nos. 17 and 21).

{¶ 22} Finally, Brinkman argues that cumulative error deprived him of a fair trial (No. 22) and that he received ineffective assistance of counsel (Nos. 13 and 14).

{¶ 23} In addition to reviewing the propositions of law that Brinkman raises, we independently evaluate his death sentences as required under R.C. 2929.05(A). Having reviewed each proposition of law and conducted our own independent sentence evaluation under R.C. 2929.05(A), we affirm Brinkman's convictions and death sentences.

ANALYSIS

I. FIRST FIVE PROPOSITIONS OF LAW

{¶ 24} In proposition of law No. 1, Brinkman contends that the panel erred when it failed to “find[], by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors,” as required by R.C. 2929.03(D)(3). Relatedly, in proposition of law No. 2, he argues that the panel improperly shifted the burden of proof to him to show that the mitigating factors outweighed the aggravating circumstances and thus erroneously imposed the death penalty.

{¶ 25} In proposition of law No. 3, Brinkman argues that the panel erred when it refused to grant expert status to two of his mitigation witnesses and that the panel exacerbated the errors when it gave their testimony zero weight in mitigation. He contends in proposition of law No. 4 that the panel compounded the errors regarding these two mitigation witnesses by granting the State’s rebuttal witness expert status despite that witness’s purportedly flawed conception of mitigation.

{¶ 26} In proposition of law No. 5, Brinkman argues that the panel allowed and considered improper victim-impact evidence.

{¶ 27} For the reasons that will be explained, we reject each of these propositions of law.

A. Compliance with R.C. 2929.03(D)(3)

{¶ 28} In his first proposition of law, Brinkman argues that the panel did not comply with R.C. 2929.03(D)(3) when it sentenced him to death, and in his second proposition of law, he argues that the panel improperly flipped the burden of proof to him when it weighed the aggravating circumstances and mitigating factors. Although the panel’s presiding judge misspoke initially about the applicable sentencing standard, the record demonstrates that the panel complied with the applicable statutory provisions when it sentenced Brinkman to death.

1. R.C. 2929.03(D)(3)

{¶ 29} To impose a death sentence on an offender who pleads guilty to a count in an indictment containing at least one capital specification listed in R.C. 2929.04(A), a panel of three judges must unanimously find “by proof beyond a reasonable doubt, that the *aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors*” (emphasis added), R.C. 2929.03(D)(3). If the three-judge panel fails to find that the aggravating circumstances outweigh the mitigating factors, the three-judge panel “shall impose one of” the life sentences set forth in R.C. 2929.03(D)(3)(a) or (b). *Id.*

2. Relevant Facts

{¶ 30} On May 31, 2023, the panel convened for Brinkman’s sentencing hearing. Before the panel discussed merging the aggravated-murder counts related to each victim and allowed the State to present victim-impact witnesses, the presiding judge stated:

Pursuant to [R.C.] 2929.03 and 2929.04, evidence regarding aggravating circumstances, mitigation, and related exhibits were received by the three-judge panel in hearings conducted on May 15th, 16th, 17th, and 30th of 2023.

The three-judge panel has deliberated and based upon evidence adduced at hearing and applicable law, as to Counts 1 through 6, the panel unanimously finds beyond a reasonable doubt that *the aggravating circumstances are not outweighed by the mitigating factors*. The three-judge panel will file a more detailed analysis of this conclusion in a separate entry to follow in accordance with [R.C.] 2929.03(F).

(Emphasis added.) Another panel member then remarked, “So we are ready as a panel to impose sentence.” No one objected to the presiding judge’s statement that “the aggravating circumstances are not outweighed by the mitigating factors.”

{¶ 31} The panel convened the parties for an unscheduled hearing the next day “upon notice from the State and concern that the particular findings need[ed] to be more . . . clarified.” A panel member explained that the hearing was necessary to “supplement, clarify, and correct the court pronouncement regarding aggravating circumstances and mitigating factors.” Next, the panel member addressed one of the assistant prosecuting attorneys directly and stated: “[T]here’s one sentence in the findings that concerns you.”

{¶ 32} The following discussion ensued:

[ASSISTANT PROSECUTING ATTORNEY]: Well, it’s the—just to make sure that the court, one and all, did not shift the burden over to the defense in that your findings, if that is your findings, that the aggravating circumstances outweighed the—any mitigating factors that were presented or that you found, yourself, beyond a reasonable doubt, and that’s what we—

JUDGE [TWO]: So you’re looking for a clarification of the language?

[ASSISTANT PROSECUTING ATTORNEY]: A clarification whether that is what in fact happened or not.

JUDGE [TWO]: Very good. Counsel, anything?

[DEFENSE COUNSEL]: Yes. Judge, for the record, we would object to any clarification at this point. I think the prosecutor pointed out that the language is essentially burden shifting, so we would object to any correction at this point.

JUDGE [TWO]: All right. Objection of course is overruled. The three-judge panel here will incorporate the entire proceedings conducted on the record yesterday, 5/31/23, and state the following, with the concurrence of my fellow judges, the three-judge panel. It will read as follows in the entry:

The three-judge panel unanimously finds that the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt.

...

The court is going to incorporate this particular finding and will issue the sentencing order in compliance with what we did yesterday. Is there anything else?

JUDGE [THREE]: No, other than I will concur.

JUDGE [TWO]: Okay, very good.

...

[PRESIDING JUDGE]: I absolutely concur.

One of the panel members reaffirmed that making the correct finding under R.C. 2929.03(D)(3) that the aggravating circumstances outweighed the mitigating factors “was absolutely our intention” but acknowledged “that we had incorrect verbiage” and “[t]hat was not the discussion that we had.” And the presiding judge confirmed, “It was our intention yesterday [to make the correct finding under R.C. 2929.03(D)(3)]. It was also consistent with our deliberations. We have not deviated from the expectations of the law. We’ve been consistent.”

{¶ 33} The panel filed a journal entry in compliance with Crim.R. 32(C), in which it fully described the court proceedings that took place on May 31 and June 1. The panel entered its sentencing opinion meeting the requirements of R.C. 2929.03(F) on June 16.

3. Analysis

{¶ 34} Defense counsel’s failure to object to the presiding judge’s inaccurate weighing statement during the sentencing hearing forfeits the error absent a showing of plain error. *See* Crim.R. 52(B); *State v. Hill*, 1995-Ohio-287, ¶ 26.

{¶ 35} Brinkman argues that the panel’s May 31 finding “mandates a life sentence under the plain language of R.C. 2929.03(D)(3),” that the “purported ‘clarification’ is a nullity,” and that “[a]ny such error in a capital case, which resulted in a death sentence being imposed despite the Ohio death penalty statute mandating a life sentence on those findings, is obviously plain error and meets any requirement for relief on appeal.” (Boldface and emphasis deleted.)

{¶ 36} “To demonstrate plain error under Crim.R. 52(B), the party asserting error must show that an error occurred, that the error was plain, and that the error affected his substantial rights.” *State v. Bond*, 2022-Ohio-4150, ¶ 17, citing *State v. Wilks*, 2018-Ohio-1562, ¶ 52. “The elements of the plain-error doctrine are conjunctive: all three must apply to justify [a] . . . court’s intervention.” *State v. Bailey*, 2022-Ohio-4407, ¶ 9; *accord State v. Barnes*, 2002-Ohio-68, ¶ 20 (“By its very terms, [Crim.R. 52(B)] places three limitations on a reviewing court’s decision to correct an error despite the absence of a timely objection at trial.”). ““We have interpreted [the third] aspect of the rule to mean that the trial court’s error must have affected the outcome of the trial.”” (Bracketed text in original.) *Bond* at ¶ 17, quoting *Barnes* at ¶ 20. Even if the appellant satisfies all three aspects of the plain-error test, we must still consider “whether correcting the error is required to prevent a manifest miscarriage of justice or whether the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at ¶ 35.

{¶ 37} The panel’s May 31 conclusion stating that it “unanimously finds beyond a reasonable doubt that the aggravating circumstances are not outweighed by the mitigating factors” is an inaccurate recitation of the law. To be sure, the

panel's statement reverses the applicable weighing calculus by indicating that the mitigating factors must outweigh the aggravating circumstances beyond a reasonable doubt. By incorrectly reciting the appropriate weighing calculus under R.C. 2929.03(D)(3), the panel gave the parties the impression that it had actually determined that the aggravating circumstances and mitigating factors were in equipoise. *See State v. Stallings*, 2000-Ohio-164, ¶ 27.

{¶ 38} *Stallings* is instructive. In *Stallings*, the trial court told the jury at various times during voir dire that “‘if [the jury] find[s] the mitigating factors outweigh the aggravating circumstances’ then it should vote on various life sentences.” (Bracketed text in original.) *Id.* at ¶ 26. Despite noting that the trial court's incorrect formulation of the R.C. 2929.03(D) weighing “confuses the burden of proof,” *id.* at ¶ 27, we held that “no outcome-determinative plain error occurred,” *id.* at ¶ 29, emphasized that the trial court's initial jury instructions during voir dire were preliminary and could not be equated to the final instructions given before the jury's deliberations, *id.*, and noted that “the parties understood and generally articulated the correct legal standard at the penalty phase,” *id.* at ¶ 30.

{¶ 39} Similarly, no plain error exists in this case. Although Brinkman easily satisfies the first two aspects of the plain-error test, he has not shown that the panel's error affected his substantial rights. The panel reconvened the next day, June 1, and stated in open court that its sentencing deliberations were consistent with the statutory weighing calculation.

{¶ 40} As in *Stallings*, throughout the proceedings in this case, the panel and the parties regularly referred to the correct weighing standard. The record demonstrates that the panel understood the applicable sentencing standard and its responsibility in determining the appropriate sentence in this case. Furthermore, there is no evidence in the record actually “suggesting [that] the aggravating circumstance[s] and mitigating factors are in equipoise,” *Hill*, 1995-Ohio-287, at ¶ 30; *accord id.* at ¶ 22-23, 27 (rejecting the defendant's argument that the jury was

misled by a verdict form and jury instructions that reversed R.C. 2929.03(D)(2)’s sentencing standard and holding that no plain error occurred because the trial-court judge and the parties generally referred to the correct sentencing standard in the sentencing proceedings).

{¶ 41} For the foregoing reasons, we reject Brinkman’s first proposition of law.

B. Shifting Burden of Proof

{¶ 42} In proposition of law No. 2, Brinkman contends that the presiding judge’s misstatement on May 31, 2023, demonstrates that the panel impermissibly flipped the burden of proof during the mitigation hearing by requiring him to prove that the mitigating factors outweighed the aggravating circumstances. Brinkman argues that flipping the burden of proof amounts to structural error that can only be remedied by a new mitigation hearing.

{¶ 43} We have applied the plain-error test to claims of structural error that were not objected to during trial. *See Bond*, 2022-Ohio-4150, at ¶ 17 (observing that “four justices determined in *West* that a plain-error analysis is still necessary when the party asserting a structural error did not object to that error in the trial court”), citing *State v. West*, 2022-Ohio-1556, ¶ 35 (lead opinion), and *West* at ¶ 38-41 (Donnelly, J., dissenting). Thus, because Brinkman failed to object to the presiding judge’s misstatement, we must analyze this claim through the plain-error analysis.

{¶ 44} The first two aspects of our plain-error analysis ask first whether an error occurred during the trial-court proceedings and second whether that error was plain. *Wilks*, 2018-Ohio-1562, at ¶ 52. Brinkman’s challenge is not in showing that a plain error occurred—we think it did, given the presiding judge’s express misstatement and the panel’s decision to hold another hearing to correct that mistake—but in showing that “the error affected [his] substantial rights,” *Bond* at ¶ 19. We are not persuaded that the error was structural.

{¶ 45} Indeed, Brinkman has not cited any applicable authority that supports his claim that the presiding judge’s misstatement is akin to any of the errors that the United States Supreme Court has recognized as structural error. *See State v. Jones*, 2020-Ohio-3051, ¶ 21 (observing that structural error necessarily involves “fundamental constitutional rights, including the denial of counsel to an indigent defendant, the denial of counsel of choice, the denial of self-representation at trial, the denial of a public trial, and the failure to instruct the jury that a defendant’s guilt must be proved beyond a reasonable doubt”), citing *Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017), and *United States v. Davila*, 569 U.S. 597, 611 (2013).

{¶ 46} To the contrary, the record demonstrates that the panel was aware of the applicable law and knew how to analyze the issues, as explained above.

{¶ 47} We therefore reject proposition of law No. 2.

C. Defense Mitigation Witnesses

{¶ 48} In proposition of law No. 3, Brinkman contends that the panel denied expert status to two of his mitigation witnesses as a pretext for arbitrarily discrediting their testimony and affording zero weight to his core mitigation evidence. He contends in his reply brief that in denying his request to deem Drs. Arne Reimers and Hanna Ljung as experts in their respective fields, the panel committed structural error because “the factfinder’s arbitrary disregard, with zero weight, of compelling mitigation evidence . . . will *always* result in a sentencing proceeding which is fundamentally unfair.” (Emphasis in original.) In response, the State argues that the panel was free to assign little or no weight to the testimony of Reimers and Ljung, respectively, and that the panel meaningfully considered the mitigation evidence that Brinkman presented, as demonstrated by the panel’s sentencing opinion.

1. Relevant Facts

{¶ 49} Defense counsel retained Drs. Reimers and Ljung to “evaluate Mr. Brinkman’s conditions and his drug treatment and their potential impact on his offenses.” Reimers and Ljung, who partner together to run a private consulting company, prepared an evaluation that focused on four prescribed medications that Brinkman was taking at the time of the offenses to treat his uncontrolled diabetes and other medical conditions. Their joint report concentrated on the pharmacological and neuropsychological aspects of Brinkman’s medical and prescription histories and their connection to the aggravated murders. In his merit brief, Brinkman summarized the overall conclusions made by Reimers and Ljung:

The doctors conclusively demonstrated and concluded that, at the relevant time in June 2017, Brinkman had ***four strikes*** against him insofar as being vulnerable to adverse drug reactions [“ADRs”] from the [prescription medications] gabapentin, naproxen, duloxetine, and hydroxyzine:

(1) He was prescribed a powerful combination of two or more such drugs which act on the central nervous system.

(2) He suffered for years with uncontrolled diabetes, which damaged his kidneys, and thereby impaired the way his body processes such drugs.

(3) He suffers from several significant psychiatric conditions and has a history of depression and anxiety and recurrent states of anger caused by his diabetes, thereby making him more sensitive to psychiatric ADRs from his medication.

(4) He was taking naproxen which can itself induce psychiatric ADRs, but also enhances the effects of gabapentin, duloxetine, and hydroxyzine, which can do so too.

(Emphasis and boldface in original.)

{¶ 50} Reimers and Ljung noted in their report that about two months before the murders, Brinkman’s dosage of gabapentin was significantly increased, which elevated his risk for ADRs. Brinkman was also taking naproxen at the same time, which can increase the body’s exposure to gabapentin. Brinkman claims in his merit brief that taking naproxen “further amplif[ied] [his] risk of psychiatric and behavioral ADRs from his large dosage of gabapentin.”

{¶ 51} The State filed a motion in limine under Evid.R. 702(B) and (C), seeking to exclude Reimers and Ljung from testifying as experts and arguing that their respective testimony would not be relevant or reliable. According to the State’s motion, Reimers and Ljung were “not qualified or licensed to testify as experts on Brinkman’s medical diagnoses, their complications, and prescribed medications for treatment,” because in their report, the doctors “have ignored the scientific method, have cited no on point peer-reviewed, controlled studies, and based their conclusions on unverified subjective data.” In Brinkman’s opposition to the State’s motion, he contended that holding a *Daubert* hearing would be “completely unnecessary” given that the panel was the fact-finder. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

{¶ 52} The panel delayed its ruling on Reimers’s and Ljung’s respective expert status until the defense proffered each witness as an expert during the mitigation hearing. However, when defense counsel moved to have Reimers and Ljung declared as experts in the fields of pharmacology and neuropsychology, respectively, the panel again held its decision in abeyance. After the defense rested its mitigation case, the panel declined to grant either Reimers or Ljung expert status. However, the panel promised to “consider all of their testimony and give it the weight that [it felt was] proper,” even though it concluded that it “just [did] not feel

at [that] point in time that [Reimers or Ljung were] at a level which would qualify [them] as experts, to be given that title or designation.”

2. *Applicable Law*

{¶ 53} Evid.R. 702² governs the admissibility of expert testimony. *See Terry v. Caputo*, 2007-Ohio-5023, ¶ 24. Evid.R. 702 provides:

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

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

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

(C) The witness’ testimony is based on reliable scientific, technical, or other specialized information. . . .

69 Ohio St.3d CXIX. We have observed that the “qualification and reliability requirements of Evid.R. 702 are distinct. Because even a qualified expert is capable of rendering scientifically unreliable testimony, it is imperative for a trial court, as gatekeeper, to examine the principles and methodology that underlie an expert’s opinion.” *Valentine v. Conrad*, 2006-Ohio-3561, ¶ 17. Trial courts “should favor the admissibility of expert testimony whenever it is relevant and the criteria of Evid.R. 702 are met.” *State v. Nemeth*, 1998-Ohio-376, ¶ 22. Even still, the decision whether to qualify a witness as an expert is a matter well within the trial

2. We recently amended Evid.R. 702, which took effect on July 1, 2024. Supreme Court of Ohio, *Final Rule Amendments*, <https://www.supremecourt.ohio.gov/ruleamendments/documents/As%20Adopted.pdf> (accessed Feb. 27, 2026) [<https://perma.cc/VN4X-BY7A>]. In this opinion, we use the former version of Evid.R. 702, 69 Ohio St.3d CXIX.

court's discretion. *See Valentine* at ¶ 9. "The term 'abuse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams*, 62 Ohio St.2d 151, 157 (1980). However, no court has the discretion to misapply or commit errors of law. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 38.

{¶ 54} During the mitigation hearing, when it denied Brinkman's request to deem Drs. Reimers and Ljung experts in their respective fields of pharmacology and neuropsychology, the panel specified that it "question[ed] the reliability of the information [provided by Reimers and Ljung], and particularly as it pertains to the procedures, tests, or experiments." The panel's ruling thus hinged on Evid.R. 702(C), and we will assume that Reimers and Ljung satisfied Evid.R. 702(A) and (B).

{¶ 55} When evaluating the reliability of scientific evidence under Evid.R. 702(C), a trial court must consider several factors: "(1) whether the theory or technique has been tested, (2) whether it has been subjected to peer review, (3) whether there is a known or potential rate of error, and (4) whether the methodology has gained general acceptance." *Miller v. Bike Athletic Co.*, 1998-Ohio-178, ¶ 14 (lead opinion), citing *Daubert*, 509 U.S. at 593-594. Neither special education nor certification is necessary to confer expert status on a witness, as long as the knowledge he or she possesses will aid the trier of fact in performing its fact-finding function. *State v. Baston*, 1999-Ohio-280, ¶ 25. Analytically, the trial court's primary focus should be on the reliability of the proposed expert opinion. A court should not be "concerned with the substance of the experts' conclusions" but instead concerned with "how the experts arrived at their conclusions." *Valentine* at ¶ 16.

3. Denying Expert Status to Drs. Reimers and Ljung

{¶ 56} Brinkman sought to have Drs. Reimers and Ljung testify as experts in their respective fields of pharmacology and neuropsychology to establish that

Brinkman suffered from cognitive impairments and adverse behaviors at the time of the murders, brought on as a result of his prescribed medications. The panel refused to qualify Reimers and Ljung as experts, stating in its sentencing opinion that their testimony and report were unreliable and “lacking in scientific integrity,” in part because they had not met with Brinkman in person. Cuyahoga C.P. No. CR-17-618342-A, 6 (June 16, 2023). During the mitigation hearing, the presiding judge noted that Reimers and Ljung were from Sweden, which does not have the death penalty, and that “[t]hey’ve never been found to be an expert on this trial level before anywhere in the United States.”

{¶ 57} Despite Brinkman’s argument to the contrary, the panel was within its discretion to deny Reimers and Ljung expert status because neither ever met with or spoke to Brinkman to complete their evaluations. And as the State observes in its merit brief, “Reimers’[s] testimony never connected the interactions he described to side effects that he could prove Brinkman experienced, rendering his testimony somewhat speculative.” Ljung’s testimony was based primarily on a report from neuropsychologist Dr. John Fabian that was admitted during Brinkman’s 2018 mitigation hearing, and the panel had that report before it, along with reports from Dr. Bob Stinson and Dr. Stephen Noffsinger, two forensically trained mental-health experts who had personally evaluated Brinkman. Although Reimers and Ljung concluded in their report that Brinkman’s conditions and drug treatments put him at risk of experiencing ADRs, neither could state with certainty that Brinkman actually experienced ADRs at the time of the offenses.

{¶ 58} Based on this record, we cannot say that the panel abused its discretion, despite the panel’s inartful and incomplete reliability analysis. “A court abuses its discretion when a legal rule entrusts a decision to a judge’s discretion and the judge’s exercise of that discretion is outside the legally permissible range of choices.” *State v. Hackett*, 2020-Ohio-6699, ¶ 19, citing *United States v. E. I. du Pont de Nemours & Co.*, 366 U.S. 316, 372 (1961) (Frankfurter, J., dissenting).

Here, while the panel’s questions about the information provided by Reimers and Ljung touched on matters inapplicable to a reliability analysis under Evid.R. 702, the panel sufficiently considered “the principles and methodology that underlie[d]” their scientific conclusions, *Valentine*, 2006-Ohio-3561, at ¶ 17, and rejected them.

{¶ 59} Denying expert status to two of Brinkman’s mitigation witnesses was within the panel’s discretion, and the panel did not abuse its discretion. Moreover, the panel did not prevent Reimers and Ljung from testifying, and it considered each witness’s testimony in weighing the aggravating circumstances against the mitigating factors. Furthermore, even if the panel had abused its discretion in denying expert status to Reimers and Ljung, we will independently evaluate the death sentences imposed in this case in accordance with R.C. 2929.05(A), including all of Brinkman’s mitigating evidence, which can cure any alleged error in the mitigation proceedings. *See State v. Kirkland*, 2014-Ohio-1966, ¶ 97; *see also State v. Hale*, 2008-Ohio-3426, ¶ 131-132 (prosecution’s improper questions of a mitigation witness were cured by the court’s independent review of the death sentence). We reject Brinkman’s argument that the panel erred in not declaring Reimers and Ljung experts in their respective fields.

4. Affording No Weight to Drs. Reimers’s or Ljung’s Conclusions

{¶ 60} Brinkman also argues that the panel exacerbated its error with respect to Drs. Reimers and Ljung by affording their testimony “no mitigating weight” in its sentencing opinion, Cuyahoga C.P. No. CR-17-618342-A, at 6 (June 16, 2023).

{¶ 61} Under the Eighth and the Fourteenth Amendments to the United States Constitution, a sentencer may “not be precluded from considering, *as a mitigating factor*, any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.” (Emphasis in original.) *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (lead opinion). Nor may a sentencer “refuse to consider, *as a matter of law*, any

relevant mitigating evidence.” (Emphasis in original.) *Eddings v. Oklahoma*, 455 U.S. 104, 114 (1982). “The sentencer, and the [appellate court] on review, may determine the weight to be given relevant mitigating evidence. But they may not give it no weight by excluding such evidence from their consideration.” *Id.* at 114-115.

{¶ 62} The panel did not exclude Reimers’s and Ljung’s testimony from consideration by declining to recognize them as experts; rather, the panel considered the evidence as lay testimony and afforded it no mitigating weight. The Eighth Amendment does not “require the sentencer to reach any particular conclusion about the weight of [mitigating] evidence.” *State v. Davis*, 2014-Ohio-1615, ¶ 60. “[A] sentencer may not refuse to *consider* mitigating evidence on the ground that no connection exists between that evidence and the murder for which the defendant is being sentenced.” (Emphasis added in *Roberts*.) *State v. Knuff*, 2024-Ohio-902, ¶ 297, quoting *State v. Roberts*, 2017-Ohio-2998, ¶ 68, citing *Smith v. Texas*, 543 U.S. 37, 45, 48 (2004). “But ‘[w]hether mitigating factors help to explain the murder is obviously relevant to the weight of those factors and may be considered by the sentencer in assigning weight to them.’” *Id.*, quoting *Roberts* at ¶ 70.

{¶ 63} The panel’s sentencing opinion adheres to these principles. The panel considered the mitigating evidence Brinkman presented, including Reimers’s and Ljung’s conclusions. The sentencing opinion shows that the panel not only considered each of the mitigating factors in question but determined what weight to assign, even though that analysis resulted in the panel affording “no mitigating weight” to Reimers’s and Ljung’s testimony, Cuyahoga C.P. No. CR-17-618342-A, at 6 (June 16, 2023).

{¶ 64} For the foregoing reasons, we reject Brinkman’s third proposition of law.

D. State’s Rebuttal Expert

{¶ 65} In his fourth proposition of law, Brinkman argues that the panel erred when it granted the State’s request to deem its rebuttal witness, Dr. Noffsinger, an expert in the fields of general medicine, psychiatry, and forensic psychiatry. Brinkman contends that Noffsinger’s “conception of mitigation” was contrary to controlling law in that he included a requirement that evidence bear a “causal connection” to the murders, that his expert opinions were flawed, and that the panel erroneously relied on his conclusions in sentencing Brinkman to death.

1. Relevant Facts

{¶ 66} After the defense rested its mitigation case, the State presented Dr. Noffsinger, a board-certified forensic psychiatrist, as its rebuttal witness. At the time of the mitigation hearing, Noffsinger was the director of the forensic-psychiatry fellowship at Case Western Reserve University School of Medicine and University Hospitals Cleveland Medical Center, a professor of psychiatry at Case Western, and the medical director of emergency psychiatric services at University Hospitals. He has been board certified in psychiatry since 1995 and in forensic psychiatry since 1996. Noffsinger completed a residency in psychiatry and a fellowship in forensic psychiatry and had published 55 professional articles and seven book chapters on various issues in psychiatry or forensic psychiatry.

{¶ 67} Over Brinkman’s objection, the panel granted the State’s motion to recognize Noffsinger as an expert in the fields of general medicine, psychiatry, and forensic psychiatry. At the State’s request, Noffsinger personally interviewed Brinkman on April 27, 2023, for three and a half hours, reviewed our previous decision from Brinkman’s initial appeal in this case, *Brinkman*, 2021-Ohio-2473, and defense-expert reports (one by Dr. James Pritchard, who had reviewed and offered an opinion regarding Brinkman’s medical history; two by Dr. Stinson; two by Kelly O’Connor, a mitigation specialist; a preliminary report by Dr. Fabian; and the report by Drs. Reimers and Ljung), and read the transcript of Stinson’s October

2019 testimony from another capital-sentencing proceeding involving Brinkman. Noffsinger also reviewed Brinkman's medical records from the Cleveland Clinic, the Ohio State University Wexner Medical Center, the MetroHealth Medical Center, the Stark County Jail, and the Department of Rehabilitation and Correction. He also reviewed Reimers's and Ljung's resumes, Brinkman's school and military records, police records, files from the prosecutor's office, and the textbook *Schatzberg's Manual of Clinical Psychopharmacology* (9th Ed. 2019).

{¶ 68} Noffsinger testified that “the allegations by Dr. Reimers that gabapentin induced aggression, hostility, violent behavior, and homicidal ideation in Mr. Brinkman at the time of the offense . . . [were] not supported by the evidence.” Noffsinger concluded that “gabapentin was an appropriate medication prescribed for Mr. Brinkman's conditions of neuropathy and nerve pain” and that his dosage of 3,600 milligrams per day “was within the recommended dosage by the drug manufacturer, and also consistent with Mr. Brinkman's kidney function.” He criticized Reimers's reasoning because Reimers “looked at the wrong data” by not considering Brinkman's “lab values close in time to the offense.” Noffsinger believed that at the time of the offenses, Brinkman's “kidneys [were] functioning well enough to handle . . . 3,600 milligrams of gabapentin per day.” Noffsinger cited other medical records and evidence demonstrating that at the time of the murders, Brinkman had not complained of increased hostility or agitation and was not having “some kind of medication-induced aggression.”

{¶ 69} Noffsinger testified that he had “different summary points” of his findings, which he arrived at based on a reasonable degree of medical certainty. He agreed with defense experts that at the time of the murders, Brinkman suffered from “persistent depressive disorder,” “posttraumatic stress disorder,” and “borderline personality disorder.” However, Noffsinger disagreed with defense experts that Brinkman had “the more serious illness of major depressive disorder,” “a substance use disorder,” or “any kind of cognitive impairment that had been labeled either by

Fabian as mild brain dysfunction or by Ljung as mild neurocognitive disorder.” In Noffsinger’s opinion, there was no evidence showing that Brinkman had any kind of cognitive disorder. Noffsinger also opined that Brinkman’s “childhood experiences witnessing his father physically abuse his mother was a factor in the initial striking of Suzanne . . . but not for the homicides.”

{¶ 70} Regarding Brinkman’s medications, Noffsinger testified that Brinkman “was prescribed the medication [hydroxyzine] appropriately for anxiety” and that “his dosage was within the normal range.” Further, he noted that Brinkman “was on it for a full two months, so you wouldn’t have expected any adverse effects, side effects, just from starting it. The medical records don’t show that he complained of or displayed any signs or symptoms of a hydroxyzine side effect.” He summarized that generally, “impaired cognition or hallucinations or violence are not caused by hydroxyzine,” and found significant that “we have him on the video close in time to the offense . . . [and] he’s not either reporting side effects or displaying any kind of medication side effects. So that contemporaneous evidence is very powerful.” Noffsinger further explained that Brinkman’s medications “are commonly prescribed medications, either alone or in combination, and there’s no evidence to support that somehow the combination of them causes some kind of unexpected violence or aggression.”

2. Analysis

{¶ 71} ““Relevant mitigating evidence is evidence which tends logically to prove or disprove some fact or circumstance which a fact-finder could reasonably deem to have mitigating value.”” *McKoy v. North Carolina*, 494 U.S. 433, 440 (1990), quoting *State v. McKoy*, 323 N.C. 1, 55 (1988) (Exum, C.J., dissenting). And because Brinkman’s mitigation hearing was before a three-judge panel, we apply the usual presumption that “the panel ‘considered only the relevant, material, and competent evidence in arriving at its judgment,’” *State v. Thomas*, 2002-Ohio-6624, ¶ 68, quoting *State v. White*, 15 Ohio St.2d 146, 151 (1968).

{¶ 72} Brinkman offered evidence of his mental illnesses as mitigating evidence. Whether Brinkman’s mental illnesses help explain the murders “‘is obviously relevant to the weight of [the mitigating] factors and may be considered by the sentencer in assigning weight to [those factors],’” *Knuff*, 2024-Ohio-902, at ¶ 297, quoting *Roberts*, 2017-Ohio-2998, at ¶ 70. Furthermore, there is no evidence that the panel disregarded the evidence Brinkman offered in mitigation about his mental illnesses because of Noffsinger’s testimony that that evidence lacked a causal connection to the murders; instead, the panel afforded Brinkman’s evidence about his mental illnesses “substantial mitigating weight,” Cuyahoga C.P. No. CR-17-618342-A, at 6 (June 16, 2023). However, even assuming arguendo that the panel erred in deeming Noffsinger an expert witness based on his conception of mitigating evidence and improperly considered his rebuttal evidence, we will cure this alleged defect in our independent review of the death sentences. *See Kirkland*, 2014-Ohio-1966, at ¶ 97.

3. Conclusion

{¶ 73} In its sentencing opinion, the panel did not suggest that Brinkman’s mitigating evidence could be excluded or ignored because there was no causal connection between it and the murders. *Compare Smith*, 543 U.S. at 45, 48 (evidence of the defendant’s troubled childhood and low IQ was constitutionally relevant despite lack of evidence of nexus with murder; hence, instruction preventing jury from giving effect to that evidence violated Eighth Amendment). Should medical and psychological conditions somehow contribute to the crime for which a defendant is being sentenced, that evidence would necessarily have a greater effect on the defendant’s moral blameworthiness—and therefore greater weight in mitigation—than evidence of medical and psychological disorders having no connection to the crime. However, as always, the weight to be assigned to any particular mitigating factor is well within the fact-finder’s discretion. *See State v. Nicholson*, 2024-Ohio-604, ¶ 259 (“In crafting a written opinion . . . , a trial court

retains wide discretion over how much, if any, weight to give a defendant's mitigating evidence.").

{¶ 74} For all these reasons, we reject Brinkman's fourth proposition of law.

E. Admission of Victim-impact Evidence

{¶ 75} In his fifth proposition of law, Brinkman argues that the panel allowed the State to present prejudicial victim-impact evidence during the sentencing hearing, denying his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 5, 9, 10, and 16 of the Ohio Constitution.

[I]f the State chooses to permit the admission of victim impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects no *per se* bar. A State may legitimately conclude that evidence about the victim and about the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed. There is no reason to treat such evidence differently than other relevant evidence is treated.

Payne v. Tennessee, 501 U.S. 808, 827 (1991); accord *State v. Lang*, 2011-Ohio-4215, ¶ 237 (holding that victim-impact testimony is permissible "in limited situations in capital cases when the testimony is not overly emotional or directed to the penalty to be imposed").

{¶ 76} Before Brinkman entered his first guilty plea, he filed a motion in limine to exclude victim-impact testimony. But during the remanded proceedings, Brinkman did not renew his objection to the challenged testimony. Thus, Brinkman has forfeited this claim, absent plain error. See *State v. Powell*, 2012-Ohio-2577,

¶ 130; *State v. McKnight*, 2005-Ohio-6046, ¶ 97. We may notice “[p]lain errors or defects affecting substantial rights . . . although they were not brought to the attention of the court.” Crim.R. 52(B). However, we notice plain error “with the utmost caution, under exceptional circumstances and *only* to prevent a manifest miscarriage of justice.” (Emphasis added.) *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus.

1. Victims’ Opinions about the Appropriate Punishment

{¶ 77} After the mitigation hearing and during the sentencing hearing, the panel heard victim-impact statements from four members of the victims’ family. Brinkman contends in his merit brief that each of these witnesses expressly advocated for the death penalty, thereby violating his right to “a fair capital sentencing proceeding . . . free from bias, passion, and prejudice.”

{¶ 78} Victim-impact evidence includes evidence relating to the victim’s personal characteristics and the emotional impact that the crimes had on the victim’s family. *State v. McKelton*, 2016-Ohio-5735, ¶ 259. This court has “permitted victim-impact testimony in limited situations in capital cases when the testimony is not overly emotional or directed to the penalty to be imposed.” *Wilks*, 2018-Ohio-1562, at ¶ 79; *accord State v. Huertas*, 51 Ohio St.3d 22 (1990), syllabus (“Expressions of opinion by a witness as to the appropriateness of a particular sentence in a capital case violate the defendant’s constitutional right to have the sentencing decision made by the jury and judge.”).

{¶ 79} At the beginning of the sentencing hearing on May 31, 2023, four members of the victims’ family made statements to the panel or had statements read to the panel. The prosecutor’s victim advocate read into the record the statements of Marcia Taylor (Suzanne’s mother) and Ken Taylor (Suzanne’s brother). Then Brian Pifer (Taylor and Kylie’s father) spoke to the panel followed by his wife, Sonya Pifer (Taylor and Kylie’s stepmother).

{¶ 80} Brinkman observes that three of these witnesses expressly asked the panel to sentence him to death for the aggravated murders of Suzanne, Taylor, and Kylie. For instance, Marcia’s statement described her daughter’s and granddaughters’ personal attributes and shared aspects of their lives before concluding: “I believe [Brinkman] should get the death penalty. It’s only fair that his life be taken as he cut short the lives of Suzanne, Taylor, and Kylie.”

{¶ 81} Ken was present during the sentencing hearing, but he asked the victim advocate to read his statement to the panel. In his statement, Ken wrote:

There is no peace knowing the person responsible still has his life. The only way anything will ever give me peace is if he no longer has his right to live, as he took three people that were part of mine. Their memories are always with me and photos are all I have left.

. . .

George, you are an animal and a monster that needs to be put down.

{¶ 82} Sonya read her own statement in which she also implored the panel to sentence Brinkman to death:

What right does he have to ask for his life to be spared? None. Three times in a row, he gave no consideration to sparing someone’s life. He had a choice to walk away, and he made the conscious and deliberate decision not to. He needs to suffer the full consequence of that.

{¶ 83} In *Payne*, the United States Supreme Court acknowledged one of the holdings of *Booth v. Maryland*, 482 U.S. 496 (1987), that “a victim’s family members’ characterizations and opinions about the crime, the defendant, and the appropriate sentence violates the Eighth Amendment,” *Payne*, 501 U.S. at 830, fn. 2. This court has long adhered to this holding of *Booth* and has “prohibited the admission of witnesses’ opinions as to the appropriateness of a particular sentence.” *State v. Treesh*, 2001-Ohio-4, ¶ 101, citing *Huertas*, 51 Ohio St.3d 22, at syllabus. But subsequent decisions in capital cases “also illustrate that the admission of such testimony does not necessarily result in reversible error.” *Id.* at ¶ 102, citing *State v. Goodwin*, 1999-Ohio-356, ¶ 62-64; *accord id.* at ¶ 103, citing *State v. Fautenberry*, 1995-Ohio-209, ¶ 12, 15.

{¶ 84} *Fautenberry* is particularly instructive. Like Brinkman, Fautenberry entered a guilty plea to his capital indictment and was sentenced to death by a three-judge panel. *See Fautenberry* at ¶ 2, 9. The three-judge panel reviewed victim-impact evidence that “indicated that each individual who was interviewed wanted [Fautenberry] to receive ‘the maximum sentence’ available under the law.” *Id.* at ¶ 12. However, this court held that reversal was not required because “[a]bsent an indication that the panel was influenced by or considered the victim impact evidence in arriving at its sentencing decision,” the admission of such is not reversible error.” *Id.* at ¶ 15, quoting *State v. Post*, 32 Ohio St.3d 380, 384 (1987), *overruled in part on other grounds by State v. McDermott*, 1995-Ohio-80, syllabus. In Fautenberry’s subsequent federal habeas proceedings, the United States Court of Appeals for the Sixth Circuit held that this court did not unreasonably apply *Booth*, stating that “*Booth* has minimal relevance when the victim-impact evidence is presented to a three-judge panel.” *Fautenberry v. Mitchell*, 515 F.3d 614, 639 (6th Cir. 2008); *accord Brewer v. Anderson*, 47 Fed.Appx. 284, 287-288 (6th Cir. 2002) (holding that this court’s finding that *Booth* does not apply to situations in which a

defendant is tried by a three-judge panel instead of a jury was a reasonable application of *Booth*).

{¶ 85} Even if the panel should not have admitted the statements advocating for the death penalty from the victims’ family members during the sentencing hearing, Brinkman cannot show that the panel considered those statements in reaching its sentencing decision. Brinkman concedes in his merit brief that the panel’s sentencing opinion does not refer to any of the victim-impact statements. Nonetheless, he contends that “there are *very strong* indications . . . that the panel or at least some of [the panel members] did indeed consider the improper victim statements in imposing death on Brinkman.” (Emphasis in original.) The “strong indications” include the fact that the panel imposed the death penalty “immediately after” it heard these pleas for the death penalty. However, the timing of the panel’s imposition of the death sentences without an explicit reference to or reliance on the prohibited statements is insufficient to show reversible error under *Payne*, *Treesh*, or *Fautenberry*.

{¶ 86} Brinkman has not shown that plain error infected the proceedings because of the victim-impact statements.

2. Overly Emotional Testimony

{¶ 87} “Testimony is overly emotional when it is likely to inflame the passions of the jurors and elicit a purely emotional response that would inhibit the jurors from making an objective and rational determination regarding the defendant’s guilt and/or the appropriate punishment.” *State v. Graham*, 2020-Ohio-6700, ¶ 123.

{¶ 88} Brinkman, however, waived a jury trial and then entered a guilty plea to the amended indictment before a three-judge panel. Therefore, Brinkman must rebut the presumption “that the three-judge panel considered only the relevant, material, and competent evidence in arriving at its judgment.” *State v. Obermiller*, 2016-Ohio-1594, ¶ 80. Echoing his second, third, and fourth propositions of law,

Brinkman maintains in his merit brief that structural error permeated his death-penalty proceeding and therefore, “this Court should not extend [the panel] any indulgence on the constitutional error resulting from the panel’s allowance and consideration of these improper victim-impact statements.”

{¶ 89} This court in *Graham* set forth a nonexhaustive list of six factors that courts should consider when determining whether victim-impact testimony was overly emotional:

(1) the length of the victim-impact testimony, (2) whether witnesses, jurors, and audience members showed physical signs of emotion during the testimony, (3) the detail and depth of the victim-impact testimony with regard to the murder victim, (4) whether the victim-impact witness used emotionally charged language, (5) the number of victim-impact witnesses, and (6) [this court’s] precedent in similar cases involving allegedly overly emotional victim-impact testimony.

(Citations omitted.) *Graham* at ¶ 126. Additionally, victim-impact testimony can be irrelevant, and thus inadmissible, if it merely describes the personal characteristics and qualities of the victim without any relevance to the circumstances of the crime. *See* Evid.R. 402; *Nicholson*, 2024-Ohio-604, at ¶ 454 (Kennedy, C.J., concurring), citing *McKelton*, 2016-Ohio-5735, at ¶ 259.

{¶ 90} As described in *Graham*, the following factors apply in this case: the length of the victim-impact testimony, the detail and depth of the victim-impact testimony with regard to the murder victims, and the use of emotionally charged language by Brian Pifer, Marcia Taylor, Ken Taylor, and Sonya Pifer.

{¶ 91} Brian began by describing the attributes of all three victims and the effect their murders had on him. Then he said:

Horried, that's another word I found myself being during this most recent trial. A word we should all be, horried. During this trial, as in the last, I excused myself from the courtroom so I did not have to hear the heart-breaking testimony of the medical examiner or see pictures that a dad can never unsee.

But as hard as I tried to not learn things that a dad should never know, I was horried. Horried when I learned that Taylor fought for four minutes, just to breathe, while George Brinkman smothered her with a pillow. Four minutes of her struggling, fighting, trying to yell and scream. Four minutes fighting just to take a breath. Four minutes of sheer terror.

And I think a lot of us forget how long four minutes is, so I'm going to indulge and start a timer and we're going to see and feel how long Taylor sat there and struggled just to take a breath, how long he had to change his mind and show mercy and chose not to.

So four minutes.

(The hearing was paused for four minutes.)

That is how long it took.

{¶ 92} The record indicates that before Brian finished his statement, the presiding judge interjected with the following statement: "Before you finish, can I just interrupt and say to you that I'm very sorry. I'm so sorry this happened to you. I just want you to know I'm sorry." Brian replied: "I appreciate that." The presiding judge repeated: "I am really sorry that this happened to you." After Brian finished his statement, another panel member thanked him for speaking and said:

“And again, we’re sorry for your loss, and those who are seated in the back of the room as well.”

{¶ 93} Brian’s testimony accounts for approximately one third of the victim-impact testimony and included an unorthodox request to pause the court proceedings to symbolize the amount of time Taylor fought to live during her murder. His testimony elicited not one but two emotional responses from the panel members. The judges’ emotions were on display when they interrupted Brian’s statement to apologize (multiple times) for the harm caused to his family by Brinkman.

{¶ 94} The panel also heard Marcia’s statement, which she wrote before she died, as read by the victim advocate. Marcia’s statement was brief and largely unobjectionable. However, Marcia’s statement contained the following language:

[Brinkman] took my family away from me and tore my heart out. The manner in which they were killed was extremely violent. It hurts to know that two of the women possibly witnessed the other’s murder.

Why did [Brinkman] cut Suzanne’s hair? What made him go from a friend to a cold-blooded murderer? So many questions go unanswered.

{¶ 95} Ken wrote a victim-impact statement but asked the victim advocate to read it to the panel. Ken’s statement included the following language:

I want you to know I am on different medications, and the mixture of medications once included gabapentin. I had my issues and problems with my family, I had pets die, my uncle committed suicide, I played sports and had concussions. I know that everyone

has challenges in their lives, me included. With that said, you don't see me torturing and murdering people.

Today is my mom, [Marcia's] birthday. She died March 8, 2019, from a broken heart. The only peace I have is that my mom did not have to go through the pain of sitting through this second trial. The aftermath of your actions has also caused harm to others.

Despite being read by the victim advocate, both Marcia's and Ken's statements contained some emotionally charged language.

{¶ 96} However, to be *overly* emotional and thus impermissible under *Graham*, the challenged testimony must have injected the hearing with more prejudicial elements than what was presented from Brian, Marcia, and Ken, such as an unwarranted level of detail and depth about the murder victims. *See Graham*, 2020-Ohio-6700, at ¶ 123, 126. Sonya's victim-impact statement, which she read to the panel herself, contained her detailed critique of the procedural aspects of Brinkman's case and the criminal-justice system as a whole:

First of all, I think the name on this document needs to be modified. While we are victims because of our relation to Kylie, Taylor, and Suzanne, they are the true victims. Imagine if they were able to tell you all what they endured during those last hours and minutes of their lives, the panic, the grief, the sheer terror, and then the agonizing fight for their last breaths.

...

We had started trying to put the pieces of our life back together when we found out that we would have to endure the entire trial process again. We should never have had to endure this in the

first place, but to go through it a second time because of judicial gaff, inexcusable.

...

Meanwhile, the monster who murdered three people is living his best life. He has a clean and comfortable bed to sleep in every night and it's always in the same place, not wherever his van happened to be parked. He is receiving a doctor's care and medication for his alleged ailments. He is provided nutritious food on a regular basis. So in essence, he is being rewarded for having committed murder.

What right does he have to ask for his life to be spared? None. Three times in a row, he gave no consideration to sparing someone's life. He had a choice to walk away and he made the conscious and deliberate decision not to. He needs to suffer the full consequence of that.

{¶ 97} As discussed above, Sonya's statement encroached on the improper subject of the appropriate punishment. But we have held that even when improperly admitted, if the victim-impact statements are "conveyed only to judges, 'it is not reversible error unless there is some indication that the judge actually considered it in sentencing the defendant.'" *State v. Wesson*, 2013-Ohio-4575, ¶ 76, quoting *State v. Franklin*, 2002-Ohio-5304, ¶ 88. And the fact that Brinkman failed to object to any of the victim-impact testimony makes his burden on appeal more onerous.

{¶ 98} Brinkman complains in his merit brief that the panel considered the impermissible statements "immediately before" it sentenced him to death. However, the record demonstrates that the panel had concluded its weighing analysis of the aggravating circumstances and mitigating factors before hearing the

statements to which Brinkman objects. Moreover, Marsy’s Law grants victims the right to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, Ohio Const., art. I, § 10a(A)(3), subject to the victim-impact limitations discussed above. Marsy’s Law defines “victim” as “a person against whom the criminal offense . . . is committed or who is directly and proximately harmed by the commission of the offense.” Ohio Const., art. I, § 10a(D). The relatives of Suzanne, Taylor, and Kylie undoubtedly qualify as victims by virtue of being persons who were directly and proximately harmed by the commission of the aggravated-murder offenses to which Brinkman admitted his guilt. This is particularly true when in this case, like in all murder cases, the persons most directly impacted by the commission of the offenses are unable to testify and be heard.

{¶ 99} The panel stated that it had completed its deliberations on the aggravating circumstances and mitigating factors and was “ready as a panel to impose [its] sentence” before hearing the victim-impact testimony, and there is no indication that the panel changed its mind about imposing the death penalty after hearing the victim-impact testimony. Accordingly, Brinkman has not established plain error regarding the victim-impact testimony presented in this case.

3. Conclusion

{¶ 100} Brinkman has not established that the challenged victim-impact testimony affected the outcome of the sentencing hearing. *See* Crim.R. 52(B); *State v. Smith*, 2002-Ohio-6659, ¶ 64-65. There was no dispute during the plea, mitigation, or sentencing hearings that Brinkman killed Suzanne and her daughters. As Brinkman argues on appeal, the dispute during the mitigation hearing centered around his mental state at the time of the murders and whether any of his prescribed medications substantially affected his ability to know right from wrong. It is difficult to see how the family members’ testimony, some of which was read to the panel by the victim advocate, could have affected the outcome of the panel’s deliberations. *See Smith* at ¶ 65.

{¶ 101} As a result, Brinkman has failed to establish plain error, and we reject his fifth proposition of law.

II. PLEA HEARING

{¶ 102} Having addressed Brinkman’s propositions of law that involve his claims of various defects in the proceedings, we now turn to the propositions of law that relate to his plea hearing. He challenges several aspects of the plea hearing, which we will address out of order for simplicity. Proposition of law No. 20 challenges the sufficiency of the capital indictment on the basis that it failed to include a grand-jury determination that there was probable cause to find that the aggravating circumstances outweighed the mitigating factors. Propositions of law Nos. 18 and 19 challenge the adequacy of the guilty-plea and jury-waiver colloquies, respectively. Proposition of law No. 15 argues that the panel improperly admitted and considered gruesome crime-scene and autopsy photographs. Finally, proposition of law No. 6 challenges the sufficiency of the evidence as to Brinkman’s aggravated-burglary conviction and the associated R.C. 2929.04(A)(7) felony-murder capital specifications because he had permission to enter Suzanne’s house.

{¶ 103} For the reasons that will be discussed, we reject each proposition of law relating to Brinkman’s plea hearing.

A. Defective Indictment

{¶ 104} In proposition of law No. 20, Brinkman contends that his indictment was defective because it did not include a determination by the grand jury that there was probable cause to find that the aggravating circumstances outweighed the mitigating factors. We reject this proposition of law for two reasons: (1) Brinkman’s guilty plea waived all challenges to the charging instrument, and (2) Brinkman’s claim fails on the merits.

{¶ 105} “[A] guilty plea . . . renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and

which do not stand in the way of conviction if factual guilt is validly established.” (Ellipsis added in *Fitzpatrick*.) *State v. Fitzpatrick*, 2004-Ohio-3167, ¶ 78, quoting *Menna v. New York*, 423 U.S. 61, 62, fn. 2 (1975). Accordingly, a capital defendant who voluntarily, knowingly, and intelligently pleads guilty “with the assistance of counsel ‘may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.’” *Id.*, quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973).

{¶ 106} Even if Brinkman had not waived this claim, he cannot prevail. Article I, Section 10 of the Ohio Constitution guarantees that “no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury.” Brinkman argues in his merit brief that a capital indictment must include “all elements that allow for the imposition of the death penalty by the courts if death is to be a possible sentence.” He contends that because “none of the six aggravated murder counts charged in the indictment sets forth the final and specific element necessary for a death sentence: that the aggravating circumstance(s) outweigh the mitigating factor(s) beyond a reasonable doubt,” he was not eligible to be sentenced to death. He relies on the United States Supreme Court’s holding that any fact that “expose[s] the defendant to a greater punishment than that authorized by the jury’s guilty verdict” is an “element” of the charged offense that must be submitted to a jury, *Apprendi v. New Jersey*, 530 U.S. 466, 494 (2000).

{¶ 107} We have previously rejected similar challenges. *See, e.g., State v. Sowell*, 2016-Ohio-8025, ¶ 124-128. “An indictment that tracks the language of the charged offense and identifies a predicate offense by reference to the statute number need not also include each element of the predicate offense in the indictment.” *State v. Buehner*, 2006-Ohio-4707, syllabus. *Apprendi* and its progeny are “rooted in the Sixth Amendment right to a jury trial.” *Sowell* at ¶ 126. By contrast, an indictment is intended “to give an accused adequate notice of the

charge, and enable an accused to protect himself or herself from any future prosecutions for the same incident.” *Id.* at ¶ 127, quoting *Buehner* at ¶ 7.

{¶ 108} The charges in the capital indictment in this case tracked the language of R.C. 2903.01(A) and (B), and the capital specifications tracked the language of R.C. 2929.04(A)(5) and (A)(7). Thus, Brinkman’s indictment was constitutionally sound.

{¶ 109} We reject Brinkman’s 20th proposition of law.

B. Jury-waiver Colloquy

{¶ 110} In his 19th proposition of law, Brinkman argues that his jury waiver was not knowing, intelligent, and voluntary in violation of his rights under the Ohio and United States Constitutions. In particular, he contends that the presiding judge failed to tell him that he could revoke the waiver at any time before the commencement of trial and that waiving a jury trial would essentially prevent him from challenging the improper admission of evidence. In response, the State maintains that the jury waiver was sufficient under R.C. 2945.05 and that Brinkman’s jury waiver was otherwise knowing, intelligent, and voluntary.

{¶ 111} The Sixth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, guarantees an accused the right to trial by jury. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). Article I, Section 5 of the Ohio Constitution states that the “right of trial by jury shall be inviolate.” Because “[a] waiver is the intentional relinquishment of a known right or privilege . . . , a defendant must have some knowledge of the nature of the jury trial right to make a valid waiver.” *State v. Bays*, 1999-Ohio-216, ¶ 29.

{¶ 112} Under R.C. 2945.05, a waiver of trial by jury must “be in writing, signed by the defendant, and filed in said cause and made a part of the record thereof” and “be made in open court after the defendant has been arraigned and has had opportunity to consult with counsel.” Crim.R. 23(A) provides that “[i]n serious offense cases the defendant before commencement of the trial may knowingly,

intelligently and voluntarily waive in writing his right to trial by jury.” And a written jury waiver “creates a rebuttable presumption that the waiver was knowing, intelligent, and voluntary.” *State v. Brinkman*, 2022-Ohio-2550, ¶ 30.

{¶ 113} A trial court is not required to interrogate a defendant in order to determine whether he or she is fully apprised of the right to a jury trial. *State v. Jells*, 53 Ohio St.3d 22 (1990), paragraph one of the syllabus (Crim.R. 23(A) and R.C. 2945.05 construed and applied). And a trial court is not required to explain all possible implications of waiving the right to a jury. *See State v. Ketterer*, 2006-Ohio-5283, ¶ 69. We have consistently rejected the argument that a three-judge panel is required to advise a capital defendant that he was giving up the right to meaningful appellate review by waiving a jury trial. *See Baston*, 1999-Ohio-280, at ¶ 17-19; *State v. Thomas*, 2002-Ohio-6624, ¶ 25-27. We have also previously rejected the argument that a jury waiver is invalid if the trial court fails to inform the defendant that he or she may withdraw the waiver at any time before the State’s presentation of its case. *Brinkman* at ¶ 30. *Brinkman* offers no explanation on appeal that would justify departing from this precedent.

{¶ 114} In any event, the presiding judge strictly complied with R.C. 2945.05 when the judge addressed Brinkman’s request to waive a jury trial. The record reflects that the jury waiver was in writing, signed by Brinkman, filed with the clerk of courts, and entered into the record for appellate proceedings. *See Brinkman* at ¶ 31, citing *Jells* at 25-26. The presiding judge also conducted a waiver colloquy with Brinkman in open court during which the judge verified with Brinkman that he understood that “by signing this, you are actually waiving your right to have a trial of twelve jurors and you will then be tried by three members of this Court,” that waiving a jury was his choice, that he had no questions about the waiver, and that he had the opportunity to engage with his lawyers regarding the waiver so that he had a full understanding of what he was doing. *Brinkman* also

affirmed twice in open court that it was his intention and desire to waive his right to a jury trial and have his case tried to a three-judge panel.

{¶ 115} Brinkman has not rebutted the presumption that his written jury waiver was knowing, intelligent, and voluntary, and we therefore reject his 19th proposition of law.

C. Guilty-plea Colloquy

{¶ 116} In his 18th proposition of law, Brinkman argues that the panel failed to inform him, during his plea colloquy, that he may be subject to postrelease control for his fifth-degree felony convictions for gross abuse of a corpse in Counts 11 through 13 and that he is therefore entitled to a new plea hearing at least on those counts. To the contrary, the panel’s plea colloquy was sufficient, and we affirm Brinkman’s guilty plea as to Counts 11 through 13.

{¶ 117} Crim.R. 11(C) contains the procedure that a trial court must follow when accepting a plea of guilty or no contest in a felony case and “ensures an adequate record on review by requiring the trial court to personally inform the defendant of his rights and the consequences of his plea and determine if the plea is understandingly and voluntarily made,” *State v. Stone*, 43 Ohio St.2d 163, 168 (1975). In felony cases, Crim.R. 11(C)(2) requires that a trial court personally address the defendant and inform him of the constitutional rights he is waiving and of several other matters, including the “maximum penalty involved,” Crim.R. 11(C)(2)(a).

{¶ 118} “[A] defendant is not entitled to have his plea vacated unless he demonstrates he was prejudiced by a failure of the trial court to comply with the provisions of Crim.R. 11(C).” *State v. Dangler*, 2020-Ohio-2765, ¶ 16, citing *State v. Nero*, 56 Ohio St.3d 106, 108 (1990). We have articulated two narrow exceptions to the prejudice requirement, allowing automatic reversal only when (1) a trial court fails to inform a defendant of the constitutional rights he waives by pleading guilty or no contest or (2) a trial court completely fails to comply with a portion of Crim.R.

11(C). *Id.* at ¶ 14-15. We have found a “complete failure” to comply with the rule sufficient to warrant automatic withdrawal of a guilty plea on appeal when a trial court failed to mention a mandatory term of postrelease control at all during a plea colloquy. *See State v. Sarkozy*, 2008-Ohio-509, ¶ 22.

{¶ 119} Brinkman challenges the panel’s alleged failure to notify him of the applicable term of postrelease control for Counts 11 through 13 during the Crim.R. 11 plea colloquy. In *Dangler*, we held that to analyze such a claim, a court need only answer three questions:

(1) has the trial court complied with the relevant provision of the rule? (2) if the court has not complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? and (3) if a showing of prejudice is required, has the defendant met that burden?

Dangler at ¶ 17.

{¶ 120} We must first determine whether the panel failed to comply with Crim.R. 11(C)(2)(a)’s requirement that Brinkman be informed of any community-control sanctions as part of “the maximum penalty involved.” During the Crim.R. 11 plea colloquy, the panel specifically stated that for Counts 11 through 13, a period of postrelease control would be “up to two years” and would be “discretionary.” The panel further informed Brinkman of the consequences of violating the terms of postrelease control, including explaining that violating the terms could result in another prison sentence for a period of up to nine months “for each of the counts listed above.” After these advisements, a panel member asked Brinkman if he “understood those rights,” to which he responded, “Yes, ma’am.” The panel addressed postrelease control again later in the colloquy, stating that it “is a parole period after incarceration relating to Counts 7 through 13” that could

result in additional time in prison if violated, and a panel member again confirmed that Brinkman understood the advisements.

{¶ 121} While Brinkman acknowledges in his merit brief that the panel advised him about the applicability of postrelease control for Counts 7 through 10, he insists that the panel “did *not* advise” him of the applicable term of postrelease control implicated by his guilty pleas to Counts 11 through 13. (Emphasis in original.) Under R.C. 2967.28(C), a prison sentence imposed for a third-, fourth-, or fifth-degree felony “shall include a requirement that the offender be subject to a period of post-release control of up to two years after the offender’s release from imprisonment, if the parole board . . . determines that a period of post-release control is necessary for that offender.”

{¶ 122} Contrary to his argument, the panel in this case properly advised Brinkman that he would be subject to postrelease control for the felony offenses contained in Counts 11 through 13 and that each term of postrelease control as to those counts was discretionary. Thus, the panel complied with Crim.R. 11(C)(2)(a) in advising Brinkman of the maximum potential penalties he faced by pleading guilty to Counts 11 through 13. Because the panel did not fail to comply with Crim.R. 11(C)(2)(a), there is no further inquiry and the second and third questions in *Dangler* do not apply.

{¶ 123} Accordingly, we reject Brinkman’s 18th proposition of law.

D. Gruesome Photographs

{¶ 124} In his 15th proposition of law, Brinkman argues that the panel improperly considered gruesome and cumulative crime-scene and autopsy photographs during the plea and mitigation hearings. Although Brinkman entered a guilty plea to the offenses, he maintains that the submission under seal for appellate review of State’s exhibit Nos. 11 (a demonstrative timeline) and 90, 91, and 93 (autopsy photographs of Suzanne, Taylor, and Kylie, respectively) violated his right to due process and a fair trial. And Brinkman complains that the admission

of State’s exhibit Nos. 100, 102 through 105, 107 through 109, 124, 134, and 135 during the plea hearing resulted in the panel considering repetitive autopsy photos that also had a prejudicial “‘carryover’ effect to the sentencing phase.”

1. Plea-hearing Stipulation

{¶ 125} Although Brinkman has not acknowledged this fact, after the plea hearing under R.C. 2945.06 concluded, the panel and parties discussed the admission of evidence. Before the panel retired to consider Brinkman’s guilt, one of the assistant prosecuting attorneys noted the following:

[T]hat this [written stipulation] was provided and agreed upon with defense counsel and their client, that it was reviewed with Mr. Brinkman prior to this hearing and that he, along with his counsel and [another assistant prosecuting attorney] did sign it on the second page. It is a two-page stipulated agreement.

. . .

The stipulations include exhibits in the form of testimony and exhibits testified to during the plea hearing that took place originally in this case during [the] prior proceeding. . . .

The assistant prosecuting attorney listed the specific testimony and exhibits from the prior proceeding that the stipulations covered, and then said:

I would just read further stipulations that were agreed to apart from the prior testimony and exhibits that I’ve listed for the record.

The parties further agree and stipulate to the authenticity and admissibility of exhibits offered during the plea hearing in the original proceeding and listed above.

The parties further agree and stipulate that any expert certification given to the above witnesses are hereby stipulated to and accepted for the purpose of this proceeding and the acceptance of the testimony and listed exhibits.

The parties further agree and stipulate [that] the redacted transcript of [Brinkman's] interview marked as Exhibit 623 with redactions agreed upon by both parties is accurate, relevant and admissible.

The parties further agree and stipulate that as to any exhibits offered during live testimony on November 9th and 10th of 2022, there is a stipulation to the authenticity and admissibility of all documentary evidence offered.

The above stipulations were agreed to by both parties after full and open discovery and without any offers, threats, or inducements beyond the agreement.

The assistant prosecuting attorney provided the panel with an amended notice of stipulation that indicated that two exhibits were not being offered and included counsels' initials noting the correction. The assistant prosecuting attorney then stated:

Also, for the record, your Honors, while both parties have agreed to the admissibility and authenticity of documents offered today, I do need to note for the record that we are not offering each and every exhibit that was discussed during today. Notably we are not offering Exhibits 90, 91, or 93 into evidence. We would like to proffer those for the appellate record. Nor are we offering Exhibit

11, which was a demonstrative timeline, although we wish to proffer that.

The written stipulation was then entered into the record.

{¶ 126} “Agreements, waivers and stipulations made by the accused, or by the accused’s counsel in his presence, during the course of a criminal trial are binding and enforceable.” *Post*, 32 Ohio St.3d at 393. Brinkman has not challenged the propriety of the written stipulation on appeal and thus cannot argue that the introduction of any evidence referred to in the stipulation violated his rights or prejudiced him. *See State v. Drain*, 2022-Ohio-3697, ¶ 63, citing *State v. Turner*, 2005-Ohio-1938, ¶ 41.

{¶ 127} Brinkman’s guilty plea further operated to waive all appealable errors unrelated to the entry of the plea. *Ketterer*, 2006-Ohio-5283, at ¶ 136, citing *State v. Kelley*, 57 Ohio St.3d 127 (1991), paragraph two of syllabus, and Crim.R. 11(B)(1). In view of the parties’ stipulations and Brinkman’s guilty plea, the admission of gruesome crime-scene or autopsy photographs during the plea hearing could not have affected the panel’s decision to find Brinkman guilty of the aggravated-murder counts. *See id.*

2. Gruesome Photographs in the Mitigation Hearing

{¶ 128} Complaining that the panel “summarily overruled the defense objection and admitted every single exhibit which the State presented during the [mitigation hearing],” including the gruesome photographs, Brinkman contends in his merit brief that the panel failed to meaningfully consider “whether any of the exhibits from the [plea hearing] should be excluded” from the mitigation hearing. The State contends that Brinkman objected only to the admission of the photographs for the purpose of the mitigation hearing and that the State later withdrew the challenged autopsy photographs during the mitigation hearing.

{¶ 129} At the mitigation stage of a capital proceeding, a prosecutor may introduce “any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing.” *State v. DePew*, 38 Ohio St.3d 275 (1988), paragraph one of the syllabus, quoting R.C. 2929.03(D)(1). Additionally, because the sentencer “must consider the nature and circumstances of the offense, R.C. 2929.03(D)(1) ‘permit[s] repetition of much or all that occurred during the guilt stage.’” (Bracketed text in original.) *State v. Fears*, 1999-Ohio-111, ¶ 62, quoting *DePew* at 282-283.

{¶ 130} When the panel asked defense counsel which specific exhibits the defense was objecting to regarding readmission at the mitigation hearing, defense counsel replied, “The whole thing” Under the circumstances, the panel did not err in summarily denying that objection. Yet Brinkman cites a recent opinion from this court affirming a death sentence and observing that the trial court has a “duty to determine which trial-phase exhibits are relevant to the aggravating circumstances for purposes of the mitigation phase.” *State v. McAlpin*, 2022-Ohio-1567, ¶ 201, citing *State v. Lindsey*, 2000-Ohio-465, ¶ 23. In relying on *McAlpin* to establish reversible error, Brinkman is mistaken. The defendant in *McAlpin* tried his case to a jury. In contrast, by pleading guilty, Brinkman waived a jury and consented to having a three-judge panel review the State’s evidence, determine guilt, and impose sentence upon finding Brinkman guilty. Absent evidence to the contrary, we generally presume that a three-judge panel in a capital case considered only the relevant, material, and competent evidence in arriving at its sentence. See *State v. Montgomery*, 2016-Ohio-5487, ¶ 141; *Fitzpatrick*, 2004-Ohio-3167, at ¶ 66.

{¶ 131} The State withdrew from the panel’s consideration State’s exhibit Nos. 101 through 139 before the panel began its deliberations about whether the aggravating circumstances outweighed the mitigating factors beyond a reasonable doubt. All these withdrawn exhibits are photographs taken during the autopsies of

Suzanne, Taylor, and Kylie. One photograph that remained for the panel to consider was State’s exhibit No. 100, which shows the three victims as they were found on the bed inside the bedroom. This one photograph is not gruesome, and there was no error in admitting it into evidence. *See State v. Froman*, 2020-Ohio-4523, ¶ 105.

{¶ 132} Regardless, Brinkman complains that the State’s belated withdrawal of the exhibits was ineffectual to cure the resulting prejudice to him. Nothing in the record indicates that the panel was improperly influenced by any of the photographs. Further, the State proffered State’s exhibit Nos. 90, 91, and 93 for appellate review only; they were not admitted into evidence. But even assuming that this was an incorrect basis for proffering these exhibits, Brinkman fails to show prejudice.

{¶ 133} For these reasons, we reject Brinkman’s 15th proposition of law.

E. Sufficiency of the Evidence

{¶ 134} In his sixth proposition of law, Brinkman asks this court to reverse his aggravated-burglary conviction and the associated R.C. 2929.04(A)(7) felony-murder capital specifications predicated on aggravated burglary attached to Counts 1 through 6. He contends that the evidence was legally insufficient to convict him of aggravated burglary because he had permission to be in Suzanne’s house.

{¶ 135} A claim challenging the sufficiency of the evidence refers to “that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.” *State v. Thompkins*, 1997-Ohio-52, ¶ 23, quoting *Black’s Law Dictionary* (6th Ed. 1990); accord Crim.R. 29(A) (motion for judgment of acquittal can be granted by the trial court if the evidence is insufficient to sustain a conviction). “[A] conviction based on legally insufficient evidence constitutes a denial of due process.” *Thompkins* at ¶ 23, citing *Tibbs v. Florida*, 457 U.S. 31, 45 (1982), citing *Jackson v. Virginia*, 443 U.S. 307 (1979). “The relevant inquiry is whether, after

viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by state constitutional amendment on other grounds as stated in State v. Smith*, 1997-Ohio-355, ¶ 49, fn. 4.

{¶ 136} The State charged Brinkman with aggravated burglary in violation of R.C. 2911.11(A)(1), which states in relevant part:

No person, by force, stealth, or deception, shall trespass in an occupied structure . . . when another person other than an accomplice of the offender is present, with purpose to commit in the structure . . . any criminal offense, if . . . [t]he offender inflicts . . . physical harm on another.

Under R.C. 2911.21(A)(1), a person trespasses when he “without privilege to do so . . . [k]nowingly enter[s] or remain[s] on the land or premises of another.” “Privilege” is defined as “an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.” R.C. 2901.01(A)(12).

{¶ 137} Regarding aggravated burglary, we have consistently held that a person who initially gains entry to another person’s home by consent will become a trespasser if consent is withdrawn. In *State v. Steffen*, we were persuaded by the fact that the felony subsequently committed on the premises was “one of violence, directed against a human being who had the ability and the authority to revoke the privilege of initial entry, if such privilege was in fact granted.” 31 Ohio St.3d 111, 115 (1987).

{¶ 138} One year later, we reinstated a conviction of aggravated murder while committing an aggravated burglary under circumstances that were similar to

those in *Steffen*, holding that “the jury could justifiably infer that the victim withdrew consent when [the defendant] commenced the assault and thus trespassed by use of force,” *State v. Holloway*, 38 Ohio St.3d 239, 243 (1988); accord *State v. Clinton*, 2017-Ohio-9423, ¶ 184-185; *Knuff*, 2024-Ohio-902, at ¶ 202. In reinstating the conviction, we observed “that [the defendant] gained entry to the victim’s home by consent” and “that [the defendant] subsequently assaulted and murdered the victim.” *Holloway* at 243. “The crime of aggravated burglary continues so long as the defendant remains in the structure being burglarized because the trespass of the defendant has not been completed.” *State v. Powell*, 59 Ohio St.3d 62, 63 (1991).

{¶ 139} The moment Brinkman began to assault Suzanne, his privilege to be a guest in her home was rescinded, making him a trespasser. Brinkman’s trespass continued while he assaulted, kidnapped, and murdered Suzanne and her daughters. Therefore, under *Steffen* and *Holloway*, the evidence was legally sufficient to convict Brinkman of the offense of aggravated burglary and the associated R.C. 2929.04(A)(7) felony-murder capital specifications predicated on aggravated burglary attached to Counts 1 through 6.

{¶ 140} Brinkman urges us to revisit *Steffen*, arguing that when a defendant enters a home as an invited guest, his subsequent commission of a criminal act alone could not convert a lawful entry into an unlawful entry sufficient to sustain a burglary charge. He reasons in his merit brief that the “*Steffen* rationale erroneously fails to treat burglary as a separate, earlier crime than the crime which [he] allegedly intended to commit in the home” and “eliminates the requirement that the criminal trespass must coincide with the intent to commit a crime.” However, the applicable precedent holds that “[f]or purposes of defining the offense of aggravated burglary pursuant to R.C. 2911.11, a defendant may form the purpose to commit a criminal offense at any point during the course of a trespass.” *State v. Fontes*, 2000-Ohio-

472, syllabus. We decline Brinkman’s suggestion to revisit the applicable precedent.

{¶ 141} Accordingly, we reject Brinkman’s sixth proposition of law.

III. MITIGATION HEARING

{¶ 142} We next address propositions of law relating to Brinkman’s mitigation hearing. Again, these propositions of law are discussed out of order for simplicity. In propositions of law Nos. 9 and 12, respectively, Brinkman makes two interrelated arguments: (1) the panel should have placed greater weight on his mental illnesses of posttraumatic stress disorder (“PTSD”) and major depressive disorder in light of R.C. 2929.025, and (2) because “[t]he record reveals that Brinkman has been diagnosed with several serious mental illnesses” including PTSD and major depressive disorder and “was suffering with them” at the time of the murders in June 2017, he should be “categorically barred” from receiving the death penalty under the state and federal Constitutions. In proposition of law No. 8, Brinkman alleges that the panel improperly weighed the aggravating circumstances in his case, and in proposition of law No. 7, he argues that the panel’s sentencing opinion was inadequate. In proposition of law No. 16, Brinkman argues that his convictions for kidnapping and aggravated burglary should have been merged with his convictions for aggravated murder. In propositions of law Nos. 10 and 11, respectively, Brinkman challenges our precedent on comparative proportionality review of death sentences under R.C. 2929.05(A) and the panel’s comparative proportionality review below. Finally, in propositions of law Nos. 17 and 21, respectively, Brinkman asserts various federal and state constitutional challenges to the death penalty as administered in Ohio and as applied in Brinkman’s case.

{¶ 143} For the reasons that will be discussed, we reject each proposition of law relating to Brinkman’s mitigation hearing.

A. Serious Mental Illnesses

{¶ 144} Brinkman argues in his ninth proposition of law that the panel erred when it failed to afford more mitigating weight to evidence he claims shows that he has “multiple serious mental illnesses.” Relatedly, in proposition of law No. 12, Brinkman contends that PTSD and major depressive disorder are serious mental illnesses and that the death penalty should be “categorically barred” under the state and federal Constitutions for offenders like him who suffer from them.

1. Scope of R.C. 2929.025

{¶ 145} Under R.C. 2929.025(E)(2), effective April 21, 2021, if a trial court

at the pretrial hearing finds that the defendant has proved, by a preponderance of the evidence, that the person has been diagnosed with one or more of the conditions set forth in [R.C. 2929.025(A)(1)(a)] and that the condition or conditions diagnosed significantly impaired the person’s capacity at the time of the alleged offense in a manner described in [R.C. 2929.025(A)(1)(b)], the court shall issue a finding that the person is ineligible for a sentence of death due to serious mental illness.

2020 Am.Sub.H.B. No. 136. The statute applies only to offenders who have been diagnosed with one of the following four conditions: schizophrenia, schizoaffective disorder, bipolar disorder, or delusional disorder. R.C. 2929.025(A)(1)(a).

{¶ 146} Brinkman acknowledges in his reply brief that he was not diagnosed with one of these four conditions. However, Brinkman essentially contends in his 12th proposition of law that we should expand the statute to include PTSD and major depressive disorder in addition to the four conditions already specified in R.C. 2929.025(A)(1)(a).

{¶ 147} The Supreme Court has held that it is unconstitutional to impose the death penalty on a person with an intellectual disability. *See Atkins v. Virginia*, 536 U.S. 304, 321 (2002), citing *Ford v. Wainwright*, 477 U.S. 399, 405 (1986). Brinkman argues that considering “the evolving standards of decency that mark the progress of a maturing society,” *Trop v. Dulles*, 356 U.S. 86, 101 (1958), R.C. 2929.025 is too narrow and that he should be “categorically barred” from receiving the death penalty.

{¶ 148} However, not every mental illness qualifies as a “serious mental illness” under R.C. 2929.025. And even a mental illness outside the scope of R.C. 2929.025 that might still generally be considered serious may not be the type that would render a person ineligible for the death penalty under United States Supreme Court precedent. R.C. 2929.025 represents Ohio’s societal determination about which mental illnesses might make an offender categorically ineligible for the death penalty. “Our duty in construing a statute is to determine and give effect to the intent of the General Assembly as expressed in the language it enacted.” *State v. Parker*, 2019-Ohio-3848, ¶ 21.

{¶ 149} R.C. 2929.025 unambiguously provides that a person charged with aggravated murder and one or more specifications of an aggravating circumstance may, before trial, raise the matter of the person’s serious mental illness, R.C. 2929.025(C), if “the person has been diagnosed with one or more of the conditions set forth in” R.C. 2929.025(A)(1)(a), R.C. 2929.025(E)(2). The person must show that at the time of the commission of the alleged aggravated murder, one or more of the conditions “significantly impaired the person’s capacity to exercise rational judgment in relation to the person’s conduct with respect to . . . (i) Conforming the person’s conduct to the requirements of the law [or] (ii) Appreciating the nature, consequences, or wrongfulness of the person’s conduct.” R.C. 2929.025(A)(1)(b). The General Assembly has specifically limited who could qualify as having a “serious mental illness” to those diagnosed with schizophrenia, schizoaffective

disorder, bipolar disorder, or delusional disorder. R.C. 2929.025(A)(1)(a). It is not our role to add other mental illnesses to that list.

{¶ 150} Thus, we reject Brinkman’s 12th proposition of law.

2. *Brinkman’s Mental Illnesses*

{¶ 151} Although Brinkman is not rendered statutorily or constitutionally ineligible for the death penalty because of his diagnoses of PTSD and major depressive disorder, in his ninth proposition of law, he contends that the panel committed a structural error when it failed to afford greater weight to his diagnoses and the impact that they had on his ability to function and his cognition in June 2017 “up to and during the crime.” Brinkman claims that the panel erred in affording “no mitigating weight” in its sentencing opinion to the testimony and report of Drs. Reimers and Ljung and that by doing so, the panel was left with only the labels of Brinkman’s conditions with no understanding of how those conditions impacted his cognition.

{¶ 152} However, in its sentencing opinion, the panel observed that Brinkman was “diagnosed with PTSD and depression and lacked the means or personal ability to obtain mental health treatment as a child and as an adult.” Cuyahoga C.P. No. CR-17-618342-A, at 6 (June 16, 2023). The panel noted that Brinkman had been “deeply affected” by the deaths of his mother and brother and that “[s]ome evidence indicates that Brinkman suffered from anxiety and borderline personality disorder.” *Id.* Finally, the panel gave the evidence of Brinkman’s mental-health issues “substantial mitigating weight” under R.C. 2929.04(B)(7). *Id.* Brinkman fails to explain how the panel could have afforded him more mitigating weight based on his mental illnesses. And as we discussed above with respect to proposition of law No. 3, the panel was free to determine what weight to assign to the testimony and report of Reimers and Ljung.

{¶ 153} We therefore reject his ninth proposition of law.

B. Weighing Errors

{¶ 154} In proposition of law No. 8, Brinkman contends in his merit brief that the panel “failed to afford any meaningful weight to substantial mitigation evidence and its weighing was improperly tilted toward[s] aggravation.” He maintains that because the panel’s weighing “was not conducted in accordance with the constitution and applicable law,” his “death sentences are inappropriate” and therefore “must be vacated.”

1. *Consideration of Inapplicable Aggravating Circumstance*

{¶ 155} A defendant may be found guilty of a felony-murder specification under R.C. 2929.04(A)(7) if he murders a person while “committing . . . or fleeing immediately after committing . . . kidnapping . . . or aggravated burglary, and *either* the offender was the principal offender . . . *or, if not the principal offender*, committed the aggravated murder with prior calculation and design.” (Emphasis added.)

{¶ 156} The panel’s sentencing opinion listed the three aggravating circumstances “contained in the specifications in each of counts one, three and five” and identified the three specifications as follows:

1. A course of conduct specification under R.C. 2929.04(A)(5) as to each count of aggravated murder involving the purposeful killing of two or more persons with prior calculation and design;
2. A felony murder specification under R.C. 2929.04(A)(7) as to each count of aggravated murder for killing each victim while committing, attempting to commit, or fleeing immediately after committing or attempting to commit aggravated burglary, and was

the principal offender in the commission of the aggravated murder with prior calculation and design; and

3. A felony murder specification under R.C. 2929.04(A)(7) as to each count of aggravated murder for killing each victim while committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, and was the principal offender in the commission of the aggravated murder with prior calculation and design.

Cuyahoga C.P. No. CR-17-618342-A, at 2 (June 16, 2023). Next, the panel summarized the evidence presented in support of the specifications for each of the counts of aggravated murder, *id.* at 3, and then, as to the felony-murder specifications, wrote:

In addition to the course-of-conduct specification, Brinkman was also found guilty of two felony-murder specifications under R.C. 2929.04(A)(7) for murdering each victim while committing both aggravated burglary and kidnapping. R.C. 2929.04(A)(7) requires the State to prove either that Brinkman “was the principal offender” or that he “committed the aggravated murder with prior calculation and design.” In this case, both are true.

Evidence of the aggravated burglary was established as Brinkman may have been initially welcome into the victims’ home but his privilege to remain terminated the moment he commenced his assault on the victims. . . . Brinkman was the sole and principal offender in each aggravated murder. And, he committed all three aggravated murders with prior calculation and design. Those aggravating circumstances are entitled to great weight.

Cuyahoga C.P. No. CR-17-618342-A, at 3-4 (June 16, 2023).

{¶ 157} The criteria set forth in R.C. 2929.04(A)(7) are to be considered in the alternative. “‘Prior calculation and design,’ however, should never be used in the conjunctive with ‘principal offender’ because ‘prior calculation and design’ is relevant in the specifications only if the defendant *is not* a principal offender.” (Emphasis in original.) *State v. Dixon*, 2004-Ohio-1585, ¶ 82; *accord State v. Penix*, 32 Ohio St.3d 369, 371 (1987) (“Prior calculation and design is an aggravating circumstance only in the case of an offender who did not personally kill the victim.”), *superseded by statute on other grounds as stated in State v. Roberts*, 2017-Ohio-2998, ¶ 32-34.

{¶ 158} Brinkman argues that the panel failed to consider the R.C. 2929.04(A)(7) criteria in the alternative and that by finding him guilty of being both the principal offender and committing the murders with prior calculation and design, the panel considered nonstatutory aggravating circumstances that carried double weight. The State concedes that the panel erred and should have found only that Brinkman was the principal offender (i.e., the actual killer) under R.C. 2929.04(A)(7). But the State asserts that the panel’s error of making an additional finding did not improperly increase the number of aggravating circumstances, lead to the panel’s considering any nonstatutory aggravating circumstances, or cause double weighing and that the error was therefore harmless.

{¶ 159} Contrary to the State’s argument, however, the panel not only found that Brinkman acted with prior calculation and design and was the principal offender, but it also expressly found that those aggravating circumstances were entitled to “great weight,” Cuyahoga C.P. No. CR-17-618342-A, at 4 (June 16, 2023). Therefore, the record demonstrates that the panel incorrectly weighed “prior calculation and design” as an aggravating circumstance when it sentenced Brinkman to death.

{¶ 160} However, this court has “previously held that ‘serious deficiencies in the trial panel’s death penalty written opinion’ can be ‘“rectified by this court’s careful independent reweighing.”’” *Montgomery*, 2016-Ohio-5487, at ¶ 155, quoting *State v. Fox*, 1994-Ohio-513, ¶ 55, quoting *State v. Lott*, 51 Ohio St.3d 160, 170 (1990). Thus, we acknowledge the panel’s error, but in our independent sentence evaluation under R.C. 2929.05(A), we will cure the error by not considering that Brinkman “committed the aggravated murder with prior calculation and design” as an aggravating circumstance under R.C. 2929.04(A)(7).

2. Consideration of Mitigating Evidence

{¶ 161} Next, Brinkman contends that the panel “virtually ignored” and “arbitrarily dismiss[ed]” his mitigation evidence supporting the statutory mitigating factors. Although “a court may not refuse to consider relevant mitigating evidence,” a court is not prohibited from “considering mitigating evidence and determining that it deserves no weight.” *Davis*, 2014-Ohio-1615, at ¶ 59. “The weight to be given mitigating factors ‘is necessarily an individual decision by the fact finder.’ . . . It is subject to correction by means of independent appellate reweighing and is not a matter of law.” *Id.* at ¶ 62, quoting *State v. Richey*, 1992-Ohio-44, ¶ 85, *abrogated in part on other grounds as stated in State v. McGuire*, 1997-Ohio-335, ¶ 62.

{¶ 162} Brinkman insists that the panel was “arbitrarily dismissive” of and “virtually ignored” his “powerful mitigation case,” including Drs. Reimers’s and Ljung’s testimony and findings (echoing his third proposition of law) and information provided by Kelly O’Connor, his mitigation specialist, and Dr. Bob Stinson, a forensic psychologist.

{¶ 163} Stinson’s testimony focused on 15 mitigating factors he found existed in Brinkman’s case that he believed were “of mitigating value”—specifically, that Brinkman (1) was raised in a family that had significant mental-health and substance-abuse histories, (2) was raised by parents who lacked stability,

(3) was physically abused as a child, (4) was emotionally abused as a child, (5) witnessed domestic violence in the home in which he was raised, (6) experienced other childhood traumas including being bullied at school, (7) was unable to complete basic training to pursue a career in the military because of an injury, (8) was impacted by the death of his mother in 2013 and the suicide of his brother in 2015, (9) had periods of homelessness, (10) experienced a number of traumatic events as an adult, (11) experienced a number of head injuries, (12) developed significant mental-health problems, (13) developed multiple and chronic serious medical problems including Type I diabetes, (14) suffered from substance-abuse disorders, and (15) took responsibility for the murders and had shown good institutional behavior in jail and prison.

{¶ 164} In its sentencing opinion, the panel did not specifically list each mitigating factor that Stinson testified about, but it did determine that Brinkman was “adversely affected by his troubled childhood and adult life,” that he “witnessed and experienced domestic violence, drug and alcohol abuse, poor parental relationships, and little emotional support as a youth,” that he “was diagnosed with PTSD and depression and lacked the means or personal ability to obtain mental health treatment as a child and as an adult,” that “[a]s an adult, he . . . was frequently homeless and was deeply affected by the death of his mother and [his] brother’s suicide,” and that “[s]ome evidence indicates that Brinkman suffered from anxiety and borderline personality disorder.” Cuyahoga C.P. No. CR-17-618342-A, at 6 (June 16, 2023). The panel determined that these factors deserved “substantial mitigating weight.” *Id.*

{¶ 165} “While a sentencing court must consider all evidence of mitigation, it need not discuss each factor individually.” *State v. Phillips*, 1995-Ohio-171, ¶ 99. Further, “a trial court’s failure to discuss each mitigating factor in its sentencing opinion does not give rise to an automatic inference that factors absent from the opinion were not considered.” *Obermiller*, 2016-Ohio-1594, at ¶ 125, citing *State*

v. Roberts, 2013-Ohio-4580, ¶ 54. Such an inference is warranted only in “unusual circumstances,” such as in *Roberts* when a trial court failed to mention allocution, which was the only relevant matter specifically placed before the court as mitigation. *See Roberts* at ¶ 64. Brinkman points to no such circumstance here, and unlike in *Roberts*, the sentencing opinion in this case “discussed multiple mitigating factors,” *Obermiller* at ¶ 126. Thus, Brinkman’s argument that the panel failed to consider Stinson’s testimony is not justified on this record.

{¶ 166} Moreover, as previously stated, the weight given to mitigating factors is an individual decision by the fact-finder, not a matter of law. *Davis*, 2014-Ohio-1615, at ¶ 62. Here, Brinkman has not shown that the panel erred in weighing the mitigating evidence.

{¶ 167} We therefore overrule Brinkman’s eighth proposition of law.

C. Inadequate Sentencing Opinion

{¶ 168} In his seventh proposition of law, Brinkman argues that the panel’s sentencing opinion is “completely inadequate” to satisfy the requirements of R.C. 2929.03(F). R.C. 2929.03(F) requires a trial court or three-judge panel, in imposing a death sentence, to state in a separate opinion “its specific findings as to the existence of any of the mitigating factors set forth in [R.C. 2929.04(B)], the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances . . . were sufficient to outweigh the mitigating factors.”

{¶ 169} Brinkman argues in his merit brief that the panel gave “*no reasons*” for why the aggravating circumstances were sufficient to outweigh the mitigating factors and that the panel instead “merely assigned a weighing ‘label’ to each category or item of aggravating circumstance and mitigating factor.” (Emphasis in original.) The State counters in its merit brief that the panel was not required to “explain its reasoning for giving each mitigating factor a particular weight” and that the panel “was permitted to rely on the nature and circumstances of the offense as

reasons” for finding that the aggravating circumstances were sufficient to outweigh the mitigating factors.

{¶ 170} We have consistently held that “in imposing [a] sentence, the assessment of and weight given to mitigating evidence are within the trial court’s discretion.” *State v. Jackson*, 2005-Ohio-5981, ¶ 106, citing *Lott*, 51 Ohio St.3d at 171. And it is understood that the admission of mitigation evidence “does not automatically mean that it must be given any weight.” *Steffen*, 31 Ohio St.3d 111, at paragraph two of the syllabus.

{¶ 171} In its sentencing opinion, the panel summarized the aggravating circumstances and the evidence presented in support of each, Cuyahoga C.P. No. CR-17-618342-A, at 2-4 (June 16, 2023), listed the statutory mitigating factors, *id.* at 4, noted that Brinkman specifically “argued that factors [R.C. 2929.04(B)(3)] ‘mental disease or defect’ and [R.C. 2929.04(B)(7)] ‘any other factors’ primarily applied in this case,” *id.* at 5, and listed and considered the mitigating evidence that Brinkman had presented, *id.* at 5-6. The panel then concluded: “Upon consideration of the evidence, the unsworn statement of [Brinkman], and the arguments of counsel, it is the unanimous judgment of the three-judge panel that the aggravating circumstances in counts one, three and five clearly outweigh the mitigating factors beyond a reasonable doubt.” *Id.* at 7.

{¶ 172} Contrary to Brinkman’s argument, the panel’s sentencing opinion adequately explains the panel’s reasons for imposing three death sentences in this case. The panel correctly identified the applicable aggravating circumstances and described in detail the mitigating evidence presented in the case. The panel observed that in Brinkman’s unsworn statement, he “apologized for his actions,” “accepted his responsibility,” and “claimed he wanted to make this process as short and easy as possible.” *Id.* at 5. The panel gave “some mitigating weight” to Brinkman’s unsworn statement, lack of a criminal record for violent offenses, adjustment to prison, and previous brief military experience. *Id.* at 5-6.

{¶ 173} Further, under the heading “Any Other Relevant Factors,” the panel noted that Brinkman had “witnessed and experienced domestic violence, drug and alcohol abuse, poor parental relationships, and little emotional support as a youth,” experienced bouts of homelessness as an adult, and lacked the resources for mental-health services throughout his life. *Id.* at 6. The panel also mentioned the negative effect that Brinkman’s mother’s death and his brother’s suicide had on him. *Id.* The panel ultimately gave this R.C. 2929.04(B)(7) other-relevant-factors evidence “substantial mitigating weight.” *Id.*

{¶ 174} Brinkman has not demonstrated that the panel’s sentencing opinion is inadequate under R.C. 2929.03(F), and we therefore reject his seventh proposition of law.

D. Merger of Offenses and Aggravating Circumstances

{¶ 175} Brinkman was convicted of three aggravating circumstances as to each aggravated-murder count: two felony-murder capital specifications under R.C. 2929.04(A)(7)—one predicated on aggravated burglary and one predicated on kidnapping—and one course-of-conduct capital specification under R.C. 2929.04(A)(5). He also pleaded guilty to one count of first-degree aggravated burglary in Count 7 and three counts of first-degree kidnapping in Counts 8 through 10, among other felony offenses. In his 16th proposition of law, Brinkman argues that the panel should have merged several of his convictions. He also argues that the panel plainly erred when it failed to merge the aggravating circumstances as to each aggravated-murder count for purposes of sentencing. The State counters that none of the aggravating circumstances or offenses should merge because “they are dissimilar in import and created separate, identifiable harms.”

{¶ 176} R.C. 2941.25 addresses merger of allied offenses of similar import and provides: “Where the same conduct by [a] defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be

convicted of only one.” R.C. 2941.25(A). In contrast, R.C. 2941.25(B) provides: “Where the defendant’s conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, . . . the defendant may be convicted of all of them.” Thus, when the defendant’s conduct supports multiple offenses, a court must engage in an analysis “to determine whether the offenses merge or whether the defendant may be convicted of separate offenses.” *State v. Ruff*, 2015-Ohio-995, ¶ 24, citing R.C. 2941.25(B).

{¶ 177} Moreover, when reviewing whether capital specifications should merge, this court uses “the same test that we use for determining whether two offenses merge as allied offenses of similar import.” *Knuff*, 2024-Ohio-902, at ¶ 219. In examining whether offenses are of similar or dissimilar import within the meaning of R.C. 2941.25, when the defendant’s conduct supports multiple offenses, the court must look to the “evidence at trial or during a plea or sentencing hearing,” *Ruff* at ¶ 26, and ask three questions: “(1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation?”, *id.* at ¶ 31. In asking these questions, the court must bear in mind that “[a]n affirmative answer to any of the above will permit separate convictions. The conduct, the animus, and the import must all be considered.” *Id.*

1. Aggravated Burglary, Kidnapping, and Aggravated-Murder Convictions

{¶ 178} Brinkman first argues that his aggravated-murder and kidnapping convictions, his aggravated-murder and aggravated-burglary convictions, and his kidnapping and aggravated-burglary convictions should have merged as allied offenses of similar import. We have “repeatedly held that aggravated murder and kidnapping are not allied offenses of similar import under R.C. 2941.25.” *State v. Elmore*, 2006-Ohio-6207, ¶ 51 (collecting cases). Thus, as to Brinkman’s convictions for aggravated murder and kidnapping, those offenses do not merge.

{¶ 179} We have also explained that offenses are of dissimilar import “when the defendant’s conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable.” *Ruff*, 2015-Ohio-995, at ¶ 23. In *Ruff*, we emphasized that “to determine whether [offenses] are allied offenses of similar import, the analysis must focus on the defendant’s conduct,” not on a comparison of the elements of the offenses. *Id.* at ¶ 30.

{¶ 180} Applying *Ruff* to the facts of this case, we conclude that the panel did not err when it did not merge Brinkman’s aggravated-burglary conviction into any of his aggravated-murder convictions. The evidence established that Brinkman was initially invited into Suzanne’s house under the guise of friendship but then assaulted her during their conversation. When Kylie and Taylor came home, Brinkman forced them at knifepoint into the same bedroom where he had thrown Suzanne onto the bed. He ordered them to lie down on the bed next to their mother and then had Kylie tie the hands of Suzanne and Taylor to the bed frame with zip ties before he put zip ties around Kylie’s hands. Brinkman then removed the restraints, had them each turn onto their stomach, and restrained them with zip ties and duct tape. Taylor tried to fight Brinkman off by kicking and hitting him, but Brinkman overpowered her, and “while [Suzanne] was laying on her stomach,” he admitted that he “took the knife to her.” He stabbed Suzanne multiple times, but she was still “twitching,” so he said that he “went on the side of her throat . . . looking just to hit the artery.” Then Taylor broke free, and Brinkman said that he “grabbed her, threw her arms up, duct taped and zip tied them again, and then just put her face in the pillow.” Brinkman said that Kylie also tried to escape, so he saw a power cord and “just wrapped it around her neck” until she died.

{¶ 181} Even though these events may have transpired quickly, there is a separation of time between the initial assault of Suzanne that established the aggravated-burglary conviction and the conduct that caused the deaths of Suzanne, Taylor, and Kylie. Under *Ruff*, these offenses were committed separately, and

therefore, the panel was correct in not merging Brinkman’s aggravated-burglary conviction with any of his aggravated-murder convictions.

{¶ 182} Similarly, the panel did not err when it did not merge Brinkman’s kidnapping and aggravated-burglary convictions. The aggravated burglary was established when Brinkman assaulted Suzanne. Again, although short, there was a separation of time between this assault and when he held the three women at knifepoint and restrained them, such that the aggravated burglary and the kidnappings caused separate and identifiable harms. Properly understood, the aggravated burglary preceded the kidnappings, which preceded the aggravated murders. The panel was therefore correct in not merging any combination of these convictions.

2. R.C. 2929.04(A)(7) *Felony-murder Capital Specifications*

{¶ 183} With regard to the felony-murder capital specifications attached to Counts 1, 3, and 5, Brinkman contends in his merit brief that “there is no evidence in this record that the alleged aggravated burglary was committed separately from the alleged kidnappings; the offenses resulted in the same harm and, finally, the intention to kill the decedents was relied upon to support the aggravated burglary and the motivation for restraining them” and that the specifications therefore “were committed with a single animus, any restraint was incidental to the commission of the underlying crimes, they were all done as part of the same course of conduct, [and] the specifications overlap and were duplicative.”

{¶ 184} Under R.C. 2911.11(A)(1), a person is guilty of aggravated burglary if he, “by force, stealth, or deception, . . . trespass[es] in an occupied structure” when another person other than an accomplice is present, “with purpose to commit in the structure . . . any criminal offense, if . . . [t]he offender inflicts, or attempts or threatens to inflict physical harm on another.” Kidnapping is committed when a person, by force, threat, or deception, restrains the liberty of another for the purpose of inflicting serious physical harm. R.C. 2905.01(A)(3).

{¶ 185} As explained above, however, the record demonstrates that the aggravated-burglary offense and the kidnapping offenses caused separate, identifiable harms. When Brinkman assaulted Suzanne after she had invited him into her home, the aggravated burglary was complete. Accordingly, Suzanne was the only victim of that offense. However, when Brinkman forced all three women to the bedroom at knifepoint, restrained each of them, and inflicted serious physical harm on each of them, he separately harmed Suzanne, Taylor, and Kylie. Thus, the aggravated burglary and the kidnappings were “dissimilar in import or significance,” *Ruff*, 2015-Ohio-995, at ¶ 31.

3. Course-of-conduct Capital Specifications

{¶ 186} Finally, the course-of-conduct capital specifications attached to Counts 1, 3, and 5 do not merge with either of the felony-murder capital specifications attached to the same counts. “We have repeatedly held that ‘specifications for multiple-murder and for felony-murder represent distinct and separate aggravating circumstances,’” are “not duplicative,” and “do not merge.” *State v. Perez*, 2009-Ohio-6179, ¶ 175, quoting *Smith*, 1997-Ohio-355, at ¶ 109; *accord McAlpin*, 2022-Ohio-1567, at ¶ 191. Therefore, the panel did not err when it did not merge each course-of-conduct specification with a felony-murder specification.

{¶ 187} We reject Brinkman’s 16th proposition of law.

E. Proportionality

{¶ 188} In Brinkman’s 10th proposition of law, he complains that this court’s comparative proportionality review of death sentences, required by R.C. 2929.05(A), is constitutionally infirm. In his 11th proposition of law, Brinkman asserts that the panel erred by failing to conduct a meaningful proportionality review and failed to satisfy its statutory obligations under R.C. 2929.11. Because these propositions of law are related, we will address them together.

{¶ 189} Brinkman argues in his merit brief that our comparative proportionality review of death sentences under R.C. 2929.05(A) fails to “serve as a check against arbitrary and capricious death sentences” because we have held that our review is limited to cases in which a death sentence was imposed. He further contends that we have erroneously failed to expand our statutorily required comparative proportionality review to include capital cases that did not result in the imposition of a death sentence. Brinkman urges us to overrule *Steffen*, in which we held that the proportionality review mandated by R.C. 2929.05(A) “is satisfied by a review of those cases already decided by the reviewing court in which the death penalty has been imposed,” 31 Ohio St.3d 111, at paragraph one of the syllabus.

{¶ 190} The Supreme Court of the United States has held that comparative proportionality review is not required by the Eighth Amendment to the United States Constitution in each case in which a death sentence is imposed. *Pulley v. Harris*, 465 U.S. 37, 50-51 (1984). In Ohio, however, R.C. 2929.05(A) requires us to conduct a comparative proportionality review of all death sentences imposed. The statute does not prescribe the scope of that review, providing only that this court “shall consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases,” R.C. 2929.05(A). We have stated that “R.C. 2929.05 does not require a comparison of sentences in non-capital murder cases for proportionality review.” *State v. Jenkins*, 15 Ohio St.3d 164, 209 (1984).

{¶ 191} At bottom, *Steffen* clarified that in Ohio, “[t]he proportionality review required by R.C. 2929.05(A) is satisfied by a review of those cases already decided by the reviewing court in which the death penalty has been imposed.” *Steffen* at paragraph one of the syllabus. We have consistently adhered to the principles articulated in *Steffen* in subsequent capital appeals challenging Ohio’s proportionality review under R.C. 2929.05(A). See, e.g., *Sowell*, 2016-Ohio-8025, at ¶ 151; *State v. Spaulding*, 2016-Ohio-8126, ¶ 183; *State v. Green*, 1993-Ohio-26, ¶ 47. *Steffen* has been repeatedly affirmed, and we decline Brinkman’s urging

to overrule *Steffen*. We therefore summarily overrule Brinkman’s tenth proposition of law.

{¶ 192} In proposition of law No. 11, Brinkman argues that the panel’s proportionality analysis was defective and must be vacated. However, R.C. 2929.05(A) does not require a trial court to engage in proportionality review in death-penalty cases; instead, it requires *appellate courts* to review every death sentence for proportionality. *See Spaulding* at ¶ 182. “By contrast, R.C. 2929.03(F) sets forth the requirements for a trial court’s sentencing opinion in a capital case,” but it “says nothing about the trial court conducting a proportionality analysis.” *Id.*

{¶ 193} Nonetheless, here, the panel included a proportionality review in its sentencing opinion. Specifically, the panel stated that “Brinkman’s sentence is also proportionate when compared with similar, recent cases in which the Supreme Court of Ohio has affirmed death sentence[s] for defendants found guilty of both (1) [a] course-of-conduct specification and (2) at least one felony-murder specification.” Cuyahoga C.P. No. CR-17-618342-A, at 7 (June 16, 2023). The panel then cited seven cases in which we found that a death sentence was proportionate: *State v. Beasley*, 2018-Ohio-493; *Clinton*, 2017-Ohio-9423; *State v. Martin*, 2017-Ohio-7556; *Sowell*, 2016-Ohio-8025; *State v. Dean*, 2015-Ohio-4347; *State v. Jackson*, 2014-Ohio-3707; and *Brinkman*, 2022-Ohio-2550.

{¶ 194} Brinkman argues that the crimes for which he was sentenced are significantly different in scope, form, and circumstance than the crimes committed by the defendants in the cases cited by the panel. We disagree. Of the cases that the panel cited, most are on point with Brinkman’s case, and like in those cases, we think Brinkman’s sentences are proportional to his offenses. For example, in *Clinton*, the defendant murdered a woman and her two children inside their home. *Clinton* at ¶ 3. Similarly, in *Martin*, the defendant shot and killed one person and attempted to kill a second during the commission of kidnapping and robbery offenses. *Martin* at ¶ 1. *Jackson* involved the murder of a woman during a robbery,

which “ended a crime spree” that had begun with an attempted murder of a second person and six other robberies. *Jackson* at ¶ 3. But perhaps the most apt example that the panel cited was another capital case involving Brinkman. In that case, Brinkman ordered two people at gunpoint to their home’s guest bedroom, where he murdered them and stole cash from their wallets. *Brinkman* at ¶ 9-12. In short, the panel did more than required of it under R.C. 2929.03(F) by conducting a proportionality analysis, and Brinkman’s sentences were not disproportionate to his offenses when compared to like cases. We reject Brinkman’s claim.

{¶ 195} Brinkman also argues that the panel failed to comply with R.C. 2929.11(B) when sentencing him. R.C. 2929.11(B) provides that a prison sentence imposed for a felony

shall be reasonably calculated to achieve the three overriding purposes of felony sentencing set forth in [R.C. 2929.11(A)], commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

{¶ 196} The State relies on our precedent, which holds that “a trial court ‘fulfills its duty under [R.C. 2929.11] by indicating that it has considered the relevant sentencing factors,’” *Clinton*, 2017-Ohio-9423, at ¶ 243, quoting *State v. Smith*, 2014-Ohio-1520, ¶ 14 (8th Dist.). Here, the panel did not state on the record or reference in its sentencing opinion that it had considered the relevant sentencing factors under R.C. 2929.11 and 2929.12. However, “[w]e have previously held that neither R.C. 2929.11 nor 2929.12 requires a trial court to make any specific factual findings on the record.” *State v. Jones*, 2020-Ohio-6729, ¶ 20, citing *State v. Wilson*, 2011-Ohio-2669, ¶ 31, and *State v. Arnett*, 2000-Ohio-302, ¶ 25.

Moreover, the “consideration of the appropriate factors set forth in R.C. 2929.11 can be presumed unless the defendant affirmatively shows to the contrary.” *Clinton* at ¶ 243, citing *State v. Davis*, 2016-Ohio-7964, ¶ 35 (8th Dist.).

{¶ 197} The panel imposed consecutive sentences for Brinkman’s noncapital offenses and stated—in open court and in its sentencing entry—the relevant statutory language required to impose consecutive sentences under R.C. 2929.14(C)(4), *see State v. Bonnell*, 2014-Ohio-3177, syllabus. Although the panel was not required to cite similar cases, the seven cases mentioned in its sentencing opinion demonstrate that Brinkman’s death sentences are consistent with the sentences imposed on offenders who committed similar offenses. And Brinkman has not alleged that the panel’s sentencing findings were pretextual or based on factors outside of R.C. 2929.11 and 2929.12. Therefore, Brinkman has not rebutted the presumption that the panel considered the appropriate factors set forth in R.C. 2929.11 and 2929.12.

{¶ 198} For all the foregoing reasons, we reject Brinkman’s 10th and 11th propositions of law.

F. Constitutional Challenges to Ohio’s Death-Penalty Statutory Scheme

{¶ 199} Brinkman’s 17th and 21st propositions of law raise multiple federal and state constitutional challenges to Ohio’s death-penalty statutory scheme. As the State accurately observes, we have repeatedly rejected the claims Brinkman asserts under these propositions of law.

{¶ 200} In proposition of law No. 17, Brinkman claims that he has a constitutional right to have a jury determine whether any mitigating factors exist and whether the aggravating circumstances outweigh those mitigating factors beyond a reasonable doubt. He contends that Ohio’s death-penalty statutes deny capital defendants that right by requiring them to waive the right to a jury trial for the mitigation hearing once a guilty plea to the capital indictment has been entered. Brinkman also argues that Ohio’s death-penalty statutes deny him the right to

present a defense by not allowing a jury the opportunity to consider a guilty plea as mitigating evidence.

{¶ 201} R.C. 2945.06 and Crim.R. 11(C)(3) govern “[t]he process for entering a plea of guilty or no contest to charges of aggravated murder and related capital specifications.” *State v. Belton*, 2016-Ohio-1581, ¶ 51. When a defendant enters a guilty plea to capital charges, “a three-judge panel must examine witnesses, ‘hear any other evidence properly presented by the prosecution,’ and ‘unanimously determine whether the defendant is guilty beyond a reasonable doubt of aggravated murder or of a lesser offense.’” *Id.*, quoting *State v. Green*, 1998-Ohio-454, ¶ 26. If the panel concludes that the defendant committed aggravated murder and at least one aggravating circumstance, then the panel must proceed to the mitigation hearing and sentencing. *See id.*; Crim.R. 11(C)(3).

{¶ 202} “[W]hen a capital defendant waives a jury and enters a [guilty] plea, a three-judge panel determines both guilt and the appropriate sentence.” *Belton* at ¶ 53. Moreover, “Ohio law does not permit a jury to sentence a capital defendant if the defendant has elected to enter a plea of guilty or no contest to capital charges.” *Id.* at ¶ 54; *accord Ketterer*, 2006-Ohio-5283, at ¶ 123.

{¶ 203} In *Lockett v. Ohio*, the United States Supreme Court invalidated Ohio’s former death-penalty statute because it did “not permit the type of individualized consideration of mitigating factors . . . required by the Eighth and Fourteenth Amendment in capital cases.” 438 U.S. at 606 (plurality opinion). However, Brinkman is incorrect that *Lockett* stands for the proposition that a state must permit a jury to consider any possible mitigating evidence at a capital sentencing hearing. Rather, as this court has previously explained, in *Lockett*, the Supreme Court “indicated that states could not preclude ‘the sentencer’ in a capital case from considering ‘as a mitigating factor, any aspect of a defendant’s character or record and any of the circumstances of the offense that the defendant proffers as

a basis for a sentence less than death.’” (Emphasis added in *Lockett*.) *Belton* at ¶ 66, quoting *Lockett* at 604.

{¶ 204} As we have previously held, Ohio’s current death-penalty statutory scheme is consistent with *Lockett* because it allows a capital defendant who enters a guilty plea to present his mitigating evidence to a three-judge panel, i.e., to the sentencer. *See Belton*, 2016-Ohio-1581, at ¶ 66-67. As such, Brinkman was not deprived of his right to present a defense “simply because he [did] not present his evidence to a jury,” *id.* at ¶ 68.

{¶ 205} Brinkman’s suggestion that Crim.R. 11(C)(3) penalizes a capital defendant’s assertion of a constitutional right is likewise unmeritorious. We have previously considered and rejected similar attacks on Crim.R. 11(C)(3). *See Belton* at ¶ 64; *McKnight*, 2005-Ohio-6046, at ¶ 51.

{¶ 206} We are not persuaded that our precedent needs revisited, and so we reject Brinkman’s 17th proposition of law.

{¶ 207} In proposition of law No. 21, Brinkman challenges the constitutionality of Ohio’s death-penalty scheme and claims that it violates international law, including treaties to which the United States is a party. We have previously considered and rejected the same arguments. *See, e.g., State v. Thompson*, 2014-Ohio-4751, ¶ 279-280 (collecting cases). “When issues of law in capital cases have been considered and decided by this court and are raised anew in a subsequent capital case, it is proper to summarily dispose of such issues in the subsequent case.” *State v. Poindexter*, 36 Ohio St.3d 1 (1988), syllabus.

{¶ 208} We therefore summarily overrule Brinkman’s 21st proposition of law.

IV. CUMULATIVE ERROR AND INEFFECTIVE ASSISTANCE OF COUNSEL

{¶ 209} Finally, we address Brinkman’s remaining propositions of law that relate to the entire proceedings below. In proposition of law No. 22, Brinkman argues that cumulative error deprived him of a fair trial. Brinkman also argues that

he was deprived of effective assistance of counsel in two separate propositions of law, Nos. 13 and 14. Many of the alleged errors that Brinkman cites have already been discussed under other propositions of law. We have held many of them not to be errors. To the extent that there were errors below, Brinkman was not prejudiced by these errors, as would be required to warrant reversal for cumulative error or ineffective assistance of counsel.

{¶ 210} We therefore reject his remaining propositions of law.

A. Cumulative Error

{¶ 211} Under the cumulative-error doctrine, “a conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each trial-court error does not individually constitute cause for reversal.” *Powell*, 2012-Ohio-2577, at ¶ 223. In his 22nd proposition of law, Brinkman asserts that errors throughout his plea and mitigation hearings were cumulatively prejudicial and denied him a fair trial.

{¶ 212} Brinkman’s plea and mitigation hearings were not error free, but “errors ‘cannot become prejudicial by sheer weight of numbers,’” *State v. McKelton*, 2016-Ohio-5735, ¶ 322, quoting *State v. Hill*, 1996-Ohio-222, ¶ 83. The panel should not have heard the victims’ family members’ overly emotional testimony and requests to impose the death penalty as identified in proposition of law No. 5. However, as noted above, we generally presume that a three-judge panel in a capital case considered only the relevant, material, and competent evidence in arriving at its sentence. See *Montgomery*, 2016-Ohio-5487, at ¶ 141; *Fitzpatrick*, 2004-Ohio-3167, at ¶ 66. Brinkman has not identified any record evidence demonstrating that the panel considered this inappropriate evidence in making its sentencing decision.

{¶ 213} Although the panel erroneously considered that in committing aggravated murder, Brinkman acted with prior calculation and design *and* was the principal offender (proposition of law No. 8), this error does not require us to

reverse his convictions and death sentences. As will be explained, we have cured the error in our independent review of Brinkman’s death sentences pursuant to R.C. 2929.05(A) and did not consider the prior-calculation-and-design specification of the aggravated-murder convictions. *See State v. Garrett*, 2022-Ohio-4218, ¶ 210.

{¶ 214} Brinkman makes no attempt to show how these individually harmless errors combined to deny him a fair capital proceeding, at which he pleaded guilty. As he “offers no further analysis, this proposition lacks substance.” *State v. Sapp*, 2004-Ohio-7008, ¶ 103.

{¶ 215} Accordingly, we reject Brinkman’s 22nd proposition of law.

B. Ineffective Assistance of Counsel—Serious Mental Illness

{¶ 216} In his 13th proposition of law, Brinkman acknowledges that his trial counsel “made the customary general overall challenges to the constitutionality of Ohio’s death penalty statute and scheme” but argues that counsel was ineffective for failing to make “constitutional arguments for a categorical bar” “against the death penalty for those, like Brinkman, who suffer with mental illnesses which are recognized as serious or severe mental illnesses.”

{¶ 217} As discussed in relation to his 9th and 12th propositions of law, Brinkman is not constitutionally ineligible to receive the death penalty. He has not been diagnosed with one of the mental illnesses identified in R.C. 2929.025(A)(1)(a), which might make him statutorily ineligible to receive the death penalty, and the court will not create a new exception for him. Brinkman cannot establish ineffective assistance of counsel based on this omission, and “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance” when considering an ineffective-assistance-of-counsel allegation, *Strickland v. Washington*, 466 U.S. 668, 689 (1986).

{¶ 218} Brinkman’s 13th proposition of law lacks merit, and we deny it.

C. Ineffective Assistance of Counsel—Other Errors

{¶ 219} In proposition of law No. 14, Brinkman similarly argues that he was deprived of effective assistance of trial counsel in violation of his federal and state constitutional rights. In a bullet-pointed list, Brinkman identifies six specific acts or omissions by defense counsel that he says, but for, he would not have been sentenced to death. To establish ineffective assistance, Brinkman must show that the performance of defense counsel was deficient and that he was prejudiced as a result. *State v. Blanton*, 2022-Ohio-3985, ¶ 45, citing *Strickland* at 687-688, 694, and *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph two of the syllabus.

1. *Failure to Object to “Unwarranted Expansion” of Aggravated-burglary Statute*

{¶ 220} Brinkman argues that defense counsel should have objected to his aggravated-burglary conviction and the associated R.C. 2929.04(A)(7) felony-murder capital specifications predicated on aggravated burglary attached to Counts 1 through 6. As explained in connection with proposition of law No. 6, we have held that an authorized guest in a house becomes a trespasser when he commits an assault on the occupant. *See Holloway*, 38 Ohio St.3d at 243. Therefore, defense counsel’s failure to object to Brinkman’s aggravated-burglary conviction and the associated capital specifications would not have been successful and thus cannot constitute deficient performance.

2. *Failure to Object to Jury-waiver Colloquy*

{¶ 221} Brinkman argues that defense counsel failed to object to the presiding judge’s allegedly incomplete jury-waiver colloquy. However, we determined in connection with Brinkman’s 19th proposition of law that the presiding judge’s jury-waiver colloquy was adequate, and defense counsel’s conduct in connection with that colloquy was therefore not deficient.

{¶ 222} Furthermore, we rejected Brinkman’s 17th proposition of law, in which he argues that Ohio’s death-penalty scheme violates the constitutional right

to a jury trial because it does not allow a capital defendant who pleads guilty to aggravated murder and the accompanying capital specifications to have a jury empaneled for the mitigation hearing. We have previously considered and rejected the same argument. *Belton*, 2016-Ohio-1581, at ¶ 55-61. Accordingly, Brinkman's counsel was not ineffective for failing to request the empaneling of a jury for Brinkman's mitigation hearing. Defense counsel cannot be faulted for failing to raise arguments that contradict legal precedent. *See Knuff*, 2024-Ohio-902, at ¶ 111-113 (defense counsel not ineffective for failing to press an unmeritorious constitutional claim).

***3. Failure to Move to Preclude or Strike Testimony of State's Mitigation
Rebuttal Witness***

{¶ 223} Brinkman asserts that defense counsel should have sought to preclude Dr. Noffsinger's rebuttal testimony and should have moved to strike his testimony. However, as analyzed under the fourth proposition of law, the panel was fully capable of evaluating Noffsinger's testimony during the mitigation hearing. Given Noffsinger's credentials, it is extremely unlikely that the panel would have granted an objection to his testimony. Here again, Brinkman cannot show that his counsel performed deficiently or unreasonably under the circumstances and therefore cannot show that he was denied the effective assistance of counsel.

***4. Failure to Move for Merger of Allied Offenses and Aggravating
Circumstances***

{¶ 224} Brinkman next argues that defense counsel was ineffective for not objecting to the panel's failure to merge allied offenses of similar import and aggravating circumstances that constituted only one indivisible course of conduct. As explained in connection with Brinkman's 16th proposition of law, the panel did not err in failing to merge Brinkman's offenses of aggravated burglary, kidnapping, and aggravated murder or the aggravating circumstances for purposes of

sentencing. Therefore, we reject his related claim of ineffective assistance of counsel.

5. *Failure to Move to Preclude or Strike Victim-impact Testimony*

{¶ 225} Under this branch of his ineffective-assistance-of-counsel claim, Brinkman maintains that defense counsel should have objected before the State presented its victim-impact witnesses and that after the witnesses offered their statements, defense counsel should have moved to strike those statements. But as we held in connection with proposition of law No. 5, the panel did not plainly err when it heard statements from members of the victims’ family. Even if defense counsel should have objected to the victim-impact testimony, Brinkman has not shown ““that the panel was influenced by or considered [the] victim impact evidence in arriving at its sentencing decision,”” *Fautenberry*, 1995-Ohio-209, at ¶ 15, quoting *Post*, 32 Ohio St.3d at 384, and thus cannot show that he was prejudiced as a result of his counsel’s inadequate performance, as *Strickland* requires, *Strickland*, 466 U.S. at 687.

{¶ 226} For all the foregoing reasons, we reject Brinkman’s 14th proposition of law.

V. INDEPENDENT SENTENCE EVALUATION

{¶ 227} Having considered Brinkman’s propositions of law, we now independently review Brinkman’s death sentences for appropriateness and proportionality as R.C. 2929.05(A) requires.

{¶ 228} For purposes of sentencing, the panel merged Counts 1 and 2 (aggravated murder with regard to Suzanne), Counts 3 and 4 (aggravated murder with regard to Taylor), and Counts 5 and 6 (aggravated murder with regard to Kylie). The State elected to sentence on Counts 1, 3, and 5, which charged Brinkman under R.C. 2903.01(A) with committing aggravated murder with prior calculation and design as to each victim.

{¶ 229} Having conducted our independent sentence evaluation, we find that the aggravating circumstances in this case outweigh the mitigating factors beyond a reasonable doubt and that the death sentences imposed are proportionate to death sentences imposed in other, similar cases.

A. Aggravating Circumstances

{¶ 230} Brinkman pleaded guilty to and was convicted of three capital specifications each as to Counts 1, 3, and 5. The panel found that Brinkman killed all three victims as “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), and that he committed each aggravated murder while also committing both aggravated burglary and kidnapping, R.C. 2929.04(A)(7). *See* Cuyahoga C.P. No. CR-17-618342-A, at 2-4 (June 16, 2023).

{¶ 231} As discussed above in connection with proposition of law No. 8, the panel erred in holding for the two R.C. 2929.04(A)(7) felony-murder specifications that Brinkman committed each aggravated murder with prior calculation and design *and* was the principal offender with respect to each count. However, in our independent sentence evaluation, we will consider only that Brinkman was the principal offender in the murders of Suzanne, Taylor, and Kylie. Thus, we have cured the panel’s error. *See Lundgren v. Mitchell*, 440 F.3d 754, 783 (6th Cir. 2006) (“This Court has held that reweighing by the Ohio Supreme Court under [R.C.] 2929.05(A) satisfies the requirements of *Clemons* [*v. Mississippi*, 494 U.S. 738 (1990)] when the court either eliminates impermissible aggravating factors or adds overlooked mitigating factors.”).

{¶ 232} The evidence adduced at the plea hearing supports the panel’s findings that Brinkman murdered Suzanne, Taylor, and Kylie as part of a course of conduct and during an aggravated burglary and kidnapping and that Brinkman did so as the principal offender.

B. Mitigating Evidence

{¶ 233} Brinkman presented four witnesses in mitigation: (1) Kelly O'Connor, a licensed independent social worker hired as the defense mitigation specialist; (2) Dr. Arne Reimers, a physician and specialist in clinical pharmacology from Sweden, who prepared a joint report with his partner, Dr. Hanna Ljung, a psychologist and specialist in neuropsychology also from Sweden; (3) Dr. Ljung herself; and (4) Dr. Bob Stinson, a board-certified forensic psychologist, lawyer, and chemical-dependency counselor. Dr. Stinson evaluated Brinkman on two separate occasions and prepared a report and supplemental report. In addition, Brinkman gave an unsworn statement to the panel during the mitigation hearing. The panel granted the State's oral motion to move the exhibits from the plea hearing to the mitigation hearing. The panel also admitted certain mitigating evidence that was presented during the original proceedings.

1. Statutory Mitigating Factors, R.C. 2929.04(B)(1) through (6)

{¶ 234} Of the mitigating factors set forth in R.C. 2929.04(B)(1) through (6) that we must consider in our independent sentence evaluation, only (B)(5) is applicable. The evidence does not support a finding that “the victims . . . induced or facilitated” the offenses, R.C. 2929.04(B)(1), or that Brinkman acted “under duress, coercion, or strong provocation,” R.C. 2929.04(B)(2). Further, while Brinkman was diagnosed with mental disorders, none qualified as a “serious mental illness” under R.C. 2929.025(A)(1)(a), and we are not persuaded that his mental disorders deprived him of “substantial capacity to appreciate the criminality of [his] conduct or to conform [his] conduct to the requirements of the law,” R.C. 2929.04(B)(3). Brinkman was 45 years old when he committed the murders, so the “youth of the offender” mitigating factor under R.C. 2929.04(B)(4) is inapplicable. Although Brinkman had a criminal record for multiple nonviolent offenses, his criminal history does not rise to the level of being “a significant history of prior criminal convictions,” and we afford the lack of that history some mitigating weight

under R.C. 2929.04(B)(5). And finally, Brinkman was the principal offender, so the R.C. 2929.04(B)(6) “degree of the offender’s participation” mitigating factor is absent.

2. Nature and Circumstances of the Offenses

{¶ 235} In addition to the specifically enumerated mitigating factors, R.C. 2929.04(B) also requires courts to consider “the nature and circumstances of the offense[s].” We find nothing mitigating about the nature and circumstances of the aggravated murders in this case.

3. Brinkman’s Unsworn Statement

{¶ 236} During the mitigation hearing, the panel granted Brinkman’s request to give his unsworn statement in a question-and-answer format with his attorney, as if he were on direct examination. Responding to questions from his attorney, Brinkman stated that he wanted to give an unsworn statement “[b]ecause there’s some things that need to be said, some things [he] need[ed] to get out there.” He continued: “One is an apology. There’s not enough in the world to make up for what I did. It’s all I got left.” He explained that he typically has trouble expressing emotion but that he recalled exhibiting emotion over his actions during his confession when “[i]t started to dawn on [him] what [he had done] and how [he] did it,”—that realization led him to become very emotional. In response to his attorney’s suggestion to say more about what he had done, Brinkman said, “I took the lives of three people that didn’t deserve it. That would be Suzanne Taylor, Taylor Pifer, and Kylie Pifer.” He then indicated that he had pleaded guilty to the indictment because he had, in fact, committed the murders and wanted “[t]o make it as short and as easy as possible as [he] could for the family and friends.” Brinkman continued:

To the family and friends, I’m sorry. They didn’t deserve what I did. I took away from you the opportunity to watch them

grow, get old, have families, be successful in their careers, have children. I took it all from them. And I know sorry will never be enough.

In closing, Brinkman stated that he would have committed suicide had he known that someday he would commit these murders.

4. History, Character, and Background under R.C. 2929.04(B) and “Any Other Factors” under R.C. 2929.04(B)(7)

a. Brinkman’s Background

{¶ 237} Born in 1972, Brinkman was the first child born to Barbara Dietz Brinkman and George Brinkman Sr. Brinkman’s younger brother, Steven, was born approximately two years later. Barbara and George Sr. divorced when Brinkman was five years old. Brinkman reported to O’Connor that while his parents were married, his father was physically abusive to everyone in the household and that living with his father was “absolute hell.”

{¶ 238} O’Connor testified that Brinkman’s “childhood and upbringing was really chaotic, very violent, had a lot of abuse, [and was] not . . . the type of home that one would want by any stretch of the imagination.” She testified as follows about one particular incident:

There was a police report from 1981. [Brinkman] shared that he remembers his mom kind of throwing him and his brother in the car and going to the police station because his father was after them. That’s what he shared. So with some digging we were able to find the police report, which indicated that his mother pulled into the station just like he said, and that his father had ran up and dragged her out of the truck and struck her several times and then dragged her into the auto injuring her shins on both legs.

Brinkman's father was initially charged with assault but was ultimately convicted of domestic violence and sentenced to three months in jail. Brinkman was nine years old and his parents had been divorced for approximately four years when this incident occurred. O'Connor testified that she viewed the fact that this incident took place after Brinkman's parents had divorced as "significant" because, "typically when an abusive parent is outside of the home, the family can kind of operate and kind of move forward," but that, to her, the incident demonstrated "how [Brinkman's] father was kind of a looming presence. Even though he wasn't in the home, he was very much able to wreak havoc on their lives."

{¶ 239} Despite this documented abuse, George Sr. had court-ordered visitation with his sons on the weekends. Brinkman reported to O'Connor that his father would take him and his brother to "a local bar where his father would drink himself into oblivion and even force his young children to drink so that they would fall asleep and he wouldn't have to deal with them." However, as Brinkman got older, he tried to stop visiting his father as often because "[h]e didn't want to spend the weekend at the bar with his dad." When Brinkman was around 11 years old, Barbara and her sons "spent some time in domestic violence shelters for a period of time, and they even moved out to California to try to escape [George] Sr." However, their time in California was brief, and Brinkman's family moved back to Ohio a short time later.

{¶ 240} When Brinkman was around 12 years old, his mother married Jimmie Leon, to whom she stayed married until her death in 2013. During Barbara's marriage to Leon, things for Brinkman were "much better, much different than the household with his father." According to O'Connor, Brinkman reported that Leon was "someone who loved his mother, treated his mother right, and did his best to treat [Brinkman] and his brother like his own."

{¶ 241} Brinkman’s mother died in 2013. O’Connor testified that “one of the things that almost everyone I spoke to said is . . . that [his mother’s death] really hit him very hard, that he really struggled with that loss, and that he may have never recovered from it.” Barbara’s death was not only a traumatic event in Brinkman’s adult life, but it also had a collateral effect on his relationship with Leon. Brinkman reported to O’Connor that he and Leon had different ideas about who was to be involved in Barbara’s funeral and that that “really created a rift in the relationship for a period of time.”

{¶ 242} Although O’Connor could have interviewed Leon, she testified that Brinkman was “adamant” that she not reach out to him. She stated, “From what I can tell, [Leon] was involved in a previous mitigation investigation, so I thought, you know, there might be a chance, but [Brinkman] said that once the crime happened, that [Leon] really washed his hands of [Brinkman], doesn’t want anything to do with him.”

{¶ 243} Brinkman’s younger brother, Steven, committed suicide in 2015. According to O’Connor, Brinkman was adversely affected by Steven’s suicide and wanted to help plan his funeral services. However, Brinkman and Steven’s partner “never really got along. So when his brother passed, Mr. Brinkman wanted to be a part of the services, [but] the partner thought otherwise, and so there was a lot of tension and it just made whatever tension was there that much worse.” O’Connor also testified that Brinkman has a niece and nephew but that he had not seen them in many years and was “adamant [that] they not be involved” in O’Connor’s mitigation investigation. O’Connor reported that in discussing “his lack of current familial ties, Mr. Brinkman remarked, ‘You get used to not counting on other people.’”

{¶ 244} At the age of 18, Brinkman proposed to his high-school girlfriend, Susan Kruse. Their relationship was on and off for several years, and they eventually broke off their engagement. But in 1991, Kruse became pregnant by

Brinkman, and they moved in together. Their son was born in 1992. Brinkman reported that he and Kruse ended their relationship in 1993 or 1994. Brinkman had hoped that he and his son would have a closer relationship than he had with his father, but Brinkman acknowledged that it has not worked out. O'Connor attempted to interview Kruse, but she did not respond to O'Connor's requests to speak with her.

b. Significant Medical Problems: Testimony of Drs. Reimers and Ljung

{¶ 245} Brinkman presented the testimony of Dr. Reimers, a Swedish citizen who works as an "Overlakare," which he said translates to senior consultant physician. Reimers has been a licensed physician in Sweden since 1992 and has specialized in the field of clinical pharmacology since 2006. He described clinical pharmacology as "the study of drug effects on the organism" and "what the human body does with the drug." He testified that "not everybody is affected in the same way" by drugs.

{¶ 246} According to Reimers, the defense retained him to "evaluate Mr. Brinkman's conditions and his drug treatment and their potential impact on his offenses." To conduct his evaluation, Reimers reviewed Brinkman's medical records, Dr. Fabian's forensic psychological evaluation from the first trial, Dr. Stinson's mitigation and sentencing evaluation report, and O'Connor's supplemental mitigation reports. Reimers also reviewed medical literature, public scientific literature, and adverse-drug-reaction databases, such as the Federal Adverse Event Reporting System, which is run by the United States Food and Drug Administration.

{¶ 247} Brinkman was first diagnosed with Type I diabetes in 2014. According to Reimers, one of the "lead complications" of Type I diabetes is cognitive impairment. According to Reimers and Ljung's joint report, Type I diabetes "is typically accompanied by damage to cells in various parts of the body, especially in small blood vessels, the brain, peripheral nerves, the eyes, the skin,

and the kidneys. Regarding the brain, reduced cognitive capacity, behavioral and mood changes are common consequences.” Moreover, “[b]oth acute and chronic hyperglycemia (high blood sugar), as well as hypoglycemia (low blood sugar), affect cognitive functions negatively by fast-forwarding the aging process of the brain.” Reimers and Ljung observed that Brinkman’s medical records showed “consistently highly elevated blood glucose levels” and “repeatedly mention[ed] episodes of hypoglycemia.”

{¶ 248} Brinkman also suffered from diabetic polyneuropathy, which Reimers explained is a “collection of symptoms that relates to the damage of peripheral nerves.” He opined that patients with this condition “experience very often painful sensations, and also reduced sensitivity in the skin.” In the months before the offenses, Brinkman was also diagnosed with panic attacks, pulmonary nodule, hypoglycemia, acute pain of the right knee, and acute pain and decreased range of motion of the left shoulder. Reimers and Ljung noted in their report that Brinkman’s treatment plan included the following medications:

- Hydroxyzine pamoate (VISTARIL) 50 mg capsule
1 capsule three times daily as needed for anxiety
- Duloxetine (CYMBALTA) 60 mg capsule
1 capsule once daily
- Gabapentin (NEURONTIN) 600 mg tablet
2 tablets three times daily
- Albuterol HFA (PROAIR HFA) 90 mcg/actuation inhaler
2 puffs every 6 hours as needed
- Naproxen (NAPROSYN) 500 mg tablet
1 tablet twice daily as needed (for pain)

- Insulin glargine (TOUJEO SOLOSTAR), Insulin lispro (HUMALOG)

(Capitalization in original.)

{¶ 249} Reimers testified that the “combination of drugs that [Brinkman] was on . . . was not unusual,” nor was the fact that Brinkman was prescribed two different types of insulin. However, Reimers later testified that the combination of medicines prescribed to Brinkman in 2017, along with Brinkman’s “long list of psychiatric diagnoses,” would cause concern for possible ADRs. In response to a question from one of the panel members, Reimers testified that naproxen “interacts with the gabapentin. It affects kidney function. And it can also induce psychiatric adverse effects on its own, although that’s not very common.” Reimers opined that when a person has impaired kidney function, gabapentin does work itself out of the body “but over a longer period of time. . . . And that means it accumulates in the body with each additional dose, each time you take a new dose, the gabapentin will accumulate in the body.” He further testified that “[i]t’s now common knowledge but it has also been demonstrated in a clinical study that each additional drug matters. So each additional drug increases the risk of psychiatric side effects.” Notably, the presiding judge asked Reimers whether the interaction between two drugs would be rendered “pretty safe” if “you take one drug, gabapentin, at 12:00 and you don’t take the other drug until 6:00.” Reimers answered no, explaining that “these drug[s] stay in the body for different periods of time and the effect on kidneys also may be longer than [how long] the drug stays in the body.”

{¶ 250} Reimers and Ljung reported that “[l]ike gabapentin, duloxetine is associated with an increased risk of aggressive behavior and violence towards others.” They further observed that “[i]n April 2017, two months before the offenses, the duloxetine dose was in one step doubled to 60 mg” and that relevant literature posits that “psychiatric and behavioral adverse drug reactions (PBARs)

typically manifest within [a] few weeks or months after the start of treatment or a dose increase.” Reimers and Ljung also stated in their report that “[i]n addition to the violence-related [PBARs] that duloxetine may elicit, e.g., hostility or homicidal ideation, there are multiple reported cases of physical assault, physical abuse and homicide where duloxetine is suspected to have played a causal role.” They concluded that “most probably Mr. Brinkman had impaired kidney function both from his treatment with Naproxen and from his diabetes” during the time of the offenses.

{¶ 251} Reimers and Ljung concluded, to a reasonable degree of scientific certainty, that

Brinkman’s conditions and his drug treatment in concert almost certainly had affected his behavior and reduced his cognitive functions at the time of his offenses to such a degree that his ability to plan and understand the consequences of his action and to control his emotion as well as his capacity for impulse control were gravely impaired.

{¶ 252} Dr. Ljung, who is a licensed psychologist and specialist in neuropsychology, reviewed Brinkman’s medical records and the reports prepared by Drs. Fabian and Stinson. Ljung was asked to opine on Brinkman’s “cognitive status at the time of the offenses,” and in her view, “the best way [she] could do that was to use reports by . . . Dr. Fabian, because he did an extensive neuropsychological examination . . . and . . . the kind of assessment that he did [was] also the same as [a neuropsychologist] would do in Sweden, so [she] could evaluate those.”

{¶ 253} Ljung testified that Fabian and Stinson had diagnosed Brinkman with depression, anxiety, PTSD, borderline-personality disorder, and substance-

abuse disorder. And after reviewing the relevant records, Ljung’s opinion was that “the diagnosis of mild neurocognitive disorder would also be” appropriate. She explained that in contrast to an intellectual disability, which is generally something a person is born with, a “mild or a major, or . . . any kind of cognitive impairment . . . that has appeared or has happened . . . after you have grown up and you are an adult, it doesn’t affect your intelligence. It doesn’t affect your intellectual abilities, but it can affect different domains of cognition, different function[s].”

{¶ 254} She also confirmed that “diabetes affects the brain negatively. It affects cognition, it affects mood, behavior.” Pointing to “peer-reviewed literature,” Ljung testified that there are “studies showing that within the first year of diabetes or after being diagnosed with diabetes, you can show significant cognitive impairment. And . . . the most important factor is how well your diabetes is controlled.” According to Ljung, Brinkman’s medical records demonstrate that he did not control his blood-glucose levels well before his offenses.

{¶ 255} Ljung concluded to a reasonable degree of scientific certainty that Brinkman’s “cognitive dysfunction is caused by his diabetes.” Reimers and Ljung also concluded in their report to a reasonable degree of scientific certainty that “at the time of the offenses, Mr. Brinkman’s capacity for decision-making, impulse control, problem-solving, strategic planning and abstract comprehension and reasoning was substantially reduced.” Summarizing her conclusions about the cumulative impact of Brinkman’s medications, medical diagnoses, and psychiatric diagnoses, Ljung testified:

Mr. Brinkman was at the risk of having side effects from his medication that were psychiatric and leading to aggression, but he was also more vulnerable because of his diabetes and his mild cognitive disorder, which was most probably caused by his diabetes. And I would also—and that would reduce his ability to stop his

impulses and it would make him more, say worsen his ability to manage aggression. And also psychiatric conditions would make him more susceptible to the drug—to side effects from drugs, psychiatric side effects.

Ljung also stated unequivocally that Brinkman’s diagnoses of acute pain, chronic pain, depression, anxiety, and borderline personality disorder “lowered his threshold and made him more vulnerable or susceptible” to aggressive and violent behavior.

c. Other Mitigating Factors

{¶ 256} Dr. Stinson was Brinkman’s final mitigation witness, and he opined that Brinkman’s case presented 15 mitigating factors: (1) family mental-health and substance-abuse histories, (2) parental instability, (3) physical abuse, (4) emotional abuse, (5) witnessing domestic violence, (6) experiencing other childhood traumas, (7) military experience and injury, (8) family members’ deaths, (9) homelessness, (10) adult trauma, (11) history of head injuries, (12) mental-health problems, (13) medical problems, (14) substance abuse, and (15) taking responsibility and showing good institutional behavior.

{¶ 257} According to Stinson, Brinkman’s family history of drug and alcohol abuse relates to the additional mitigating factor of parental instability. Stinson pointed to public research from the American Psychological Association and the United States Department of Justice, which he testified has shown that “external structures need to be put in place in order for children to develop internal structures and their own capacity for self-guidance.” When a family has a history of “drug and alcohol problems, or instability in parenting, then that guidance is not provided and self-control doesn’t develop and aggression can unfold.” Thus, “self-control is not something that just magically happens,” but rather, “parental guidance and structure and appropriate discipline are needed” for children to “develop those

internal controls as they age and mature.” In Brinkman’s case, his parents’ instability and substance-abuse problems affected him beginning in his childhood. Brinkman told Stinson that as a teenager, he began “acting out” frequently and that he “realized [he] could stand up to [his] dad—and did several times.” Stinson also reported that Brinkman “acknowledged that some of his conduct problems continued into his adult years.” Brinkman said to Stinson that “he has tended to be impulsive, doing what he wants to do and not thinking it through until after he has done it.” Brinkman told Stinson that “he has been reckless” and “chronically irritable and even more so since he learned about his diabetes in July 2015.”

{¶ 258} Stinson testified that when children are exposed to parental violence, even when they themselves are not the target of that violence, “they have reactions very similar to children who are exposed to other forms of maltreatment.” To assess the effect that Brinkman’s background had on his adult life, Stinson “used the Adverse Childhood Experience (“ACE”) Questionnaire.” According to Stinson, Brinkman “endorsed having experienced the following: emotional abuse, physical abuse, emotional neglect, physical neglect, and significant household dysfunction, including parental divorce, witnessing his mother being treated violently, substance abuse problems in the family, legal problems in the family, and mental health problems in the family.” Stinson testified that “it would be extremely atypical for you to find somebody who’s experienced nine out of the ten of these adverse childhood experiences and show me they’re living a healthy and productive life. That would be statistically atypical.”

{¶ 259} According to Stinson, people who have experienced a high number of ACEs are “more likely to become alcoholics, . . . more likely to perpetrate domestic violence, more likely to have impaired performance on the job, more likely to have chronic depression, more likely to be prescribed antidepressants, [and] more likely to attempt suicide.” He continued: “[W]hat the research shows is actually about 40 adverse outcomes that have been linked to adverse childhood

experiences with four or five being the [point] where you really see an uptick in the likelihood of these negative outcomes.” Applying this principle to Brinkman’s case, Stinson observed that “there was developmental abandonment and instability,” and thus, “at the very least we see that foundation, that strong foundation we want is fractured.” Stinson testified that Brinkman’s family history of psychological problems and drug and alcohol dependence further disrupted the foundation such that “it’s as if from day one he’s kind of on a downhill skid towards negative outcomes because of not having the healthy early development, the healthy family.” Stinson concluded his direct examination by stating that “[w]hat I can do from a psychological standpoint is say these are all the things that he experienced leading up to this that the research tells us probably contributed in some way.” In his report, Stinson concluded, to a reasonable degree of psychological certainty, that at the time of the offenses, Brinkman “was experiencing the psychological impact that follows from the accumulation of [traumatic] events and untreated conditions. While these do not excuse his behaviors and, indeed, [Brinkman] takes full responsibility and has acted accordingly since the offenses charged, they are, nonetheless, offered for mitigation purposes.”

C. Sentence Evaluation

{¶ 260} Having outlined the mitigating evidence presented in the proceedings below, we must now “independently weigh all of the facts and other evidence disclosed in the record . . . to determine whether the aggravating circumstances . . . outweigh the mitigating factors in the case, and whether the sentence of death is appropriate,” R.C. 2929.05(A). After considering the aggravating circumstances and relevant mitigating factors, we conclude that the aggravating circumstances outweigh the mitigating factors in this case.

{¶ 261} Nothing in the nature and circumstances of the offenses is mitigating. The day before the murders, Brinkman purchased ammunition and a

knife. The next day, Brinkman went to Suzanne's home, they got into an argument, and he forced her into the bedroom, along with Taylor and Kylie after they arrived home. Brinkman then slit Suzanne's throat, suffocated Taylor, and strangled Kylie. Brinkman was arrested three days later following a police standoff, which put at risk the safety of his friend Amy Szijarto. These are horrendous crimes that lack any mitigating features.

{¶ 262} The statutory mitigating factors under R.C. 2929.04(B) include (B)(1) (victim inducement), (B)(2) (duress, coercion, or strong provocation), (B)(3) (mental disease or defect), (B)(4) (youth of the offender), (B)(5) (lack of a significant criminal record), (B)(6) (accomplice only), and (B)(7) (any other relevant factors). However, our review of the evidence shows that none of these mitigating factors are applicable except the lack of a significant criminal record under R.C. 2929.04(B)(5) and the catchall provision under R.C. 2929.04(B)(7).

{¶ 263} Brinkman had a criminal record before he committed the offenses in this case. However, the prior offenses were nonviolent in nature and sporadic throughout his life. We find that this does not constitute a significant history of prior criminal convictions and is entitled to some weight under R.C. 2929.04(B)(5).

{¶ 264} We also find that the mitigating evidence that Brinkman presented has some weight under the R.C. 2929.04(B)(7) catchall provision. First, Brinkman experienced a dysfunctional upbringing, parental instability, domestic violence, and an alcoholic and abusive father who often threatened his family with a gun. Brinkman's brother committed suicide as an adult, and Brinkman attempted to kill himself on multiple occasions. We hold that this evidence is entitled to some weight in mitigation. *See Graham*, 2020-Ohio-6700, at ¶ 208 (finding that the defendant's history and background, which included a dysfunctional family and unstable home environment where he witnessed combative and violent behavior, was "entitled to some weight").

{¶ 265} Second, Brinkman has a documented history of mental-health problems. Brinkman suffers from depression, anxiety, PTSD, a substance-abuse disorder, and a borderline-personality disorder. Brinkman’s deficient coping mechanisms and failure or inability to obtain medical or mental-health treatment meant that he never received appropriate care regarding these issues or his diabetes diagnosis. Brinkman reported that he was homeless and living out of his van around the time before the murders. He also experienced social rejection and self-rejection. Brinkman’s mental-health problems are also entitled to some weight under R.C. 2929.04(B)(7). *See id.* at ¶ 209 (the defendant’s history of mental-health issues given “some weight” in mitigation); *Clinton*, 2017-Ohio-9423, at ¶ 296 (same).

{¶ 266} Third, Drs. Reimers and Ljung jointly concluded that the combination of Brinkman’s medical conditions (such as uncontrolled diabetes, hypoglycemia, chronic and acute pain, and decreased kidney function) and mental-health conditions combined with his prescription medications “almost certainly had affected his behavior and reduced his cognitive functions at the time of his offenses to such a degree that his ability to plan and understand the consequences of his actions and to control his emotions as well as his capacity for impulse control were gravely impaired.”

{¶ 267} Reimers and Ljung further opined that at the time of the offenses, Brinkman’s impaired cognitive functioning and reduced impulse control increased his susceptibility for psychiatric and behavioral ADRs, including a significant risk of aggressive behavior, and that these factors “played a causal role in the offenses.” This evidence is entitled to some weight. *See Drain*, 2022-Ohio-3697, at ¶ 172, (when mental-health history “does not support the lack-of-substantial-capacity mitigating factor” under R.C. 2929.04(B)(3), it may be considered under the R.C. 2929.04(B)(7) catchall provision), citing *State v. Seiber*, 56 Ohio St.3d 4, 9 (1990), and *State v. Reynolds*, 1998-Ohio-171, ¶ 90; *id.* at ¶ 173 (affording some weight to

the defendant's "history of being diagnosed with severe mental illness and receiving mental-health services").

{¶ 268} Fourth, Brinkman's employment history and military service should be given a modicum of weight under R.C. 2929.04(B)(7). *See State v. Neyland*, 2014-Ohio-1914, ¶ 302 (giving "weight" to the defendant's employment history and military service "as a (B)(7) factor").

{¶ 269} Fifth, Brinkman's guilty plea is entitled to substantial weight under R.C. 2929.04(B)(7). *See State v. Ashworth*, 1999-Ohio-204, ¶ 64 ("guilty pleas are traditionally accorded substantial weight in imposing a sentence"). Here, Brinkman pleaded guilty and accepted his responsibility for the murders of all three women. Thus, we hold that his guilty plea is entitled to substantial weight.

{¶ 270} Sixth, Brinkman expressed remorse in his unsworn statement. We hold this factor is entitled to some weight under R.C. 2929.04(B)(7).

{¶ 271} As detailed above, Brinkman has presented mitigating evidence that is entitled to substantial weight when considered cumulatively. However, the aggravating circumstances of this case outweigh the mitigating factors beyond a reasonable doubt. Brinkman murdered Suzanne and her two daughters in their home, to which he had gained entry under the pretext of his longtime friendship with Suzanne. After brutally murdering the three women, he fled the scene, and he was taken into custody only after a dramatic eight-hour standoff that placed his friend, as well as law-enforcement officers, in danger. Under these circumstances, we conclude that the aggravating circumstances undeniably outweigh the mitigating factors beyond a reasonable doubt.

D. Proportionality

{¶ 272} As discussed above, we must also decide whether Brinkman's death sentences are "excessive or disproportionate to the penalty imposed in similar cases," R.C. 2929.05(A).

{¶ 273} After consideration, we hold that the death sentences imposed in this case are appropriate and proportionate to death sentences upheld in similar cases. We have upheld death sentences imposed for course-of-conduct murders under R.C. 2929.04(A)(5). *E.g.*, *State v. Grate*, 2020-Ohio-5584, ¶ 249; *Froman*, 2020-Ohio-4523, at ¶ 186. We have also upheld death sentences as punishment for aggravated murders committed during a kidnapping or an aggravated burglary under R.C. 2929.04(A)(7). *E.g.*, *State v. Trimble*, 2009-Ohio-2961, ¶ 329, 331 (kidnapping); *State v. Jackson*, 2016-Ohio-5488, ¶ 169 (aggravated burglary). We therefore conclude that the death sentences imposed in this case are proportionate to death sentences imposed in similar cases.

CONCLUSION

{¶ 274} We find no reversible error in the proceedings below. We therefore affirm Brinkman’s convictions and death sentences.

Judgment affirmed.

BRUNNER, J., concurring in part and dissenting in part.

{¶ 275} I agree with the analysis set forth in the majority opinion, except with respect to its analysis of appellant George Brinkman Jr.’s third and tenth propositions of law. For the reasons stated below, I would affirm Brinkman’s convictions but reverse his death sentences. I therefore concur in the majority opinion in part and dissent in part.

Proposition of Law No. 3

{¶ 276} In his third proposition of law, Brinkman argues that the three-judge panel committed structural error during the mitigation hearing when it refused to recognize Drs. Arne Reimers and Hanna Ljung as experts in the fields of pharmacology and neuropsychology, respectively. He further asserts that the panel arbitrarily assigned no weight to their testimony and conclusions.

{¶ 277} The panel declined to grant Reimers and Ljung expert status

because it found that the doctors' testimony failed to satisfy Evid.R. 702(C). For instance, the panel discredited the doctors' testimony because they hailed from Sweden, a country that has abolished the death penalty. The presiding judge interrupted defense counsel's mitigation-hearing opening statement several times to point out that Reimers and Ljung were not "from the United States," that "[t]hey've never been found to be an expert on this trial level before anywhere in the United States," and that "Sweden [hasn't] [had] the death penalty . . . since 1908." Furthermore, in its sentencing opinion, the panel wrote that it "allowed [their] testimony but did not recognize the team as experts and found their report lacking in scientific integrity. Notably, the Reimers/Ljung [team] had not personally met or interviewed Brinkman." Cuyahoga C.P. No. CR-17-618342-A, 6 (June 16, 2023).

{¶ 278} Under Evid.R. 702(C), the focus of the panel's attention should have been on the reliability of the proposed expert opinions of Reimers and Ljung. Specifically, rather than focusing on "the substance of the experts' conclusions," the panel was required to be concerned with "how the experts arrived at their conclusions." *Valentine v. Conrad*, 2006-Ohio-3561, ¶ 16.

{¶ 279} I would hold that the panel abused its discretion when it declined to qualify Reimers and Ljung as experts in the fields of pharmacology and neuropsychology, respectively. A trial court "'may conclude that there is simply too great an analytical gap between the data and the opinion proffered.'" *Id.* at ¶ 18, quoting *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). But in this case, the panel was myopically focused on Reimers' and Ljung's qualifications and the fact that Sweden does not have the death penalty; it therefore never considered or examined "the principles and methodology that underlie[d]" their scientific conclusions, *id.* at ¶ 17. Rather, the panel based its conclusion that Reimers and Ljung were not qualified as experts on irrelevant information taken from each panel member's own experiences.

{¶ 280} The majority opinion improperly minimizes the panel’s reliance on irrelevant information by describing the panel’s reliability analysis as “inartful and incomplete” and as having merely “touched on matters inapplicable to a reliability analysis under Evid.R. 702.” Majority opinion, ¶ 58. It also concludes that the panel did not abuse its discretion in denying Reimers and Ljung expert status “because neither ever met with or spoke to Brinkman to complete their evaluations.” *Id.* at ¶ 57. The majority opinion cites no law for the idea that the principles and methodology that underly an expert’s opinion can be found unreliable simply because the expert never personally met with the person on whose behalf the expert is testifying. Such a rule would be contrary to Evid.R. 703, which provides that “[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing.” *See also Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592 (1993) (“an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation”). The majority opinion would disrupt the well-settled understanding that an expert may base his or her opinions on a review of records alone. *See, e.g., Theis v. Lane*, 2013-Ohio-729, ¶ 19 (6th Dist.) (“[An expert’s] review of medical records in a medical malpractice action . . . coupled with [the expert’s] vast experience, are appropriate principles and methodologies to be used by a physician expert in forming medical opinions.”).

{¶ 281} Nonetheless, under R.C. 2929.05(A), this court must conduct its own independent evaluation of the death sentences imposed in this case, and we have held that the evaluation can cure errors occurring during the mitigation hearing. *See State v. Kirkland*, 2014-Ohio-1966, ¶ 97; *see also State v. Hale*, 2008-Ohio-3426, ¶ 131-132 (improper questions of a mitigation-hearing witness were cured by the independent sentence evaluation). In my view, the evidence from Reimers and Ljung is significant and, when considered with the other mitigating

evidence Brinkman presented, prevents me from concluding that the aggravating circumstances of this case outweigh the mitigating factors beyond a reasonable doubt. I therefore agree with Brinkman’s arguments under his third proposition of law and would vacate his death sentences.

Proposition of Law No. 10

{¶ 282} In his tenth proposition of law, Brinkman points to the requirement in R.C. 2929.05(A) that we consider whether his death sentences are “disproportionate to the penalty imposed in similar cases.” Because I would vacate Brinkman’s death sentences based on his third proposition of law, I would not address his tenth proposition of law. Because the majority opinion does address the tenth proposition of law, however, I note the following in response to the majority opinion’s conclusions on this proposition of law.

{¶ 283} We have previously held that “[t]he proportionality review required by R.C. 2929.05(A) is satisfied by a review of those cases already decided by the reviewing court in which the death penalty has been imposed.” *State v. Steffen*, 31 Ohio St.3d 111 (1987), paragraph one of the syllabus. Brinkman argues that by this court’s limiting its proportionality review to cases in which the death penalty was imposed and by this court’s failing to expand its review to include cases that were capitally indicted but that resulted in the imposition of a life sentence, this court’s proportionality review fails to “serve as a check against arbitrary and capricious death sentences.” Brinkman therefore urges this court to overrule *Steffen*.

{¶ 284} As I have previously explained, “[t]he method by which this court currently conducts its required proportionality review under R.C. 2929.05(A) is inherently weighted in favor of affirming death sentences.” *State v. Nicholson*, 2024-Ohio-604, ¶ 488 (Brunner, J., concurring in part and dissenting in part). “[L]imiting our proportionality review by considering only cases in which a death sentence was imposed renders the review meaningless, especially because no such review by this court has resulted in the reversal of a death sentence.” *Id.* at ¶ 486

(Brunner, J., concurring in part and dissenting in part). “A more meaningful review would require consideration of cases in which the defendant was convicted of crimes similar to those involved in the case under review and cases in which the death penalty was *not* imposed but potentially could have been.” (Emphasis in original.) *Id.* at ¶ 487 (Brunner, J., concurring in part and dissenting in part). I would therefore overrule *Steffen* to ensure that such a review is conducted.

{¶ 285} That said, in my view, since the majority opinion has reached conclusions on Brinkman’s tenth proposition of law, which I would not, under the R.C. 2929.05(A) required proportionality review, the death sentences imposed on Brinkman are not disproportionate compared to the sentences imposed in “similar cases,” even factoring in cases in which a life sentence has been imposed. In response to the majority opinion’s conclusions on this, I note that I would reject Brinkman’s argument on his tenth proposition of law if I agreed it was appropriate to address it.

Conclusion

{¶ 286} For these reasons, I concur with the conclusions set forth in the majority opinion, except with respect to Brinkman’s third and tenth propositions of law, the latter being because I would find it moot. I therefore concur in part and dissent in part.

Michael C. O’Malley, Cuyahoga County Prosecuting Attorney, and Saleh Awadallah, Sarah E. Hutnik, and Kristen Hatcher, Assistant Prosecuting Attorneys, for appellee.

Joseph V. Pagano; and the Law Office of Timothy F. Sweeney and Timothy F. Sweeney, for appellant.
