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***IN THE SUPREME COURT OF THE
UNITED STATES***

MICHAEL MADISON, Petitioner,

v.

STATE OF OHIO, Respondent.

On Petition for a Writ of Certiorari to
the Supreme Court of Ohio

**APPENDIX TO PETITION
FOR WRIT OF CERTIORARI**

(CAPITAL CASE: EXECUTION DATE
MAY 15, 2024)

Timothy F. Sweeney (OH 0040027)*
Member of the Bar of This Court
LAW OFFICE OF TIMOTHY F. SWEENEY
The 820 Building, Suite 430
820 West Superior Ave.
Cleveland, Ohio 44113-1800
Phone: (216) 241-5003
Email: tim@timsweeneylaw.com
*COUNSEL OF RECORD

Counsel for Petitioner Michael Madison

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

[Cite as *State v. Madison*, 160 Ohio St.3d 232, 2020-Ohio-3735.]

Criminal Law—Aggravated murder—Capital convictions and death sentences affirmed.

(No. 2016-1006—Submitted September 11, 2019—Decided July 21, 2020.)

APPEAL from the Court of Common Pleas of Cuyahoga County, No. 579539.

DEWINE, J.

{¶ 1} This is a direct appeal in a capital case. Over a nine-month period, Michael Madison murdered three women in his East Cleveland apartment. A jury found Madison guilty of three counts of aggravated murder, and he was sentenced to death on each count. We affirm the convictions and the death sentences.

I. BACKGROUND

A. Three Bodies Are Discovered in East Cleveland

{¶ 2} Madison lived in a second-floor apartment on Hayden Avenue in East Cleveland. A cable-television company occupied the ground floor. In July 2013, workers at the cable company noticed a foul odor coming from a garage behind the building and called the police. In the garage, which was used by Madison and several others, the police discovered a large garbage bag jammed between Madison’s car and the wall. The officers cut open the bag and found inside the decomposing body of Shirellda Terry. The body had been wrapped in a paisley bedsheet and then enveloped in multiple layers of garbage bags.

{¶ 3} Searching further, officers discovered another garbage bag under a brush pile located behind the garage. In that bag was the decomposing body of Shetisha Sheeley. Another garbage bag was discovered in the basement of an abandoned house, just 15 to 20 yards from the brush pile. This one held the body

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of Angela Deskins. Like Terry's body, the bodies of Sheeley and Deskins had been placed inside multiple garbage bags. In addition, a sheet and a sports-themed blanket were wrapped around the body of Deskins.

{¶ 4} Autopsies revealed that Terry and Deskins had been strangled to death with a belt. Terry had a severe laceration penetrating her vagina and her anus that was inflicted while she was still alive. Sheeley had a deep bruise on her face, also inflicted while she was alive, but her body was too badly decomposed for the medical examiner to determine a precise cause of death. Each victim's body had been bent at the waist, and the head had been bound to the legs.

B. The Victims and Their Disappearances

{¶ 5} All three women had gone missing within the past year. Twenty-eight-year-old Sheeley had last communicated with her family in September 2012. At trial, Brittney Darby, one of Madison's girlfriends, testified that around that time, she had noticed a fresh scab on Madison's nose. When she asked him about it, he told her he had broken up a fight between two girls.

{¶ 6} The father of 38-year-old Angela Deskins lost contact with her around May 2013. At trial, a friend of Deskins testified that around this same time, he had dropped Deskins off at an abandoned barbeque spot in East Cleveland where Madison was waiting for her.

{¶ 7} In the same time period, Darby noticed a strong smell in Madison's apartment. Madison claimed that the smell came from two raccoons who had died in the front closet. But when Darby pressed him on the point, Madison began sweating profusely and seemed nervous. "You don't want to see that," he told her. Later that week, Darby could still smell the odor near the closet. She asked Madison if that was where the raccoons had been, and he said that it was in an irritated tone.

{¶ 8} Eighteen-year-old Shirellda Terry was last seen alive on July 10, 2013. She had met Madison a week earlier and exchanged phone numbers with

him. Over the following days, they texted back and forth. Madison told Terry that he was 25 years old and had no kids. (He was actually 35 and had two kids.) Madison also lied about what he did for a living.

{¶ 9} The two discussed when and where they might “hang[] out.” Madison suggested that Terry “come to [his] place.” Terry replied: “We can hang[] out but I’m not going to your house[;] I don’t trust you like that yet.” On the afternoon of July 10, she texted to Madison: “Do you wanna hang[] out now[?]” Madison asked if she was headed to his street and she replied that she was “on 152[nd] and [St.] Clair right now.” That was Terry’s last message.

{¶ 10} A few days later, Darby noticed a long, deep scratch on Madison’s shoulder. He claimed that he had been in a fight and his adversary’s girlfriend had scratched him. Subsequently, another girlfriend of Madison’s, Shawnta Mahone, noticed a foul smell in his apartment. Madison claimed he did not know what the odor was but said it might be a dead animal. Around the same time, Mahone saw several deep scratches on Madison’s face. According to Mahone, Madison told her that “he got into a fight and a girl jumped in and scratched his face.”

C. Madison’s Confession and DNA Evidence

{¶ 11} Detectives interrogated Madison over the course of several days, and on July 21, 2013, he signed a four-page confession. He admitted that he had choked a woman to death in October 2012 and then left her in his apartment while he went out drinking. When he returned, he “folded her up,” put her into multiple layers of trash bags, and moved her to the garage. He left the body there for months, then moved it outside behind the garage. He did not know this victim’s name.

{¶ 12} Madison claimed he did not recall actually killing the other victims. He admitted that he had invited Terry to his apartment. He was “really drunk and high” that night, he said, and did not remember killing her. But he did recall waking up next to her dead body and later putting the body in the garage. As to the third

victim, Deskins, Madison said he did not recall anything about her death or what he did with the body.

{¶ 13} A search of Madison’s apartment turned up a few personal items that yielded a DNA profile consistent with Terry’s profile. A piece of bloodstained carpet found in the closet where Darby had noticed an odor in May had a DNA profile consistent with Deskins’s. And a pillowcase in the apartment had a paisley pattern matching the sheet Terry had been wrapped in.

D. Indictment, Verdicts, and Sentences

{¶ 14} The grand jury returned a 14-count indictment against Madison. The indictment included two counts of aggravated murder for each victim—one premised on R.C. 2903.01(A), for murder committed with prior calculation and design, the other on R.C. 2903.01(B), for felony murder.

{¶ 15} For the state to impose the death penalty, an indictment must include—and the state must prove—one of the specifications set forth in R.C. 2929.04(A). Here, each aggravated-murder count included a specification alleging that the murder was part of a course of conduct involving the purposeful killing or attempt to kill two or more victims, *see* R.C. 2929.04(A)(5), and a felony-murder specification predicated on kidnapping, *see* R.C. 2929.04(A)(7). Additionally, the aggravated-murder counts involving Terry each included a felony-murder specification predicated on rape.

{¶ 16} The table below shows all the indicted offenses, the death specifications, and the other specifications:

Counts	Offenses	Death Specifications	Other Specifications
Count 1	Aggravated murder of Shetisha Sheeley under R.C. 2903.01(A) (prior calculation and design)	Each included a course-of-conduct specification, R.C. 2929.04(A)(5), and a felony-murder specification,	Counts 1 through 10 each carried a sexual-motivation

Count 2	Aggravated murder of Sheeley under R.C. 2903.01(B) (felony murder predicated on kidnapping)	R.C. 2929.04(A)(7), predicated on kidnapping.	specification, R.C. 2941.147(A);
Count 3	Kidnapping of Sheeley under R.C. 2905.01(A)(3)		a sexually-violent-predator specification, R.C. 2941.148(A);
Count 4	Aggravated murder of Angela Deskins under R.C. 2903.01(A) (prior calculation and design)	Each included a course-of-conduct specification, R.C. 2929.04(A)(5), and a felony-murder specification,	a repeat-violent-offender specification, R.C. 2941.149(A);
Count 5	Aggravated murder of Deskins under R.C. 2903.01(B) (felony murder predicated on kidnapping)	R.C. 2929.04(A)(7), predicated on kidnapping.	and a notice of prior conviction, R.C. 2929.13(F)(6).
Count 6	Kidnapping of Deskins under R.C. 2905.01(A)(3)		Counts 1 through 8 and 10 each carried a firearm specification, R.C. 2941.141(A).
Count 7	Aggravated murder of Shirellda Terry under R.C. 2903.01(A) (prior calculation and design)	Each included a course-of-conduct specification, R.C. 2929.04(A)(5), and two felony-murder specifications, R.C. 2929.04(A)(7), predicated on kidnapping and rape.	
Count 8	Aggravated murder of Terry under R.C. 2903.01(B) (felony murder predicated on kidnapping)		
Count 9	Kidnapping of Terry under R.C. 2905.01(A)(3)		
Count 10	Rape of Terry under R.C. 2907.02(A)(2)		

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Count 11	Having a weapon under a disability under R.C. 2923.13(A)(2)		Counts 11 through 14 each carried a firearm-forfeiture specification, R.C. 2941.1417(A).
Count 12	Gross abuse of a corpse under R.C. 2927.01(B) (Sheeley)		
Count 13	Gross abuse of a corpse under R.C. 2927.01(B) (Deskens)		
Count 14	Gross abuse of a corpse under R.C. 2927.01(B) (Terry)		Counts 12 through 14 each carried a firearm specification, R.C. 2941.141(A).

{¶ 17} A jury found Madison guilty on Counts 1 through 10 and 12 through 14, as well as all the death specifications and sexual-motivation specifications. The jury found him not guilty of the firearm specifications. Count 11, the weapon-under-a-disability charge, and the remaining specifications were tried to the judge, who found Madison guilty of Count 11 and the sexually-violent-predator specifications.

{¶ 18} At the close of the penalty phase, the jury recommended death for each aggravated-murder count. The trial court merged the aggravated-murder counts for each victim, and the state elected to proceed on the counts alleging prior calculation and design: Counts 1, 4, and 7. The trial court sentenced Madison to death for each murder and imposed prison sentences on the noncapital counts.

{¶ 19} Madison now appeals, raising 20 propositions of law.

II. JURY ISSUES

{¶ 20} Madison’s first four propositions of law attack the adequacy of the voir dire (proposition of law No. 1) and the trial court’s resolution of challenges for cause (propositions of law Nos. 2 and 3) and contend that the practice of death-qualifying capital juries violates the First Amendment to the United States Constitution (proposition of law No. 4). None of these claims has merit.

A. Adequacy of Voir Dire

{¶ 21} In his first proposition of law, Madison asserts that the trial court improperly restricted his counsel’s ability to conduct voir dire. Madison lists many jurors and prospective jurors whose voir dire he claims was inadequate. But only some of these persons actually served on the jury. Because Madison can be prejudiced only as a result of restrictions on the voir dire of those who actually served on his jury, we will limit our analysis to those jurors only. *See State v. Cunningham*, 105 Ohio St.3d 197, 2004-Ohio-7007, 824 N.E.2d 504, ¶ 25.

1. Questioning to Identify Automatic-Death-Penalty Jurors

{¶ 22} Madison maintains that the trial court prevented his counsel from asking questions sufficient to identify jurors who would automatically vote for a death sentence without considering mitigating factors. In particular, he argues that his counsel should have been allowed to incorporate into their questions the “inflammatory” facts of the case—three women kidnapped and murdered, one of them raped, and their bodies disposed of “like trash.” This claim applies to seated juror Nos. 5, 23, 40, and 43.

{¶ 23} The trial judge has discretion over the scope, length, and manner of voir dire. *See State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, 767 N.E.2d 166, ¶ 40; *State v. Getsy*, 84 Ohio St.3d 180, 190, 702 N.E.2d 866 (1998). However, because “[a] juror who will automatically vote for the death penalty in every case * * * has already formed an opinion on the merits” and is therefore not impartial, “a capital defendant may challenge for cause any prospective juror who maintains

such views.” *Morgan v. Illinois*, 504 U.S. 719, 729, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992). And the defendant is entitled to a voir dire adequate to identify such jurors. *Id.* at 729-736.

{¶ 24} But *Morgan* does not give the defense a right to ask prospective jurors how they will vote “given the specific facts of the individual case.” *Hodges v. Colson*, 727 F.3d 517, 529 (6th Cir.2013); *see also Richmond v. Polk*, 375 F.3d 309, 330 (4th Cir.2004). The purpose of voir dire is not to establish how a juror will vote on the case to be tried; it is to discover whether any juror has a bias that would prevent him or her from individually weighing the facts of the case.

{¶ 25} We have held that in a capital case involving the death of a young child, the defendant is entitled upon request to have the prospective jurors informed of the fact that the victim was a child and to ask questions that seek to reveal bias. *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, 836 N.E.2d 1173, ¶ 61. *Jackson*’s rationale centers on the fact that the murder of a young child is especially likely to evoke strong emotions. *Id.* at ¶ 60. By its terms, the holding in *Jackson* narrowly applies only in death-penalty cases involving the murder of a young child and only when the defense seeks to inform the prospective jurors of that fact. And, even then, it does not require that prospective jurors be informed of the specific details of the murder; they are to be informed only that the victim was a young child.

{¶ 26} We reject Madison’s attempt to extend *Jackson* beyond the facts of that case. We also note that in this case, the trial judge, exercising her discretion, did allow a fair amount of information about inflammatory facts to be revealed during voir dire. The allegations of triple homicide, kidnapping, “sexual[] mutilat[ion],” and corpse abuse were all set forth in the jury questionnaire. In addition, during the examinations of juror Nos. 5, 40, and 43, the court allowed defense counsel to ask questions incorporating inflammatory facts.

{¶ 27} This portion of Madison’s first proposition of law lacks merit.

2. *Use of “Follow the Law” Questions*

{¶ 28} Madison also complains that the trial court allowed the prosecution to ask the prospective jurors whether they would “follow the law” despite their personal views and used the responses to retain jurors who should have been excluded under *Morgan*, 504 U.S. 729, 112 S.Ct. 2222, 119 L.Ed.2d 492. Madison contends that permitting these “superficial” questions “denied [him] a reasonable opportunity to discover[] necessary information about at least some of these juror’s views about capital punishment.” But Madison does not explain how the prosecutor’s questions could have impaired his own counsel’s ability to inquire into the views of the jurors. We reject this portion of Madison’s first proposition.

3. *Questions about Jurors’ Understanding of Rights and Responsibilities*

{¶ 29} Madison additionally contends that the trial court unreasonably restricted his counsel’s attempts to ask jurors about their understanding of their “rights and responsibilities” as jurors in a capital case. He asserts—without citing authority—that such questioning is “[e]ssential to an adequate voir dire.”

{¶ 30} The purpose of voir dire is to determine whether a prospective juror has the statutory qualifications to be a juror and is free from bias or prejudice, and to facilitate an “intelligent exercise” of peremptory challenges. *State v. Anderson*, 30 Ohio St.2d 66, 72, 282 N.E.2d 568 (1972). It is not to indoctrinate jurors or instruct them in the law. See *State v. Patterson*, 188 Ohio App.3d 292, 2010-Ohio-2012, 935 N.E.2d 439, ¶ 85-86 (2d Dist.); *State v. Carmon*, 10th Dist. Franklin No. 75AP-583, 1976 WL 189810, *2 (June 1, 1976). Furthermore, contrary to Madison’s claims, the trial court did not uniformly prevent defense counsel from asking about these matters.

a. *“Personal Moral Judgment”*

{¶ 31} Madison complains that the trial court precluded his counsel from asking jurors if they understood that they were required to exercise their own

“personal moral judgment” in weighing aggravating circumstances and mitigating factors. This claim applies to seated juror Nos. 5, 9, 30, and 32.

{¶ 32} Certainly, jurors exercise moral judgment in capital sentencing. But Madison cites no authority supporting his claim that he was entitled to ask this specific question. In any event, the trial court allowed his counsel to ask questions on the topic multiple times. Only when questions became repetitive did the trial court sustain objections or tell counsel to “move on.” The record does not indicate an abuse of discretion.

b. “Spark of Humanity”

{¶ 33} Madison next asserts that the trial court improperly prevented his counsel from asking jurors if they understood they could consider anything to be mitigating, including seeing a “spark of humanity” in the defendant. Again, he cites no authority for the proposition that a capital defendant is entitled to ask such a question on voir dire.

{¶ 34} This claim applies to four seated jurors (Nos. 7, 30, 35, and 43). In the case of juror No. 30, the “spark of humanity” question was asked without objection. This question or similar questions to juror Nos. 7, 35, and 43 were not permitted, but the defense did ask these jurors about having moral feelings in one’s heart that one cannot articulate and about being able to exercise their “personal moral judgment” without any obligation to explain themselves. These questions cover concepts similar to the “spark of humanity” question, and the trial court did not abuse its discretion by disallowing the question as to some jurors.

c. Duty to Respect Moral Judgment of Other Jurors

{¶ 35} Madison next objects that the court did not allow his counsel to inquire about each juror’s “duty to respect the personal moral judgment of their fellow jurors.” This claim applies to six seated jurors (Nos. 23, 24, 30, 32, 40, and 43). However, it is factually supported only as to juror Nos. 40 and 43. Madison’s counsel was allowed to ask this question of the other four, being restricted only

when the questions became repetitive. And counsel was permitted to ask juror No. 43 about his obligation to “listen very carefully” and to “consider everything” the other jurors might say.

{¶ 36} In any event, we see no error. Madison cites no authority for this alleged duty, nor does he explain why this question is essential to an adequate voir dire.

d. Single-Juror Veto of Death Sentence

{¶ 37} Madison further complains that his counsel was restricted from asking jurors if they understood that every juror could preclude a death sentence. This claim applies to three seated jurors (Nos. 24, 32, and 40). But defense counsel was permitted to tell one of these jurors that “if one juror * * * votes for life, it’s a life sentence” and another that “each individual juror has the power of life.” The trial court sustained objections only when counsel asked the jurors if they knew that all jurors could do this and when counsel described it as an “awesome” power or responsibility. Further, counsel was allowed to describe the matter as an important responsibility and to ask the jurors to deliberate carefully. No abuse of discretion is apparent here.

e. Death Sentence Will Be Carried Out

{¶ 38} Madison also contends that the trial court improperly barred his counsel from inquiring into the jurors’ understanding that if a death sentence is imposed in Ohio, it will actually be carried out. This claim applies to one seated juror (No. 43). Madison cites no authority establishing a right to ask this question on voir dire, and we find no abuse of discretion.

4. Failure to Define Aggravation and Mitigation

{¶ 39} In his final challenge to the adequacy of voir dire, Madison takes issue with the trial court’s failure to define the terms “aggravating circumstances” and “mitigating factors.” But “[a]t the early stage of a trial, the trial court is not required to completely instruct the jury, for example, by defining mitigation.” *State*

v. Bryan, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶ 202. This applies to aggravating circumstances as well.

{¶ 40} Madison’s first proposition of law is overruled.

B. Defense Challenges for Cause

{¶ 41} In his second proposition of law, Madison contends that the trial court erroneously overruled his challenges for cause to nine jurors and prospective jurors. Juror Nos. 5, 40, and 43 were seated as jurors in this case; the remaining six, prospective juror Nos. 11, 12, 29, 31, 34, and 37, were peremptorily challenged by the defense. Madison maintains that each should have been excused as automatic-death-penalty jurors under *Morgan*, 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 492. He also says that juror Nos. 40 and 43 should have been excused for other reasons.

{¶ 42} On a challenge for cause, “[t]he ultimate question is whether the ‘juror sw[ore] that he could set aside any opinion he might hold and decide the case on the evidence, and [whether] the juror’s protestation of impartiality [should be] believed.’ ” (Brackets sic.) *White v. Mitchell*, 431 F.3d 517, 538 (6th Cir.2005), quoting *Patton v. Yount*, 467 U.S. 1025, 1036, 104 S.Ct. 2885, 81 L.Ed.2d 847 (1984). This determination “necessarily involves a judgment on credibility,” *State v. DePew*, 38 Ohio St.3d 275, 280, 528 N.E.2d 542 (1988), so “deference must be paid to the trial judge who sees and hears the juror,” *Wainwright v. Witt*, 469 U.S. 412, 426, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985). Hence, a trial court’s resolution of a challenge for cause will be upheld unless it is unsupported by substantial testimony, so as to constitute an abuse of discretion. *State v. Tyler*, 50 Ohio St.3d 24, 31, 553 N.E.2d 576 (1990).

1. Alleged Automatic-Death-Penalty Jurors

a. Juror No. 5

{¶ 43} At the outset of her voir dire, juror No. 5 stated that she would consider the aggravating circumstances and mitigating factors in determining the

sentence. When asked if she could put her personal opinion aside and follow the law even if she thought “someone is deserving of the death penalty but the law prohibits” it, she said, “Yes.” After the prosecutor explained what “mitigation” meant, she said she would consider mitigation.

{¶ 44} Juror No. 5 later gave a few contrary responses when Madison’s counsel asked her to assume that a defendant had been found guilty of aggravated murder with “no legal justification or excuse” in the course of a kidnapping or rape or multiple homicides, with 100 percent certainty of guilt.

{¶ 45} Trying to clarify the juror’s views, the trial court pointed out that she had earlier said she would “consider all the possible sentences” but had told defense counsel that she would vote to impose a death sentence in the scenario she was given. The court asked: “Are you telling me that you would not consider those other factors—those other possible sentences?” She answered, “*I would still mitigate—I would still go through the process* to come to a fair decision in my heart.” (Emphasis added.)

{¶ 46} In response to a later defense question, the juror said that if the defendant was proven guilty and no mitigating factors existed, she would vote to impose a death sentence. But if there were mitigating factors, she said, she “would consider them.” She reaffirmed this twice.

{¶ 47} The trial court asked: “[I]f the mitigating factors indicated to you that life with parole at 25 was appropriate, would you do that?” The juror replied: “*Yes, I would.* * * * [I]t goes back to being a fair person, to *take everything into consideration* and make a decision based on the law and what I feel is appropriate I guess.” (Emphasis added.)

{¶ 48} When a prospective juror gives contradictory answers, it is the trial judge’s function to determine her true state of mind. *E.g., State v. Group*, 98 Ohio St.3d 248, 2002-Ohio-7247, 781 N.E.2d 980, ¶ 66. But Madison maintains that a

juror who indicates a preference for an automatic death penalty is biased under *Morgan* even if the juror states that he or she will follow the law.

{¶ 49} It is true that a *Morgan* challenge may not be denied based merely on a juror’s answers to “*general* questions of fairness and impartiality.” (Emphasis added.) *Morgan*, 504 U.S. at 735, 112 S.Ct. 2222, 119 L.Ed.2d 492. But juror No. 5 “was not merely making a general promise to be fair or to uphold the law.” *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104, ¶ 171. Her statements were specific. She repeatedly pledged to consider mitigation and said the sentence she would vote to impose would depend on what the mitigating factors were. The trial court’s decision to retain her was “supported by substantial testimony,” *id.* at ¶ 173, and was not an abuse of discretion.

b. Prospective Juror No. 11

{¶ 50} Prospective juror No. 11 said that he was not “predisposed to the death penalty.” He understood that he was required to vote for a life sentence if the state failed to prove that aggravation outweighed mitigation, and he pledged to “put [his] own personal preference aside,” weigh the mitigating factors, and fully consider all sentencing options.

{¶ 51} Defense counsel specifically declined to challenge this prospective juror under *Morgan* and indeed conceded that he was not a *Morgan*-challengeable juror. When the defense challenged this prospective juror for cause, it did so only on the ground that the trial court had unduly restricted his voir dire. Now, Madison argues that prospective juror No. 11 should have been excluded under *Morgan*. But he forfeited this claim by declining to assert it at trial. *See State v. Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150, ¶ 116.

c. Prospective Juror No. 12

{¶ 52} Prospective juror No. 12 indicated on his questionnaire that the death penalty should be imposed in all murder cases. The trial court outlined the jury’s four sentencing options—life in prison with parole eligibility after 25 years, life in

prison with parole eligibility after 30 years, life in prison without parole, and the death penalty—and asked prospective juror No. 12 if he would consider all four before rendering his verdict. He replied: “I’d have to see all the information to give an honest answer.” The court then asked: “Would you in fact consider any mitigating factors that the defense may present * * * and after that weighing process, would you return a verdict after fairly and fully considering all those four options?” The prospective juror said he would.

{¶ 53} The trial court asked prospective juror No. 12 why he had indicated on his questionnaire that death should be imposed in all murder cases. He replied, “[T]hat was my feeling at the time.” When asked if he felt that he “could determine the sentence he would impose right now,” he answered, “No.” Instead, he would listen to everything, weigh it, and only then make his determination. And he reiterated that he would consider all four sentences. He understood that if the aggravating circumstances did not outweigh the mitigating factors, it would be his duty to vote for a life sentence, and he said he could do that.

{¶ 54} Prospective juror No. 12’s questionnaire response would have made him ineligible had he stuck to it. But he did not; he modified his position during voir dire. He explained that his response reflected what he thought “at the time,” indicating that his views had changed during the voir dire process as he better understood the requirements of the law. He said that he had not predetermined his verdict and repeatedly stressed the importance of knowing the facts before voting to impose a sentence. The trial court did not abuse its discretion in declining to excuse him for cause.

d. Prospective Juror No. 29

{¶ 55} Prospective juror No. 29 wrote on his questionnaire that “[i]n some cases,” capital punishment is “all right.” He also checked a box indicating that the death penalty “[s]hould be imposed in most, but not all, murder cases.”

{¶ 56} On voir dire, prospective juror No. 29 told the trial court that if he felt the mitigating factors outweighed the aggravating circumstances, he could consider the life-sentencing options that the judge had outlined to him. The court asked prospective juror No. 29 whether he would “consider everything that’s presented to [him], engage in that weighing process,” and base his verdict on whether or not the aggravating circumstances outweighed the mitigating factors beyond a reasonable doubt. He said, “Yes.”

{¶ 57} The prosecutor asked prospective juror No. 29 whether he understood that he must impose a life sentence if the state did not prove beyond a reasonable doubt that the aggravating circumstances outweighed the mitigating factors. He said that he did and that he was comfortable with that.

{¶ 58} The prosecutor then asked prospective juror No. 29 to explain what he meant by “some cases” on his questionnaire. He replied: “It all depends on if the person is guilty of the crime, if [it’s] proved * * * that he’s taken someone else’s life, then he should give his own life for that life that he’s taken.” The prosecutor explained that her question assumed the person had been found guilty and then asked: “But what if the state does not prove beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors? Can you apply the law that says that you have to impose” one of the life-sentence options? The prospective juror said: “I suppose you can do that, sure.” He also said he could apply the law, even though he might not agree with it. The prosecutor then asked again whether he could vote for a life sentence if the state failed to prove beyond a reasonable doubt that the aggravating circumstances outweighed the mitigating factors. He answered, “Yes.”

{¶ 59} During defense questioning, prospective juror No. 29 stated that in his “personal opinion,” a person who takes life “ruthlessly” and without justification or excuse gives up his right to live. The trial court then asked: “[I]f you feel that the mitigating factors outweigh any aggravating circumstances [sic],

could you consider the other possibilities [i.e., the life sentencing options]?” He said that he could and that he would listen to all the evidence.

{¶ 60} Defense counsel then asked: “You’ve already said that if somebody goes out and kills somebody, as far as you’re concerned in your personal moral judgment, it’s the death penalty?” The prospective juror said: “From what I understand, * * * they have to prove it beyond whatever reasonable doubt or what have you, * * *. If they don’t do it like you’ve already went through it earlier, *then I could impose one of the other three*. (Emphasis added.) Defense counsel said, “You’re right on the law” but then asked: “[I]n your mind, in your heart, a guy who goes out and does something like that, * * * it’s the death penalty, right?” The prospective juror replied: “[I]f they can prove it * * * I can say *yes or no* to that.” (Emphasis added.)

{¶ 61} The trial court overruled a defense challenge for cause. Madison argues that the court abused its discretion in retaining the prospective juror and complains that the defense had to later remove him with a peremptory challenge. Though at one point, prospective juror No. 29 stated his “personal opinion” that a person who takes a life ruthlessly and without justification gives up his right to live, he repeatedly said that he would follow the law and could consider imposing a life sentence. Taking his voir dire as a whole, the trial court did not abuse its discretion by retaining him.

e. Prospective Juror No. 31

{¶ 62} Prospective juror No. 31 wrote on her questionnaire that the death penalty is warranted “in some henious [sic] cases.” She also checked a box indicating that the death penalty is “[a]ppropriate in some murder cases [and] inappropriate in other murder cases,” adding that “although murder is horrendous, sometimes the circumstances would warrant a less severe sentence.”

{¶ 63} On voir dire, the prospective juror stated that she understood that the state had to prove that the aggravating circumstances outweighed the mitigating

factors for the death penalty to be imposed. She also acknowledged that if the state failed to so prove, she “would be required to make a finding of one of the life sentences” and said that she could do so. When asked if she had predetermined the sentence, she said that she had not because she had not yet heard the evidence.

{¶ 64} When asked what she meant by heinous cases, she explained that it meant “something that’s beyond * * * an average case—* * * something so horrendous that it’s not fathomable.” Defense counsel asked if she regarded the facts of the instant case, as stated in the questionnaire, as heinous; the prospective juror answered: “If it’s proven.” She also said: “I think in a heinous case I would say that all would probably involve the death penalty. * * * In lesser degrees of guilt, that there may be other sentences that are more appropriate.”

{¶ 65} Prospective juror No. 31 did not state that she would automatically support a death sentence even for a heinous crime; the closest she came was her statement that all heinous cases would “*probably* involve the death penalty.” (Emphasis added.) But she wrote on her questionnaire that death was warranted in “some” heinous cases and said on voir dire that she would impose one of the life sentences if aggravation did not outweigh mitigation. Considering all her answers, the trial court did not abuse its discretion in concluding that she was not an automatic-death-penalty juror and in overruling the defense’s challenge for cause.

f. Prospective Juror No. 34

{¶ 66} Prospective juror No. 34 wrote on his questionnaire that he favored the death penalty for all persons convicted of murder. But on voir dire, when asked if he could impose a life sentence, he said: “I suppose I could.” The trial court explained: “[I]f you find that [the] mitigating factors outweigh any aggravating circumstances, then you would be required to return a penalty and not the death penalty.” He said he thought he could do that, adding, “it’s hard for me to sit here not knowing what those mitigating circumstances may or may not be.” The trial court explained that at the appropriate time, the jury would be told what they were.

The prospective juror said he would be able to consider and weigh them. The trial court asked: “[I]f you find the state has not proven beyond a reasonable doubt that those aggravating circumstances outweigh the mitigating factors, would you in fact as required * * * sign a verdict for one of those life options?” He replied that he would do so.

{¶ 67} Defense counsel later asked about a murderer who killed “intentionally * * * after deliberation” and without justification or excuse: “For that guilty murderer, in your opinion—not what does the law require, but in your opinion—is the death penalty the only appropriate penalty without regard to any mitigation?” The prospective juror said, “Yes.” Later, however, defense counsel asked: “[W]ill you in fact weigh aggravation and mitigation? Can you do that?” He responded, “Yes.”

{¶ 68} The trial court overruled Madison’s challenge for cause. The defense later exercised a peremptory challenge against prospective juror No. 34.

{¶ 69} Like prospective juror No. 29, prospective juror No. 34 expressed a *personal* view favoring a death sentence in certain circumstances yet also said that he would consider mitigating factors, would engage in weighing, and would vote for a life sentence if aggravation did not outweigh mitigation. These were not mere “general promise[s] to be fair or to uphold the law.” *Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104, at ¶ 171. The trial court’s decision to overrule the defense’s challenge for cause as to this prospective juror was based on substantial testimony and was not an abuse of discretion.

g. Prospective Juror No. 37

{¶ 70} Prospective juror No. 37 indicated on his questionnaire that he believed in the death penalty for “most, but not all, murder cases.” In a number of his other questionnaire responses, he stated that it was important to him to consider the “details” of the case, including the defendant’s past history, before determining a punishment.

{¶ 71} On voir dire, the prospective juror said he would be able to consider one of the life sentences. He understood that he was required to choose a life sentence if the state failed to prove beyond a reasonable doubt that aggravating circumstances outweighed mitigating factors. He also said he would not automatically vote for death without following the law given by the judge.

{¶ 72} Defense counsel asked prospective juror No. 37 whether, in his personal opinion, death would be the only appropriate penalty for a premeditated killing, without regard to mitigation. The prospective juror replied: “[I]t would not be the only * * * appropriate penalty.” Repeated questioning failed to change his answer. Because this prospective juror said he would consider the mitigating factors and would not automatically vote for death, the trial court did not err in declining to excuse him for cause.

h. Juror No. 40

{¶ 73} On his questionnaire, juror No. 40 wrote that the death penalty “can be necessary for some crimes,” that it is appropriate in some murder cases and not in others, and that its appropriateness “really depends on each case [and] the situation.”

{¶ 74} On voir dire, juror No. 40 affirmed that he could consider and impose a life sentence “if [the state] didn’t prove beyond a reasonable doubt the aggravating circumstances outweigh the mitigating factors.” Indeed, he said he had no preconceived idea of what sentence would be appropriate. Although he felt the death penalty “should be on the table” for murder, he said he would consider other sentences and would not automatically vote for death.

{¶ 75} Stressing that he sought only juror No. 40’s personal opinion, defense counsel asked if he believed that death should be the only appropriate penalty, regardless of any mitigation, for an aggravated murder committed during a kidnapping or rape. The juror replied, “From what you just described, yes.” However, the trial court followed up and asked, “[I]f you found * * * that the

mitigating factors do outweigh the aggravating circumstances, could you consider one of the life options?” The juror said that he “could consider it.”

{¶ 76} The defense challenged juror No. 40 based on his answer to defense counsel’s hypothetical. But the defense’s hypothetical had specifically asked for the juror’s *personal* opinion: “Not a legal quiz, just in your heart, in your opinion.” Even though the juror did indicate that in his personal opinion, death would be the only appropriate penalty for the crime described, he also repeatedly affirmed that he would engage in the statutory weighing and could consider imposing a life sentence.

{¶ 77} Juror No. 40’s voir dire responses as a whole indicate that he was not biased in favor of the death penalty. The trial court did not abuse its discretion in retaining him.

i. Juror No. 43

{¶ 78} Juror No. 43’s responses included a few contradictory answers. He initially stated that he was opposed to capital punishment. But when defense counsel asked whether, after hearing the facts of the case, he had formed the opinion that “whoever did this * * * should get the death penalty,” he replied, “Yes, definitely.” However, when counsel posed another version of the same question, the juror said, “[T]hat never crossed my mind.” Counsel also asked for his personal opinion—not for what he thought the law required—about whether a hypothetical person guilty of three murders with kidnapping and rape should get the death penalty. The juror said, “Yeah.”

{¶ 79} The trial court subsequently asked the juror if he would impose a life sentence if the aggravating circumstances did not outweigh the mitigating factors, and he replied yes. The court questioned whether the juror would automatically impose either death or a life sentence, and he said, “[It] depends on how it goes.” Defense counsel also asked the juror whether he “like[d] the death penalty.” He

declined to say that he did; before he could decide, he said, he “ha[d] to see everything first.”

{¶ 80} Juror No. 43 stated that he would impose a life sentence if aggravation did not outweigh mitigation. And the record does not indicate that he would automatically vote for death. Thus, the court did not abuse its discretion in retaining him.

2. Other Challenges for Cause

{¶ 81} Madison identifies other reasons why he believes the court should have excused juror Nos. 40 and 43 for cause. Juror No. 40, Madison argues, was unable to state that he could give proper attention to the case, and juror No. 43 had “difficulty reading and writing in English.”

{¶ 82} Juror No. 40 told the trial court that he would give his full attention to the case. He did admit the “possibility” that his job might distract him but promised he “would do [his] best” to give the trial his full attention. No abuse of discretion is evident.

{¶ 83} Juror No. 43 did not fully complete his questionnaire and did not sign it. He indicated privately to the court that he could not read or write. The court offered to excuse him prior to his voir dire, and the state moved for excusal, but the defense opposed it, arguing that it would violate the juror’s constitutional right to serve. On voir dire, the juror explained that he was able to read, albeit slowly, but his ability to read “certain things” was limited. After juror No. 43’s voir dire, the parties switched positions, with the defense challenging him for cause due to his limited reading ability and the state opposing the challenge. The trial court denied the challenge.

{¶ 84} Neither R.C. 2945.25 nor Crim.R. 24(C) specifies that limited reading ability is cause for disqualification. Thus, the trial court had discretion to determine whether the juror was “unsuitable” under Crim.R. 24(C)(14). Nothing in the record indicates an abuse of discretion.

{¶ 85} To sum up, Madison has not shown that the trial court abused its discretion in overruling any of the challenges for cause discussed in this proposition. Madison’s second proposition of law is overruled.

C. Prosecution Challenges for Cause

{¶ 86} In his third proposition of law, Madison contends that three prospective jurors (Nos. 18, 38, and 45) were improperly excused for cause due to their reservations about capital punishment.

{¶ 87} A prospective juror may not be excluded for cause simply because the prospective juror expresses reservations about imposing the death penalty. *State v. Keith*, 79 Ohio St.3d 514, 519-520, 684 N.E.2d 47 (1997), citing *Witherspoon v. Illinois*, 391 U.S. 510, 520-523, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968). However, a prospective juror may be excluded for cause if the prospective juror’s beliefs about capital punishment “would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and oath.” *Adams v. Texas*, 448 U.S. 38, 45, 100 S.Ct. 2521, 65 L.Ed.2d 581 (1980); *see also State v. Rogers*, 17 Ohio St.3d 174, 478 N.E.2d 984 (1985), paragraph three of the syllabus, *vacated on other grounds, Rogers v. Ohio*, 474 U.S. 1002, 106 S.Ct. 518, 88 L.Ed.2d 452 (1985).

1. Prospective Juror No. 18

{¶ 88} Prospective Juror No. 18 wrote on her questionnaire: “I don’t believe anyone should be punished for a crime with death,” “I would never agree to impose the death penalty,” “I would not agree to sentence anyone to death,” and “I believe the taking of another person’s life is morally wrong.”

{¶ 89} She said pretty much the same thing in voir dire. She could not imagine any circumstance in which she would vote to impose the death penalty, “could not morally ever feel right” in imposing a death sentence, “could never agree to put somebody to death,” and “could not attach [her] name to” a death verdict. When defense counsel inquired if she would “be able to consider * * * aggravation

and mitigation,” she replied, “Absolutely,” but immediately followed this with, “[H]e could be guilty, but I still wouldn’t impose the death penalty.”

{¶ 90} Prospective juror No. 18 consistently and categorically said that she could *never* vote to impose a death sentence. The trial court justifiably concluded that her views would substantially impair her ability to perform as a juror.

2. Prospective Juror No. 38

{¶ 91} When asked if she could sign a verdict imposing the death penalty if the state proved that aggravation outweighed mitigation, prospective juror No. 38 said, “No.” The trial court noted that she responded “quickly and firmly.” Asked if she could set aside her views and follow the law, she answered, “No.” She said she could not sign a death verdict under any circumstances. Like prospective juror No. 18, this prospective juror unequivocally said she could not set her views aside and follow the law in a capital case. The trial court did not abuse its discretion by taking her at her word.

3. Prospective Juror No. 45

{¶ 92} Prospective juror No. 45 was excused for cause after stating that he would not follow the law if his conscience said otherwise. Madison contends that it was error to excuse this prospective juror, but we need not consider his claim. Had prospective juror No. 45 not been excused, he would have been an alternate juror. No alternates were substituted for regular jurors in this case; hence, “[e]ven if [the prospective juror] had not been excused, [he] would not have deliberated [Madison’s] fate,” *State v. Jenkins*, 15 Ohio St.3d 164, 186, 473 N.E.2d 264 (1984).

{¶ 93} Madison’s third proposition of law is overruled.

D. Religious-Freedom Claims

{¶ 94} In his fourth proposition of law, Madison contends that the practice of death-qualifying juries violates the Free Exercise and Establishment Clauses of the First Amendment by excluding prospective jurors who are opposed to capital punishment based upon their religious beliefs.

{¶ 95} To start with, Madison makes no argument as to why he is entitled to raise the religious-freedom rights of the prospective jurors. The United States Supreme Court has allowed a defendant third-party standing to challenge on equal-protection grounds the exclusion of petit jurors on the basis of race or sex. *See Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994). It has not, however, addressed the issue whether a defendant possesses standing to assert the rights of petit jurors in other contexts. Nevertheless, even assuming that Madison has standing to raise the religious-freedom rights of excluded prospective jurors, we have little difficulty rejecting his challenge.

{¶ 96} The practice of death qualification is authorized by R.C. 2945.25(O), which permits a trial court to excuse a prospective juror who “otherwise is unsuitable for any other cause to serve as a juror.” *See State v. Beuke*, 38 Ohio St.3d 29, 38, 526 N.E.2d 274 (1988). This court, as well as the United States Supreme Court, has repeatedly upheld the “death qualification” process. *State v. Moore*, 81 Ohio St.3d 22, 26, 689 N.E.2d 1 (1998); *Lockhart v. McCree*, 476 U.S. 162, 173, 106 S.Ct. 1758, 90 L.Ed.2d 137 (1986). R.C. 2945.25(O) is a facially neutral law of general applicability and is not designed to target religious conduct. The death-qualification requirement applies neutrally to all prospective jurors, regardless of the basis for their unwillingness to consider the death penalty. Thus, the death-qualification procedure does not violate the Free Exercise Clause. *See Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 532-534, 542-545, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993). Nor is there anything in the practice that could be said to violate the First Amendment’s prohibition on government action “respecting an establishment of religion.”

{¶ 97} In addition to his constitutional claims, Madison argues that death qualification of jurors violates the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. 2000bb-1. This argument is precluded by the holding of the United

States Supreme Court that RFRA may not constitutionally be applied to the states. *Boerne v. Flores*, 521 U.S. 507, 519-536, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997).

{¶ 98} Madison’s fourth proposition of law is overruled.

III. COMPELLED PSYCHIATRIC EXAMINATION

{¶ 99} Before trial, the defense retained two forensic psychologists to evaluate Madison. The trial court also ordered Madison to submit to a pretrial mental examination by a state-selected forensic psychiatrist. Dr. Steven Pitt conducted the court-ordered examination and testified for the state in the penalty phase. During his testimony, portions of his video-recorded interview with Madison were played.

{¶ 100} In his 11th through 13th propositions of law, Madison challenges the compelled psychiatric examination. Principally, he claims that ordering the examination and admitting the resulting evidence violated the Fifth and Sixth Amendments. He also makes an argument based on one of Ohio’s death-penalty statutes, R.C. 2929.03(D)(1).

A. Factual Background

{¶ 101} Before trial, the state moved to require Madison to submit to a psychological evaluation. The state asserted that Madison had retained multiple psychological experts and that it anticipated that these experts would testify about Madison’s psychological state before and after the murders.

{¶ 102} In response, Madison claimed that he had “not given pre-trial notice of any intent to put his mental state in issue,” that “neither his competency, nor his sanity or mens rea will be an issue” in either phase, and that he was “not putting his state of mind in issue.” Madison contended that the state would have “no psychiatric evidence to rebut.” Nevertheless, Madison “reserve[d] the right to present expert psychological evidence * * * in mitigation that does not call into question his mental state.”

{¶ 103} At a subsequent hearing, the state reiterated its request for a court-ordered mental examination. The defense argued that such an order would violate the Fifth Amendment and asserted: “We are not placing [Madison’s] mental state into issue in either the trial or the mitigation phase.” The state rejoined that a defense psychological report it had received in discovery indicated that defense experts had found “brain damage,” a claim the state argued it could not rebut without an additional examination. The defense denied that it was “claiming brain damage” but conceded that its experts had stated that early childhood abuse causes “changes in the brain” of the abused person.

{¶ 104} The trial court asked defense counsel whether they intended to use “brain damage as a mitigating factor, should we get there.” Counsel ultimately stated that they “anticipate[d]” using it in the penalty phase.

{¶ 105} The trial court granted the state’s motion to have Madison evaluated by Dr. Pitt. But the court limited the examination to Madison’s brain damage and prohibited questioning about the facts and circumstances of this particular case. The defense took an interlocutory appeal to the Eighth District Court of Appeals, which stayed the examination during the appeal. The Eighth District then affirmed the trial court’s judgment. *State v. Madison*, 8th Dist. Cuyahoga No. 101478, 2015-Ohio-4365, *appeal not accepted*, 144 Ohio St.3d 1505, 2016-Ohio-652, 45 N.E.3d 1050.

{¶ 106} After the Eighth District’s decision, Dr. Pitt resumed his interview with Madison, which had begun prior to the stay. Defense counsel sought to be present during the interview to ensure that the limits set by the trial court’s order were respected, but the trial court denied this request.

{¶ 107} During the penalty phase, two defense experts, Drs. Daniel L. Davis and Mark D. Cunningham, testified that Madison’s childhood environment had included a number of adverse factors—including “neurodevelopmental factors” such as abuse, neglect, harsh discipline, and head trauma—that are

correlated with a high risk of negative outcomes, including criminal or violent behavior. They also testified that these neurodevelopmental factors have a physical effect on the “wiring” of the brain itself: its structure, chemistry, and electrical activity.

{¶ 108} Dr. Davis explained that the brain does not finish developing until a person is 24 or 25 years old. According to Dr. Davis, early exposure to abuse and trauma results in negative alterations to the brain’s structure and chemistry. Dr. Cunningham also testified about the effect of abuse and other negative childhood experiences on the brain’s physiology.

{¶ 109} The state introduced Dr. Pitt’s testimony in rebuttal. He diagnosed Madison as having antisocial-personality disorder. Dr. Pitt’s opinion was that Madison’s childhood did not cause him to commit the murders, and he rejected the idea that Madison’s ability to make choices in life was limited by his background. A video recording of his examination of Madison was admitted into evidence and portions of it were shown to the jury.

B. Madison’s Claims

{¶ 110} Madison contends that the trial court erred by ordering him to submit to Dr. Pitt’s mental examination and admitting evidence derived from that examination. He argues that (1) implicit within Ohio’s death-penalty statute, R.C. 2929.03(D)(1), is a broad policy prohibiting the use of such examinations, (2) the compelled examination in this case violated the Fifth Amendment because he did not place his mental state in issue, (3) ordering the examination unconstitutionally forced him to choose between his Fifth Amendment right against self-incrimination and his Eighth Amendment right to present mitigating evidence, (4) his Sixth Amendment right to counsel was violated because his counsel lacked adequate advance notice of the examination’s scope, and (5) his right to counsel was violated because counsel was not present for the examination.

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

{¶ 111} In his 11th proposition of law, Madison argues that the structure of Ohio’s death-penalty statutes limits the state’s ability to force a death-eligible defendant to respond to questions unless the defendant chooses to do so. For support, he chiefly relies on language in R.C. 2929.03(D)(1), which provides for the preparation of presentence-investigation reports and psychiatric reports for purposes of mitigation in capital cases at the request of the defendant. *See also* R.C. 2947.06. Specifically, he relies on one sentence within R.C. 2929.03(D)(1): “A pre-sentence investigation or mental examination shall not be made except on the request of the defendant.” He also points to another part of R.C. 2929.03(D)(1) that allows a capital defendant to make an unsworn statement in the penalty phase without being subjected to cross-examination. Tying these provisions together, he infers a “broad policy” that capital defendants may not be “forc[ed] * * * to respond to questions.”

{¶ 112} The problem with this argument is that the mental examination to which Madison objects was not done pursuant to R.C. 2929.03(D)(1) but rather to allow the state to provide rebuttal evidence. The prohibition in R.C. 2929.03(D)(1) applies only to presentence investigations and medical examinations done pursuant to that section. We find nothing in R.C. 2929.03(D)(1) that bars a trial court from ordering a psychiatric examination of a defendant for the purpose of rebutting psychiatric evidence that the defendant intends to introduce. And we decline Madison’s invitation to craft a statutory prohibition based on speculation about legislative intent.

2. Fifth Amendment

{¶ 113} Madison also contends in his 11th proposition of law that a defendant can be compelled to undergo a state-requested psychiatric examination only when he intends to introduce psychiatric evidence that places his state of mind directly at issue. Although he says he did not place his mental state at issue, he

introduced extensive expert testimony during the penalty phase that his background and childhood experiences affected the physical structure of his brain, limited his ability to make choices, and exposed him to a high risk of negative life outcomes.

{¶ 114} A defendant “who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding.” *Estelle v. Smith*, 451 U.S. 454, 468, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981). However, “a different situation arises where a defendant intends to introduce psychiatric evidence at the penalty phase.” *Id.* at 472. When a defendant presents expert testimony from a psychiatrist who has examined the defendant, the prosecution is entitled to rebut that testimony by presenting testimony from an expert who has also examined the defendant. In those circumstances, a compelled mental examination of the defendant does not violate the Fifth Amendment. *See Buchanan v. Kentucky*, 483 U.S. 402, 422-424, 107 S.Ct. 2906, 97 L.Ed.2d 336 (1987); *Kansas v. Cheever*, 571 U.S. 87, 93-95, 134 S.Ct. 596, 187 L.Ed.2d 519 (2013); *State v. Goff*, 128 Ohio St.3d 169, 2010-Ohio-6317, 942 N.E.2d 1075, ¶ 58.

{¶ 115} *Buchanan*, *Cheever*, and *Goff* were not capital cases, but several courts have concluded that the rule of *Buchanan* and *Cheever* applies when the defense presents psychiatric testimony in the penalty phase of a capital case. *See Williams v. Lynaugh*, 809 F.2d 1063, 1068 (5th Cir.1987); *State v. Fitzgerald*, 232 Ariz. 208, 303 P.3d 519, ¶ 44-45 (2013); *Soria v. State*, 933 S.W.2d 46, 55 (Tex.Crim.App.1996); *State v. Ross*, 269 Conn. 213, 295-296, 849 A.2d 648 (2004); *Lockett v. State*, 2002 OK CR 30, 53 P.3d 418, ¶ 25-26; *see also Giarratano v. Procunier*, 891 F.2d 483, 488 (4th Cir.1989) (“Giarratano’s introduction of psychiatric evidence for the purpose of mitigation enabled the prosecution to introduce psychiatric evidence, including that derived from an examination of Giarratano, to show future dangerousness”); *Lockett v. Trammell*, 711 F.3d 1218, 1242 (10th Cir.2013) (state court reasonably held that capital defendant “put his

mental health at issue” by presenting psychological evidence in the penalty phase); *Dillbeck v. State*, 643 So.2d 1027, 1030 (Fla.1994).

{¶ 116} Madison tries to distinguish *Buchanan* and *Cheever* by arguing that they apply only when the defendant alleges that he has a “mental disease or defect” or a “mental condition” that implicates his mens rea, mental capacity to commit a crime, or ability to premeditate or when he seeks to establish the existence of a “mental disease or defect” mitigating factor under R.C. 2929.04(B)(3).

{¶ 117} Madison’s narrow reading of *Buchanan* and *Cheever* makes little sense. *Cheever* explains that a rule shielding the defendant from examination by the state’s expert “would undermine the adversarial process” by depriving the state of “the only effective means of challenging” the defendant’s psychological experts. *Cheever*, 571 U.S. at 94, 134 S.Ct. 596, 187 L.Ed.2d 519. *Buchanan* and *Estelle* express similar concerns. *Buchanan*, 483 U.S. at 422-423, 107 S.Ct. 2906, 97 L.Ed.2d 336; *Estelle*, 451 U.S. at 465, 101 S.Ct. 1866, 68 L.Ed.2d 359.

{¶ 118} This concern is not confined to cases in which psychiatric evidence is used in adjudicating guilt, as in *Buchanan* and *Cheever*. Nor is it confined to cases in which the defense seeks to show the existence of a “mental disease or defect” mitigating factor under R.C. 2929.04(B)(3). Instead, *Cheever*’s reasoning logically applies to any case in which a defendant introduces evidence derived from a defense expert’s mental examination of the defendant.

{¶ 119} In such a case, the mental issue is one that the defendant has “interjected into the case,” *Buchanan* at 422, quoting *Estelle* at 465. And prohibiting examination by the state’s expert would undermine the adversarial process, because “the only effective means of challenging” the testimony of the defendant’s expert is “testimony from an expert who has also examined him.” *Cheever* at 94.

{¶ 120} We conclude that in a capital case, when the defendant demonstrates an intention to use expert testimony from a mental examination in the

penalty phase, the Fifth Amendment permits the trial court to order that the defendant submit to a mental examination by an expert of the state's choosing. Further, when the defense uses expert testimony from a mental examination in the penalty phase, the state may rebut that evidence by presenting expert testimony derived from the court-ordered mental examination. Thus, we reject Madison's Fifth Amendment claim.

{¶ 121} Madison also contends in his 11th proposition that by ordering him to submit to the examination by the state's expert, the trial court forced him to forfeit his Fifth Amendment right to remain silent as a condition of exercising his Eighth Amendment right to obtain and present mitigating evidence in a capital case. Relying upon *Simmons v. United States*, 390 U.S. 377, 393-394, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968), Madison asserts that he cannot be compelled to forfeit one constitutional right in order to assert another.

{¶ 122} *Simmons* simply held that a defendant's testimony in support of a motion to suppress on Fourth Amendment grounds is inadmissible against him on the issue of guilt at trial. "*In these circumstances*," the court explained, "we find it intolerable that one constitutional right should have to be surrendered in order to assert another." (Emphasis added.) *Id.* at 394.

{¶ 123} But *Simmons* did not hold that a defendant may never have to choose between the exercise of constitutional rights. Indeed, the United States Supreme Court has cautioned against giving *Simmons* a "broad thrust." *McGautha v. California*, 402 U.S. 183, 212-213, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971), *vacated in part on other grounds sub nom. Crampton v. Ohio*, 408 U.S. 941, 92 S.Ct. 2873, 33 L.Ed.2d 765 (1972). "'Difficult judgments'" are sometimes required, and although a defendant may have a constitutional right to follow whichever course he chooses, "the Constitution does not by that token always forbid requiring him to choose." *Id.* at 213, quoting *McMann v. Richardson*, 397 U.S. 759, 769, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970). Instead, a court must ask

“whether compelling the election impairs to an appreciable extent any of the policies behind the rights involved.” *Id.* In this instance, it does not.

{¶ 124} The right to present mitigating evidence in a capital case stems from the conclusion of the United States Supreme Court that the Eighth Amendment requires that before a defendant may be sentenced to death there must be “an *individualized* determination on the basis of the character of the individual and the circumstances of the crime.” (Emphasis sic.) *Zant v. Stephens*, 462 U.S. 862, 879, 103 S.Ct. 2733, 77 L.Ed.2d 235 (1983). When a defendant opts to submit psychiatric evidence, the principle of individualized capital sentencing is not undermined by requiring the defendant to submit to an examination by a state expert so that the state has a fair chance to rebut the defense evidence.

{¶ 125} Nor does such an examination undermine the policies of the Fifth Amendment privilege against compelled self-incrimination. To the contrary,

[t]he admission of this rebuttal testimony harmonizes with the principle that when a defendant chooses to testify in a criminal case, the Fifth Amendment does not allow him to refuse to answer related questions on cross-examination. A defendant “has no right to set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts.” * * * When a defendant presents evidence through a psychological expert who has examined him, the government likewise is permitted to use the only effective means of challenging that evidence: testimony from an expert who has also examined him.

Cheever, 571 U.S. at 94, 134 S.Ct. 596, 187 L.Ed.2d 519, quoting *Fitzpatrick v. United States*, 178 U.S. 304, 315, 20 S.Ct. 944, 44 L.Ed. 1078 (1900).

{¶ 126} Madison’s 11th proposition of law is overruled.

3. Sixth Amendment

a. Notice of Scope of Examination

{¶ 127} The Sixth Amendment right to counsel requires that defense counsel be given prior notice of the nature and scope of a state-sponsored psychiatric examination. *See Powell v. Texas*, 492 U.S. 680, 681, 109 S.Ct. 3146, 106 L.Ed.2d 551 (1989); *Estelle*, 451 U.S. at 471, 101 S.Ct. 1866, 68 L.Ed.2d 359, citing *Powell v. Alabama*, 287 U.S. 45, 69, 53 S.Ct. 55, 77 L.Ed. 158 (1932). In his 13th proposition of law, Madison contends that Dr. Pitt’s examination exceeded the limits set by the trial court and that, as a result, his counsel were not notified of the full scope of the examination.

{¶ 128} The trial court’s order approving the examination provided: “State may not inquire into the facts and circumstances of the case. Examination only relates to the brain damage of defendant.” The interview was recorded and the portions that were played for the jury covered several topics: Madison’s childhood and adolescence, his current incarceration, his drug and alcohol use during the period leading up to his arrest, whether he was sexually abused as a child, and his self-evaluation of character defects and weakness.

{¶ 129} Though Dr. Pitt’s testimony did not tie all of these areas of inquiry directly to Madison’s claim of brain damage, there is nothing in the record that establishes that Dr. Pitt exceeded the scope of the court’s order. Questions regarding Madison’s childhood, mental status, substance abuse, and self-evaluation could all be relevant to Madison’s claim that he suffered from physiological changes to his brain. And the recordings make clear that Dr. Pitt adhered to the court’s admonition not to inquire into the facts of the case. Thus, Madison has failed to demonstrate that his counsel did not receive adequate notice of the scope of the examination, and we overrule his 13th proposition of law.

b. Presence of Counsel during Examination

{¶ 130} In his 12th proposition of law, Madison argues that the Sixth Amendment entitles a defendant to have his attorney present during a psychiatric examination. In *Estelle*, the United States Supreme Court held that a defendant has a right to the assistance of counsel “before submitting” to a psychiatric interview. 451 U.S. at 469, 101 S.Ct. 1866, 68 L.Ed.2d 359. But the court specifically disavowed any implication of a right to have counsel present during the interview. *Id.* at 471, fn.14. Following *Estelle*, courts have widely determined that the Sixth Amendment does not include a right to have counsel present during a compelled psychiatric interview. *See, e.g., United States v. Byers*, 740 F.2d 1104, 1115-1122 (D.C.Cir.1984) (plurality opinion); *Re v. Snyder*, 293 F.3d 678, 682 (3d Cir.2002); *State v. Martin*, 950 S.W.2d 20, 26-27 (Tenn.1997) (citing cases). We agree and overrule Madison’s 12th proposition of law.

IV. EVIDENTIARY ISSUES

A. The Interrogation Videos

{¶ 131} During the guilt phase, the state introduced video recordings of portions of Madison’s interrogation by the police. In his sixth proposition of law, Madison contends that these videos contained officers’ statements that should have been excluded as inadmissible, including accusations of lying and prejudicial reflections on Madison’s character. Madison forfeited most of these claims, and those he preserved do not amount to reversible error.

{¶ 132} Madison repeatedly told detectives that he did not remember much about the murders due to his excessive drinking and drug use. During one interview, Detective Nate Sowa expressed doubt about this, pointing out to Madison that after spending three or four days in jail, he was “exhibiting no signs” of withdrawal. Detective Raymond Diaz added that people with drinking problems are “a wreck” after a day or two without alcohol. Madison admitted, “I can’t really explain that.” Madison objected to the jury hearing Sowa’s and Diaz’s statements

because they were unqualified to give opinions on the subject of alcohol dependence. The trial court overruled the objection but instructed the jury that the detectives “are not experts in alcohol dependence.” Madison later objected to the jury hearing a different detective’s statement questioning his claims of alcohol and drug abuse, and the trial court overruled that objection as well.

{¶ 133} We find no error. It is common knowledge that heavy drinkers often suffer withdrawal symptoms when they are forced to go without alcohol. Further, the statements made by Sowa and Diaz provided useful context to Madison’s admission that he could not explain why he was not going through withdrawal. And the statement made by the other detective was not harmful to Madison in view of other evidence admitted on this issue. In addition, any possible prejudice was dispelled by the trial court’s instruction.

{¶ 134} Madison points to several other police statements that he says should have been redacted as unfairly prejudicial. These include additional skeptical comments about his claims of heavy drug and alcohol use, attempts to find out how many victims he killed, entreaties to cooperate and show remorse, and a detective’s suggestion that Madison got sexually aroused by killing women.

{¶ 135} The record does not show any objection to these statements at trial. Thus, Madison can prevail only by showing plain error. To prevail, he must show that an error occurred, that the error was plain, and that but for the error the outcome of the trial clearly would have been otherwise. *State v. Mammone*, 139 Ohio St.3d 467, 2014-Ohio-1942, 13 N.E.3d 1051, ¶ 69.

{¶ 136} The likelihood of prejudice here is low. “[T]he jury was fully aware * * * [that] the officers were engaged in the interrogation of a criminal suspect. In this context, the impact on the average jury would have been much less than the same statements made by a police officer on the witness stand at trial.” *State v. Kidder*, 32 Ohio St.3d 279, 285, 513 N.E.2d 311 (1987).

{¶ 137} Finding no plain error, we overrule Madison’s sixth proposition of law.

B. Unfairly Prejudicial Evidence

{¶ 138} In his seventh proposition of law, Madison contends that the trial court admitted unfairly prejudicial evidence during the guilt phase in violation of Evid.R. 403(A), which requires a trial court to exclude relevant evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.”

{¶ 139} In his videotaped interview, officers asked Madison multiple times if they would find more victims than the three they had already found, and Madison replied that he did not know. Madison argues that these statements had no probative value and were unfairly prejudicial because they suggested that he may have committed other murders.

{¶ 140} Madison concedes that he “did not specifically object” to these questions. But he argues that he preserved this claim by asking the trial court, just before the video was played, to exclude references to “unsolved homicides.” (The state agreed to this request, and the trial court granted it.) The statements that Madison now claims were improper, however, did not involve unsolved homicides and thus were outside the scope of Madison’s request. Thus, Madison’s failure to object at trial forfeits this argument, absent plain error. We find no plain error.

{¶ 141} Quiana Baker, a friend of Madison’s, testified that Madison had told her he was “aggravated” with women “acting like they don’t want to fuck” and that they made him “want to * * * Anthony Sowell a bitch.”¹ Madison’s objection at trial was overruled. The admission of this statement was not error. Madison’s statement that he wanted to “Anthony Sowell” a woman was relevant to show intent and prior calculation and design. And when considered in the context of the other

1. Anthony Sowell is a Cleveland serial killer who was convicted of killing 11 women and sentenced to death. See *State v. Sowell*, 148 Ohio St.3d 554, 2016-Ohio-8025, 71 N.E.3d 1034, ¶ 1-3.

evidence presented at trial, its probative value was not outweighed by the danger of unfair prejudice.

{¶ 142} Another friend, Eugenia Thomas, testified that Madison had once told her he “liked submissive women” and that Madison had “talked about hitting women and tying them up” in a sexual context. Defense objections to this testimony were overruled. We find no error. All three victims were found with bindings around their necks and legs. The fact that Madison enjoyed tying up women was directly relevant to the murders. It also supported the sexual-motivation specifications, R.C. 2941.147(A), which required proof that the murders were committed with “a purpose to gratify the sexual needs or desires of the offender,” R.C. 2971.01(J).

{¶ 143} Thomas also testified that sometimes during phone conversations, Madison would tell her he was “watching the bitches.” She further recounted that Madison once told her he wanted to kill the mother of his children because “she wouldn’t let him see his kids.” Madison concedes that he did not object to this testimony but claims that it was plain error, “especially with respect to the sentencing phase.”

{¶ 144} We disagree. Admitting this testimony was not plain error as to either phase. As to the guilt phase, the evidence of Madison’s guilt was overwhelming. As to the penalty phase, once Madison had been convicted of *actually* killing three women, the information that he had *talked about* killing another woman or that he sometimes used improper language to refer to women is not sufficiently prejudicial to undermine confidence in the jury’s sentencing verdict.

{¶ 145} The video footage of the interrogations played for the jury included a brief conversation between Madison and a female detective who brought him coffee and shows Madison referring to the detective as “sweetheart” and telling her to “be good.” Madison did not object at trial to this portion of the video. His

argument that it was inherently prejudicial is unconvincing, and there was no plain error.

{¶ 146} Finally, the jury saw footage of Madison, alone in the interview room, talking to himself, displaying anger, and using profanity. Madison did not object at trial. He now accuses the state of using this incident to “demonize him.” We find no plain error. The jury heard extensive evidence about the three murders; if Madison was demonized in the eyes of the jury, it was not from a snippet of video of him talking to himself.

{¶ 147} Madison’s seventh proposition of law is overruled.

V. SENTENCING ISSUES

A. Exclusion of Mitigating Evidence

{¶ 148} In his tenth proposition of law, Madison asserts that the trial court excluded relevant mitigating evidence that he had a constitutional right to present. *See Skipper v. South Carolina*, 476 U.S. 1, 4, 106 S.Ct. 1669, 90 L.Ed.2d 1 (1986); *Eddings v. Oklahoma*, 455 U.S. 104, 114, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

1. Testimony on Moral Culpability

{¶ 149} Madison takes issue with the trial court’s ruling that Dr. Cunningham could not testify about the concept of “moral culpability.” According to the defense’s proffer at trial, Dr. Cunningham would have testified as follows:

[T]he concept of moral culpability acknowledges [that] * * * we do not all arrive at our choices out of equivalent raw material. It follows that the degree of “blameworthiness” for an individual for criminal or even murderous conduct may vary depending on what factors and experiences shaped, influenced, or compromised that choice.

* * * The formative or limiting impact from any source of developmental damage * * * is relevant in the weighing of moral

culpability. An appraisal of moral culpability involves an examination of the degree to which the background and circumstances of the defendant influenced, predisposed, or diminished the defendant's moral sensibilities and the exercise of * * * free will.

Madison also argues that Dr. Cunningham should have been allowed to testify about United States Supreme Court decisions discussing the role of moral culpability in capital sentencing.

{¶ 150} Dr. Cunningham is a forensic psychologist. Morality is not within his field of expertise. Neither is law. His opinion of what is “relevant in the weighing of moral culpability” and what affects “the degree of ‘blameworthiness’ ” would not have “relate[d] to matters beyond the knowledge or experience possessed by lay persons,” Evid.R. 702(A). And any discussion of United States Supreme Court decisions would have involved matters of law, and opinion testimony on matters of law is generally inadmissible. *See, e.g., Sikorski v. Link Elec. & Safety Control Co.*, 117 Ohio App.3d 822, 831, 691 N.E.2d 749 (8th Dist.1997). The trial court did not abuse its discretion by excluding this testimony.

2. Connection between Developmental Factors and Choice

{¶ 151} Madison maintains that the trial court improperly excluded testimony about the connection between adverse developmental factors and a person's capacity to make choices. He cites three instances when the trial court sustained objections to Dr. Cunningham's use of the term “choice.” But Dr. Cunningham did explain to the jury multiple times that the adverse developmental factors in Madison's history limited his range of choices. And Dr. Cunningham testified at the close of his direct examination about a person who has such a background: “You get a choice, you just don't get the same choice. You get a choice that rests on all the damage of that history.” We find no error.

3. Evidence about Certain Adverse Developmental Factors

{¶ 152} Madison asserts that the trial court improperly excluded evidence of certain adverse developmental factors in Madison’s background.

{¶ 153} First, he contends that the trial court erred by excluding PowerPoint slides about heritable traits in Madison’s family tree such as alcoholism and personality disorders. The slides were excluded because Madison’s counsel had failed to make timely disclosure of them to the prosecution.

{¶ 154} Further, Madison was not barred from presenting evidence about the heritability of alcoholism and personality disorders and their prevalence among his forebears. Dr. Cunningham testified at length about those subjects. Only the slides were excluded. Excluding the slides while allowing the testimony the slides illustrated did not violate Madison’s Eighth Amendment right to present mitigation.

{¶ 155} Second, he complains that the trial court did not let Dr. Cunningham testify about the effects of head injuries on Madison. The record, however, demonstrates that Dr. Cunningham testified that a head injury is an adverse neurodevelopmental factor and that during early childhood and adolescence, Madison sustained a number of them.

{¶ 156} Third, Madison contends that the trial court erred when it did not let Dr. Cunningham discuss an incident when Madison was choked at age 10 or 11; the trial court excluded this testimony because the incident did not involve any of Madison’s relatives. The significance of the choking incident is that hypoxia, or “oxygen deprivation to the brain,” and anoxia, or “oxygen cutoff,” are adverse neurodevelopmental factors, as Dr. Cunningham testified.

{¶ 157} Madison, however, was not prevented from presenting evidence concerning the possible effect of hypoxia and anoxia on his brain development. Dr. Cunningham testified about Madison’s allegations that his mother had more than once choked him until he passed out. Therefore, any error in the trial court’s ruling is harmless.

{¶ 158} Fourth, Madison alleges that the trial court erred because it did not let Dr. Cunningham testify about certain instances of “sexually perverse behavior in [Madison’s] home” (such as his brother being molested) unless Madison was aware of the behavior. Madison fails to explain what was wrong with this ruling. Dr. Cunningham testified that a child can be damaged when he *sees* other children being abused; he did not say that a child is damaged by abuse of others even when the child is unaware that abuse is occurring. The trial court could reasonably determine that this testimony was irrelevant to mitigation.

{¶ 159} Finally, Madison complains that the trial court excluded numerous PowerPoint slides as repetitive. But Madison does not dispute that the slides were repetitive, and the trial court was not required to admit cumulative evidence. *Sheppard v. Bagley*, 657 F.3d 338, 346 (6th Cir.2011).

{¶ 160} Madison’s tenth proposition of law is overruled.

B. Unfairly Prejudicial Evidence in the Penalty Phase

{¶ 161} In his 14th proposition of law, Madison contends that the state presented unfairly prejudicial evidence in the penalty phase.

{¶ 162} First, Madison accuses the state of presenting inflammatory testimony about his “bad character.” He complains that Dr. Pitt testified that he has an antisocial-personality disorder. Madison does not, however, explain why it is improper for a psychiatrist to make such a diagnosis of a defendant.

{¶ 163} Madison also maintains that Dr. Pitt improperly described him as “depraved” and “twisted.” But it was *the defense* that first brought those descriptions to the jury’s notice. It is true that Dr. Pitt’s report described Madison as “depraved” and “twisted,” but that report was not admitted into evidence. The word “depraved” was placed before the jury during defense counsel’s direct examination of Madison’s own expert witness, Dr. Cunningham. Dr. Cunningham testified on direct that he had read and evaluated Dr. Pitt’s report, of which he was quite critical. Defense counsel asked whether the term “depraved individual” is

used in the *Diagnostic and Statistical Manual of Mental Disorders*.² Dr. Cunningham said it is not and criticized Dr. Pitt for using the term in his report. The prosecutor brought up Dr. Pitt’s use of “depraved” only after the defense had introduced that term. Similarly, in an effort to discredit Dr. Pitt’s testimony, the defense cross-examined him at length on his report’s use of the word “twisted.”

{¶ 164} Madison also takes issue with the state’s introduction of testimony that Madison asked a pen pal to send him pictures of women. Dr. Cunningham, however, had already testified regarding Madison’s “disturbed sexuality.” Madison further contends that the state improperly introduced testimony that Madison has a “victimization mentality,” does not accept responsibility for his acts, and is deceitful. But all these matters were relevant to Madison’s antisocial-personality disorder. The same is true of evidence regarding Madison’s lack of “regret” or “remorse” for the murders. (Expert testimony in the penalty phase established that the criteria for antisocial-personality disorder include deceitfulness, aggressiveness, irresponsibility, and indifference to harming others.)

{¶ 165} Madison contends that the state improperly introduced evidence that he is “fully responsible” for his conduct and has no mental disease or defect. But the defense had previously put on evidence that Madison is *not* fully responsible, because his background diminished his ability to make choices. Indeed, this was the major theme of his penalty-phase defense in general and Dr. Cunningham’s testimony in particular. The state was entitled to cross-examine on that point.

{¶ 166} Madison contends that Dr. Pitt exceeded the scope of the trial court’s order in his examination of Madison. We have already rejected that claim in overruling Madison’s 12th and 13th propositions of law.

2. Dr. Cunningham explained that the *Diagnostic and Statistical Manual of Mental Disorders* is the classification system of psychological disorders used by American psychologists and psychiatrists.

{¶ 167} Madison also asserts that the state presented excessive evidence of the circumstances of the crimes and improperly referred to “irrelevant details” of his prior drug and attempted-rape convictions but offers no specifics to support these claims.

{¶ 168} Finally, Madison complains that the state described him as a serial killer. Madison was charged with and found guilty of killing three women on three different dates as part of a single course of conduct. The term “serial killer” aptly describes Madison’s conduct. Counsel for both sides are entitled to wide latitude in closing argument, *State v. Jackson*, 141 Ohio St.3d 171, 2014-Ohio-3707, 23 N.E.3d 1023, ¶ 197, and “a prosecutor may denounce the defendant’s wrongdoing,” *State v. Keene*, 81 Ohio St.3d 646, 666, 693 N.E.2d 246 (1998). We see no reason why a prosecutor may not call a serial killer a serial killer.

{¶ 169} Madison’s 14th proposition of law is overruled.

C. Trial Court’s Sentencing Opinion

{¶ 170} In its sentencing analysis, the trial court assigned no mitigating weight to Madison’s relationship with his children, “minimal weight” to his adaptability to prison, and “some very slight weight” to his history of substance abuse. The court also considered his history as a victim of abuse and paternal abandonment as well as the “toxic culture” and “intergenerational dysfunction” of his family; the court gave his background and childhood “greater weight” than other factors but “not * * * great weight.”

{¶ 171} In his 17th proposition of law, Madison contends that the trial court’s sentencing opinion violated the Eighth Amendment, because it “unreasonably discount[s]” mitigating evidence—i.e., because it assigns no weight or insufficient weight to mitigating factors.

{¶ 172} The United States Supreme Court in *Eddings* held that the sentencer in a capital case may not “refuse to consider, *as a matter of law*, any relevant mitigating evidence.” (Emphasis sic.) 455 U.S. at 114, 102 S.Ct. 869, 71

L.Ed.2d 1. But *Eddings* does not preclude a court from considering mitigating evidence and determining that it deserves no weight. *State v. Davis*, 139 Ohio St.3d 122, 2014-Ohio-1615, 9 N.E.3d 1031, ¶ 59; *see also Harris v. Alabama*, 513 U.S. 504, 512, 115 S.Ct. 1031, 130 L.Ed.2d 1004 (1995).

{¶ 173} Madison also argues that the trial court improperly “discounted the mitigation” by “view[ing] the evidence as not establishing a causal connection to Madison’s conduct in committing the murders.” But nothing in the trial court’s opinion discusses a lack of causal connection between the claimed mitigating factors and the murders. In any event, Madison’s claim does not state an Eighth Amendment violation. “Whether 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.” *State v. Roberts*, 150 Ohio St.3d 47, 2017-Ohio-2998, 78 N.E.3d 851, ¶ 70.

{¶ 174} Madison’s 17th proposition of law is overruled.

D. Refusal of Mercy Instruction

{¶ 175} Madison argues in his ninth proposition of law that the trial court erred by denying his requests that the jury be instructed to consider “mercy.” But mercy is not a mitigating factor. *State v. Belton*, 149 Ohio St.3d 165, 2016-Ohio-1581, 74 N.E.3d 319, ¶ 88. The proposition is overruled.

VI. PROSECUTORIAL MISCONDUCT

A. Voir Dire

{¶ 176} In his fifth proposition of law, Madison contends that the prosecutor engaged in misconduct during jury selection. He accuses the prosecutor of “employ[ing] a strategy to assert multiple groundless objections” to the defense’s voir dire questions in order to “obstruct” counsel’s efforts to identify the jurors who were excludable under *Morgan*, 504 U.S. at 729, 112 S.Ct. 2222, 119 L.Ed.2d 492, as predisposed to impose the death penalty. He offers no specific examples of

actual “groundless objections” but incorporates by reference many of the arguments from his first and second propositions of law.

{¶ 177} It is true that the prosecutor made numerous objections, but Madison was not denied an adequate opportunity to identify *Morgan*-excludable jurors, and no such jurors were seated. Nothing in the record supports Madison’s accusation that the prosecutor deliberately made groundless objections as a strategy, and the prosecutor’s conduct in this regard did not render Madison’s trial unfair, *see Smith v. Phillips*, 455 U.S. 209, 219, 102 S.Ct. 940, 71 L.Ed.2d 78 (1992) (the touchstone of analysis in considering allegations of prosecutorial misconduct “is the fairness of the trial, not the culpability of the prosecutor”). Madison’s fifth proposition of law is overruled.

B. “Serial Killer” References

{¶ 178} Madison’s eighth proposition of law posits that it was misconduct for the prosecution to refer to him as a “serial killer.” As we have discussed above, this appellation was accurate, relevant, and in no way improper. Madison’s eighth proposition of law is overruled.

C. Other Misconduct Claims

{¶ 179} In his 15th proposition of law, Madison contends that the state committed prosecutorial misconduct in both the guilt and penalty phases.

1. Guilt Phase

{¶ 180} As to the guilt phase, Madison first claims the prosecution improperly introduced the testimony of the family members of the victims, because it “went beyond what was proper or necessary” to prove relevant matters. He cites two such witnesses: Shirelda Terry’s sister, Britney Terry, and her stepfather, Derrick Minor.

{¶ 181} Britney testified without objection that her sister enjoyed praise dancing. When the state asked her to describe her relationship with her sister,

however, the trial court sustained a defense objection, and the question went unanswered. Thus, no error occurred.

{¶ 182} Minor testified without objection about Terry’s schooling, straight-A average, participation in praise dancing, and employment. He said that she worked from 7:30 a.m. to 4:00 p.m. but sometimes left early if there was no work to do. He took her to school and to work, and she walked home from work. The defense objected only when he testified that she loved “[the l]ibrary, reading, poetry.”

{¶ 183} The state argues that Minor’s testimony was not victim-impact evidence but was relevant to establish Terry’s routine and route to and from work. But Terry’s love of reading (the only item Madison objected to) was unrelated to that purpose. However, this testimony was brief, unemotional, and insignificant; any error here was harmless.

{¶ 184} In his second, third, and fourth arguments under this proposition of law, Madison asserts that the prosecutor committed misconduct by not redacting the confession videos to eliminate the “improper statements” of detectives, by introducing “inflammatory” evidence, and by calling him a “serial killer.” These claims reiterate claims made in Madison’s sixth, seventh, and eighth propositions of law, which we have rejected above.

{¶ 185} Next, Madison contends that the prosecutor committed misconduct in the guilt-phase closing argument by saying Madison was a “professional” killer after he committed his second murder. But this was fair comment on the evidence. *Compare State v. Tibbetts*, 92 Ohio St.3d 146, 168, 749 N.E.2d 226 (2001) (“like a trained killer” was fair comment). He also complains that the prosecutor referred to his comment about wanting to “Anthony Sowell a bitch.” However, as discussed in relation to Madison’s seventh proposition of law, this statement was properly introduced into evidence and, therefore, could be used in argument.

{¶ 186} Finally, Madison says that the prosecutor committed misconduct in closing argument by arguing that he lacked remorse. It is true that Madison’s lack of remorse was irrelevant to guilt. But the guilt-phase evidence was overwhelming, so any error was harmless. Moreover, there is no carryover prejudice in the penalty phase. Madison’s lack of remorse was discussed by expert witnesses in that phase, as it was relevant to the diagnosis of antisocial-personality disorder.

2. *Penalty Phase*

{¶ 187} As to the penalty phase, Madison first argues that the prosecutor unfairly emphasized the grotesque nature of the murders and the autopsy photographs. In cross-examining Dr. Davis, the prosecutor described the crimes as “grotesque” and asked Dr. Davis if he had looked at the autopsy photos. Both times the trial court sustained defense objections. The prosecutor did not display or describe the photos during the penalty phase. Any error stemming from these brief incidents was harmless.

{¶ 188} Madison also complains that the state used the cross-examination of Dr. Cunningham “to make speeches and arguments” to the jury. Although he provides record citations, he offers no specific examples or analysis. Cross-examination is entitled to wide latitude, and its scope is within the trial court’s discretion. *State v. Garfield*, 34 Ohio App.3d 300, 303, 518 N.E.2d 568 (11th Dist.1986), citing *State v. Huffman*, 86 Ohio St. 229, 99 N.E. 295 (1912). Moreover, prosecutorial misconduct constitutes reversible error only if it denies the defendant a fair trial. *Smith v. Phillips*, 455 U.S. at 219, 102 S.Ct. 940, 71 L.Ed.2d 78. Madison fails to show either that the trial court abused its discretion or that the alleged misconduct denied him a fair trial.

{¶ 189} Next, Madison protests that the prosecutor improperly sought to discredit his expert witnesses. In cross-examining Dr. Davis, the prosecutor suggested that he was “loyal to [his] client,” sought “strategic advantage,” and was being “used as a tool to aid in [Madison’s] defense.” The trial court sustained

objections to the “client” and “tool” questions, and instructed the jury to disregard the “client” question. (Madison did not ask for a curative instruction regarding the “tool” question.) No error occurred. *See State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, ¶ 182.

{¶ 190} As for the “strategic advantage” question, Dr. Davis was hired by the defense and the question seems a legitimate attempt to probe possible bias. Hence, the trial court did not abuse its discretion by overruling Madison’s objection.

{¶ 191} Madison takes issue with a prosecution question to Dr. Davis asking whether Dr. Cunningham was a “professional testifier.” But because the trial court sustained his objection, no error occurred.

{¶ 192} Madison also complains that the prosecutor in closing argument attacked Dr. Cunningham’s testimony on the heritability of personality disorders by saying, “There’s no heredity to murder. * * * [T]here’s no DNA to rape * * *. There’s no DNA to murder. It’s a ridiculous proposition, and * * * it’s never been even claimed by anybody * * * responsible that I’ve ever heard of, or irresponsible for that matter, to my knowledge.” Madison did not object at trial and does not attempt to show that plain error occurred. Hence, this claim is forfeited.

{¶ 193} Madison accuses the prosecutor of making “groundless objections” to his mitigating evidence. We have already rejected this claim in overruling Madison’s tenth proposition of law.

{¶ 194} Madison contends that the prosecutor improperly commented on the defense’s failure to call certain witnesses in the sentencing phase, including Madison’s mother. A defense objection was overruled when the prosecutor asked Dr. Davis if he knew that Madison’s mother lived in the area and that “all they have to do is subpoena her * * * and she can come right in here * * * and testify * * *.” But the trial court sustained two later objections to similar questions. We find nothing improper about the prosecutor’s questions.

{¶ 195} Madison charges that the prosecutor disparaged him in front of the jury. On cross-examination, the prosecutor, referring to Madison, asked Dr. Cunningham: “Do you see the guy here on the iPad looking at pictures of ladies * * *?” The defense objected, and the trial court cautioned the prosecutor not to refer to what Madison was doing and told the jury to disregard the question. The defense later asked for a mistrial based on the prosecutor’s discussing “non-evidentiary items.” The trial court denied the motion but instructed the jury that “the defendant has no burden of proof, and the defendant is permitted to look at the iPad during the course of this trial.”

{¶ 196} The decision to grant or deny a mistrial lies in the trial court’s discretion, and the court should grant one only when justice requires and a fair trial is no longer possible. *State v. Cepec*, 149 Ohio St.3d 438, 2016-Ohio-8076, 75 N.E.3d 1185, ¶ 89. Madison does not explain how this incident rendered a fair trial impossible or why the trial court’s instructions were insufficient to deal with any unfair prejudice.

{¶ 197} Madison complains that in discussing his prior attempted-rape conviction, the prosecutor improperly called him a “con artist.” He also contends the prosecutor improperly discussed the details of that conviction, Madison’s violations of sex-offender reporting obligations stemming from it, and a prior drug offense. However, Madison offers no argument or analysis to show why any of this was improper.

{¶ 198} In his penalty-phase closing argument, the prosecutor stated: “It would be * * * dishonest morally to violate your oaths.” A defense objection was overruled. It is not misconduct to allude to the jurors’ oath. Just before the statement here, the prosecutor admonished the jurors to put aside “bias, * * * sympathy [and] prejudice” and “act in a logical, reasonable fashion.” It is evident that “[t]he prosecutor was not asking the jurors to return a finding of guilty because of their oath.” *State v. Pickens*, 141 Ohio St.3d 462, 2014-Ohio-5445, 25 N.E.3d

1023, ¶ 116, *overruled in part on other grounds, State v. Bates*, 159 Ohio St.3d 156, 2020-Ohio-634, 149 N.E.3d 475, ¶ 35. Instead, his statement linked the jurors’ oath to their responsibility to act logically, reasonably, and without bias.

{¶ 199} The prosecutor also said that there was “no reasonable question whatsoever as to weight”; that it would not be honest to say “a bush is bigger than a giant Sequoia tree”; that he had “faith in the people” and “in you [jurors] to do the right thing”; that “we owe” it to the victims, society, and the community “to follow our oath”; and that “I appreciate * * * the weight you will carry the rest of your life thinking about this case and the justice it deserves.” The defense objected to none of this at trial, forfeiting all but plain error. Madison now claims that all of it was error, but he cites nothing to show how any of it was improper. Nor does he show how these statements undermined the reliability of the penalty-phase verdict. Thus, he fails to show plain error.

{¶ 200} Madison contends that the prosecutor, in examining Dr. Pitt, “ignored” the trial court’s admonition that he could explore the issue of “choice” in a “limited manner.” But he does not explain how the prosecutor exceeded this limitation. The defense objected only once, and the trial court overruled that objection. Madison has not shown error.

{¶ 201} Madison’s remaining claims in this proposition of law repeat claims from his 13th and 14th propositions, claims we have already rejected. Madison’s 15th proposition of law is overruled.

VII. INEFFECTIVE ASSISTANCE OF COUNSEL

{¶ 202} In his 16th proposition of law, Madison contends that his trial counsel rendered ineffective assistance. To establish ineffective assistance, Madison must show (1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel’s errors, the proceeding’s result would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-688, 694, 104

S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraphs two and three of the syllabus.

A. Guilt Phase

{¶ 203} Madison asserts that to the extent counsel failed to object to improper statements in the interrogation videos, they rendered ineffective assistance. Similarly, he contends they were ineffective to the extent they failed to object to prosecutorial misconduct. As he gives no specifics and offers no analysis, we reject these claims.

{¶ 204} He also claims that defense counsel were ineffective by failing to object to (1) the police interrogating Madison about the number of victims, (2) testimony that Madison talked about “watching the bitches” and wanting to kill the mother of his children, (3) his flirting with a female detective, and (4) the portion of the video when he was talking to himself.

{¶ 205} These issues are all raised in Madison’s seventh proposition of law. As we have explained in discussing that proposition, the final three of these claims do not satisfy the prejudice prong of the plain-error test. Nor do they meet the prejudice prong for ineffective assistance. As for the number-of-victims issue, Madison fails to show that his trial counsel’s failure to object fell below an objective standard of reasonable representation. Thus, Madison has failed to demonstrate ineffective assistance as to any of these issues.

B. Penalty Phase

{¶ 206} Madison contends that to the extent counsel in the penalty phase failed to object to unfairly prejudicial evidence or to prosecutorial misconduct, they rendered ineffective assistance. Again, he offers no analysis, so we reject these claims.

{¶ 207} Madison asserts that after the state cross-examined Dr. Davis on the defense’s failure to call Madison’s mother in the penalty phase, defense counsel erred by failing to draft a curative instruction after the trial court had offered counsel

an opportunity to do so. But, as stated above in our discussion of Madison’s 15th proposition of law, it is unclear how any unfair prejudice resulted from the cross-examination.

{¶ 208} Finally, Madison argues that defense counsel should have requested a penalty-phase instruction to inform the jury about United States Supreme Court decisions establishing the relevance of “moral culpability” to capital sentencing. He cites no authority, however, for the proposition that a jury should be instructed about specific Supreme Court decisions.

{¶ 209} Madison fails to establish that counsel rendered ineffective assistance in either phase of trial. His 16th proposition of law is overruled.

VIII. CUMULATIVE ERROR

{¶ 210} In his 18th proposition, Madison claims that the cumulative effect of the errors alleged in this case denied him a fair trial. “[A] conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of a fair trial even though each of the numerous instances of trial-court error does not individually constitute cause for reversal.” *State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577, 971 N.E.2d 865, ¶ 223. However, because Madison “offers no further analysis, this proposition lacks substance.” *State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008, 822 N.E.2d 1239, ¶ 103; *see also Bethel*, 110 Ohio St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150, at ¶ 197. Madison’s 18th proposition of law is overruled.

IX. SETTLED ISSUES

{¶ 211} In his 19th proposition of law, Madison repeats several oft-rejected arguments against the constitutionality of the death penalty and the Ohio statutes governing its imposition and also repeats rejected arguments that the death penalty violates international law. *See, e.g., State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 106, 109-120, *vacated in part and remanded on other grounds*, 145 Ohio St.3d 1455, 2016-Ohio-2807, 49 N.E.3d 318; *Jenkins*, 15 Ohio

St.3d at 168-174, 473 N.E.2d 264. We summarily overrule this proposition of law. *See generally State v. Poindexter*, 36 Ohio St.3d 1, 520 N.E.2d 568 (1988), syllabus; *State v. Spisak*, 36 Ohio St.3d 80, 81, 521 N.E.2d 800 (1988).

X. COURT COSTS

{¶ 212} In his 20th proposition, Madison complains that the trial court should have told him at sentencing that it intended to impose costs and asks us to remand this case to the trial court so he can file a motion to waive costs. A trial court “retains jurisdiction to waive, suspend, or modify the payment of costs of prosecution * * * at the time of sentencing or at any time thereafter.” R.C. 2947.23(C). *See State v. Beasley*, 153 Ohio St.3d 497, 2018-Ohio-493, 108 N.E.3d 1028, ¶ 265. Because Madison can ask for a waiver without a remand, we overrule his 20th proposition of law.

XI. INDEPENDENT SENTENCE REVIEW

{¶ 213} Under R.C. 2929.05, we must independently review Madison’s death sentence. We must determine whether the evidence supports the jury’s finding of aggravating circumstances, whether the aggravating circumstances outweigh the mitigating factors, and whether the death sentence is proportionate to death sentences affirmed in similar cases. R.C. 2929.05(A).

A. Aggravating Circumstances

{¶ 214} The jury found three aggravating circumstances as to Terry’s murder: course of conduct under R.C. 2929.04(A)(5) and two felony-murder circumstances under R.C. 2929.04(A)(7) (offense committed during rape and kidnapping). Two aggravating circumstances each were found as to the murders of Deskins and Sheeley: course of conduct and kidnapping.

{¶ 215} The evidence overwhelmingly supports the course-of-conduct specification as to each of the aggravated murders. Madison confessed to committing one of the murders. The similarities in the murders indicate that a single person killed all three victims. Madison’s admissions and the strong

evidence connecting the victims to him and to his residence prove that he was the murderer. The similar packaging, storage, and disposal of the bodies also shows a course of conduct. *See generally Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008, 822 N.E.2d 1239, at ¶ 52 (course of conduct requires “factual link” between murders alleged to constitute the course of conduct).

{¶ 216} The evidence also supports the rape specification as to Terry. R.C. 2907.02(A)(2) provides: “No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.” The medical examiner testified that both Terry’s vagina and anus were penetrated and that the resulting severe lacerations were probably inflicted with an instrument of some sort, possibly a knife. Under R.C. 2907.01(A), “the insertion, however slight, of * * * any instrument, apparatus, or other object into the vaginal or anal opening of another” constitutes “sexual conduct.” And force or threat of force can be inferred from the circumstances.

{¶ 217} The evidence also supports the kidnapping specification as to Terry. The evidence shows that Madison lied to win her trust and that he invited her to his apartment. *Compare State v. Fox*, 69 Ohio St.3d 183, 194, 631 N.E.2d 124 (1994) (kidnapping by deception occurred when defendant called victim pretending to be a prospective employer). As this was the third in a series of murders, the jury could reasonably draw the inference that Madison intended to kill Terry at the time he invited her to his apartment.

{¶ 218} As to Sheeley and Deskins, the kidnapping case is far weaker. In Sheeley’s case, Madison told police he picked her up at a bar and brought her back to his apartment. At trial, the state argued that he had already formed a plan to kill Sheeley when he brought her home and that taking her home with him was thus kidnapping by deception. But the state fails to direct us to any evidence that supports this theory.

{¶ 219} The state also argued at trial that Madison kidnapped Sheeley by restraint, *see* R.C. 2905.01(A), based on his admission to police that he attempted to “restrain” her. But that statement was in the context of his claim that she started a fight with him and he was trying to get her out of his apartment. It does not amount to an admission of kidnapping.

{¶ 220} As for Deskins, there is evidence that she was in Madison’s apartment at some point. Her DNA was found on the floor of the same closet where Darby had noticed a foul smell in May 2013. It is reasonable to infer that Deskins, like the other victims, was murdered in Madison’s apartment. But there is no evidence showing how she got there. At trial, the state argued that Madison “lured” her to the apartment, but again, there is no evidence of that. Deskins used her cell phone to call Madison around the time she disappeared, but the record does not show what was said in those calls. Finally, the state argued at trial that the bindings on Deskins’s body showed kidnapping by restraint. But the medical examiner was unable to state that the bindings were placed on the body while Deskins was alive.

{¶ 221} At oral argument, the state theorized that Madison restrained Deskins when he placed the plug of an electrical cord that he had used to bind Deskins in her mouth, in what the state says was an attempt to gag her. But the photographs of the plug in the record do not support the state’s theory. Rather the photographs show only that the plug had been placed loosely between Deskins’s lips and not secured in any way.

{¶ 222} The evidence in the record is insufficient to support the kidnapping specifications as to either Sheeley or Deskins. But this does not mean that we should vacate Madison’s death sentences for those murders. In both cases, the course-of-conduct specification remains valid. When a defendant’s death sentence is based in part on an invalid specification, we can cure the error by excluding that specification from our independent reweighing of the death sentence, so long as at least one valid specification remains. *See, e.g., State v. Wesson*, 137 Ohio St.3d

309, 2013-Ohio-4575, 999 N.E.2d 557, ¶ 97, citing *Clemons v. Mississippi*, 494 U.S. 738, 745, 110 S.Ct. 1441, 108 L.Ed.2d 725 (1990); *see also State v. Tench*, 156 Ohio St.3d 85, 2018-Ohio-5205, 123 N.E.3d 955, ¶ 309, 311.

B. Mitigating Factors

{¶ 223} The mitigating factors set forth in R.C. 2929.04(B)(1) through (6) do not assist Madison. Youth is not a factor: Madison was 36 years old when he committed these murders. *See State v. Frazier*, 61 Ohio St.3d 247, 258, 574 N.E.2d 483 (1991). Degree of participation is not a factor: Madison was the sole offender. Madison does not lack a substantial criminal record: he was convicted of attempted rape in 2002 and he has other convictions. There was no evidence that the victims induced or facilitated the murder and no evidence that Madison was under duress, coercion, or provocation. As the defense conceded, there was no evidence of any mental disease or defect. And the nature and circumstances of the aggravated murders offer no mitigation whatsoever.

{¶ 224} Madison’s chief witnesses in the penalty phase were Drs. Davis and Cunningham. Their testimony dealt mostly with Madison’s history, especially his childhood, and its effect on his ability to make choices. Drs. Davis and Cunningham concluded that Madison’s life contained numerous “risk factors” associated with negative life outcomes, including instability, physical abuse, neglect and emotional abuse, and substance abuse.

{¶ 225} *Instability*: Madison was born in Pennsylvania in 1977. As an infant, he moved to Cleveland with his mother. Madison’s paternity was unclear, and his father was never involved in his life. His mother had a series of short-term relationships with men. Madison grew up with at least 14 “transient parental figures” in the household. Few if any were good role models.

{¶ 226} Madison’s mother also moved frequently. According to Dr. Cunningham, frequent moves can disrupt a child’s socialization and undermine his sense of security. At various times, Madison was sent to live with relatives and

with others. In 1993, Madison and his half-brother, J.R. Miller, stayed with an uncle in Pennsylvania who abused J.R., had sex with a woman in front of Madison, and encouraged the boys to use drugs and watch pornography.

{¶ 227} *Physical Abuse*: Madison reported that his mother sometimes choked him. She also allegedly beat him with a cord, bruised his eye with her fist, stuffed food down his throat, and inflicted “exercise punishments” such as forcing him to do pushups for a long time without stopping. Her live-in boyfriends also physically abused him, and she did nothing about it. On one occasion, Madison was taken to the hospital after one of his mother’s boyfriends severely beat him. Madison’s half-brother J.R. was also abused; according to Dr. Cunningham, seeing another household member abused is as damaging to a child as being abused.

{¶ 228} Madison told Dr. Pitt that he had never been sexually abused. (However, Dr. Cunningham noted that Madison’s aunt reported that when Madison was six, a babysitter had sexually abused him.) Moreover, his first sexual experience took place at age 15 with a 35-year-old woman, a situation Dr. Cunningham considered “predatory” and “exploitive.”

{¶ 229} *Neglect and Emotional Abuse*: Madison’s mother did not ensure that he had enough to eat. She did not provide guidance, help him with homework, take him to playgrounds or movies, give him Christmas presents, or tell him she loved him. She once burned him by bathing him in water that was too hot.

{¶ 230} Dr. Cunningham opined that chronic stress in childhood—including disrupted attachments, poor maternal bonding, abuse, and neglect—causes changes in the brain’s anatomy, electrical activity, and chemistry that increase the likelihood of criminal conduct and violence in adulthood. In particular, Dr. Cunningham testified that neglect and instability are more damaging to a child than physical abuse. Dr. Davis explained that if a child has “unstable or insecure attachments” early in life, his brain may fail to develop the pathways that allow persons to form healthy emotional attachments.

{¶ 231} Dr. Cunningham also testified that lack of empathy and other antisocial characteristics have a “heredity component.” He noted that the behavioral history of Madison’s mother and other relatives suggests that such dysfunctional traits may have been “genetic[ally] transmit[ted]” to Madison.

{¶ 232} Dr. Cunningham concluded that Madison is fundamentally impaired in his ability to understand the emotional experiences of others. He conceded that Madison “had choices,” i.e., that he was capable of making choices. But in his opinion, Madison lacked the same foundation for making choices that “less damaged people” have. According to Dr. Cunningham, it is “very unusual” for someone with a history like Madison’s to lead a “highly achieving constructive” life. On the other hand, he said not everyone who is subjected to similar adverse influences goes on to commit multiple murders.

{¶ 233} The state called Dr. Pitt in rebuttal. Dr. Pitt diagnosed Madison as having antisocial-personality disorder, a condition defined by a pervasive pattern of violating the rights of others. Dr. Pitt also saw evidence that Madison has a “victimization mindset,” i.e., he tends to see himself as a victim. Like Dr. Davis, Dr. Pitt found no evidence that Madison has a mental disease or defect.

{¶ 234} Dr. Pitt emphatically disagreed with Dr. Cunningham’s conclusion that Madison’s history “limit[ed] the range of choices or * * * options that were available to him.” He found Madison “entirely capable of making lawful choices.”

{¶ 235} Dr. Pitt agreed that abuse “may” have an impact on a child’s development and that bad parenting can have a lasting effect on one’s personality and behavior. Nor did he dispute Dr. Davis’s conclusion that Madison’s childhood abuse and emotional trauma may have resulted in a “neurobiologically determined pathway placing him at much greater risk for psychological[,] behavior[al,] and substance abuse problems.”

{¶ 236} While conceding some correlation between having a bad childhood and becoming a violent offender, Dr. Pitt noted that correlation does not prove

causation and testified that it is impossible to predict who will become an alcoholic, a sex offender, or a serial killer. Indeed, he testified that “there are people all across this country who have had [Madison’s] background and then some, and have gone on to * * * live very productive, happy, successful lives.” And he pointed out that the “overwhelming majority” of child-abuse victims, even though they “have to live with some demons,” do not go on to commit multiple murders, kidnappings, and rapes. Conversely, some people with “terrific upbringings * * * do terrible things.”

{¶ 237} Dr. Cunningham agreed with Dr. Pitt that Madison has a “victim mentality,” but said that is evidence of his being “damaged.” He also acknowledged that Dr. Pitt’s diagnosis of antisocial-personality disorder was “probably” accurate.

{¶ 238} *Substance Abuse*: Mental-health experts on both sides diagnosed substance-abuse problems. Dr. Cunningham testified that the most powerful risk factor for alcohol and drug abuse is heredity and that Madison’s early substance abuse indicates a “genetic predisposition” to abuse substances. But Dr. Pitt said that the level of drug and alcohol use Madison described in his interview was insufficient to cause blackouts, cognitive difficulty, or long-term psychiatric problems. Madison’s girlfriend Darby recalled that Madison was not a heavy drinker during the timeframe of the murders, contradicting what Madison told the police and Dr. Cunningham about his alcohol use.

{¶ 239} *Low Risk to Prison Staff and Inmates*: The jury also heard from James E. Aiken, a consultant and retired prison administrator, who testified as a defense expert witness on corrections and prison environments. Aiken reviewed Madison’s prison and jail records, his social history and education, and a “brief overview” of his crimes. He concluded that the Department of Rehabilitation and Correction could “adequately manage” Madison if he was sentenced to life in prison. Aiken testified that Madison’s age and past behavior while incarcerated

indicated an “extremely low” probability that Madison would pose a danger to prison employees or to other inmates.

{¶ 240} *Relationship with Children*: In the guilt phase, Madison’s neighbor Asia Stovall, his friend Quiana Baker, and his girlfriend Darby testified that Madison was a good father to his two children. In Stovall’s view, Madison’s children loved being with him. Baker offered that the children respected and obeyed Madison. And Darby said that Madison loved his children and they loved him.

C. Sentence Evaluation

{¶ 241} Madison’s most significant mitigating factor is his abused, unstable childhood. But this court has seldom given strong weight to a defendant’s unstable or troubled childhood. *See, e.g., State v. Campbell*, 95 Ohio St.3d 48, 51-54, 765 N.E.2d 334 (2002); *State v. Cooley*, 46 Ohio St.3d 20, 41, 544 N.E.2d 895 (1989); *but see State v. Johnson*, 144 Ohio St.3d 518, 2015-Ohio-4903, 45 N.E.3d 208, ¶ 137- 140; *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 101-106. Madison was 36 years old when he committed these murders. “He had reached ‘an age when * * * maturity could have intervened’ and ‘had clearly made life choices as an adult before committing’ ” these murders. *Campbell* at 53, quoting *State v. Murphy*, 65 Ohio St.3d 554, 588, 605 N.E.2d 884 (1992) (Moyer, C.J., dissenting). He “had considerable time to distance himself from his childhood and allow other factors to assert themselves in his personality and his behavior.” *Id.*

{¶ 242} Madison’s relationship with his children is entitled to some slight weight. His possible voluntary intoxication during the offenses is entitled to little weight. *See id.* at 51. Aiken’s assessment that Madison will not likely be a danger to guards or fellow inmates if incarcerated for life deserves some slight weight.

{¶ 243} With respect to Terry’s murder, we conclude that the three aggravating circumstances—kidnapping, rape, and Madison’s course of conduct

involving three murders in ten months—outweigh the mitigating factors beyond a reasonable doubt. As to the murders of Deskins and Sheeley, we conclude in each case that the course-of-conduct aggravating circumstance alone outweighs the mitigating factors beyond a reasonable doubt.

D. Proportionality Review

{¶ 244} We further conclude that the imposition of death sentences for these crimes is proportionate to sentences approved in similar cases. This court has approved death sentences in multiple-murder cases. *E.g.*, *Beasley*, 153 Ohio St.3d 497, 2018-Ohio-493, 108 N.E.3d 1028, at ¶ 250; *State v. Spaulding*, 151 Ohio St.3d 378, 2016-Ohio-8126, 89 N.E.3d 554, ¶ 229.

XII. CONCLUSION

{¶ 245} We reverse the trial court’s judgment convicting Madison of kidnapping Sheeley and Deskins under Counts 3 and 6 of the indictment, and we accordingly vacate the prison sentences imposed for each of those offenses. We also reverse the trial court’s judgment on the felony-murder death specifications to Counts 2 and 5, which were predicated on kidnapping. Those specifications are dismissed. *See Tench*, 156 Ohio St.3d 85, 2018-Ohio-5205, 123 N.E.3d 955, at ¶ 311; *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶ 149.

{¶ 246} In all other respects, we affirm the judgment of the trial court regarding the convictions and sentences. We affirm all three sentences of death.

Judgment affirmed in part
and reversed in part.

O’CONNOR, C.J., and KENNEDY, FRENCH, FISCHER, DONNELLY, and STEWART, JJ., concur.

Michael C. O’Malley, Cuyahoga County Prosecuting Attorney, and Christopher D. Schroeder, Katherine E. Mullin, and Anna M. Faraglia, Assistant Prosecuting Attorneys, for appellee.

January Term, 2020

Law Office of Timothy Farrell Sweeney and Timothy F. Sweeney; and John
B. Gibbons, for appellant.

The Supreme Court of Ohio

FILED

State of Ohio

Case No. 2016-1006

JUL 21 2020

v.

JUDGMENT ENTRY

CLERK OF COURT
SUPREME COURT OF OHIO

Michael Madison

APPEAL FROM THE
COURT OF COMMON PLEAS

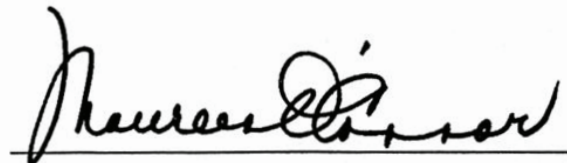
This cause, here on appeal from the Court of Common Pleas for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the trial court is affirmed in part and reversed in part. It is ordered that the trial court's judgment convicting appellant of kidnapping Shetisha Sheeley and Angela Deskins under Counts 3 and 6 of the indictment is reversed. It is further ordered that the trial court's judgment on the felony-murder death specifications to Counts 2 and 5, which were predicated on kidnapping, is reversed. It is further ordered that judgment of the trial court regarding the convictions and sentences in all other respects is affirmed, consistent with the opinion rendered herein.

Furthermore, it appearing to the court that the date fixed for the execution of judgment and sentence of the Court of Common Pleas has passed, it is ordered by the court that the sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility or, in his absence, by the Deputy Warden on Wednesday, May 15, 2024, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be certified to the Warden of the Southern Ohio Correctional Facility, and that the Warden shall make due return to the Clerk of the Court of Common Pleas for Cuyahoga County.

It is further ordered by the Court that a mandate be sent to and filed with the clerk of the Court of Common Pleas for Cuyahoga County.

(Cuyahoga County Court of Common Pleas; No. CR-13-579539-A)



Maureen O'Connor
Chief Justice

The official case announcement, and opinion if issued, can be found at
<http://www.supremecourt.ohio.gov/ROD/docs/>

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101478

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL MADISON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-579539-A

BEFORE: Celebrezze, A.J., E.T. Gallagher, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: October 22, 2015

Appendix B

CR13579539-A

91411803



APPX-0065

ATTORNEYS FOR APPELLANT

Robert L. Tobik
Cuyahoga County Public Defender
BY: Erika B. Cunliffe
Jeffrey Gamso
Assistant Public Defenders
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Christopher D. Schroeder
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., A.J.:

{¶1} Defendant-appellant, Michael Madison (“Madison”), brings this appeal challenging the trial court’s order granting the state of Ohio’s motion to compel a psychiatric evaluation of Madison. Specifically, appellant argues that the trial court does not have the authority to compel Madison to submit to a psychiatric evaluation when Madison’s mental state or psychological status is not at issue, and that Madison should be able to exercise his Eighth Amendment right to present mitigating evidence without sacrificing his Fifth Amendment right against self-incrimination. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} On October 28, 2013, the Cuyahoga County Grand Jury returned a 14-count indictment charging appellant with six counts of aggravated murder. All six counts were accompanied by death penalty specifications under R.C. 2929.04(A)(5) and 2929.04(A)(7). The matter was set for trial on July 21, 2014.

{¶3} Following his indictment in this case, Madison’s defense team retained two psychiatric experts to evaluate him — Dr. Daniel A. Davis, a forensic psychologist, and Dr. James Karpawich, a clinical psychologist. Defense counsel plans to introduce the psychiatric expert testimony as mitigation evidence during the penalty phase of the proceedings. During pretrial discovery,

the defense provided copies of the expert reports to appellee, the state. Dr.

Davis's report included the following relevant comments and conclusions:

* A substantial body of research documents the negative impact of the effects of abuse and trauma upon the developing brain. It is well documented in the research literature that exposure to trauma can have profound negative effects upon the developing child. These effects are physical and chemical in nature that result in subsequent psychological dysfunction. Specifically, exposure to violence, verbal and physical abuse results in an imbalance in an important chemical, cortisol, in the brain that results in damage to structures of the brain such as the hippocampus that is responsible for the control of memory, emotions, and attention. Exposure to abuse has also been shown to affect the limbic system (the emotional seat of the brain) especially the amygdala, an area of the brain critically involved in moods, emotions such as anger and fear and emotional learning.

* Thus, the extreme trauma and abuse experienced by Mr. Madison resulted in a neurobiologically determined pathway placing him at much greater risk for psychological, behavioral and substance abuse problems.

* [Madison's] instability as a youth as well as potentially his family history, suggests the potential of a possible underlying mood disorder, likely Posttraumatic Stress Disorder or at a minimum, a need for a psychiatric consultation.

* In Mr. Madison's case, it is highly likely that his early victimization resulted in severe behavioral symptoms that are frequently associated with Posttraumatic Stress Disorder in males.

* Youth who come from markedly abusive and dysfunctional environments do not have the chance to learn appropriate social coping skills, skills to regulate emotions, skills to control impulses and skills to relate in positive, socially appropriate ways.

* As an adult, [Madison] presented with substance abuse, behavioral instability as well as antisocial behaviors.

{¶4} Preparing to rebut his expert testimony, the state moved for an order compelling a psychiatric evaluation of Madison by the state's expert, Dr. Steven E. Pitt. Defense counsel objected to the evaluation proposed by the state, arguing that it had no intention of putting Madison's mental state in issue — either in the trial or penalty phase — and only intended to introduce the expert testimony as mitigating evidence during the penalty phase. At the conclusion of the June 3, 2014 hearing on the state's motion, the trial court granted the state's motion, ruling:

You may not use it during the guilt/non-guilt phase. You can only use it in mitigation. The State will be able to have an examination of the defendant. However, it is limited only to brain damage and issues like that. There may be no questioning about the facts and circumstances of this particular case.

(Tr. 24-25.)

{¶5} Madison filed a notice of appeal in this court and an emergency motion to stay the trial court's order. The state moved to dismiss the appeal, arguing that the ruling on the motion was not a final, appealable order pursuant to R.C. 2505.02(B). This court denied the state's motion to dismiss — finding the trial court's ruling to be a final, appealable order under R.C. 2505.02(B)(4) — on the grounds that Madison's Fifth Amendment testimonial privilege is a provisional remedy. Therefore, the issue as to whether Madison can be compelled to submit to the psychiatric examination is ripe for hearing and judgment.

{¶6} On June 30, 2014, the state filed a writ of prohibition in the Supreme Court of Ohio, again challenging this court's jurisdiction to entertain the appeal under R.C. 2505.02. The Supreme Court dismissed the state's complaint and subsequent motion for reconsideration.

{¶7} Appellant filed the instant appeal assigning two errors for review:

I. The trial court has no authority to compel a defendant to submit to a psychiatric evaluation by a prosecution expert where that evaluation's explicit purpose is to rebut mitigation evidence the defense has repeatedly denied any intention of presenting.

II. A capital defendant should be able to exercise his 8th Amendment right to develop and present mitigating evidence for a possible penalty phase without sacrificing his 5th Amendment privilege against self-incrimination.

II. Law and Analysis

{¶8} Constitutional analysis involves a question of law that is subject to de novo review. *Ornelas v. United States*, 517 U.S. 690, 698-99, 116 S.Ct. 1657 134 L.Ed.2d 911 (1996) (stating legal conclusions of trial court are reviewed de novo).

A. Mental Condition Controversy

{¶9} In his first assignment of error, Madison argues that the trial court had no authority to compel him to submit to a psychiatric evaluation by the state's expert where that evaluation's explicit purpose is to rebut mitigation evidence that the defense does not intend to present. Specifically, Madison argues that the state's expert, Dr. Pitt, has no right to perform an evaluation

because: (1) Madison is not arguing that his mental condition made him incapable of prior calculation and design or from acting purposefully, and (2) Madison is not asserting any mental condition as an affirmative defense in the criminal liability phase of the proceedings. Therefore, Madison argues, the state is not entitled to a psychiatric evaluation because his mental health is not in controversy.

{¶10} However, Madison concedes he anticipates introducing the expert testimony of Dr. Davis and Dr. Karpawich during the penalty phase of the proceedings as mitigating evidence. Specifically, Madison intends to introduce the expert testimony to illustrate how the physical abuse and neglect he experienced as a child resulted in damage — both physical and chemical — to his brain. The state maintains that it is entitled to its own psychiatric evaluation to rebut the mitigation evidence, including psychological issues, that Madison introduces during the penalty phase.

{¶11} The United States Supreme Court precedent holds that a defendant's Fifth Amendment privilege against self-incrimination applies to the penalty phase of a capital case. *White v. Woodall*, ___U.S.___, 134 S.Ct. 1697, 1699, 188 L.Ed.2d 698 (2013). Further, it is undisputed that "when a criminal defendant 'neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence,' his compelled statements to a psychiatrist cannot be used against him." *Kansas v. Cheever*, ___U.S.___, 134 S.Ct. 596, 601, 187

L.Ed.2d 519 (2013), quoting *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981). However, when a defendant introduces psychiatric evidence and places his state of mind directly at issue at trial, he may be compelled to submit to a psychiatric evaluation. *Buchanan v. Kentucky*, 483 U.S. 402, 422-424, 107 S.Ct. 2906, 97 L.Ed.2d 336 (1987).

{¶12} There are no criminal rules governing whether or when a court may order a defendant to submit to a psychological examination. However, there is an applicable civil rule: Civ.R. 35(A). Crim.R. 57(B) permits a trial court in a criminal case to look to the civil rules for guidance when no applicable rule of criminal procedure exists. *State v. Schlee*, 117 Ohio St.3d 153, 154, 2008-Ohio-545, 882 N.E.2d 431, ¶ 1. Ohio courts, including this court, have generally been guided by Civ.R. 35(A) in criminal cases. See e.g. *State v. Ervin*, 8th Dist. Cuyahoga No. 80473, 2002-Ohio-4093, ¶ 69-70.

{¶13} Civ.R. 35(A) allows a trial court to order a party to submit to a mental examination when the mental condition of the party is in controversy. Specifically, Civ.R. 35(A) states, in its entirety:

When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit himself to a physical or mental examination or to produce for such examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place,

manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

{¶14} A party's mental condition is "in controversy" when it is "directly involved in some material element of the cause of action or defense." *In re Guardianship of Johnson*, 35 Ohio App.3d 41, 44, 519 N.E.2d 655 (10th Dist.1987). The "in controversy" element is established when the mental condition of a party is a relevant factor in the case. *Brossia v. Brossia*, 65 Ohio App.3d 211, 215, 583 N.E.2d 978 (6th Dist.1989).

{¶15} R.C. 2929.04 lists the criteria to be considered in deciding whether to impose a death sentence in a capital case. R.C. 2929.04(B)(3) specifically allows the court to determine "[whether], at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law."

{¶16} Despite statements to the contrary, Madison admitted at the trial court hearing that he intends to present expert testimony of his mental condition as mitigating evidence to avoid the death penalty should the case proceed to the penalty phase. Therefore, Madison has made his mental condition a relevant factor in determining whether a death sentence is appropriate.

{¶17} Madison argues that the facts about his past detailed in the expert reports — while perhaps mitigating — "do not constitute evidence relating to his

mental state.” However, Dr. Davis’s report contains several conclusions about Madison’s mental condition — conclusions that Madison intends to introduce as mitigating evidence — including:

- * Exposure to childhood trauma had physical and chemical effects on Madison’s brain that result in subsequent psychological dysfunction.

- * Exposure to violence, verbal and physical abuse results in an imbalance in an important chemical, cortisol, in the brain that results in damage to structures of the brain such as the hippocampus that is responsible for the control of memory, emotions, and attention.

- * Exposure to abuse has also been shown to affect the limbic system (the emotional seat of the brain) especially the amygdala, an area of the brain critically involved in moods, emotions such as anger and fear and emotional learning.

- * Exposure to abuse during critical times can result in damage to structures such as the frontal lobes that are critical for executive functions, such as attention, working memory, motivation, and behavioral inhibition.

- * The supposed damage to Madison’s frontal lobes results in an inability to plan and anticipate outcomes, to be flexible, to self-monitor and show good judgment and be aware of one’s self and one’s impact upon others.

- * Thus, the extreme trauma and abuse experienced by Mr. Madison resulted in a neurobiologically determined pathway placing him at much greater risk for psychological, behavioral and substance abuse problems. [Madison’s] instability as a youth as well as potentially his family history, suggests the potential of a possible underlying mood disorder, likely Posttraumatic Stress Disorder or at a minimum, a need for a psychiatric consultation.

* In Mr. Madison's case, it is highly likely that his early victimization resulted in severe behavioral symptoms that are frequently associated with Posttraumatic Stress Disorder in males.

* Youth who come from markedly abusive and dysfunctional environments do not have the chance to learn appropriate social coping skills, skills to regulate emotions, skills to control impulses and skills to relate in positive, socially appropriate ways.

* As an adult, [Madison] presented with substance abuse, behavioral instability as well as antisocial behaviors.

{¶18} Dr. Davis's report raises nine potential issues regarding Madison's mental state. Madison argues that Dr. Davis does not make a diagnosis — pursuant to R.C. 2929.04(B)(3) — in his report. Although the report does not make a psychiatric diagnosis, Madison's brain and mental condition is nevertheless in controversy because the state submits that none of these statements are true.

{¶19} Madison raises R.C. 2945.371 in support of his position that the state is not entitled to a psychiatric evaluation. R.C. 2945.371(A) states:

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

Thus, because neither competency nor sanity is in issue, Madison argues that the trial court was not authorized to order a psychiatric evaluation. In *State v. Goff*, the defendant intended to introduce expert testimony from a psychiatric examination to support her self-defense claim. *State v. Goff*, 128

Ohio St.3d 169, 2010-Ohio-6317, 942 N.E.2d 1075, ¶ 3. The Supreme Court of Ohio held that the trial court had the authority to order a compelled psychiatric evaluation of defendant, stating:

By putting her mental state directly at issue and introducing expert testimony based upon her own statements to the expert, the defendant opens the door to a limited examination by the state's expert concerning battered-woman syndrome and its effect on the defendant's behavior.

Id. at ¶ 58. Here, Madison's mental state is at issue because the state disputes the conclusions that Dr. Davis makes in his report.

{¶20} Madison further argues that the state can effectively rebut his expert testimony without conducting a personal and independent psychiatric evaluation. Specifically, Madison argues that the expert testimony he intends to introduce "does not include a diagnosis, and is not predicated on his statements to the expert," and instead is "based on his expert's research on risk factors relating to violent behavior and on historical facts of Mr. Madison's life."

{¶21} The only way to rebut Madison's expert testimony is through expert testimony. *In re Guardianship of Johnson*, 35 Ohio App.3d at 44, 519 N.E.2d 655. "When a defendant presents evidence through a psychological expert who has examined him, the government likewise is permitted to use the only effective means of challenging that evidence: testimony from an expert who has also examined him." *Cheever*, 134 S.Ct. at 601, 187 L.Ed.2d

519 (2013); see also *United States v. Byers*, 740 F.2d 1104, 1113

(D.C.Cir.1984) (en banc) (holding that the government could present rebuttal expert testimony in part because it is perhaps “the most trustworthy means of attempting to meet” the burden of proof. *Byers* quoting *Pope v. United States*, 372 F.2d 710, 720 (8th Cir.1967)). Furthermore, “[i]t is unfair and improper to allow a defendant to introduce favorable psychological testimony and then prevent the prosecution from resorting to the most effective and in most instances the only means of rebuttal: other psychological testimony.” *Goff* at ¶ 46, citing *Schneider v. Lynaugh*, 835 F.2d 570, 576 (5th Cir.1988).

{¶22} We conclude that to allow Madison to present expert evidence of his mental condition without allowing the state to investigate Madison’s claims and present a case in rebuttal is not fair and “would undermine the adversarial process, allowing a defendant to provide the jury * * * a one-sided and potentially inaccurate view,” unfairly tipping the weight of the evidence in his favor. *Cheever* at 601.

{¶23} The trial court’s order is aimed at protecting — and does adequately protect — Madison’s Fifth Amendment privilege. “The limitation on a defendant’s bedrock constitutional right against self-incrimination must be carefully tailored to avoid any more infringement than is necessary to ensure a fair trial.” *Goff* at ¶ 30. Here, the order “is limited only to brain damage and issues like that.” The court further ordered: “[t]here may be no

questioning about the facts and circumstances of this particular case.” The court’s order restricting the scope of the psychiatric evaluation is sufficiently tailored to protect Madison from an unreasonable infringement on his Fifth Amendment privilege against self-incrimination.

{¶24} “Courts have the inherent authority to preserve the fairness in the trial process, and allowing defendant to present expert testimony * * * while denying the prosecution the ability to introduce such evidence would unfairly handicap the prosecution and prevent the trier of fact from making an informed decision.” *Goff* at ¶ 46. While his expert testimony does not include a mental status diagnosis or raise an affirmative defense, Madison has made his mental condition a material issue for a possible penalty phase of the proceedings. Therefore, the state is entitled to its own evaluation solely for the purposes of rebutting the evidence Madison presents concerning his brain damage and mental condition. The examination authorized by the court’s order is limited to the sole issue in controversy—the nature and extent of Madison’s brain damage.

{¶25} The first assignment of error is overruled.

B. Eighth Amendment

{¶26} In the second assignment of error, Madison argues that he should be able to exercise his Eighth Amendment right to present mitigating evidence

for a possible penalty phase without sacrificing his Fifth Amendment privilege against self-incrimination.

{¶27} Because of the uniquely severe and irrevocable nature of the death penalty, defendants in capital cases are afforded “wide latitude in introducing evidence alleged to be mitigating.” *State v. Eley*, 77 Ohio St.2d 174, 185, 672 N.E.2d 640 (1996). Thus, the scope of the evidence a defendant may introduce is comprehensive and includes expert psychiatric or psychological testimony, details from his social history, education, medical and mental health, as well as other things. *State v. Were*, 118 Ohio St.3d 448, 2008-Ohio-2762, 890 N.E.2d 263. The United States Supreme Court acknowledged that this kind of evidence “is relevant because of the belief, long held by society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional or mental problems, may be less culpable than defendants who have no such excuse.” *Penry v. Lynaugh*, 492 U.S. 302, 327-328, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989).

{¶28} Madison contends that an order compelling him to submit to a psychiatric examination forces him to choose between his Fifth Amendment privilege against self-incrimination and his Eighth Amendment right to present evidence in mitigation of the death penalty. Furthermore, Madison contends that the United States Supreme Court has “consistently rejected the notion that exercise of one constitutional right may be conditioned on the substantial

impairment of another.” In support of this argument, Madison relies on *Simmons v. United States*, 390 U.S. 377, 88 S.Ct 967, L.Ed.2d 1247 (1968). In *Simmons*, the Supreme Court held that “when a defendant testifies in support of a motion to suppress evidence pursuant to the Fourth Amendment, his testimony cannot be admitted against him at trial on the issue of guilt unless he makes no objection.” *Id.* at 394. In *Simmons*, the defendant was not present when his suitcase was seized from another person’s home. The only way to establish standing to object to the admission of the suitcase was for the defendant to testify that he was its owner. The defendant’s suitcase, which was seized within a few hours of a bank robbery, was found to contain money wrappers taken from the victimized bank and was therefore incriminating. The court recognized that Simmons was faced with the dilemma of choosing between his Fourth Amendment exclusionary claim and his Fifth Amendment privilege against self-incrimination.

{¶29} However, the court in *Simmons* held that the surrender of one right in order to assert another was intolerable “under the circumstances of th[at] case.” *Id.* It did not hold, as Madison suggests, that a defendant may never be forced to surrender one right in order to assert another in any kind of criminal prosecution.

{¶30} Madison argues that “[h]e must submit to an unjustifiable infringement on his Fifth Amendment right to remain silent so that he may

exercise his Eighth Amendment right to present mitigating evidence at a potential penalty phase.” Further, Madison contends that the compelled psychiatric evaluation will result in “an unrestricted intrusion on his Fifth Amendment privilege against self-incrimination.”

{¶31} Having reviewed the record, we do not see anything in the trial court’s order — limiting the psychiatric evaluation to the issue of brain damage, and disallowing any questioning regarding the facts or circumstances of the case — that jeopardizes Madison’s Fifth Amendment right against self-incrimination. By the defense’s own admission, Madison’s mental state is going to be an issue in the penalty phase of the proceedings. The trial court’s order is narrowly tailored and adequately protects Madison’s Fifth Amendment right against self-incrimination — in both the trial on the merits and the potential penalty phase — from an unreasonable infringement by the state.

{¶32} The alternative, that defense counsel has not argued here, is having the state examine Madison after he is found guilty and before the matter proceeds to the penalty phase. This would require putting the trial on hold for an undetermined number of months while Dr. Pitt evaluates Madison and prepares his report. Therefore, this solution is neither realistic nor constitutionally required.

{¶33} The second and final assignment of error is overruled.

{¶34} Finding no error based on the arguments advanced, this cause is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

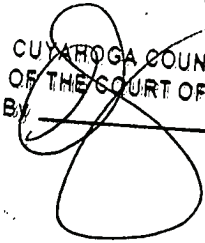
Frank D. Celebrezze Jr.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

EILEEN T. GALLAGHER, J., and
ANITA LASTER MAYS, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

OCT 22 2015

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By  Deputy

The Supreme Court of Ohio

FILED

FEB 24 2016

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

Case No. 2015-1734

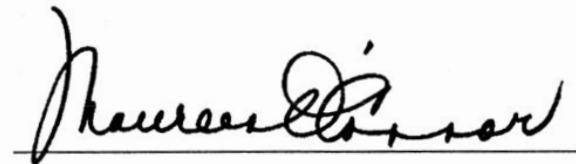
v.

ENTRY

Michael Madison

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Cuyahoga County Court of Appeals; No. 101478)



Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

Appendix C

APPX-0083



84489625

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MICHAEL MADISON
Defendant

2014 JUN -3 A 10:11

CLERK OF COURTS
CUYAHOGA COUNTY

Case No: CR-13-579539-A

Judge: NANCY R MCDONNELL

INDICT: 2903.01 AGGRAVATED MURDER /FRM1 /NPC
/RVOS /SMS /SVPS /CCS /FMS
2903.01 AGGRAVATED MURDER /FRM1 /NPC
/RVOS /SMS /SVPS /CCS /FMS
2905.01 KIDNAPPING /FRM1 /NPC /RVOS /SMS
/SVPS
ADDITIONAL COUNTS...

JOURNAL ENTRY

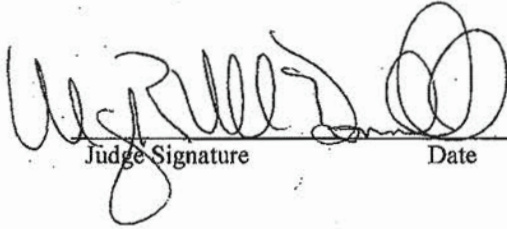
COURT REPORTER SUE VADNAL PRESENT.

DEFENDANT IN COURT WITH DAVID GRANT, CHRIS JULIAN, JACK GREENE AND LINDA HRICKO. PROSECUTORS
TIM MCGINTY, ANNA FARAGLIA, KATIE MULLIN, BRENT KIRVEL, SAL AWADALLAH, AND MOLLIE MURPHY
PRESENT.

STATE'S MOTION FOR DEFENDANT TO BE EXAMINED BY DR. PITT IS GRANTED.

STATE MAY NOT INQUIRE INTO THE FACTS AND CIRCUMSTANCES OF THE CASE. EXAMINATION ONLY RELATES
TO THE BRAIN DAMAGE OF DEFENDANT.

06/02/2014
CPJM2 06/02/2014 16:03:59

 6-3-12
Judge Signature Date

HEAR
06/02/2014

Appendix D



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

2016 JUN -8 P 12: 54

STATE OF OHIO

Plaintiff

vs

MICHAEL MADISON

Defendant

CASE NO. CR 570589
CLERK OF COURTS
CUYAHOGA COUNTY
JUDGE NANCY R. McDONNELL

SENTENCING OPINION
ON MICHAEL MADISON

On May 12, 2016, the defendant was found guilty of Counts 1 and 2, the Aggravated Murder of Shetisha Sheeley, Counts 4 and 5, the Aggravated Murder of Angela H. Deskins and Counts 7 and 8, the Aggravated Murder of Shirellda Terry. Counts 1, 2, 4, 5, 7 and 8 each allege a Course of Conduct Specification as well as a Felony Murder Specification setting forth the offense of Kidnapping. In addition, Counts 7 and 8 further allege a second Felony Murder Specification for Rape. The Court merges Counts 1 and 2; Counts 4 and 5; and Counts 7 and 8 for purposes of sentencing. The State elected that the defendant be sentenced on Counts 1, 4 and 7, each alleging that the aggravated murders were committed with prior calculation and design.

The jury found that the State failed to prove beyond a reasonable doubt the firearm specifications attached to various counts of the Indictment.

The defendant was also convicted of kidnapping in Counts 3, 6 and 9 as to Shetisha Sheeley, Angela H. Deskins and Shirellda Terry respectively. Additionally, the defendant was found guilty in Count 10 of the rape of Shirellda Terry. Finally, the defendant was found guilty of Abuse of a Corpse as to Shetisha Sheeley, Angela H. Deskins and Shirellda Terry in Counts 12, 13 and 14.

Appendix E

The Having Weapons Under Disability charge in Count 11 and the Sexually Violent Predator Specifications in Counts 1 – 10 were tried to the Court after the defendant waived his right to a jury trial on those matters. The defendant was convicted of the Having Weapons Under Disability charge as well as the Sexually Violent Predator Specifications.

On May 19, 2016, the penalty phase began. As the defendant was found to be a Sexually Violent Predator, the only sentencing options are Life Without Parole and Death.

AGGRAVATED CIRCUMSTANCES

The aggravated circumstances which are to be weighed against the mitigating factors are as follows:

1. That the Aggravated Murder was part of a Course of Conduct involving the purposeful killing of or attempt to kill two or more persons, namely Shetisha Sheeley, Angela H. Deskins and Shirellda Terry.
2. That the offense at bar was committed, while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit Kidnapping and either the offender was the principal offender in the commission of the Aggravated Murder or, if not the principal offender, committed the Aggravated Murder with prior calculation and design.
3. As to Count 7 only, that the offense at bar was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit Rape, and either the offender was

the principal offender in the commission of the Aggravated Murder or, if not the principal offender, committed the Aggravated Murder with prior calculation and design.

A. Course of Conduct.

The evidence demonstrated that Shetisha Sheeley, Angela H. Deskins and Shirellda Terry were all murdered by the defendant as part of a Course of Conduct spanning the time period from September 25, 2012 through July 10, 2013. All three women were found in close proximity to defendant's apartment. Shirellda Terry was discovered in the defendant's garage, Shetisha Sheeley in an adjacent field and Angela H. Deskins in the basement of an abandoned house neighboring defendant's apartment building. In fact, the location of the remains of all 3 victims were visible from defendant's back porch. Shetisha Sheeley and Angela H. Deskins died by means of strangulation and Shirellda Terry by homicidal violence by unspecified means. Each woman was folded in half and bound. Each woman was nude from the waist down. Each woman was discovered in multiple layers of heavy construction bags. Each bag was criss-crossed with duct tape. All of the above makes clear that the purposeful killing of Shetisha Sheeley, Angela H. Deskins and Shirellda Terry were part of a course of conduct by the defendant. This aggravated circumstance is afforded great weight.

B. Felony Murder Specification – Kidnapping.

The evidence established that the aggravated murders were committed while the defendant was committing the offense of Kidnapping and the defendant was the principal offender and committed the offense with prior calculation and design.

There was absolutely no evidence introduced that anyone other than the defendant was involved in the deaths of Shetisha Sheeley, Angela H. Deskins and Shirellda Terry. Furthermore, the element of prior calculation and design is obvious from the facts. First, the accused knew all three victims. Next, the defendant gave thought to his actions by choosing both the site, his apartment, and the means. Thirdly, the aggravated murders were not spontaneous fits of rage. He lured all three back to the privacy of his apartment where he would end their lives and then painstakingly prepare and dispose of their bodies. Most importantly, the acts were drawn out. Dr. Timm, of the coroner's office, testified it takes three to five minutes to strangle a human to death and may take longer if the victim is struggling.

As to the Kidnappings themselves, with regard to Shetisha Sheeley, testimony revealed the defendant and she met at the Honey Do Bar, and he deceptively invited her back to his apartment possibly for paid sexual services. The defendant struck her on her face as was documented in the autopsy. The defendant himself admitted Shetisha Sheeley tried to leave, but he would not let her and at that time he choked her. Clearly, she was restrained of her liberty.

As to Angela H. Deskins, phone records show communications between the defendant in the weeks leading up to her death. The last call on Angela H. Deskins' phone was with the defendant. Angela H. Deskins was never heard from again. Much like Shetisha Sheeley, the defendant lured this victim to his home with the intent to kill. And like Shetisha Sheeley, he

choked Angela H. Deskins in an act which took significant time and force restraining her of her liberty.

Turning to the Kidnapping of Shirellda Terry, numerous text messages were presented confirming an ongoing conversation between the 35-year old defendant and the 18-year old victim.

The two met while walking in East Cleveland. The defendant deceived Shirellda Terry into believing a number of untruths about himself. He said he was 25, had a job working on houses and had no children. In fact, the defendant was 35, had two children and his only source of income was dealing drugs. These lies were an attempt to deceive Shirellda Terry. The defendant wanted Shirellda Terry to come to his house, but she cautiously declined. On a day they were to meet in public, it was raining. He then deceptively lured her into his apartment where he killed her by homicidal violence of unspecified means.

The aggravated circumstance of Felony Murder – Kidnapping as to all three women carries great weight.

C. Felony Murder Specification – Rape.

Evidence proved that the Aggravated Murder of Shirellda Terry was committed while the defendant was committing the offense of Rape and that the defendant was the principal offender and committed the offense with prior calculation and design.

The evidence of principal offender and prior calculation and design were analyzed in Part “B” above and the same conclusion can be made herein.

As to the Rape, Dr. Timm of the County Coroner’s Office testified that a gaping slash from Shirellda Terry’s vagina to her anus was noted upon autopsy. Dr. Timm was able to opine that the

instrumentality was used while the victim was still alive. Photos depicting the injury were admitted. The Aggravated Circumstance of Felony Murder – Rape carries great weight.

MITIGATING FACTORS

The defendant, in his case, introduced some exhibits as well as the testimony of forensic psychologists Dr. David L. Davis, Dr. Mark Cunningham and James Aiken, a prison expert. The State presented Dr. Steven Pitts in rebuttal.

The Court considered all of the mitigating factors presented at both the trial and penalty phases. The Court did not limit its consideration to the specific mitigating factors argued. Rather, the Court considered any and all other mitigating factors which were supported by the evidence that weighed in favor of Life without Parole. The Court did not find anything mitigating in the nature and circumstances of the Aggravated Murders.

A. Relationship with Children.

At the conclusion of the penalty phase in defendant's closing argument two photographs were shown of the defendant with two children. There was no testimony concerning these pictures, and they were not sought to be admitted. There was minimal testimony concerning defendant's interaction with his children during either phase. This factor is given no weight.

B. Adaptability to Prison.

James Aiken, a prison expert with considerable experience in Corrections, was called by the defense at the Mitigation Phase. He indicated that the defendant's risk of danger to himself, inmates and staff are extremely low based on an assessment of numerous factors. Mr. Aiken further testified the defendant would most likely adapt well to prison and could in some way lead a productive life. This mitigating factor is accorded minimal weight.

C. Substance Abuse.

Next, the defense raised the defendant's substance abuse as a mitigatory factor. At the outset, no reliable evidence was introduced that the defendant was under the influence of either alcohol or any illicit substance at the time of the Aggravated Murder of Shetisha Sheeley, Angela H. Deskins and Shirellda Terry. Defendant's claims of substance abuse professed at the very lengthy audiotaped interview with the police seems feigned and contrived to absolve himself of any responsibility. The evidence leading up to the last killing, that of Shirellda Terry, shows text messages with a number of women with whom he was able to maintain relationships unbeknownst to the others. Additionally, when the defendant learned the police were conducting an investigation at his apartment in the days after the Aggravated Murders and upon discovery of the body of Shirellda Terry, he was able to operate a motor vehicle and devise a plan to hide at his mother's house. During the lengthy videotaped interrogations by both the East Cleveland and Cleveland Police Departments, there were no signs of withdrawal.

As relates to all three women, the defendant had the presence of mind to carefully and methodically dispose of their bodies to prevent detection. This contradicts any suggestion that the defendant was significantly impaired.

Evidence was introduced that the defendant abused drugs, primarily marijuana and alcohol. This mitigatory factor is entitled to some very slight weight.

D. Defendant's Background and Childhood.

The defense presented the testimony of Dr. James Davis and Dr. Mark Cunningham to explain the defendant's conduct as a result of his background and childhood. The toxic culture of defendant's upbringing is undeniable. The record is replete with instances of emotional and physical abuse of the defendant by his own mother and her various partners and love interests. He was abandoned by his father.

The Department of Children and Family Services became involved with the family. Subsequently, while the defendant was very young, inadequate measures were taken to protect the defendant and his brother. He was irresponsibly permitted to live with family members who exposed him to inappropriate sexual behaviors and lifestyles.

Dr. Cunningham testified that all of the negative experiences of his childhood caused a foregone trajectory leading up to the murders. However, Dr. Cunningham further testified that this in no way excuses his conduct but rather explains his actions. Dr. Cunningham also spent a considerable amount of time discussing the intergenerational dysfunction of the defendant's family. The family has been riddled with substance abuse; physical, emotional and perhaps sexual abuse; unstable living conditions; and lack of caring and empathy.

Dr. Steven Pitts testified in rebuttal of Dr. Cunningham. While he agreed that there was abuse and dysfunction, he did not subscribe to a foregone trajectory necessarily resulting in the aggravated murders of the three victims. As to the intergenerational dysfunction, Dr. Pitts opined there is no hereditary component to murder.

The mitigation factor relating to the defendant's background and childhood is given greater weight than the other factors, but it is not given great weight.

In weighing the aggravated circumstance against the mitigating factors the other offenses of which the defendant was convicted were not considered. The mitigating factors were weighed both singularly and cumulatively.

Upon consideration of the relevant evidence, testimony and exhibits admitted in mitigation, it is the judgment of this Court that the aggravating circumstances of Course of Conduct, Felony Murder – Kidnapping and Felony Murder – Rape, of which the defendant was convicted outweigh the mitigating factors by proof beyond a reasonable doubt.

Accordingly, the Sentence of Death is imposed upon the defendant Michael Madison on Counts 1, 4 and 7.

Date: June 8, 2016

THE STATE OF OHIO Cuyahoga County	} SS.	I, THE CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <u>CRIMINAL</u> <u>Sentencing Opinion</u>		
NOW ON FILE IN MY OFFICE.		
WITNESS MY HAND AND SEAL OF SAID COURT THIS <u>29</u>		
DAY OF <u>June</u> A.D. 20 <u>16</u>		
CUYAHOGA COUNTY CLERK OF COURTS		
By <u>Dorrie McAffey</u> , Deputy		

Copy to: Timothy J. McGinty, Cuyahoga County Prosecutor
David Grant, Esq.
Mary Cay Tylee, Esq.



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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

2016 JUN -8 P 12: 41

Case No: CR-13-579539-A

MICHAEL MADISON
Defendant

FILED
CLERK OF COURTS
CUYAHOGA COUNTY

Judge: NANCY R MCDONNELL

INDICT: 2903.01 AGGRAVATED MURDER /FRM1 /NPC
/RVOS /SMS /SVPS /CCS /FMS
2903.01 AGGRAVATED MURDER /FRM1 /NPC
/RVOS /SMS /SVPS /CCS /FMS
2905.01 KIDNAPPING /FRM1 /NPC /RVOS /SMS
/SVPS
ADDITIONAL COUNTS...

JOURNAL ENTRY

PROSECUTORS TIMOTHY MCGINTY, ANNA FARAGLIA, BRENT KIRVEL, AND CHRIS SCHROEDER PRESENT.
DEFENDANT IN COURT. COUNSEL DAVID L GRANT, MARY CAY TYLEE, CHRIS JULIAN, AND LINDA HRICKO
PRESENT.

COURT REPORTER KERRI NESTOR PRESENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF AGGRAVATED MURDER 2903.01 A
UN WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147, COURSE OF CONDUCT SPECIFICATION(S), FELONY
MURDER SPECIFICATION(S) UNDER COUNT(S) 1, 4, 7 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S)
- 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 1, 4, 7 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF AGGRAVATED MURDER 2903.01 B
UN WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147, COURSE OF CONDUCT SPECIFICATION(S), FELONY
MURDER SPECIFICATION(S) UNDER COUNT(S) 2, 5, 8 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S)
- 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 2, 5, 8 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF KIDNAPPING 2905.01 A(3) F1 WITH
SEXUAL MOTIVATION SPECIFICATION(S) 2941.147 UNDER COUNT(S) 3, 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S)
- 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 3, 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF KIDNAPPING 2905.01 A(3) F1 WITH
SEXUAL MOTIVATION SPECIFICATION(S) 2941.147 UNDER COUNT(S) 9 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF RAPE 2907.02 A(2) F1 UNDER
COUNT(S) 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S)
- 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF OFFENSES AGAINST HUMAN
CORPSE 2927.01 B F5 UNDER COUNT(S) 12, 13, 14 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S)
- 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 12, 13, 14 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FINDS DEFENDANT GUILTY OF THE SEXUALLY VIOLENT PREDATOR
SPECIFICATIONS IN COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FINDS DEFENDANT GUILTY OF HAVING A WEAPON WHILE UNDER
DISABILITY 2923.12 A(2) F3, AS CHARGED IN COUNT 11 OF THE INDICTMENT. COURT FINDS DEFENDANT IS THE
OWNER AND/OR POSSESSOR OF A FIREARM SERIAL NUMBER 5812786.

THE COURT CONSIDERED ALL REQUIRED FACTORS OF THE LAW.

THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSE OF R. C. 2929.11.

SENT
06/02/2016



94444187

**** CAPITAL SENTENCING. ****

THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION.
COUNTS 1 AND 2 MERGE; COUNTS 4 AND 5 MERGE; COUNTS 7 AND 8 MERGE.
STATE ELECTS DEFENDANT TO BE SENTENCED ON COUNTS 1, 4 AND 7.
DEFENSE ATTORNEY SPEAKS. DEFENDANT IS GIVEN THE OPPORTUNITY TO SPEAK. STATE SPEAKS.
COUNT 1: DEATH
COUNT 4: DEATH
COUNT 7: DEATH

*** NON CAPITAL SENTENCING. ***

DEFENSE ATTORNEY SPEAKS. DEFENDANT IS GIVEN THE OPPORTUNITY TO SPEAK. STATE SPEAKS, VICTIM REPRESENTATIVES INCLUDED.

THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION.
COUNT 3, KIDNAPPING, FEL-1, (SHETISHA SHEELY): 11 YEARS. MANDATORY 5 YEARS PRC.
COUNT 6, KIDNAPPING, FEL-1, (ANGELA DESKINS): 11 YEARS. MANDATORY 5 YEARS PRC.
COUNT 9, KIDNAPPING, FEL-1, (SHIRELLDA TERRY): 11 YEARS. MANDATORY 5 YEARS PRC.
COUNT 10, RAPE, FEL-1, (SHIRELLDA TERRY): 11 YEARS TO LIFE. MANDATORY 5 YEARS PRC.
COUNT 11, HWWUD, FEL-3: 3 YEARS. 3 YEARS MANDATORY PRC.

- AS TO COUNT 11: DEFENDANT TO FORFEIT TO THE EAST CLEVELAND POLICE DEPARTMENT: GUN, SERIAL # 5812786.

COUNT 12, GROSS ABUSE OF CORPSE, FEL-5 (SHETISHA SHEELY): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNT 13, GROSS ABUSE OF CORPSE, FEL-5 (ANGELA DESKIN): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNT 14, GROSS ABUSE OF CORPSE, FEL-5 (SHIRELLDA TERRY): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNTS TO BE SERVED CONSECUTIVELY WITH EACH OTHER, FOR AN AGGREGATE SENTENCE OF 50 YEARS.
SENTENCE TO RUN CONCURRENT TO CR 576419.

FINDINGS FOR CONSECUTIVE SENTENCE: 1. NECESSARY TO PROTECT THE PUBLIC; 2. NECESSARY TO PUNISH YOU; 3. THE SENTENCE IS NOT DISPROPORTIONATE TO OTHER SENTENCES IMPOSED FOR SIMILAR CONDUCT; 4. HARM IS SO GREAT OR UNUSUAL THAT A SINGLE TERM DOES NOT ADEQUATELY REFLECT THE SERIOUSNESS OF THE CONDUCT; 5. CRIMINAL HISTORY SHOWS THAT CONSECUTIVE SENTENCES ARE NEEDED TO PROTECT THE PUBLIC.

*** DEFENDANT IS DETERMINED TO BE A TIER III SEX OFFENDER/CHILD OFFENDER REGISTRANT. *** COURT EXPLAINED ALL DEFENDANT'S REGISTRATION DUTIES AS A TIER III SEX OFFENDER. DEFENDANT, WHEN NOT INCARCERATED UNDER ANY OF THE SENTENCES MUST PERSONALLY REGISTER HIS RESIDENCE, EMPLOYMENT OR SCHOOL (OR INSTITUTION OF HIGHER EDUCATION) ADDRESSES WITH THE COUNTY SHERIFF OF THE COUNTY CONTAINING THESE ADDRESSES AND VERIFY SAME FOR LIFETIME WITH IN PERSON VERIFICATION EVERY 90 DAYS BY PERSONALLY APPEARING AT THE SHERIFF'S OFFICE. HE MUST GIVE 20 DAYS PRIOR NOTICE OF ANY RESIDENCE OR SCHOOL ADDRESS CHANGE TO THE COUNTY SHERIFF WITH WHOM HE MOST RECENTLY REGISTERED AND TO THE COUNTY SHERIFF OF THE COUNTY IN WHICH THE NEW ADDRESS IS LOCATED. HE MUST REGISTER A NEW EMPLOYMENT ADDRESS WITHIN 3 DAYS OF OBTAINING SUCH NEW ADDRESS WITH SUCH SHERIFF. THESE PROVISIONS APPLY WITH EQUAL FORCE SHOULD DEFENDANT RESIDE, ATTEND SCHOOL OR WORK IN ANY OTHER STATE OF THE UNITED STATES.

DEFENDANT IS ORDERED TO SUBMIT TO A DNA SPECIMEN COLLECTION PROCEDURE UNDER R.C. 2901.07.

JAIL CREDIT DAYS TO DATE TO BE CALCULATED BY THE SHERIFF.

DEFENDANT ADVISED OF APPEAL RIGHTS.

DEFENDANT INDIGENT. ATTORNEY JOHN GIBBONS AND ATTORNEY TIM SWEENEY ASSIGNED FOR APPEAL.
THE COURT HEREBY ENTERS JUDGMENT AGAINST THE DEFENDANT IN AN AMOUNT EQUAL TO THE COSTS OF THIS PROSECUTION.

06/02/2016
CPEDB 06/08/2016 10:58:40

SENT
06/02/2016



94444187

[Handwritten Signature] 6-8-16
Judge Signature Date

THE STATE OF OHIO }
 Cuyahoga County } SS. I, THE CLERK OF THE COURT
 OF COMMON PLEAS WITHIN
 AND FOR SAID COUNTY,

HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
 TAKEN AND COPIED FROM THE ORIGINAL CRIMINAL
Journal Entry

NOT ON FILE IN MY OFFICE.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 29
 DAY OF June A.D. 20 16

CUYAHOGA COUNTY CLERK OF COURTS

By Janice McElfresh, Deputy

SENT.
06/02/2016



94468465

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MICHAEL MADISON
Defendant

Case No: CR-13-579539-A

Judge: NANCY R MCDONNELL

INDICT: 2903.01 AGGRAVATED MURDER /FRM1 /SMS
/CCS /FMS
2903.01 AGGRAVATED MURDER /FRM1 /SMS
/CCS /FMS
2905.01 KIDNAPPING /FRM1 /SMS
ADDITIONAL COUNTS...

JOURNAL ENTRY

** SENTENCING ENTRY DATED 6-2-2016 IS CORRECTED TO INCLUDE IMPOSITION DATE FOR THE CAPITAL SENTENCE. **

PROSECUTORS TIMOTHY MCGINTY, ANNA FARAGLIA, BRENT KIRVEL, AND CHRIS SCHROEDER PRESENT. DEFENDANT IN COURT. COUNSEL DAVID L GRANT, MARY CAY TYLEE, CHRIS JULIAN, AND LINDA HRICKO PRESENT.

COURT REPORTER KERRI NESTOR PRESENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF AGGRAVATED MURDER 2903.01 A UN WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147, COURSE OF CONDUCT SPECIFICATION(S), FELONY MURDER SPECIFICATION(S) UNDER COUNT(S) 1, 4, 7 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 1, 4, 7 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF AGGRAVATED MURDER 2903.01 B UN WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147, COURSE OF CONDUCT SPECIFICATION(S), FELONY MURDER SPECIFICATION(S) UNDER COUNT(S) 2, 5, 8 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 2, 5, 8 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF KIDNAPPING 2905.01 A(3) F1 WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147 UNDER COUNT(S) 3, 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 3, 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF KIDNAPPING 2905.01 A(3) F1 WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147 UNDER COUNT(S) 9 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF RAPE 2907.02 A(2) F1 UNDER COUNT(S) 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF OFFENSES AGAINST HUMAN CORPSE 2927.01 B F5 UNDER COUNT(S) 12, 13, 14 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 12, 13, 14 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FINDS DEFENDANT GUILTY OF THE SEXUALLY VIOLENT PREDATOR SPECIFICATIONS IN COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FINDS DEFENDANT GUILTY OF HAVING A WEAPON WHILE UNDER DISABILITY 2923.12 A(2) F3, AS CHARGED IN COUNT 11 OF THE INDICTMENT. COURT FINDS DEFENDANT IS THE

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NAILAH K. BYRD, CLERK
APPX-0097



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OWNER AND/OR POSSESSOR OF A FIREARM SERIAL NUMBER 5812786.
THE COURT CONSIDERED ALL REQUIRED FACTORS OF THE LAW.
THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSE OF R. C. 2929.11.

**** CAPITAL SENTENCING. ****

THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION.
COUNTS 1 AND 2 MERGE; COUNTS 4 AND 5 MERGE; COUNTS 7 AND 8 MERGE.
STATE ELECTS DEFENDANT TO BE SENTENCED ON COUNTS 1, 4 AND 7.
DEFENSE ATTORNEY SPEAKS. DEFENDANT IS GIVEN THE OPPORTUNITY TO SPEAK. STATE SPEAKS.
COUNT 1: DEATH
COUNT 4: DEATH
COUNT 7: DEATH
SENTENCE TO BE IMPOSED ON JULY 20, 2017.

*** NON CAPITAL SENTENCING. ***

DEFENSE ATTORNEY SPEAKS. DEFENDANT IS GIVEN THE OPPORTUNITY TO SPEAK. STATE SPEAKS, VICTIM REPRESENTATIVES INCLUDED.
THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION.
COUNT 3, KIDNAPPING, FEL-1, (SHETISHA SHEELY): 11-YEARS. MANDATORY 5 YEARS PRC.
COUNT 6, KIDNAPPING, FEL-1, (ANGELA DESKINS): 11 YEARS. MANDATORY 5 YEARS PRC.
COUNT 9, KIDNAPPING, FEL-1, (SHIRELLDA TERRY): 11 YEARS. MANDATORY 5 YEARS PRC.
COUNT 10, RAPE, FEL-1, (SHIRELLDA TERRY): 11 YEARS TO LIFE. MANDATORY 5 YEARS PRC.
COUNT 11, HWWUD, FEL-3: 3 YEARS. 3 YEARS MANDATORY PRC.
- AS TO COUNT 11: DEFENDANT TO FORFEIT TO THE EAST CLEVELAND POLICE DEPARTMENT: GUN, SERIAL # 5812786.

COUNT 12, GROSS ABUSE OF CORPSE, FEL-5 (SHETISHA SHEELY): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNT 13, GROSS ABUSE OF CORPSE, FEL-5 (ANGELA DESKIN): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNT 14, GROSS ABUSE OF CORPSE, FEL-5 (SHIRELLDA TERRY): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNTS TO BE SERVED CONSECUTIVELY WITH EACH OTHER, FOR AN AGGREGATE SENTENCE OF 50 YEARS.
SENTENCE TO RUN CONCURRENT TO CR 576419.

FINDINGS FOR CONSECUTIVE SENTENCE: 1. NECESSARY TO PROTECT THE PUBLIC; 2. NECESSARY TO PUNISH YOU; 3. THE SENTENCE IS NOT DISPROPORTIONATE TO OTHER SENTENCES IMPOSED FOR SIMILAR CONDUCT; 4. HARM IS SO GREAT OR UNUSUAL THAT A SINGLE TERM DOES NOT ADEQUATELY REFLECT THE SERIOUSNESS OF THE CONDUCT; 5. CRIMINAL HISTORY SHOWS THAT CONSECUTIVE SENTENCES ARE NEEDED TO PROTECT THE PUBLIC.

*** DEFENDANT IS DETERMINED TO BE A TIER III SEX OFFENDER/CHILD OFFENDER REGISTRANT. *** COURT EXPLAINED ALL DEFENDANT'S REGISTRATION DUTIES AS A TIER III SEX OFFENDER. DEFENDANT, WHEN NOT INCARCERATED UNDER ANY OF THE SENTENCES MUST PERSONALLY REGISTER HIS RESIDENCE, EMPLOYMENT OR SCHOOL (OR INSTITUTION OF HIGHER EDUCATION) ADDRESSES WITH THE COUNTY SHERIFF OF THE COUNTY CONTAINING THESE ADDRESSES AND VERIFY SAME FOR LIFETIME WITH IN PERSON VERIFICATION EVERY 90 DAYS BY PERSONALLY APPEARING AT THE SHERIFF'S OFFICE. HE MUST GIVE 20 DAYS PRIOR NOTICE OF ANY RESIDENCE OR SCHOOL ADDRESS CHANGE TO THE COUNTY SHERIFF WITH WHOM HE MOST RECENTLY REGISTERED AND TO THE COUNTY SHERIFF OF THE COUNTY IN WHICH THE NEW ADDRESS IS LOCATED. HE MUST REGISTER A NEW EMPLOYMENT ADDRESS WITHIN 3 DAYS OF OBTAINING SUCH NEW ADDRESS WITH SUCH SHERIFF. THESE PROVISIONS APPLY WITH EQUAL FORCE SHOULD DEFENDANT RESIDE, ATTEND SCHOOL OR WORK IN ANY OTHER STATE OF THE UNITED STATES.

DEFENDANT IS ORDERED TO SUBMIT TO A DNA SPECIMEN COLLECTION PROCEDURE UNDER R.C. 2901.07.

JAIL CREDIT DAYS TO DATE TO BE CALCULATED BY THE SHERIFF.

DEFENDANT ADVISED OF APPEAL RIGHTS.

DEFENDANT INDIGENT. ATTORNEY JOHN GIBBONS AND ATTORNEY TIM SWEENEY ASSIGNED FOR APPEAL.

THE COURT HEREBY ENTERS JUDGMENT AGAINST THE DEFENDANT IN AN AMOUNT EQUAL TO THE COSTS OF

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06/09/2016

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NAILAH K. BYRD, CLERK



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THIS PROSECUTION.

06/09/2016
CPEDB 06/09/2016 12:56:54

Ulang J. M. Daniel

Judge Signature

06/09/2016

THE STATE OF OHIO Cuyahoga County	} SS.	I, THE CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <i>Criminal</i>		
NOW ON FILE IN MY OFFICE.		
WITNESS MY HAND AND SEAL OF SAID COURT THIS <i>29</i>		
DAY OF <i>June</i> A.D. 20 <i>16</i>		
CUYAHOGA COUNTY CLERK OF COURTS		
By <i>Darlene Mcuffert</i> , Deputy		

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06/09/2016

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NAILAH K. BYRD, CLERK
APPX-0099



94606437

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MICHAEL MADISON
Defendant

Case No: CR-13-579539-A

Judge: NANCY R MCDONNELL

INDICT: 2903.01 AGGRAVATED MURDER /FRM1 /SMS
/CCS /FMS
2903.01 AGGRAVATED MURDER /FRM1 /SMS
/CCS /FMS
2905.01 KIDNAPPING /FRM1 /SMS
ADDITIONAL COUNTS...

JOURNAL ENTRY

** SENTENCING ENTRY DATED 6-2-2016 IS CORRECTED TO REFLECT CORRECT ORC FOR HWWUD, COUNT 11 (2923.13). **

PROSECUTORS TIMOTHY MCGINTY, ANNA FARAGLIA, BRENT KIRVEL, AND CHRIS SCHROEDER PRESENT.
DEFENDANT IN COURT. COUNSEL DAVID L GRANT, MARY CAY TYLEE, CHRIS JULIAN, AND LINDA HRICKO PRESENT.

COURT REPORTER KERRI NESTOR PRESENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF AGGRAVATED MURDER 2903.01 A UN WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147, COURSE OF CONDUCT SPECIFICATION(S), FELONY MURDER SPECIFICATION(S) UNDER COUNT(S) 1, 4, 7 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 1, 4, 7 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF AGGRAVATED MURDER 2903.01 B UN WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147, COURSE OF CONDUCT SPECIFICATION(S), FELONY MURDER SPECIFICATION(S) UNDER COUNT(S) 2, 5, 8 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 2, 5, 8 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF KIDNAPPING 2905.01 A(3) F1 WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147 UNDER COUNT(S) 3, 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 3, 6 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF KIDNAPPING 2905.01 A(3) F1 WITH SEXUAL MOTIVATION SPECIFICATION(S) 2941.147 UNDER COUNT(S) 9 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF RAPE 2907.02 A(2) F1 UNDER COUNT(S) 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT THE JURY RETURNED A VERDICT OF GUILTY OF OFFENSES AGAINST HUMAN CORPSE 2927.01 B F5 UNDER COUNT(S) 12, 13, 14 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE JURY RETURNED A VERDICT OF NOT GUILTY OF FIREARM SPECIFICATION(S) - 1 YEAR (2941.141) AS CHARGED IN COUNT(S) 12, 13, 14 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FINDS DEFENDANT GUILTY OF THE SEXUALLY VIOLENT PREDATOR SPECIFICATIONS IN COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 OF THE INDICTMENT.

ON A FORMER DAY OF COURT, THE COURT FINDS DEFENDANT GUILTY OF HAVING A WEAPON WHILE UNDER DISABILITY 2923.13 A(2) F3, AS CHARGED IN COUNT 11 OF THE INDICTMENT. COURT FINDS DEFENDANT IS THE

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NAILAH K. BYRD, CLERK



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OWNER AND/OR POSSESSOR OF A FIREARM SERIAL NUMBER 5812786.
THE COURT CONSIDERED ALL REQUIRED FACTORS OF THE LAW.
THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSE OF R. C. 2929.11.

**** CAPITAL SENTENCING. ****

THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION.
COUNTS 1 AND 2 MERGE; COUNTS 4 AND 5 MERGE; COUNTS 7 AND 8 MERGE.
STATE ELECTS DEFENDANT TO BE SENTENCED ON COUNTS 1, 4 AND 7.
DEFENSE ATTORNEY SPEAKS. DEFENDANT IS GIVEN THE OPPORTUNITY TO SPEAK. STATE SPEAKS.
COUNT 1: DEATH
COUNT 4: DEATH
COUNT 7: DEATH
SENTENCE TO BE IMPOSED ON JULY 20, 2017.

***. NON CAPITAL SENTENCING. ***

DEFENSE ATTORNEY SPEAKS. DEFENDANT IS GIVEN THE OPPORTUNITY TO SPEAK. STATE SPEAKS, VICTIM REPRESENTATIVES INCLUDED.

THE COURT IMPOSES A PRISON SENTENCE AT THE LORAIN CORRECTIONAL INSTITUTION.
COUNT 3, KIDNAPPING, FEL-1, (SHETISHA SHEELY): 11 YEARS. MANDATORY 5 YEARS PRC.
COUNT 6, KIDNAPPING, FEL-1, (ANGELA DESKINS): 11 YEARS. MANDATORY 5 YEARS PRC.
COUNT 9, KIDNAPPING, FEL-1, (SHIRELLDA TERRY): 11 YEARS. MANDATORY 5 YEARS PRC.
COUNT 10, RAPE, FEL-1, (SHIRELLDA TERRY): 11 YEARS TO LIFE. MANDATORY 5 YEARS PRC.
COUNT 11, HWWUD, FEL-3: 3 YEARS. 3 YEARS MANDATORY PRC.

- AS TO COUNT 11: DEFENDANT TO FORFEIT TO THE EAST CLEVELAND POLICE DEPARTMENT: GUN, SERIAL # 5812786.

COUNT 12, GROSS ABUSE OF CORPSE, FEL-5 (SHETISHA SHEELY): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNT 13, GROSS ABUSE OF CORPSE, FEL-5 (ANGELA DESKIN): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNT 14, GROSS ABUSE OF CORPSE, FEL-5 (SHIRELLDA TERRY): 1 YEAR. 3 YEARS DISCRETIONARY PRC.
COUNTS TO BE SERVED CONSECUTIVELY WITH EACH OTHER, FOR AN AGGREGATE SENTENCE OF 50 YEARS.
SENTENCE TO RUN CONCURRENT TO CR 576419.

FINDINGS FOR CONSECUTIVE SENTENCE: 1. NECESSARY TO PROTECT THE PUBLIC; 2. NECESSARY TO PUNISH YOU; 3. THE SENTENCE IS NOT DISPROPORTIONATE TO OTHER SENTENCES IMPOSED FOR SIMILAR CONDUCT; 4. HARM IS SO GREAT OR UNUSUAL THAT A SINGLE TERM DOES NOT ADEQUATELY REFLECT THE SERIOUSNESS OF THE CONDUCT; 5. CRIMINAL HISTORY SHOWS THAT CONSECUTIVE SENTENCES ARE NEEDED TO PROTECT THE PUBLIC.

*** DEFENDANT IS DETERMINED TO BE A TIER III SEX OFFENDER/CHILD OFFENDER REGISTRANT. *** COURT EXPLAINED ALL DEFENDANT'S REGISTRATION DUTIES AS A TIER III SEX OFFENDER. DEFENDANT, WHEN NOT INCARCERATED UNDER ANY OF THE SENTENCES MUST PERSONALLY REGISTER HIS RESIDENCE, EMPLOYMENT OR SCHOOL (OR INSTITUTION OF HIGHER EDUCATION) ADDRESSES WITH THE COUNTY SHERIFF OF THE COUNTY CONTAINING THESE ADDRESSES AND VERIFY SAME FOR LIFETIME WITH IN PERSON VERIFICATION EVERY 90 DAYS BY PERSONALLY APPEARING AT THE SHERIFF'S OFFICE. HE MUST GIVE 20 DAYS PRIOR NOTICE OF ANY RESIDENCE OR SCHOOL ADDRESS CHANGE TO THE COUNTY SHERIFF WITH WHOM HE MOST RECENTLY REGISTERED AND TO THE COUNTY SHERIFF OF THE COUNTY IN WHICH THE NEW ADDRESS IS LOCATED. HE MUST REGISTER A NEW EMPLOYMENT ADDRESS WITHIN 3 DAYS OF OBTAINING SUCH NEW ADDRESS WITH SUCH SHERIFF. THESE PROVISIONS APPLY WITH EQUAL FORCE SHOULD DEFENDANT RESIDE, ATTEND SCHOOL OR WORK IN ANY OTHER STATE OF THE UNITED STATES.

DEFENDANT IS ORDERED TO SUBMIT TO A DNA SPECIMEN COLLECTION PROCEDURE UNDER R.C. 2901.07.

JAIL CREDIT DAYS TO DATE TO BE CALCULATED BY THE SHERIFF.
DEFENDANT ADVISED OF APPEAL RIGHTS.

DEFENDANT INDIGENT. ATTORNEY JOHN GIBBONS AND ATTORNEY TIM SWEENEY ASSIGNED FOR APPEAL.
THE COURT HEREBY ENTERS JUDGMENT AGAINST THE DEFENDANT IN AN AMOUNT EQUAL TO THE COSTS OF

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NAILAH K. BYRD, CLERK



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THIS PROSECUTION.

06/21/2016
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Wang J. M. G. Small

Judge Signature

06/21/2016

THE STATE OF OHIO } SS. I, THE CLERK OF THE COURT
 Cuyahoga County } OF COMMON PLEAS WITHIN
 AND FOR SAID COUNTY,

HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
 TAKEN AND COPIED FROM THE ORIGINAL Quarrel Entry

NOW ON FILE IN MY OFFICE.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 29
 DAY OF June A.D. 20 16

CUYAHOGA COUNTY CLERK OF COURTS

By Danaher McEffert, Deputy

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06/21/2016

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NAILAH K. BYRD, CLERK

The Supreme Court of Ohio

FILED

SEP 29 2020

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

Michael Madison

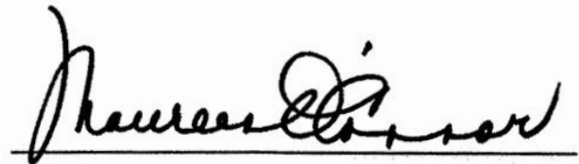
Case No. 2016-1006

RECONSIDERATION ENTRY

Cuyahoga County

It is ordered by the court that the motion for reconsideration in this case is denied.

(Cuyahoga County Court of Common Pleas; No. CR-13-579539-A)



Maureen O'Connor
Chief Justice

Appendix F

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

§ 2929.04 Criteria for imposing death or imprisonment for a capital offense. [Effective until April 12, 2021]

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

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

(2) The offense was committed for hire.

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

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

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

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

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

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

Appendix G

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

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

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

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

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

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

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

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

(4) The youth of the offender;

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

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

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

(C) The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.

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

History

134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 147 v S 32 (Eff 8-6-97); 147 v H 151 (Eff 9-16-97); 147 v S 193 (Eff 12-29-98); 149 v S 184. Eff 5-15-2002; 2016 hb158, § 1, effective October 12, 2016.

ORC Ann. 2929.04