

No. _____

In the
United States Supreme Court
October Term, 2021

James D. Worley,
Petitioner

v.

State of Ohio,
Respondent

Petition for a Writ of Certiorari to the Ohio Supreme Court

Appendix

Capital Case

Gary W. Crim
Counsel of Record
943 Manhattan Avenue
Dayton, Ohio 45406-5141
(937) 276-5770
garywcrim@gmail.com

Andrew P. Avellano
Attorney at Law
4200 Regent Street, Suite 200
Columbus, Ohio 43219
(614)-237-8050
drewavo@wowway.com

Counsel for Petitioner

Table of Contents

Ohio Supreme Court Decision	A-1
Trial Court Termination Entry	A-62
John Matthew Fabian, Psy.D, J.D., Forensic Psychological Evaluation, Forensic Neuropsychological Evaluation, Death Penalty Mitigation Evaluation, Defense Exhibit C (“Fabian Report”)	A-76
U.S. CONST. amend. V	A-137
U.S. CONST. amend. VI	A-137
U.S. CONST. amend. VIII	A-137
U.S. CONST. amend. XIV	A-137

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Worley*, Slip Opinion No. 2021-Ohio-2207.]

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SLIP OPINION NO. 2021-OHIO-2207

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

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Worley*, Slip Opinion No. 2021-Ohio-2207.]

Criminal law—Aggravated murder—Findings of guilt and death sentence affirmed.

(No. 2018-0757—Submitted January 12, 2021—Decided July 1, 2021.)

APPEAL from the Court of Common Pleas of Fulton County,

No. 16CR000106.

DONNELLY, J.

{¶ 1} Appellant, James Worley, murdered Sierah Joughin in July 2016. After a trial, a Fulton County jury convicted him of aggravated murder with an escaping-detection specification, kidnapping, felonious assault, possessing criminal tools, tampering with evidence, and having weapons while under a disability. Following the jury’s recommendation of a death sentence, the trial court sentenced Worley to death.

{¶ 2} We now review Worley’s direct appeal of right and, for the following reasons, we affirm his convictions and sentence of death.

I. TRIAL EVIDENCE

{¶ 3} Evidence adduced at trial showed that Worley kidnapped, restrained, and killed 20-year-old Joughin between July 19 and 22, 2016, in Fulton County. He attacked Joughin as she was riding her bike home one evening. He then struck her on the head with his motorcycle helmet and dragged her into a cornfield. Worley handcuffed Joughin, left her in the cornfield, and drove his motorcycle home. He returned to the cornfield after dark in his pickup truck and took her to a barn on his property. He dressed Joughin in lingerie, bound her, and shoved a rubber dog toy into her mouth and tied it in place, causing her death by suffocation. He then buried her body in a nearby cornfield.

A. Joughin goes missing

{¶ 4} In July 2016, Joughin was living on County Road 6 in a rural area in Fulton County. Her boyfriend, Joshua Kolasinski, lived nearby on County Road 12.

{¶ 5} On July 19, around 4:00 or 5:00 p.m., Joughin rode her bike to Kolasinski's house. She left to ride back home around 6:45 p.m., with Kolasinski riding alongside her on his motorcycle part of the way. Kolasinski recorded two videos of Joughin on her bike during the ride. She was wearing sunglasses, athletic shoes, shorts, and a tank top, and she sat on a checkered dishtowel draped over her bike seat.

{¶ 6} After Kolasinski headed back to his home, Joughin continued riding toward her home. Around 7:20 p.m., a motorist named Mary Stine was driving south on County Road 6 when she noticed a bike lying beside the west side of the road in an open area before the rows of corn began. As Stine passed by, she saw a man bent over at the waist about two or three rows deep into the cornfield. She later told police that the man was Caucasian and was wearing red shorts and possibly a white shirt.

{¶ 7} Kolasinski spent the next couple of hours at his house with a friend. Around 8:00 or 9:00 p.m., Kolasinski texted Joughin, but he did not receive a reply. Kolasinski called Joughin’s mother, Sheila Vaculik, around 9:30 p.m., who told him that Joughin’s bike was not at the family’s home. The two of them drove around in Vaculik’s car looking for Joughin, but they did not find her. They stopped at the fire department, where Vaculik spotted a police officer sitting in a police vehicle. Vaculik spoke to the officer and explained that she was looking for Joughin and asked for help. Later in the evening, police informed Vaculik that there was police activity on County Road 6.

{¶ 8} Sometime after 7:00 p.m. on July 19, a local farmer named Troy Vandebusch was driving south on County Road 6 when he noticed a helmet beside the east side of the road. On his way home, Vandebusch stopped, picked up the helmet, and tossed it into the bed of his truck. The next morning, when Vandebusch heard that there had been police activity on County Road 6 the previous evening, he turned the helmet over to law enforcement. The helmet had reddish-brown stains on the exterior and also on the inside lining. Subsequent testing indicated that the stains were blood.

B. The likely abduction site is found

{¶ 9} Jeremy Simon, an officer with the Fulton County Sheriff’s Office, and his K-9 partner searched for Joughin’s bike in the late evening hours of July 19 into the early morning hours of July 20. Shortly after midnight, while traveling north on County Road 6, Simon saw a small section of the cornfield on the east side of the road where, upon inspection, he noticed many disturbed cornstalks, a “strong smell of gasoline,” a motorcycle tire track, and a box of fuses. He saw a pair of women’s sunglasses lying on the road near the painted white fog line on the west side of County Road 6. He also found a purple mountain bike in the cornfield on the west side of the road.

{¶ 10} The bike was collected and upon inspection, officers observed reddish-brown stains on its handlebars and seat. Subsequent testing confirmed that the stains were blood. Joughin’s mother and boyfriend identified the bike as Joughin’s. Investigators also found a checkered dishtowel with a reddish-brown stain approximately 1,000 feet north of the County Road 6 abduction site.

{¶ 11} Later that morning, agents from the Ohio Bureau of Criminal Investigation (“BCI”) arrived and assisted in the search for Joughin. BCI crime-scene specialist Megan Roberts noticed two areas in the cornfield on the west side of County Road 6 that were “consistent with paths or point[s] of entry or exit.”

{¶ 12} In the west cornfield, agents found broken cornstalks, reddish-brown stains on some corn leaves, and pattern impressions in the loose dirt. About 20 feet into the same cornfield, Roberts found a green sock with reddish-brown stains on it. Approximately 35 feet south of that location, Roberts found a pair of men’s sunglasses and an orange-handled screwdriver.

C. Worley is interviewed

{¶ 13} On July 21, Dan Van Vorhis, an employee of the Ohio Adult Parole Authority who was assigned to the Federal Bureau of Investigation’s (“FBI”) violent-crimes task force, Major Matt Smithmyer of the Fulton County Sheriff’s Office, and FBI Special Agent Devon Lossic went to Worley’s property at 10627 County Road 6, which is near where Joughin disappeared, to ask whether Worley knew Joughin or whether he had any information regarding her disappearance. Van Vorhis testified that Worley was “very friendly” at first, and that he invited the group into his living room. For approximately 90 minutes, Worley described his activities on the evening of July 19. Van Vorhis recorded part of that interview.

{¶ 14} Worley gave the following account. Around 5:45 or 6:00 p.m. on July 19, he departed his property on his motorcycle, but the motorcycle stalled when he was driving on County Road U. He got the motorcycle running again, but it stalled once more when he was driving on County Road 6. He stopped near a

cornfield that abutted a wheat field, where he saw a blue bike and a light gray bike lying on the ground. He pulled his motorcycle into the cornfield out of view from the road because he planned on riding one of the bikes home. But he changed his mind and alternated between getting his motorcycle to start and riding it and pushing it home. He did not see anyone on his trip and got home around 10:00 p.m.

{¶ 15} Worley told the investigators that he lost some belongings when his motorcycle broke down. He volunteered that his helmet, fuses, a screwdriver, and sunglasses were missing. Worley asserted his innocence multiple times during the interview, but also asked whether the police had any evidence against him, such as fingerprints.

{¶ 16} Later on July 21, BCI Special Agent Thomas Brokamp was at the police command center when he “overheard a conversation regarding a guy wanting his helmet back.” After hearing this, Brokamp and other FBI and BCI agents went back to Worley’s house that day. The group talked with Worley on his property for the next 14 hours, off and on. This second interview was recorded by Brokamp and Van Vorhis.

{¶ 17} On the investigators’ arrival, Worley was told that a black helmet had been found. Worley immediately stated that he wanted it back. When Brokamp said that the helmet looked like it had blood on it, Worley told the investigators that that was impossible. Later during the interview, Worley said that he still did not understand “this deal with [his] helmet * * * that [his] helmet [has] this lady’s blood on it.”

{¶ 18} Worley allowed the investigators to walk around his property, which consisted of a residence, two barns, a machine shop, and a trailer. BCI Special Agent Dave Hammond testified that when investigators walked into the north barn, Worley’s “reaction to [them] being in there was a little unsettling or a little alarming.” When another investigator approached a green crate in the barn and

lifted its lid, Worley “got very upset with him, * * * told him to close that, and then made [the investigators] all get out rather quickly.”

{¶ 19} Van Vorhis testified that when they entered the north barn, Worley’s body language and demeanor indicated his anxiety over where the investigators were looking. Before leaving the barn, investigators were able to see that the green crate contained many clear plastic bags filled with women’s lingerie. Worley told the investigators that the bags contained lingerie that he would give to women he was dating.

{¶ 20} The sand floor in the north barn had been recently raked. Worley said that he had just cleaned it up in preparation to raise rabbits. Investigators found an inflated air mattress behind stacked straw bales. Worley told the investigators that the only DNA they would find on the mattress would be his mother’s.

{¶ 21} Agent Brokamp informed Worley that a security video from the Evergreen High School complex—located on County Road 6 in between Worley’s property and the site where he likely kidnapped Joughin—showed a motorcycle traveling north on County Road 6 on July 19. Despite this video, Worley initially stuck with his original story that he had returned home on his motorcycle around 10:00 p.m., that he had not driven it north on County Road 6, and that did not leave his property again that evening. He eventually admitted, however, that he had not told the truth because he felt that “ammo [was] being stacked against [him].”

{¶ 22} Throughout both interviews, Worley consistently denied having anything to do with Joughin’s disappearance. At that time, Joughin’s body had not yet been discovered.

D. Worley’s property is searched

{¶ 23} While investigators were speaking with Worley at his property, a search warrant was secured and executed on the property.

1. North barn

{¶ 24} Investigators noticed recent tire impressions in the grass leading directly to the north barn on Worley's property. Inside the barn, investigators noted that a metal rake and a scoop shovel were leaning up against the north wall of the barn. After removing stacked straw bales inside the barn, investigators found a roll of black duct tape, a piece of a white rope, and a trash bag containing adult diapers. Investigators also discovered a carpet-lined chest freezer that had been buried into the floor. The floor of the freezer was wet and contained some straw. Investigators also found a motorcycle visor and what appeared to be a drop of blood on the south wall of the barn, approximately 33 inches above the floor.

{¶ 25} Inside the green crate, officers found more adult diapers, a bag containing bondage clothing and restraints, a roll of white clothesline, latex gloves, clear plastic bags containing women's lingerie and clothing, a piece of duct tape with straw, hair, and other debris adhering to it, brown rope, white socks, a bag for storing the air mattress, and a pink sex toy. The pink underwear had a reddish-brown stain on it that tested presumptively positive for blood.

2. Machine shop

{¶ 26} Inside a machine shop on the property, investigators found Worley's motorcycle, which had pollen and weeds stuck to it, adult diapers, a tool board that had a compartment for ammunition, handcuff keys, two sets of handcuffs with keys tied to them, a zip tie, and a bottle of bleach.

3. Residence

{¶ 27} While searching Worley's residence, BCI agents found additional adult diapers in the kitchen, living room, and two bedrooms. In the laundry room, Special Agent Roberts found a gray T-shirt, size XL, in the washing machine. Debris was present on the left sleeve, and the shirt was damp. Investigators recovered a dirty pair of men's black denim jeans from Worley's bedroom. Investigators also found a computer tower and a pair of black boots caked with

mud. Agent Roberts testified that Worley gave law enforcement the clothing he was wearing on July 19, which included a cream-colored XL shirt.

4. Worley’s vehicles

{¶ 28} Worley’s vehicles—a red Chevrolet S-10 pickup truck and a green Dodge Dakota pickup truck—were searched on July 21. Although it had not rained recently, the red pickup truck was wet and had standing water in its bed. Officers recovered the following items from the red pickup truck: a can of pepper spray in the driver’s side door pocket, a black ski mask, work gloves, an ear warmer, a roll of duct tape, and seven 24-inch zip ties in the rear pocket of the passenger’s seat, three of which had already been connected.

{¶ 29} From the green pickup truck, officers collected a white rope bundled with black electrical tape and zip ties under the driver’s side seat and under the floor mat of the driver’s seat.

{¶ 30} Agents compared standard impressions from the tires on Worley’s red and green pickup trucks with cast-tire impressions from the County Road 6 crime scene and determined that the cast-tire impressions were consistent with the make and model of two tires on Worley’s green pickup truck.

E. Joughin’s body is found

{¶ 31} On July 22, a volunteer searcher named Scott Hudik was driving south on County Road 7 when he noticed an area of disturbance in a cornfield on the east side of the road. Hudik noticed 18-inch-wide drag marks in the dirt. He followed the drag marks for about 20 to 25 yards when he noticed that the dirt looked as if “someone took a shovel, dug a hole, and reburied it.” This was not the burial site, but as he was looking around the area, Hudik saw a “yellowish latex glove” lying on the ground in between the road and the cornfield. Subsequent DNA testing revealed that the glove contained a mixture of DNA profiles, with Joughin and Worley being included with an expected frequency of one in 6,000. The one-in-6,000-frequency statistic is considered a “lower frequency.” The forensic

scientist who testified at trial explained that the frequency was lower due to the sample being a “partial profile.”

{¶ 32} Later that day, investigators located the burial site on the west side of County Road 7. They located the site after noticing a peculiar “section of corn” where “maybe 3, 4 feet, * * * was missing out of the field.” As investigators began excavating the site, they could smell decomposing remains.

{¶ 33} Joughin’s body was covered in dirt with her wrists handcuffed behind her back, her ankles bound together with duct tape, and her feet bound to her hands with a rope. She was lying on her stomach with her head turned to the side. A rubber cone-shaped dog toy, which was secured with a shoelace tied at the back of her head, had been used to gag her and there was straw in her hair. She was dressed in a “lace colored brassiere, handcuffs, a rope, and an adult diaper.” A key was attached to the handcuffs.

F. The autopsy

{¶ 34} Dr. Cynthia Beisser from the Lucas County Coroner’s Office conducted the autopsy on July 25, 2016. She testified that Joughin was 5 feet 4 inches tall and weighed 122 pounds at the time of her death.

{¶ 35} Dr. Beisser testified that Joughin had a head wound high on the right side of her forehead, which had caused significant bleeding. There was a hairline fracture on Joughin’s skull at the left occipital bone, and several contusions along her outer left leg. Dr. Beisser testified that the forehead wound and the skull fracture could have been caused by Joughin’s being struck with a motorcycle helmet. She also testified that the fracture was recent and could also have been caused by Joughin’s head hitting the roadway.

{¶ 36} Dr. Beisser measured Joughin’s oral cavity and the dog toy and found that they were the same size. After removing the dog toy, Dr. Beisser noted that Joughin’s upper left medial incisor was broken, and she opined to a reasonable

degree of scientific certainty that Joughin’s tooth could have been broken by the dog toy when it was inserted into her mouth.

{¶ 37} Dr. Beisser testified that because Joughin’s mouth was the same size as the dog toy, the dog toy filled her oral cavity completely and cut off her ability to breathe. Dr. Beisser stated that there would have been visible or audible signs of Joughin’s distress while she struggled to breathe and that her death occurred within ten minutes from asphyxiation. Dr. Beisser opined to a reasonable degree of medical certainty that Joughin’s death was caused by asphyxia due to the mechanical obstruction of her mouth.

G. Evidence collection and analysis

1. DNA testing

{¶ 38} BCI agents conducted DNA testing on a number of items collected throughout the investigation. BCI agents also tested fingernail clippings from Joughin’s left hand. The BCI forensic scientist who testified at trial stated that Joughin “was included as the major contributor” and that Worley was excluded as a major contributor. The BCI analyst further testified that “[t]here was additional data that included a male contributor that was not sufficient for comparison.” Bloodstains on the exterior of Worley’s motorcycle helmet yielded a DNA profile consistent with Joughin, with an expected frequency of one in one trillion. This conclusion was significant because it means that over one trillion individuals would need to be tested to find that DNA profile. The helmet’s unstained interior revealed a mixture of DNA profiles, and Joughin was included as the major contributor, with an expected frequency of one in one trillion. Worley was included as the minor contributor, with an expected frequency of one in 30 million. Bloodstained swabs from the checkered dishtowel that was recovered from the abduction site yielded a DNA profile consistent with Joughin, with an expected frequency of one in one trillion. DNA testing of the interior and thumb tip of the latex glove that was recovered near the site where Joughin was buried yielded a mixture of DNA

profiles, with Worley and Joughin being included with an expected frequency of one in 6,000.

{¶ 39} BCI also tested some of the items collected from Worley’s north barn, including a swab of the bloodstain from the pink underwear, which yielded a DNA profile consistent with Joughin, with an expected frequency of one in one trillion. Investigators also had a roll of paper towels tested for Joughin’s DNA. The paper towels also yielded a mixture of DNA profiles, with Joughin being included as the major contributor, with an expected frequency of rarer than one in one trillion. The air mattress also contained a mixture of DNA profiles, with Joughin being included as the major contributor, with an expected frequency of one in one trillion. The duct tape found in the green crate also contained a mixture of DNA profiles, with Joughin and Worley both being included in the mixture, with an expected frequency of one in 20 million.

2. Surveillance video and cellular-phone data

{¶ 40} A video camera from the Evergreen Elementary School recorded a motorcycle traveling north on County Road 6 at 7:19 p.m. on July 19, 2016. A video camera from the high school captured the same motorcycle heading south on County Road 6 around 10:00 p.m. The same video showed a vehicle traveling north on County Road 6 about nine minutes later. Testimony established that it takes approximately 4.5 minutes to drive the 3.5 miles from the school to Worley’s house.

{¶ 41} Forensic cellular-phone evidence introduced at trial showed that Joughin’s and Worley’s cellular phones were in the area of the abduction site between 7:42 p.m. and 7:45 p.m. on July 19. Worley made a call from that area at 7:43 p.m. FBI cellular-data analyst Joseph Jenson testified that the evidence showed that between 8:01 and 8:05 p.m. “there are arcs [for both phones] in the same general area.” Jenson could not conclude that the two phones intersected at the same spot because the “measurements” were taken at different times. Jenson

also determined that, at 9:13 p.m. on July 19, Worley’s phone was in the area of the abduction site.

3. Worley’s computer

{¶ 42} Detective Dave Morford, from the computer-crimes unit at the Toledo Police Department, testified that a forensic analysis of Worley’s computer revealed that Worley visited a website called xvideos.com, which showed pornographic videos. In 2015 and 2016, Worley searched for videos using keywords such as “hogtyed [sic] teen,” “bound,” “beaten down teens,” “forced teens,” “stranded and forced,” and “rough pick-ups.” In one of the videos that Worley watched, the female participant was strangled with a tennis net.

{¶ 43} On July 18 and 19, 2016, Worley accessed a website called AliExpress.com and searched for “camisole tanks,” “G string thongs,” “wholesale women’s bralette tops, underwear, women’s lace strap backless rack chest sleepwear, cropped tank tops,” and other lingerie.

4. Worley’s financial records

{¶ 44} Bank statements showed that Worley’s personal checking account was used to purchase items from AliExpress.com in January and February 2016. In addition, a checking account in the name of Worley’s mother—which listed Worley as having a power of attorney regarding this mother—was used to purchase items from AliExpress.com in June 2015 and March 2016 and items from Wicked Temptations in May 2015.

5. Other evidence taken from Worley

{¶ 45} After Worley was taken into custody, investigators photographed various scratches and bruises on Worley’s arms, shoulders, and neck and a cut on his finger. Worley’s keychain contained a unique key that looked like the key to the handcuffs that had been found attached to Joughin’s wrists.

H. Worley's previous abduction attempt

{¶ 46} At trial, the state introduced testimony from Robin Gardner about her encounter with Worley on July 4, 1990. Gardner, who was 26 years old at the time, was riding her bike in a rural area around Lucas County. Approximately one mile from her house, a pickup truck struck Gardner from behind, running her into a ditch. When she saw the pickup truck, she realized that it was the same one that had passed by her just moments before traveling in the other direction.

{¶ 47} When Gardner stood up, the driver of the pickup truck—later identified as Worley—asked her if she was all right. Gardner testified that she “put her defenses down” and told him that she thought she was okay. Worley then hit Gardner on the back of her head with a hammer and put her in a stranglehold. He also held a screwdriver to her throat and threatened to kill her if she did not get into his truck. Worley overpowered Gardner, got her into his truck, and then attempted to get both of her hands behind her back and handcuff her, but he succeeded in placing a handcuff only on her right wrist.

{¶ 48} During the struggle, a motorcyclist saw the commotion and stopped to help Gardner. She was able to get out of Worley's pickup truck and run out into the street and up to the motorcyclist, who took her home. Later that day, Gardner identified Worley as her attacker. Law-enforcement officers were unable to unlock the handcuff attached to Gardner's wrist with keys available to them. Gardner suffered a skull fracture and a concussion from the hammer blow.

I. Defense case

{¶ 49} Worley presented two witnesses in his defense. Mark Fauble, a high-school friend of Worley's, testified that they had remained in touch over the years. Fauble testified that in 2011 or 2012, he knew that Worley needed a new helmet, so he picked one up for Worley at an automotive swap meet. Fauble confirmed that the helmet recovered at the abduction site in this case looked like

the one he had given Worley. On cross-examination, Fauble testified that the helmet was new when he gave it to Worley.

{¶ 50} Jeffrey Whitaker, also Worley’s high-school friend, testified that from 2010 to 2016, he saw Worley “sometimes every week or a couple times a month.” They rode motorcycles together, and Whitaker was aware that in the summer of 2016, Worley’s bike had some electrical or fuel issues. Although Whitaker said that the motorcycle “occasionally stalled at corners,” he denied that it ever left them “stranded.” On cross-examination, Whitaker said that he and Worley had watched pornography together, and that it seemed to him that Worley had “an idea” about creating a pornographic studio at his residence.

II. PROCEDURAL HISTORY AND SENTENCING

{¶ 51} A grand jury indicted Worley on 19 felony counts, including two counts of aggravated murder. The indictment charged Worley with two counts of abduction (Counts 1 and 2), four counts of kidnapping (Counts 3 through 6), two counts of felonious assault (Counts 7 and 8), two counts of murder (Counts 9 and 10), two counts of aggravated robbery (Counts 13 and 14), one count of possessing criminal tools (Count 15), one count of gross abuse of a corpse (Count 16), one count of tampering with evidence (Count 17), and two counts of having a weapon while under a disability (Counts 18 and 19).

{¶ 52} Count 11 charged Worley with aggravated murder with prior calculation and design, in violation of R.C. 2903.01(A). Count 12 charged Worley with purposely causing Joughin’s death while “committing or attempting to commit” kidnapping, in violation of R.C. 2903.01(B). Each aggravated-murder count included two death-penalty specifications: (1) that Worley committed the murder for the purpose of escaping detection, apprehension, trial, or punishment for another offense, in violation of R.C. 2929.04(A)(3), and (2) that Worley committed the murder in the course of committing the offense of kidnapping and that Worley was either the principal offender in the commission of the aggravated

murder or that he committed the aggravated murder with prior calculation and design, in violation of R.C. 2929.04(A)(7). He pleaded not guilty to all the counts and specifications.

{¶ 53} The state dismissed Counts 13 and 14 before the case was submitted to the jury. The jury returned guilty verdicts on all the remaining counts, including both death-penalty specifications.

{¶ 54} The trial court merged the prior-calculation-and-design-aggravated-murder charge (Count 11) into the aggravated-murder-during-a-felony charge (Count 12), and merged the second specification (R.C. 2929.04(A)(7)) into the first specification (R.C. 2929.04(A)(3)) before the sentencing phase began. The state elected to proceed to sentencing on Count 12 and the first specification to that count. As such, for purposes of capital sentencing, the jury considered only Count 12 (purposely causing the death of Joughin while committing or attempting to commit the crime of kidnapping, in violation of R.C. 2903.01(B)) and the sole aggravating factor associated with that count after merger (that Worley purposely caused the death of Joughin for the purpose of escaping detection, apprehension, trial, or punishment for another offense, in violation of R.C. 2929.04(A)(3)). The jury recommended a sentence of death, and the trial court accepted that recommendation and imposed a death sentence.

{¶ 55} On the noncapital convictions, the trial court merged Counts 1 through 5 with Count 6 (kidnapping) and sentenced Worley to 11 years in prison on that count. The court merged Count 7 with Count 8 (felonious assault) and sentenced Worley to 8 years in prison on that count. The court merged Count 16 with Count 17 (gross abuse of a corpse) and sentenced Worley to 36 months in prison on that count. The court merged Count 18 with Count 19 (having weapons while under a disability) and sentenced Worley to 36 months in prison on that count. The court sentenced Worley to 11 months in prison for one count of possessing criminal tools (Count 15). The court ordered that the sentences imposed for the

noncapital convictions be served consecutively, for an aggregate sentence of 25 years and 11 months. Worley appeals his convictions and sentence and raises 11 propositions of law.

III. ANALYSIS

A. Sufficiency of the evidence

{¶ 56} In his first proposition of law, Worley argues that the state failed to prove beyond a reasonable doubt that he committed the offenses of aggravated murder and kidnapping. For the following reasons, we disagree.

{¶ 57} The test for sufficiency of the evidence is “whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, *superseded by constitutional amendment on other grounds as stated in State v. Smith*, 80 Ohio St.3d 89, 102, 684 N.E.2d 668 (1997), fn. 4, and following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). “ ‘Proof beyond a reasonable doubt’ is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person’s own affairs.” R.C. 2901.05(E). A sufficiency-of-the-evidence challenge asks whether the evidence adduced at trial “is legally sufficient to support the jury verdict as a matter of law.” *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 219.

{¶ 58} In Worley’s sufficiency-of-the-evidence claim pertaining to his kidnapping conviction, he contends that the evidence did not sufficiently prove that he “engaged in sexual activity with Joughin.” And in Worley’s sufficiency-of-the-evidence claim pertaining to his aggravated-murder conviction for which he was sentenced to death, he contends that the evidence did not sufficiently prove that he was the perpetrator of the crimes or that he acted with a purposeful mens rea. His claims lack merit because when the evidence is viewed in a light most favorable to

the prosecution, it supports the jury’s conclusion that Worley committed the crimes and the conduct underlying the capital specifications.

1. The state presented overwhelming evidence that Worley committed kidnapping

{¶ 59} Worley challenges the sufficiency of the evidence supporting his kidnapping conviction, arguing that the state failed to present sufficient evidence that he “engaged in sexual activity with Joughin.” This claim fails for several reasons.

{¶ 60} Worley’s claim is focused on Count 4 (kidnapping)—a count for which he was not sentenced to death and was merged with Count 6. Count 4 alleged that Worley, by force, threat, or deception, restrained Joughin’s liberty “with the purpose to engage in sexual activity, as defined in Section 2907.01 of the Revised Code, with the other against the other’s will,” R.C. 2905.01(A)(4).

{¶ 61} Even if Worley had been sentenced for a violation of R.C. 2905.01(A)(4), Worley’s argument would still be unpersuasive. Worley’s contention that there was insufficient evidence that he “engaged in sexual activity with Joughin” is based on a faulty reading of that statute. R.C. 2905.01(A)(4) prohibits the removal or restraint of another for the purpose of engaging in sexual activity with the person and “requires only that the restraint or removal occur for the purposes of non-consensual sexual activity—*not that sexual activity actually take place.*” (Emphasis added.) *State v. Powell*, 49 Ohio St.3d 255, 262, 552 N.E.2d 191 (1990), *superseded by constitutional amendment on other grounds as stated in Smith*, 80 Ohio St.3d at 102, 684 N.E.2d 668, fn. 4, and following *Jackson*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560.

{¶ 62} Although Worley does not challenge the sufficiency of the evidence for Count 6, which was the kidnapping count that supported the aggravated-murder conviction for which he was sentenced to death, the evidence supporting Worley’s conviction for Count 6 was overwhelming as well. Count 6 required proof beyond

a reasonable doubt that Worley, “by force, threat, or deception,” knowingly restrained Joughin of her liberty “under circumstances that create[d] a substantial risk of serious physical harm.” R.C. 2905.01(B)(2). The evidence showed that Worley used force when he attacked Joughin as she was riding her bike, that he restrained her at his property using rope and handcuffs, and that he shoved a dog toy into her mouth and tied it in place causing her to suffocate. Thus, we find ample evidence supporting Worley’s kidnapping conviction.

2. The state presented sufficient evidence to establish that Worley committed aggravated murder during a kidnapping

{¶ 63} The jury found Worley guilty of purposely causing Joughin’s death while committing the crime of kidnapping (R.C. 2903.01(B)) so that he could escape detection, apprehension, trial, or punishment for the kidnapping (R.C. 2929.04(A)(3)). Worley argues that the state failed to produce legally sufficient evidence that he purposely killed Joughin or that he was her “actual killer.”

a. Worley purposely killed Joughin

{¶ 64} “A person acts purposely when it is the person’s specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender’s specific intention to engage in conduct of that nature.” R.C. 2901.22(A). A defendant’s purpose may be established by circumstantial evidence. *State v. Nicely*, 39 Ohio St.3d 147, 151, 529 N.E.2d 1236 (1988). “The law has long recognized that intent, lying as it does within the privacy of a person’s own thoughts, is not susceptible to objective proof.” *State v. Garner*, 74 Ohio St.3d 49, 60, 656 N.E.2d 623 (1995). Therefore, intent may be established from the surrounding facts and circumstances in the case. *Id.*

{¶ 65} Worley maintains that there was no evidence submitted at trial that he purposely suffocated Joughin. He argues that the jury could not infer his purpose in this case because (1) Joughin’s death was not caused by a gunshot or knife

wound, (2) the state failed to prove an exact time of death, and (3) the state’s “main argument on purposefulness focused on Joughin’s broken front tooth.”

{¶ 66} Worley’s claims lack merit. First, Dr. Beisser concluded to a reasonable degree of medical certainty that the death in this case was caused by asphyxia due to mechanical obstruction of Joughin’s mouth. During the autopsy, Dr. Beisser removed the dog toy used to gag Joughin and found that her upper left front tooth was broken. Photographic and video evidence of Joughin’s last bike ride demonstrated that her teeth were intact prior to the abduction. Furthermore, Dr. Beisser testified to a reasonable degree of scientific certainty that the tooth could have been broken when the gag was inserted into her mouth.

{¶ 67} The dog toy and Joughin’s oral cavity were the same size, and the gag was tied tightly in place with a shoelace. Therefore, when the gag was inserted and then secured in place, it completely blocked both of Joughin’s airways and prevented her from breathing. Although Worley owned gear that was specifically made for sexual bondage that he could have used, he instead chose to use a dog toy, which was larger and differently shaped. He then secured that large dog toy with a shoelace. “It is a fundamental principle that a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts.” *State v. Johnson*, 56 Ohio St.2d 35, 39, 381 N.E.2d 637 (1978); *see also State v. Carter*, 64 Ohio St.3d 218, 226, 594 N.E.2d 595 (1992).

{¶ 68} The evidence also indicated that Joughin’s death was not instantaneous—it took up to ten minutes for her to asphyxiate from the time that Worley inserted the gag into her mouth. Dr. Beisser opined that there would have been visible or audible signs of Joughin’s distress as she asphyxiated. Indeed, Dr. Beisser’s testimony alone was sufficient for the jury to reasonably infer that when Worley pushed the gag into Joughin’s mouth, he intended to kill her.

{¶ 69} Worley points out that no tooth fragment was found during the autopsy. Therefore, he contends, “[t]he most reasonable inference that a rational

trier of fact could reach was that [Joughin’s] tooth was broken prior to the sex toy¹ entry, or after—as when she was buried—eliminating any reasonable probability that the toy was inserted into her mouth with the level of force showing a purpose to kill by suffocation.” This assertion is meritless. The issue in a challenge to the sufficiency of the evidence is “whether any reasonable trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Jenks*, 61 Ohio St.3d at 273, 574 N.E.2d 492. The dispositive question is not, as Worley contends, whether there was a more reasonable inference the jury could have made. Moreover, the failure of the police to find a tooth fragment does not show that Worley did not intend to suffocate Joughin. The autopsy report established that Joughin died from asphyxia due to the dog toy’s placement into her mouth.

{¶ 70} Worley lied to the investigators when they first came to his property and he continued to mislead the police for days after that initial visit. Although Joughin’s body had not yet been located, Worley lied about his whereabouts on July 19 and lied about whether Joughin had ever been on his property. The state presented ample evidence showing that Worley made extensive efforts to escape detection, including lying, which also indicates that Worley purposely murdered Joughin. *See State v. Coleman*, 37 Ohio St.3d 286, 290-291, 525 N.E.2d 792 (1988).

{¶ 71} We reject Worley’s arguments and hold that the state presented sufficient evidence that he purposely killed Joughin.

b. Evidence showing that Worley was the actual killer

{¶ 72} Worley also argues that the state presented insufficient evidence to show that he actually killed Joughin. He contends that the evidence was insufficient to allow the jury to conclude that he was the “principal offender,” an element of the

1. Worley’s briefs persistently misidentify the object that suffocated Joughin as a “sex toy.” In fact, it was a rubber dog toy with a conical structure.

aggravating circumstance contained in the second specification attached to both counts of aggravated murder.

{¶ 73} We find no merit to Worley’s argument. After the court merged allied offenses and the state elected to proceed to the penalty phase with Count 12 and the first specification attached to that count, Worley was sentenced to death solely on that first capital specification, not the second specification (which required, among other elements, that there be sufficient evidence that Worley was the “principal offender”). *See* R.C. 2929.04(A)(7). Under the first specification—the only aggravating circumstance that the jury considered for sentencing purposes—Worley was found to have committed the aggravated murder for the purpose of escaping detection, apprehension, trial, or punishment for another offense that he had committed. R.C. 2929.04(A)(3). Thus, even if we were to hold that the evidence was insufficient to prove that Worley was the “principal offender,” the erroneous verdict would be harmless beyond a reasonable doubt because the error would not affect the sentence. *Powell*, 49 Ohio St.3d at 263, 552 N.E.2d 191.

{¶ 74} We reject Worley’s argument because he was not sentenced to death based on the principal-offender specification contained in R.C. 2929.04(A)(7), and he has not challenged the sufficiency of the evidence supporting the escaping-detection specification.

{¶ 75} Even so, there was overwhelming evidence that Worley was the perpetrator of these crimes and thus the “actual killer” and principal offender. Worley admitted to police that he was in the area of the abduction site on July 19, in the cornfield where a box of fuses belonging to Worley was found. He placed a call at 7:43 p.m. from that location. Joughin’s blood was on Worley’s helmet, which was found on the side of the road near the abduction site. And although Worley strongly denied that Joughin was ever at his property, her DNA was on the air mattress in his barn. The green crate contained a pair of pink underwear soaked

with Joughin’s blood and a roll of paper towels in that crate also contained her DNA. All the DNA evidence found on Worley’s property belies his claim that he was not her actual killer. His argument that a different perpetrator was likely involved because DNA analysis of Joughin’s fingernail clippings revealed an unknown male’s DNA profile is likewise meritless. Joughin was handcuffed and bound in a way that made her utterly defenseless. Thus, the fact that Worley’s DNA profile was not detected from the DNA taken from underneath her fingernails does not support his argument.

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

B. Denial of motion for new venire

{¶ 77} In his second proposition of law, Worley argues that his right to a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 16 of the Ohio Constitution² was infringed upon when the trial court denied his motion for a new venire after many prospective jurors were, as he describes it, exposed to “information harmful to [him] and positive toward the government.” But Worley fails to demonstrate that the trial court abused its discretion in denying his motion. The court dismissed every prospective juror who either stated that he or she had prejudged Worley’s guilt or had unnecessarily commented on Worley’s character. The trial court also issued timely and thorough admonishments and limiting instructions that the jurors swore they would follow.

2. “Since 1887, this court has equated the Due Course of Law Clause in Article I, Section 16 of the Ohio Constitution with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, 83 N.E.3d 883, ¶ 15. Because we have not held that Article I, Section 16 of the Ohio Constitution provides broader due-process protections than the Fourteenth Amendment to the United States Constitution and because Worley has not actually provided this court with that argument, we decline to address that issue.

1. Facts

{¶ 78} The trial court ordered an initial draw of 400 individuals for the prospective jury pool. The court granted Worley’s request for individual voir dire on the topics of pretrial publicity and the death penalty. The court dismissed about 156 prospective jurors after holding pretrial hearings on statutory juror excusals. The trial court placed the remaining 242 prospective jurors into two groups. General voir dire took place over the course of two days, and individual voir dire followed on the next day.

{¶ 79} On the first day of general voir dire, Worley’s name quickly came up as the cause of a number of prospective jurors’ inability to be fair and impartial. Prospective juror No. 96 said that he and Worley had attended the same high school, that he had spoken to a previous employer about this case, and that he could not be a fair and impartial juror despite the court’s instructions. Defense counsel successfully challenged that juror for cause. After prospective juror No. 96 was dismissed, other prospective jurors stated that they too had already decided that Worley was guilty and could not fairly consider the evidence. Prospective juror No. 134 told the court that Worley used to come into the shop where she worked and that “we just kind of thought he was kind of different.”

{¶ 80} When the court asked whether any of the prospective jurors had a “state of mind showing ill will, hatred, or bias” toward the state or Worley, prospective juror No. 60 raised her hand. She said that she had been “in the same friend group” with Joughin and that that relationship would make it impossible for her to be fair and impartial. The court dismissed that prospective juror for cause. Next, the court asked whether anyone had formed or expressed an opinion as to Worley’s guilt. Prospective juror No. 18 stated that he had formed the opinion that Worley was guilty and that he would not be able to fairly and impartially consider the evidence. Prospective juror No. 65 stated that he believed Worley was guilty, prospective juror No. 62 lived near where Joughin’s body was found and said she

could not be impartial, prospective juror No. 52 said that she could not be unbiased because of her friendship with the Joughin, Vaculik, and Kolasinski families, and prospective juror No. 102 said that he already made up his mind. The court dismissed all those prospective jurors for cause.

{¶ 81} Addressing the remaining prospective jurors, the court requested those who had a preconceived opinion about Worley’s guilt to stand. The court then asked the prospective jurors who stood up whether they could set aside any preconceived judgments as to Worley’s guilt and whether they could decide the case based only on the evidence that would be presented at trial. Prospective juror No. 4 revealed that Joughin’s family had been to her wedding, and then said that “based on that he did this 30 years ago, it’s been—” before the court interrupted her. The court instructed the prospective jurors to answer the specific question asked and to avoid making any additional statements.

{¶ 82} Defense counsel moved to dismiss the entire panel. After calling a recess, the court held a meeting in chambers. Counsel argued that prospective juror No. 4’s allusion to Worley’s prior conviction had tainted the venire and that a new venire should be empaneled. The state opposed the motion and pointed out that the parties had stipulated to the existence of Worley’s prior conviction and that a witness would testify about it. The court then stated: “The Court is not going to dismiss this panel. The Court instead is going to give a curative instruction. * * * We will discuss with the jurors whether they can lay aside that comment and go forward from there. If there’s an appearance that no one can lay it aside, then I will reconsider the defense’s motion.” The court also indicated that the jury commissioner had informed the court that prospective juror No. 159 “claims that Mr. Worley assaulted her daughter. She is convinced he committed this offense.”

{¶ 83} The court dismissed prospective juror Nos. 4 and 159 and then instructed the jury as follows:

Everyone must understand that every individual charged with an offense in the United States is presumed to be innocent. That presumption carries to every defendant.

Comments made during voir dire are not evidence because, as I've said before, the only evidence that a jury may consider is the evidence that comes from the witness stand, from the exhibits; and from other things, quite frankly, [that] the Court tells you [that] you may consider, and from nowhere else, certainly not during voir dire.

So any comments you hear during voir dire related to something that someone supposedly did are just that. It's speculation, it's gossip. It's the stuff you read on the internet.

Because absent being present, none of you know for sure what occurred in this case. No one. And Mr. Worley is presumed innocent as any of you would be if you were accused of a crime. So I'm instructing all of you to disregard any of the comments that you've heard, and we're going to move forward.

{¶ 84} After issuing the curative instruction, the court again asked whether any of the remaining prospective jurors had a preconceived notion about Worley's guilt. Twenty-three prospective jurors raised their hands. The court conducted a brief colloquy with each prospective juror before dismissing each of them for cause.

{¶ 85} At the end of that day, the court admonished the remaining prospective jurors to abstain from advertising their being a part of the case on social media. Prospective juror No. 46 then raised a concern over a Facebook post she had made the previous day. The prospective juror said that she "had put on yesterday, that 'Oh, boy.'" The court stopped her and responded, "That was yesterday." Without inquiring further, the court asked prospective juror No. 46 to delete the post. She agreed to do so when she got home. She was later dismissed

without objection for having “made up [her] mind about [Worley’s] guilt or innocence.”

{¶ 86} The next morning, the court told counsel that 68 prospective jurors remained. During voir dire that morning, prospective juror No. 103 raised his hand and told the court that he did not think he “should be on the jury because [he] pretty much made up [his] mind about it.” The court instructed the prospective juror to take his seat and told the prospective panel that the next step in voir dire would be focused on that issue. Yet, the prospective jurors continued to volunteer that their minds were already made up.

{¶ 87} In response, the court instructed the prospective jurors to consider two questions: “First, are you possessed of a state of mind showing ill will, hatred, or bias toward either the defendant or the State of Ohio? And, secondarily, have you formed or expressed an opinion as to the guilt or innocence of [Worley]?” The court then explained:

If you become a juror in this case, you’re going to take an oath. And the oath indicates that you will follow the instructions of the Court as to what it is you can consider in this case and how you will weigh the evidence in this case.

And basically, what I’m going to tell you is, you have to consider only the matters that you hear here in the courtroom from the witness stand, the exhibits that are admitted, and anything else that I instruct you to follow.

So what I want to know at this point in time, is there anyone here who cannot follow the instructions of the Court with respect to how they’re to consider the evidence or who has already made up their mind with respect to the guilt or innocence of [Worley]?

Now, in doing this, all you have to tell me is you've made up your mind. I don't need any other editorial comments. We ran into some problems yesterday.

So those of you who would answer that question in the affirmative, would you please raise your hand?

In response, 20 prospective jurors told the court that they would not follow its instructions and had already made up their minds that Worley was guilty. During this process, prospective juror No. 397 said that he "went to Evergreen High School and lived three miles from the guy's house, and [Worley] attended our church after his first imprisonment 25 years ago."

{¶ 88} Defense counsel renewed their motion for a new venire after prospective juror No. 397's statement. The state opposed the motion, and the court took the motion under advisement. Eleven more prospective jurors stated that they had already decided the question of Worley's guilt. Prospective juror No. 250 said that he could not be impartial because he had "two little girls at home." The court then stopped the proceedings again to instruct the jury on a defendant's presumption of innocence, stating:

Couple of comments before we proceed further with voir dire. I'm certain that all of you understand that any individual accused of any offense has the presumption of innocence.

I believe the expression I heard yesterday was that the individual is cloaked with innocence if they're charged. And that individual remains innocent of the offense unless the State has proven the defendant's guilt beyond a reasonable doubt.

And until that moment, the defendant is entitled to the Constitutional presumption of innocence. Now some comments

may have been made today or you may have overheard something. None of what any of these prospective jurors has said in the courtroom is evidence.

The only matter that the jury can rely upon are those matters that are testified to in open court, the exhibits that will be received into evidence in this case, and your reliance on the Court's instructions.

You are all going to be placed under oath and promise to do those very things, promise to give that assurance to the defendant that he's presumed to be innocent until he's proven guilty by the State until and unless he is proven guilty by the State.

So I want to make certain that there is no one here who feels that they have somehow been biased by any comments that may have been made during this particular part of voir dire.

Is there any individual here who feels they cannot lay aside anything that they've heard here today and a [sic] render their verdict based on the instructions given to them by the Court, which is going to tell you you have to rely on the evidence you hear in the courtroom?

If there is, I want you to raise your hand at this time.

None of the prospective jurors raised their hand. After some follow-up general voir dire, the court denied Worley's motion for a new venire.

{¶ 89} Individual voir dire began on March 7, 2016. The court explained that individual voir dire was designed to ferret out the potential jurors' views on the death penalty and whether the potential jurors could apply the law as given to them by the court without regard to their personal views on capital punishment.

2. Analysis

{¶ 90} We will not presume that a venire is tainted when a prospective juror makes improper comments during voir dire. *State v. Sanders*, 92 Ohio St.3d 245, 248, 750 N.E.2d 90 (2001); *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, 767 N.E.2d 216, ¶ 98 (“Absent some * * * indication, we decline to speculate that hearing [a prospective juror’s] opinions must somehow have irretrievably tainted the other prospective jurors”). “The party challenging the entire jury panel has the burden to show either that the jurors were unlawfully impaneled or that the jurors could not be fair and impartial.” *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, ¶ 150. And the trial court retains wide discretion over the conduct and scope of voir dire, including whether to grant a party’s motion for a new venire. *See id.* at ¶ 150-151. An abuse of discretion implies that the court’s attitude was unreasonable, arbitrary, or unconscionable. *See State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, 836 N.E.2d 1173, ¶ 48.

{¶ 91} The trial court provided limiting instructions to the prospective jurors more than once each day. Whenever a prospective juror failed to heed the court’s instructions to answer “yes” or “no” to the questions and to refrain from any other commentary, the trial court stopped the proceedings and provided further instruction. Moreover, each of the jurors who were ultimately empaneled was subjected to individual voir dire in sequestered sessions with the court and counsel present. The court asked those jurors whether they had formed any fixed opinions regarding Worley’s guilt or innocence, whether they could decide the case solely on the evidence presented at trial, and whether they could follow the court’s instructions and deliberate in a fair and impartial manner. Following thorough questioning, the trial court excused members of the venire who had formed fixed opinions about Worley’s guilt. And none of the prospective jurors who referred to Worley’s prior conviction during general voir dire was seated on the jury.

{¶ 92} Citing *Richardson v. Marsh*, 481 U.S. 200, 208, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987), and *Bruton v. United States*, 391 U.S. 123, 136, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), Worley argues in his reply brief that he has demonstrated an “overwhelming probability” that the venire could not have followed the court’s curative instructions and admonitions. In support of his argument, he points to the inappropriate comments made by some prospective jurors concerning their preconceived notions of Worley’s guilt.

{¶ 93} Worley’s reliance on *Richardson* and *Bruton* is misplaced. Neither Supreme Court case involved a claim that prospective jurors’ inappropriate comments during voir dire demonstrated an “overwhelming probability” that the venire could not follow the court’s curative instructions. Both *Richardson* and *Bruton* involved Confrontation Clause violations due to the admission of a nontestifying codefendant’s confession inculcating the defendant. See *Richardson* at 201-202; *Bruton* at 124. Here, there is no Confrontation Clause violation and no indication that the jurors could not follow the court’s instructions and admonitions. The trial court gained the necessary assurances from every juror who served on Worley’s jury. We reject Worley’s claim that the trial court abused its discretion in denying his motion for a new venire.

C. Ineffective assistance of counsel

1. During voir dire

{¶ 94} In his fourth proposition of law, Worley asserts that trial counsel provided ineffective assistance in violation of his Sixth and Fourteenth Amendment rights, as well as his rights under Article I, Section 10 of the Ohio Constitution. He alleges that during voir dire, defense counsel did not (1) elicit prospective jurors’ “actual beliefs about imposing the death penalty” or (2) inform the prospective jurors of Joughin’s age or that a homemade gag had been used to kill her. Worley also contends that the court’s use of a hypothetical during voir dire further confused the potential jurors and that defense counsel should have objected to it.

{¶ 95} Reversal of a conviction on an ineffective-assistance-of-counsel claim requires the defendant to show that counsel’s performance was deficient and that counsel’s deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph two of the syllabus. The standard under the Ohio Constitution is “essentially the same as the one enunciated by the United States Supreme Court in *Strickland*.” *Id.* at 142. To succeed on his claim, Worley must overcome “the strong presumption that counsel’s conduct f[ell] within the wide range of reasonable professional assistance.” *Strickland* at 689. The issue regarding counsel’s performance for any ineffective-assistance-of-counsel claim is whether counsel’s assistance was reasonable considering all the relevant circumstances. *Id.* at 688.

{¶ 96} This court has long “recognized that counsel is in the best position to determine whether any potential juror should be questioned and to what extent.” *State v. Murphy*, 91 Ohio St.3d 516, 539, 747 N.E.2d 765 (2001); *see also State v. Mundt*, 115 Ohio St.3d 22, 2007-Ohio-4836, 873 N.E.2d 828, ¶ 65 (in some cases, counsel may decide that the best tactic is to ask “few or no questions of a prospective juror”). In fact, “ ‘[f]ew decisions at trial are as subjective or prone to individual attorney strategy as juror voir dire, where decisions are often made on the basis of intangible factors.’ ” *Id.* at ¶ 64, quoting *Miller v. Francis*, 269 F.3d 609, 620 (6th Cir.2001).

a. Failure to elicit prospective jurors’ actual beliefs about the death penalty

{¶ 97} Worley contends that defense counsel were ineffective during voir dire for failing to meaningfully examine the prospective jurors’ views on the death

penalty. In support, he points to the voir dire of prospective juror Nos. 40, 42, 136, and 179.³

{¶ 98} During voir dire, the trial court and counsel questioned prospective jurors individually about their views on the death penalty. The court made the following statement to prospective juror No. 40:

This case is what we call a capital case. And that means because of the two counts of aggravated murder with which Mr. Worley is charged, there is the possibility and only a possibility of the imposition of the death penalty.

That's because each one of those counts of aggravated murder has attached to it certain specifications, and we call those specifications aggravating circumstances.

Do you understand that?

Prospective juror No. 40 responded affirmatively, and the court continued with that line of explanation and questioning:

It's these aggravating circumstances, these specifications, which make Mr. Worley potentially, and only potentially, eligible for the penalty of death.

Now, because of the possibility of the death penalty, it's important we ask every juror questions regarding his or her views on the death penalty. And it's equally important to remember that Mr. Worley is presumed innocent.

3. The portion of the transcript that Worley cites to reflects the individual voir dire of prospective juror No. 170, who sat as an alternate juror for Worley's trial and was substituted onto the petit jury prior to trial-phase deliberations. There was no juror No. 179 on the jury or who sat as an alternate juror.

Do you understand that?

Prospective juror No. 40 again responded affirmatively.

{¶ 99} Prospective juror No. 40 indicated on her questionnaire that the death penalty is appropriate in all cases in which the defendant is convicted of aggravated murder. In the blank lines left for explanation, she wrote: “Taking a life w[ith]out provocation should result in paying the penalty w[ith] their life.” That being the case, the trial court explained that “the law does not necessarily—in fact, in many cases—does not state that to be the case.” Prospective juror No. 40 indicated that she understood the court’s statement and accepted it as true.

{¶ 100} The court then asked prospective juror No. 40 whether she understood that “it would not be automatic that if the defendant was convicted of aggravated murder, that you would automatically say he needs to be sentenced to death.” The trial court also posed a question based on a hypothetical situation involving a defendant who had been convicted of aggravated murder and whose counsel presented certain mitigating factors during sentencing—i.e., “[t]he IQ of the individual, the age of the individual, the social background of the individual.” When the court asked prospective juror No. 40 whether she could fairly consider mitigating factors in the event that Worley was convicted of aggravated murder, she stated that she “would be able to take those [mitigating factors] into consideration.”

{¶ 101} Worley challenges defense counsel’s follow-up voir dire, claiming that “[d]efense counsel asked no substantive questions after [the trial court’s individual voir-dire] other than to repeat the [j]udge’s instruction on the burden of proof for the government at the penalty and mitigation phases of the trial.” Defense counsel questioned prospective juror No. 40 as follows:

Q. If I could briefly follow up that was a great summation by the Judge. Because in capital litigation, a capital murder case * * * [t]his is the only time in Ohio criminal law that the jury hears and gives a sentence. It doesn't happen in a drug case or DUI or something like that. It's the only time.

And to get there, you first have to find the defendant guilty of aggravated murder. And then after that and with the specifications, you go to the sentencing phase. And then would you be able to follow the law and listen to everything and then make that weighing process.

Has the State proven beyond a reasonable doubt [that] the aggravating circumstances outweighing [sic] the mitigating factors?

Can you do that?

A. Yes.

Q. So you're not going to be one to go, "Aggravated murder? Death, check."

A. No.

Q. Okay. And, ma'am, you hold certain beliefs close to your heart. I think I can see that.

A. Yes.

Q. Okay. And if it's 11 to 1 and you believe the State has not proven that, are you willing to tell everybody, "I'm standing for myself?"

A. Yes. I can give you a back story about that if you like.

Q. That's ok.

A. I've been given a very, very difficult time about having jury duty. I had no idea what the case was. And people keep telling me to get out of it, and I said that is our right as an American citizen.

It just makes me angry that people think that they have to get out of it.

Q. There is only one greater service you can provide to this country, and that is military service. And then possibly the only thing greater is giving your life on behalf of our nation. And I thank you, ma'am. Thank you, because you just showed me what you can do. Everyone told you to leave. Everyone told you to get out of this.

And do you know what you said?

A. "No. That's my duty."

{¶ 102} Defense counsel's voir dire was not deficient. In addition to revealing her character trait of standing up for her decisions in the face of opposition from family and friends, counsel's questioning of prospective juror No. 40 elicited her unequivocal assurance that she would not automatically recommend a death sentence. We have held that "not questioning certain members of the venire or asking too few questions of prospective jurors falls within the wide range of reasonable professional assistance." *State v. Dixon*, 101 Ohio St.3d 328, 2004-Ohio-1585, 805 N.E.2d 1042, ¶ 45. Moreover, the prospective jurors were subject to questioning from both the bench and the prosecutor. Defense counsel has no duty to ask further questions during voir dire on topics that have already been sufficiently addressed. *Mundt*, 115 Ohio St.3d 22, 2007-Ohio-4836, 873 N.E.2d 828, at ¶ 65.

{¶ 103} Reasonable professional assistance may also include a decision by defense counsel not to object to the court's use of a hypothetical situation involving a capital sentencing hearing. See *State v. Jackson*, 107 Ohio St.3d 300, 2006-Ohio-1, 839 N.E.2d 362, ¶ 132; *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, 880 N.E.2d 31, ¶ 70. The hypothetical question addressed a primary issue: whether a

juror would automatically sentence Worley to death if he were convicted of aggravated murder, regardless of any mitigation factors presented. Even if the trial court’s use of a hypothetical question was error, defense counsel’s failure to object, without more, will not sustain a claim of ineffective assistance of counsel. *See State v. Fears*, 86 Ohio St.3d 329, 346-347, 715 N.E.2d 136 (1999); *State v. Holloway*, 38 Ohio St.3d 239, 244, 527 N.E.2d 831 (1988).

{¶ 104} Counsel’s and the court’s voir dire of prospective juror Nos. 42, 136, and 170 was similar to the voir dire of prospective juror No. 40. Prospective juror Nos. 42, 136, and 170 never indicated, either in voir dire or on their death-penalty questionnaires, that they believed that the death penalty was appropriate in every case in which an individual is convicted of aggravated murder. The court asked prospective juror No. 42 about an answer on his questionnaire that revealed the prospective juror’s belief that the death penalty is a proper punishment with exceptions: “Are you telling me that in each case of aggravated murder, you believe the individual should be sentenced to death?” Prospective juror No. 42 unequivocally denied that he believed this. And when defense counsel questioned prospective juror No. 170, she maintained that “whatever the law prescribes that [she] do in [the] courthouse, [she] would follow the law.”

{¶ 105} Defense counsel’s questioning in all three cases was brief. But Worley fails to cite any authority to demonstrate that brevity in questioning prospective jurors is a basis on which to find deficient performance. In addition, Worley cannot show that defense counsel’s voir dire prejudiced him in any way.

b. Failure to “lay the factual groundwork”

{¶ 106} Worley contends that the specific facts of this case—that Joughin was “a young woman killed as she was entering adulthood” and that “[h]er death was caused by a sex toy”—should have been explored with the prospective jurors during voir dire and that counsel’s failure to do so was unreasonable and

prejudicial. He also asserts that defense counsel should have “objected to the absence of such questions.”

{¶ 107} Here, Worley argues that defense counsel were ineffective because they did not request the court to allow specific questions regarding the facts of this case. The law does not require defense counsel to ask particular questions of every prospective juror. *State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶ 61. The jury-selection process is inherently subjective; it is based on intangible factors and the experience and intuition of trial counsel. *Mundt*, 115 Ohio St.3d 22, 2007-Ohio-4836, 873 N.E.2d 828, at ¶ 64. Accordingly, “it is for [trial] counsel to determine what questions should be asked on voir dire.” *State v. Group*, 98 Ohio St.3d 248, 2002-Ohio-7247, 781 N.E.2d 980, ¶ 139.

{¶ 108} The trial court began the voir dire process by informing the venire of the charges that Worley faced, which included aggravated murder. The prospective jurors knew that Joughin was the victim of the alleged crimes. Because this ineffective-assistance-of-counsel claim is based on counsel’s failure to act, Worley can only speculate that informing the jurors of the specifics of the murder would have resulted in a different jury and that the different jury would not have sentenced him to death.

{¶ 109} Worley has not shown that defense counsel were ineffective during voir dire. Accordingly, we reject Worley’s fourth proposition of law.

2. During the state’s closing argument

{¶ 110} In his third proposition of law, Worley argues that defense counsel were ineffective by failing to object to the prosecutor’s “material misstatements” about the evidence during the trial-phase closing arguments. Worley contends that the state improperly argued that Worley’s intent to kill was proved by his insertion of the dog toy into Joughin’s mouth. According to Worley, the state did not “present evidence that the [dog] toy caused the broken tooth, only that it could have.”

{¶ 111} It is true that Dr. Beisser did not testify that Joughin’s front tooth was broken due to the insertion of the dog toy. But Dr. Beisser did state to a reasonable degree of scientific certainty that Joughin’s tooth could have broken when the dog toy was inserted. In his closing argument, the prosecutor addressed the element of purpose as follows:

From the moment he took her on County Road 6, he was going to have to kill her if he was going to get away with it. He could not let her go and avoid punishment. But there’s more. You heard Major Smithmyer talk about some of the videos that he watched. There’s a movie called “Death of a Tennis Star” where the female character is choked on a tennis net, choked out on a tennis net.

[Worley] was into that kind of pornography. And he wanted to watch [Joughin] die. He wanted to watch her die. That’s why he didn’t use the ball gag that’s specifically designed for bondage activity. That’s why he used a dog toy that’s tied in place.

And you heard Dr. Beisser say it took minutes for [Joughin] to die, visible signs of distress, up to ten minutes. But [Worley] wanted to watch that because that’s what got him excited.

And that dog chew—right, you see the dog chew and the rope that was inserted into [Joughin’s] mouth, you can see how it was run through the dog toy and inserted into [Joughin’s] mouth to prepare for this type of activity, and *how it was inserted with such force that it broke her tooth*. It requires that much force, yet he still ties it in place.

So [Joughin] is killed by the insertion of that yellow dog chew because she still cannot breathe.

(Emphasis added.) Later, the prosecutor argued:

The tying of that dog chew in place shows her death is purposeful. Her death was purposely caused. Again, same thing, more evidence of purpose, the videos he watched were of the female character being strangled to death as part of the video.

{¶ 112} Worley cannot establish that defense counsel’s failure to object to the prosecutor’s trial-phase closing argument was constitutionally deficient. The prosecutor’s remarks were based on a reasonable inference from Dr. Beisser’s testimony. Dr. Beisser testified that the dog toy was the same size as Joughin’s mouth and that it had been inserted far enough to fill her entire oral cavity, and yet, it was also firmly tied in place. She also testified that as Joughin asphyxiated, there would have been visible or audible signs of distress as Joughin struggled to breathe and that she ultimately died within ten minutes. When asked, Dr. Beisser testified that the dog toy could have been inserted into Joughin’s mouth forcefully enough to have broken her front tooth. The prosecutor’s argument represented a reasonable inference from Dr. Beisser’s testimony.

{¶ 113} Worley has not shown that defense counsel performed deficiently by failing to object during the prosecutor’s closing argument. Accordingly, we reject Worley’s third proposition of law.

D. Admission of evidence of other crimes, wrongs, or acts

{¶ 114} In his fifth proposition of law, Worley challenges the state’s introduction of evidence of Worley’s abduction of Robin Gardner in 1990.⁴ He claims that the evidence was inadmissible under Evid.R. 404 and 403.

4. The jury was not told that the incident about which Gardner testified resulted in Worley’s conviction for abduction. Because Worley’s conviction for abduction was relevant to the having-a-

{¶ 115} Before trial, the state gave notice that it intended to call Gardner as a witness. Worley filed a pretrial motion in limine arguing that Gardner’s testimony was inadmissible character evidence. The court denied Worley’s motion.

{¶ 116} The state called Gardner as its final witness in the trial phase, and defense counsel renewed their objection. Before Gardner testified, the trial court instructed the jury regarding the limited purposes for which it could consider her testimony.

{¶ 117} The admissibility of other-acts evidence under Evid.R. 404(B) is a question of law that we review *de novo*. *State v. Hartman*, 161 Ohio St.3d 214, 2020-Ohio-4440, 161 N.E.3d 651, ¶ 22. But the trial court’s weighing of the probative value of admissible evidence against the danger of unfair prejudice to the defendant pursuant to Evid.R. 403(A) involves an exercise of judgment and will be reviewed for an abuse of discretion. *Hartman* at ¶ 30.

1. Evid.R. 404(B)

{¶ 118} Evidence of other acts may not be used to prove by inference that the accused acted in conformity with those other acts or that he has a propensity to act in that way. Evid.R. 404(B). Other-acts evidence may be admissible for nonpropensity purposes—i.e., as “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* To justify the admission of other-acts evidence for a nonpropensity purpose, the evidence must pertain to a “ ‘material’ issue that is actually in dispute.” *Hartman* at ¶ 27, quoting *Huddleston v. United States*, 485 U.S. 681, 686, 108 S.Ct. 1496, 99 L.Ed.2d 771 (1988). Worley disputed that he was the perpetrator in this case, so his identity was squarely at issue.

{¶ 119} The state asserts that Gardner’s testimony demonstrated Worley’s particular modus operandi and thus his identity as Joughin’s murderer. It is well

weapon-under-a-disability count in the indictment, the parties stipulated that the court would instruct the jury that Worley had been convicted of a felony offense of violence.

established that other-acts evidence may be admitted to establish *modus operandi*. *State v. Lowe*, 69 Ohio St.3d 527, 530, 634 N.E.2d 616 (1994). *Modus operandi* evidence is evidence of “signature, fingerprint-like characteristics unique enough ‘to show that the crimes were committed by the same person.’ ” *Hartman* at ¶ 37, quoting Weissenberger, *Federal Evidence*, Section 404.17 (7th Ed.2019). Slight differences between the current and other acts will not affect the admissibility of the other-acts evidence as long as it establishes “a *modus operandi* identifiable with the defendant.” (Emphasis sic.) *Lowe* at 531.

{¶ 120} The evidence of Worley’s abduction of Gardner established a *modus operandi* tending to prove Worley’s identity as the person who kidnapped and killed Joughin. In both cases, Worley assaulted a young woman (Gardner was 26 and Joughin was 20) who was riding a bicycle in a rural area surrounded by cornfields. Worley attacked each woman by hitting her on the back of the head, causing each of them to sustain a skull fracture. In the course of committing both crimes, Worley used a distinctive kind of handcuff on his victims that could not be removed with any keys that had been available to law enforcement. And Worley used a pickup truck in both cases with the apparent intent of using the truck to transport each of the victims back to his property.

{¶ 121} The most powerful evidence of a *modus operandi*, however, was Worley’s use of a screwdriver during the abductions. Worley argues that although a screwdriver was found in both cases, the screwdriver in this case was not located near the abduction site and that DNA testing of the handle failed to yield a result. But Worley is incorrect that the screwdriver in this case was not near the abduction site. His screwdriver was found in the western cornfield on County Road 6 in an area where agents found broken cornstalks and blood stains on leaves. And more importantly, at bottom, this argument is a challenge to the weight and credibility of the evidence, which is not relevant in deciding whether the evidence was admissible. “Admissibility is not adversely affected simply because the other

[crimes] differed in some details. * * * The weight to be given to this evidence is for the jury to determine.” *State v. Jamison*, 49 Ohio St.3d 182, 187, 552 N.E.2d 180 (1990).

{¶ 122} Worley further contends that Gardner’s testimony failed to “provide the jurors with information about the purposefulness of the killing of Joughin with the [dog] toy.” But this argument misses the point—Gardner’s testimony was not introduced to provide the jury with information about the purposefulness of Joughin’s murder. The facts surrounding Gardner’s abduction establish “a similar method of operation” to that in this case, making the other-acts evidence probative of identity. *State v. Bey*, 85 Ohio St.3d 487, 491, 709 N.E.2d 484 (1999).

{¶ 123} The similarities between Worley’s abduction of Gardner and the evidence of his kidnapping and assault of Joughin are striking. Indeed, the trial court correctly determined that Gardner’s testimony was offered for a proper purpose—i.e., to prove the identity of Joughin’s killer.

2. Evidence Rule 403(A)

{¶ 124} Worley argues that even if Gardner’s testimony was admissible under Evid.R. 404(B), it was inadmissible under 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.”

{¶ 125} The exclusion of relevant evidence under Evid.R. 403(A) requires more than mere prejudice, because anything adverse to a party’s case could be deemed prejudicial to that party. *State v. Crotts*, 104 Ohio St.3d 432, 2004-Ohio-6550, 820 N.E.2d 302, ¶ 23 (Evid.R. 403(A) requires exclusion only of “evidence that is *unfairly* prejudicial” [emphasis sic]). We have held:

“Unfair prejudice is that quality of evidence which might result in an improper basis for a jury decision. Consequently, if the evidence

arouses the jury’s emotional sympathies, evokes a sense of horror, or appeals to an instinct to punish, the evidence may be unfairly prejudicial. Usually, although not always, unfairly prejudicial evidence appeals to the jury’s emotions rather than intellect.”

Oberlin v. Akron Gen. Med. Ctr., 91 Ohio St.3d 169, 172, 743 N.E.2d 890 (2001), quoting Weissenberger, *Ohio Evidence*, Section 403.3, at 85-87 (2000).

{¶ 126} Given the considerable similarity between the two incidents, the probative value of Gardner’s testimony was high. Worley has not shown that the testimony *unfairly* prejudiced him or appealed to the jury’s emotions. The evidence was directly probative of a material issue in dispute—namely, the assailant’s identity. See *Hartman*, 161 Ohio St.3d 214, 2020-Ohio-4440, 161 N.E.3d 651, at ¶ 31. Although the state referred to Gardner’s testimony during closing argument, the reference was not prolonged—in an argument that covers 59 transcript pages, the Gardner incident occupies less than two.

{¶ 127} We hold that the trial court did not abuse its discretion by allowing Gardner’s testimony and find no merit in Worley’s fifth proposition of law.

E. Sentencing opinion

1. Reliance on facts not in evidence

{¶ 128} Worley argues in his ninth proposition of law that the trial court’s sentencing opinion inappropriately relied on facts not in evidence “to find beyond a reasonable doubt that the aggravating factor in a capital prosecution outweighed the mitigating circumstances in order to sentence a defendant to death.” In particular, Worley points to the trial court’s finding that “[t]he gag was placed with enough force to break Ms. Joughin’s tooth.” Worley reasons that because “[t]he jurors did not formally state the facts they relied on to conclude that Worley acted purposely,” the trial court’s reliance on that particular fact was erroneous.

{¶ 129} R.C. 2929.03(F) sets forth the findings a trial court must make when imposing a death sentence. The statute requires that the court state:

[S]pecific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors.

{¶ 130} In the sentencing opinion, the trial court recited the underlying facts in the case before setting out the mitigating factors and engaging in the analysis of why the aggravating circumstances sufficiently outweighed the mitigating factors. The basis of Worley’s argument is that there was no evidence to support the trial court’s statement that he inserted the dog toy into Joughin’s mouth with enough force to break her tooth. Although the coroner did not testify that the forceful insertion of the dog toy did, in fact, break Joughin’s tooth, she did testify to a reasonable degree of scientific certainty that “that foreign body could have broken her tooth.” Photographic and video evidence showed that Joughin’s front teeth were fully intact prior to the abduction. The coroner’s testimony, along with the other evidence, was sufficient for the trial court to infer that Worley broke Joughin’s tooth by forcefully shoving the dog toy in her mouth. *See State v. Simko*, 71 Ohio St.3d 483, 494, 644 N.E.2d 345 (1994) (the trial court did not misstate the evidence in its sentencing opinion by referring to a reasonable inference based on the evidence presented at trial).

{¶ 131} Accordingly, we reject Worley’s ninth proposition of law.

2. Failure to give proper weight to mitigating facts

{¶ 132} In his tenth proposition of law, Worley argues that in the sentencing opinion, the trial court violated the Eighth and Fourteenth Amendments to the United States Constitution when it gave “no or minimal weight to, or unreasonably discount[ed], accepted mitigation evidence.” Worley claims that the court gave “little weight” to his (1) history, character, and background, (2) history of concussions, and (3) cannabis-use disorder. He also argues that the trial court violated the Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 9 and 16 of the Ohio Constitution when it “avoided giving any weight to nine of Worley’s twelve mental illness diagnoses.”

{¶ 133} The court considered the evidence submitted by Dr. John Fabian, a forensic and clinical psychologist, that Worley seemed to have genuinely cared for his family and, as diagnosed by Dr. Fabian, that he suffered from mental illnesses and personality disorders. Accordingly, the court assigned “some weight due to the cumulative nature of these mitigating factors.” Although the court failed to address Worley’s adaptability to prison, Dr. Fabian’s report discusses that factor. And the trial court mentioned the remaining mitigating evidence that had been presented by Dr. Fabian. Worley’s argument rests on his assertion that the trial court “unreasonably discounted” his mitigating evidence.

{¶ 134} Quoting *Porter v. McCollum*, 558 U.S. 30, 42, 130 S.Ct. 447, 175 L.Ed.2d 398 (2009), Worley argues that the case “is instructive here” because the United States Supreme Court “held [in that case] that the Florida Supreme Court ‘either did not consider or unreasonably discounted the mitigation evidence’ adduced in a state postconviction hearing.” He is incorrect. We have previously rejected this argument, observing that “[t]he *Porter* court was not directly reviewing a trial court’s weighing of aggravation against mitigation in the penalty phase; it was reviewing a state court’s analysis of an ineffective-assistance claim on collateral review.” *State v. Davis*, 139 Ohio St.3d 122, 2014-Ohio-1615, 9

N.E.3d 1031, ¶ 65. Finding this procedural difference to be dispositive, we held that “*Porter* does not stand for the proposition that the Eighth Amendment forbids a sentence to ‘discount’ mitigating evidence introduced at the penalty phase of the trial.” *Id.*

{¶ 135} Moreover, the record does not support Worley’s claim that the trial court erred in how it assigned weight to his mitigating evidence or in weighing the mitigating factors. It is true that despite the fact that Dr. Fabian’s report contained a section detailing Worley’s institutional adjustment, the trial court’s opinion did not mention Worley’s ability to adapt to prison life. The history in Dr. Fabian’s report reveals that Worley generally adjusted well to prison life, in that he completed educational programs and while he was incarcerated for this case, he received only one ticket for yelling at another inmate.

{¶ 136} But a trial court is not required to individually discuss each mitigating factor in its sentencing opinion. *See State v. Phillips*, 74 Ohio St.3d 72, 104, 656 N.E.2d 643 (1995). Moreover, any error in assigning weight to any of the mitigating factors may be cured during our independent analysis of Worley’s death sentence. *See State v. Gapen*, 104 Ohio St.3d 358, 2004-Ohio-6548, 819 N.E.2d 1047, ¶ 143; *State v. Montgomery*, 148 Ohio St.3d 347, 2016-Ohio-5487, 71 N.E.3d 180, ¶ 155.

{¶ 137} Accordingly, we reject Worley’s tenth proposition of law.

F. Settled issues

1. *Hurst v. Florida* challenge

{¶ 138} In his sixth proposition of law, Worley argues that Ohio’s death-penalty statutes violate the Sixth Amendment right to a jury trial as construed in *Hurst v. Florida*, 577 U.S. 92, 136 S.Ct. 616, 193 L.Ed.2d 504 (2016). We overrule this proposition of law on the authority of *State v. Mason*, 153 Ohio St.3d 476, 2018-Ohio-1462, 108 N.E.3d 56.

2. Other constitutional and international-law challenges

{¶ 139} In his seventh proposition of law, Worley presents several frequently raised constitutional challenges to Ohio’s capital-punishment scheme. In his eighth proposition of law, he argues that Ohio’s death-penalty statutes violate international law “whether found in treaty or in custom.” Because we have considered and rejected each of these claims previously, we summarily reject them now. *See, e.g., Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751, 23 N.E.3d 1096, at ¶ 279-280; *State v. Mammone*, 139 Ohio St.3d 467, 2014-Ohio-1942, 13 N.E.3d 1051, ¶ 184; *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 111, 113-115, 124; *State v. Jackson*, 141 Ohio St.3d 171, 2014-Ohio-3707, 23 N.E.3d 1023, ¶ 239-240; *State v. Ferguson*, 108 Ohio St.3d 451, 2006-Ohio-1502, 844 N.E.2d 806, ¶ 87, 88; *State v. Jenkins*, 15 Ohio St.3d 164, 167-168, 178-179, 473 N.E.2d 264 (1984); *Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, 880 N.E.2d 31, at ¶ 211.

3. Proportionality

{¶ 140} In the last section of his seventh proposition of law, Worley contends that our R.C. 2929.05(A) method of proportionality review is constitutionally infirm. He argues that the “comparison method” of review, upheld in *State v. Steffen*, 31 Ohio St.3d 111, 509 N.E.2d 383 (1987), “prevents a fair proportionality review” because there is “no meaningful manner to distinguish capital defendants who deserve the death penalty from those who do not.” He argues that R.C. 2929.021—which requires clerks of trial courts to notify this court of all capitally charged cases regardless of the sentencing outcome—creates “substantial doubts as to the adequacy of the information received after guilty pleas to lesser offenses or after charge reductions at trial.”

{¶ 141} Because Ohio has determined that death should be an available penalty for certain crimes, it must administer that penalty in a way that rationally distinguishes individuals for whom death is an appropriate sanction from those for

whom it is not. *Zant v. Stephens*, 462 U.S. 862, 873-880, 103 S.Ct. 2733, 77 L.Ed.2d 235 (1983); *Furman v. Georgia*, 408 U.S. 238, 294, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Brennan, J., concurring). In every death-penalty direct appeal, we are statutorily required to “consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases.” R.C. 2929.05(A). The statute continues by requiring us to “affirm a sentence of death only if [we are] persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case.” *Id.*

{¶ 142} That language means that in every capital direct appeal, before deciding whether a death sentence will stand, we must consider the record to determine whether the death sentence was correctly imposed (meaning that “the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case”) and to ensure that the death sentence is appropriate. *See* R.C. 2929.05(A). We have determined, with respect to the appropriateness inquiry, that the phrase “similar cases” as used in R.C. 2929.05(A) includes “those cases already decided by the reviewing court in which the death penalty has been imposed.” *Steffen* at paragraph one of the syllabus; *but see Jenkins*, 15 Ohio St.3d at 209, 473 N.E.2d 264 (“R.C. 2929.05 does not require a comparison of sentences in non-capital murder cases for proportionality review”).⁵

G. Cumulative error

{¶ 143} In his eleventh proposition of law, Worley argues that cumulative errors committed during his capital trial necessitate a reversal of his convictions

5. The author of this opinion, speaking only for himself and not for this court, has previously expressed the view that our proportionality review should include factually comparable cases that did not result in the death penalty. *See State v. Graham*, __ Ohio St.3d __, 2020-Ohio-6700, __ N.E.3d __, ¶ 220-229 (Donnelly, J., concurring). The author of this opinion nevertheless agrees that the heinous facts of this case would not make the sentence imposed here disproportionate even if this court were to undertake such a review.

and death sentence. We have not identified a single error in Worley’s trial, so the cumulative-error doctrine does not apply. *See State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577, 971 N.E.2d 865, ¶ 223. As such, we reject the eleventh proposition of law.

IV. INDEPENDENT-SENTENCE EVALUATION

{¶ 144} We have a duty to independently review the death sentence for appropriateness and proportionality. R.C. 2929.05(A). In conducting this review, we must determine whether the evidence supports the jury’s finding of the aggravating circumstance, whether that aggravating circumstance outweighs the mitigating factors, and whether Worley’s death sentence is proportionate to those affirmed in similar cases. *Id.* We consider these issues de novo. *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, ¶ 272.

A. Aggravating circumstance

{¶ 145} The only aggravating circumstance that the jury considered was that Worley committed aggravated murder “for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed” by Worley—namely, kidnapping. *See* R.C. 2929.04(A)(3). As we discussed in connection with proposition of law No. I, the evidence presented at trial supported the jury’s finding that Worley was guilty of purposely killing Joughin in order to escape detection for kidnapping her. Accordingly, the evidence supports the capital specification that was found by the jury under R.C. 2929.04(A)(3).

B. Mitigating factors

{¶ 146} We must weigh the above aggravating circumstance against any mitigating evidence about “the nature and circumstances of the offense” and Worley’s “history, character, and background.” R.C. 2929.04(B). In addition, we must consider and weigh any evidence of the mitigating factors specifically listed in R.C. 2929.04(B):

(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.

1. Worley's mitigation evidence

{¶ 147} At Worley's mitigation hearing, his counsel presented testimony from three lay witnesses who were friends or acquaintances of Worley (Thomas Mossing, Jack Roschmann, and William Gombash). The defense also presented testimony from a mitigation investigator (Gary Ericson) and a forensic and clinical psychologist (Dr. Fabian). Worley declined to make an unsworn statement.

a. Family history, childhood, and educational background

{¶ 148} The evidence presented demonstrated that Worley's childhood was difficult because his parental figures exposed him to physical abuse and alcoholism.

Because no members of Worley's family testified, his familial and childhood history was presented through the testimony of Ericson and Dr. Fabian.

{¶ 149} Ericson interviewed Worley's sister (Cynthia Barlow), a friend of Worley's (Thomas Wilson), a former friend (Lorna Mangrum), and a former employer (Mr. Newlan). He also interviewed Worley on several occasions. Defense counsel played for the jury a recording of Barlow's interview in full. The recording was also admitted into evidence. Defense counsel chose not to offer Ericson's written report into evidence because it contained information regarding other interviews that defense counsel did not want to present to the jury.

{¶ 150} Worley's parents (James Sr. and Florence) were married in 1941, and they later had three children: Cynthia, James, and Mark. Worley was born in 1959 in the state of Washington, approximately four years after his sister and two years before his brother. The family later moved to Waukegan, Illinois, and then to Ohio, where the family ultimately settled in Fulton County. According to Worley, he lived at the same property in Fulton County from third grade until the day of his arrest for Joughin's murder. His brother, Mark, also lived on the Fulton County property, but in a separate trailer near the residence.

{¶ 151} Both Worley and his sister recalled that their father drank after work with his colleagues and, on returning home, James Sr. would become violent toward their mother. Worley remembered one particular fight, during which his mother tried to pick up the telephone, but his father yanked the cord out of the wall. Barlow recalled the same episode, but added that she recalled her father having a butcher knife in his hand while he chased her mother, and that Barlow attempted to help her mother escape through a bedroom window.

{¶ 152} When Worley was around five years old, his mother was granted a divorce based on James Sr.'s "gross neglect of duty and extreme cruelty." Worley and his siblings remained with their mother after the divorce. The children "didn't

see [their father] for a long time,” but eventually began to see him “every six months for seven hours.” Worley said that those visits “went on for a number of years.”

{¶ 153} Around 1969, Worley’s mother married Graydon “Jack” Shepherd. According to Ericson, Worley respected his stepfather. Ericson said that Worley did not make any “denigrating statements that [he could] ever recall” about Shepherd. Barlow told Ericson that Shepherd had been a drill sergeant in World War II and that he had a gruff demeanor. According to Dr. Fabian, Worley previously told a presentence investigator that around the age of 16 or 17, he and his brother had moved in with their biological father “because of a strict upbringing with their step-father and mother, and [because] they were searching for some freedom.”

{¶ 154} Barlow said that unlike James Sr., Shepherd did not have a penchant for physical violence toward their mother but, like James Sr., Shepherd drank heavily. Dr. Fabian reported that Barlow told him that when she was about 16 years old, Shepherd began trying to have sex with her. She stated to Dr. Fabian: “He grabbed me and threw me down and tried to rape me.” Barlow informed Dr. Fabian that on two occasions, Worley walked in on Shepherd raping her, but that she and Worley never discussed it.

{¶ 155} According to Barlow, Worley never disrespected her or their mother. In fact, Barlow stated that their mother spoke highly of Worley and how well he cared for her in her later years. Worley informed Dr. Fabian that he had had a “[v]ery strong” emotional connection with his mother and that she never excessively disciplined him or his siblings. According to Worley, his mother was “a genuinely awesome person.” Worley described his emotional connection to James Sr. as “[g]ood, even though [he] had a hard time processing what [he] saw when [he] was little or when [he] was five years old.” But as he aged, Worley began to view James Sr. as a “pretty good guy,” because in Worley’s view, “[o]ne bad day shouldn’t define someone.”

{¶ 156} Barlow recalled that Worley struggled in school and that he may have been prescribed Ritalin when he was less than ten years old. She recalled that when they were young, Worley was very social and liked to talk to people and play pranks. According to Barlow, Worley had to repeat the third grade because he was inattentive during class. Dr. Fabian reviewed Worley’s educational records and testified that Worley was an underachiever who had a 1.5 grade-point average upon graduating from high school. Records show that Worley’s IQ early in life was determined to be around 97, which, according to Dr. Fabian, is “right at the 50th percentile.” In his report, Dr. Fabian noted that Worley briefly attended Owens Community College in Toledo, but that he voluntarily withdrew in 2000 and lacked sufficient credits to complete a degree. His final grade-point average at Owens Community College was 2.0.

b. Psychologist testimony

{¶ 157} Dr. Fabian met with Worley twice, interviewed Barlow, reviewed a host of information regarding Worley’s life, and administered various psychological tests. Dr. Fabian testified that three factors impeded his assessment: (1) Worley’s lack of openness about his childhood and prior offense history, (2) Worley’s denial of his role in and responsibility for the prior offense and the instant offense, and (3) Worley’s mental-health issues, including severe personality disorders, which likely exacerbated the first two factors.

{¶ 158} Noting the episodes of physical and sexual violence that Worley reportedly had witnessed as a child, Dr. Fabian concluded that Worley “lack[ed] an emotional depth and insight into his relationships with his parents.” Dr. Fabian stated that he had “concerns about a potentially incestuous relationship with [Worley and his] mother.” Dr. Fabian acknowledged, however, that there was no evidence to support this conjecture.

{¶ 159} Dr. Fabian opined that Worley “ha[d] a chronic cannabis-dependence problem” exhibited by his “long history of cannabis use beginning

around age 10 or 12 or 13.” Dr. Fabian concluded that Worley “lack[ed] * * * insight or self-awareness or self-introspection” in terms of how his drug use negatively affected his life.

{¶ 160} Because Ericson could not locate any mental-health records, Dr. Fabian used a presentence evaluation for purposes of reviewing Worley’s mental-health history that had been done in connection with Worley’s 1990 abduction case. Those records indicated that Worley reported “some memory of trauma in his life, especially relating to Father to Mother, had used cannabis, some experimentation, not as regular, use of cocaine.” Dr. Fabian agreed with the assessment by the presentence-evaluation psychologist that Worley had “a personality disorder with narcissistic, antisocial, and inadequate features.”

{¶ 161} Dr. Fabian reviewed Worley’s records for a history of any head injuries to inform his neuropsychological assessment. A medical record indicated that in 1994, Worley suffered a scalp laceration and a head contusion. Worley told Dr. Fabian that in 1982, he was in a car accident and that he “went through the windshield.” Worley said, however, that he did not lose consciousness, and no medical records were found relating to that incident. Ultimately, Dr. Fabian stated, “[I]t’s likely he had a couple of concussions, you know, as an adult.”

{¶ 162} Dr. Fabian also administered a battery of tests, including the Minnesota Multiphasic Personality Inventory-2 (“MMPI-2”) and the Millon Clinical Multiaxial Inventory-III (“MCMI-III”). The MMPI-2 assesses for psychopathology, personality, and emotional functioning. According to Dr. Fabian, Worley was shown to be “irritable, suspicious, very guarded, * * * [and] paranoid,” and he showed “antisocial behaviors, * * * a disconnect with people [and] * * * feelings of inadequacy, low self-esteem, [and] depressi[on.]” Dr. Fabian also testified that Worley exaggerates his abilities and feels a sense of entitlement. Worley’s performance on the MCMI-III demonstrated that he is “meticulous, perfectionistic, [and has] rigid moral beliefs. * * * But underneath

that veneer, there's some dark sides to him." Dr. Fabian also said that Worley was likely experiencing mild chronic depressive disorder at the time of the offense.

{¶ 163} Dr. Fabian reported that it was "very difficult to evaluate Mr. Worley due to his denial of not only his criminal offense history but also his psychiatric symptoms. He also lacked the depth as to his emotional functioning and interconnectedness with other people." Dr. Fabian diagnosed Worley with "sexual sadism disorder; fetishistic disorder; other specified personality disorder with paranoid, antisocial, narcissistic and obsessive-compulsive traits; a persist[ent] depressive disorder; cannabis use disorder; attention deficit hyperactivity disorder [(“ADHD”)], combined type, [which would] would be inattention and impulsivity combination." Dr. Fabian also diagnosed Worley with a "Possible Mild Neurocognitive Disorder Due to Concussive History."

{¶ 164} Dr. Fabian testified that he viewed the applicable mitigating factors as "some dysfunction in childhood," evidence of ADHD, depression, cannabis dependence, inadequate coping skills, isolation, and low self-esteem. Dr. Fabian opined that Worley's "emotional loneliness" fueled "a dark fantasy life that he had relevant to sadistic sexual acts and then in connection with a fetishistic disorder." Dr. Fabian summed up his thoughts as to the applicable mitigating factors as follows:

I've got a defendant here that won't open up to me when it really counts, and had never really seen a therapist or opened up[,] and living in, I guess, this warped world taking care of his mother, who was the only female in his life, where he was quite detached, and I think looking at pornography with a friend of his, which is what maybe 17-year-olds do or 14-year-olds, but maybe not 55-year-olds.

{¶ 165} On cross-examination, Dr. Fabian admitted that Worley’s chronic depression was not so severe that it would lead to “difficulties in life function.”

c. Work history

{¶ 166} Worley held numerous jobs for short periods of time throughout his adult life, and he had attempted to start multiple businesses, none of which were successful. Dr. Fabian testified that Worley showed “motivation, but then there’s a lot of failure. * * * So there are periods of unemployment and then also eventual caretaking of his mother full time.”

d. Worley’s relationships

{¶ 167} Barlow indicated to Ericson and Dr. Fabian that Worley “liked to talk and goof around” and that “he had some friends outside of the family.” The defense called three of Worley’s “friends” as mitigation witnesses. Each of them had been interviewed by the FBI and gave those investigators different descriptions of Worley. Mossing described Worley as talkative but peculiar. Roschmann described Worley as “weird” and as having “a crazy side when they hung out back in the day.” At trial, Roschmann further stated that Worley was “[w]ild, maybe aggressive.” And Gombash described Worley as “severely unstable.”

{¶ 168} There was ample evidence that Worley voluntarily took on the responsibility to care for his mother on a permanent basis. He expressed to both Dr. Fabian and Ericson that he loved his mother and felt lucky that she was his mother.

e. Criminal history

{¶ 169} Worley had previously been convicted of multiple felonies, including the 1990 abduction of Robin Gardner, and in 2000, he was convicted of illegally manufacturing drugs and possessing weapons while under a disability. He served time in prison for both of the latter convictions.

f. Ability to adjust to incarceration

{¶ 170} Dr. Fabian addressed in his report Worley’s adjustment to incarceration. With respect to his 1990 abduction conviction, the Department of Rehabilitation and Correction’s records indicated that Worley had adjusted well to prison, that he completed various programs, and that he treated staff and fellow inmates well. While in prison for his drug-manufacturing conviction, Worley worked as a “career technical school aid tutor, porter, and a student and food services worker.”

{¶ 171} At the time of the mitigation hearing, Worley had been incarcerated at the Corrections Center of Northwest Ohio for about 15 months. Dr. Fabian’s report indicates that jail records showed one infraction that resulted in him being placed in lock-down.

2. Sentence evaluation

{¶ 172} At the close of the mitigation phase, defense counsel asked the jury to consider various mitigating factors, including Worley’s history, character, and background. Notably, however, defense counsel did not ask the jury to consider Dr. Fabian’s finding that Worley had adjusted well to prison life. Further, Worley does not argue that any additional statutory mitigating factors apply. And the record does not provide evidence of other mitigating factors.

{¶ 173} Nothing in the nature or the circumstances of this offense is mitigating. Joughin was attacked while riding her bike in a rural area less than one mile from her home. She was hit on the head, handcuffed, and taken to Worley’s property where he undressed her, placed her in risqué lingerie, bound her hands to her ankles, and suffocated her with a rubber dog toy. He then buried her in a shallow grave in a cornfield.

{¶ 174} Worley presented some evidence of his difficult childhood and family background. Worley’s father was an alcoholic and had abused Worley’s mother in front of him. Worley and his sister both recalled an incident when their

drunken father chased their mother around the house and that their father yanked the telephone cord out of the wall when their mother tried to call the police. Worley's parents divorced when he was four or five years old. Worley's biological father all but vanished immediately after the divorce, and it was several years before Worley even heard from James Sr.

{¶ 175} Worley's stepfather also drank heavily. Barlow told Dr. Fabian that Shepherd started trying "to have sex with her with she was about 16," and that she "experienced penetration which would meet the definition of rape." She also told Dr. Fabian that Worley, who would have been approximately 12 years old, walked in on her stepfather raping her "[b]oth of those times." The evidence of Worley's childhood indicates that he was traumatized at an early age. According to Dr. Fabian, this led to Worley being emotionally regressed, lacking appropriate interpersonal relationships, and having no impulse control.

{¶ 176} We have not always given strong weight to a defendant's unstable or troubled childhood even in cases in which such occurrences were extremely severe. *See, e.g., State v. Campbell*, 95 Ohio St.3d 48, 51-53, 765 N.E.2d 334 (2002) (an independent review of the evidence, which included Campbell's family history indicating that he was one of six children in an unruly household in which both parents abused alcohol; that Campbell's father forced the children to watch while he beat their mother, locked their mother outside in cold weather, and threatened to kill the children if they let her back in the house; and that Campbell was beaten, isolated, terrorized, and encouraged to commit crimes at a young age, still led to a decision by this court that the aggravating circumstances outweighed, beyond a reasonable doubt, the mitigating factors that were present in the case); *but see State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 101-106 (an independent review of the evidence, which included testimony that the defendant's parents were "abusive, neglectful, and pernicious influences on their children, who were schooled in crime from an early age" and other physical abuse,

led to this court’s finding that the “aggravating factor [did] not outweigh the mitigating factors in evidence to support a sentence of death”); *State v. Johnson*, 144 Ohio St.3d 518, 2015-Ohio-4903, 45 N.E.3d 208, ¶ 137-140 (this court vacated the defendant’s sentence of death because “the mitigation evidence militate[d] against imposing the death sentence”). On the other hand, ample evidence was presented showing that Worley cared for his mother as she aged, cared for his mentally ill brother, and felt a deep sense of love for them. Thus, his childhood and familial relationships are entitled to some weight.

{¶ 177} Despite Worley’s demonstrated lack of candor in the evaluation, Dr. Fabian concluded that Worley likely did have a history of mental-health problems. In connection with the 1990 abduction, Worley was diagnosed with a personality disorder with narcissistic, antisocial, and inadequate features. Dr. Fabian concurred with that diagnosis and made additional diagnoses, some of which were severe: “The paraphiliac connection between sexual sadism and fetishistic disorder also is aggravated with the personality pathology of Mr. Worley, including evidence of antisocial, narcissistic, obsessive-compulsive, and paranoid personalities.” Furthermore, Worley struggled with intimacy issues. As reported by Dr. Fabian: “In my opinion, Mr. Worley was emotionally detached from society, lacked the ability and confidence to make good friends, had severe feelings and perceptions of self-inadequacy and then he would retreat into his own internal world due to fear of rejection.” We have previously accorded significant weight to “personality disorders and other mental problems under the catch-all provision, R.C. 2929.04(B)(7).” *State v. Neyland*, 139 Ohio St.3d 353, 2014-Ohio-1914, 12 N.E.3d 1112, ¶ 300 (after evaluations by three psychologist experts, evidence that the defendant was paranoid and suffered from other personality disorders and “made bizarre comments that made little sense and exhibited other odd behavior during trial” was given significant weight). Worley’s personality disorders were not strongly substantiated and we therefore give them only some weight.

{¶ 178} Worley was also diagnosed with cannabis disorder, which Dr. Fabian testified affected Worley’s self-reflection and insight into how his drug use affected his life. Worley’s IQ of 97 falls within the average range, but he did not excel in school. The evidence also demonstrated that Worley had untreated and likely lifelong mental-health issues, and that some family members have suffered from mental-health issues. Thus, we give Worley’s mental-health disorders some weight under R.C. 2929.04(B)(7). *See State v. Clinton*, 153 Ohio St.3d 422, 2017-Ohio-9423, 108 N.E.3d 1, ¶ 296.

{¶ 179} Although the issue was not explored at trial, Dr. Fabian addressed Worley’s adaptability to incarceration in his report. Generally speaking, the evidence of his prior incarcerations and the 15 months or so that he spent in jail for the instant offenses show that, with very minimal infractions, he was a productive inmate and treated other inmates and staff with respect. Therefore, we give his good behavior while incarcerated some weight.

{¶ 180} Dr. Fabian testified that Worley denied “not only his criminal offense history but also his psychiatric symptoms,” thus making him difficult to evaluate. Dr. Fabian gave Worley multiple mental-health diagnoses, some of which were severe, and found that his childhood was chaotic and difficult, but there was no evidence that these factors deprived Worley of the “substantial capacity to appreciate the criminality of his conduct.” *See* R.C. 2929.04(B)(3). Worley’s denial that he committed the offenses against Joughin resulted in his failing to show any remorse. Moreover, this was not a crime of impulse; Worley spent significant time (prior to and including the day of the offense) watching pornographic videos showing young women being bound and strangled. We hold that Worley’s resolve to murder Joughin to escape detection for kidnapping her far outweighs the mitigating factors beyond a reasonable doubt.

3. Proportionality

{¶ 181} When this case is compared to cases involving similar crimes, the imposition of the death penalty is appropriate and proportionate for the murder of Joughin, which Worley committed in order to escape detection, apprehension, trial, or punishment for kidnapping her. R.C. 2929.05; *see, e.g., State v. Lawson*, 64 Ohio St.3d 336, 353, 595 N.E.2d 902 (1992) (this court affirmed the defendant’s death sentence for the crimes of murder during a kidnapping and murder to escape detection); *State v. Stumpf*, 32 Ohio St.3d 95, 108, 512 N.E.2d 598 (1987) (this court affirmed the defendant’s death sentence for the crime of murder to escape detection).

V. CONCLUSION

{¶ 182} For the foregoing reasons, we affirm Worley’s convictions and death sentence.

Judgment affirmed.

O’CONNOR, C.J., and KENNEDY, FISCHER, DEWINE, STEWART, and BRUNNER, JJ., concur.

Scott A. Haselman, Fulton County Prosecuting Attorney, for appellee.

Gary W. Crim and Andrew P. Avellano, for appellant.

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IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

FILED
FULTON COUNTY
COMMON PLEAS COURT
2018 APR 18 P 4:05
TRACY L. ZUVER
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State of Ohio, *
Plaintiff * Case No. 16CR000106
Vs. * JUDGEMENT ENTRY OF SENTENCE
James D. Worley, *
Defendant *

On March 27, 2018, a jury found James D. Worley guilty of two counts of Aggravated Murder and the Specifications attached thereto. The State elected to proceed at the sentencing phase with specification one attached to count twelve of the indictment. That specification provided,

"The Defendant committed the offense for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by the Defendant".

The Capital Murder charge arose as a result of the kidnapping and subsequent murder of Sierah Joughin by the Defendant. After the verdict in the trial phase was announced, the Defendant declined the option of a presentence investigation and/or a mental health evaluation. The Defendant was fully advised of all of his rights before the Court proceeded to the sentencing phase.

The sentencing phase was scheduled to commence on April 2, 2018. At that time, the Court was informed that the Defense had only received the report of its mitigation specialist, Dr. Fabian, the day before and had not had time to review that report with the Defendant. As a result, the Defendant requested a continuance of the hearing until April 3, 2018.

Testimony on the sentencing phase commenced on April 3, 2018. The Court permitted

the State to use only selected trial exhibits during the sentencing phase. The Defendant raised no objection to the testimony and exhibits which the State wished to utilize in the sentencing phase.

The Defense presented five witnesses in mitigation. The Defense also presented a tape of the Defendant's sister which had been obtained by the Defense investigator, Gary Ericson. The Defendant's presentation consumed the entire day. On April 4, 2018, the Defense rested after admitting its exhibits. The jury heard final arguments from both the State and the Defense. The Court then instructed the jury.

After approximately six hours of deliberation, the jury returned a sentencing verdict finding the State of Ohio had proved the aggravating circumstance outweighed the mitigating factors beyond a reasonable doubt and that the penalty of death should be imposed in this case.

During both the trial phase and the sentencing phase deliberations, the jury was appropriately sequestered. During the trial phase deliberations, the jury was sequestered overnight.

The jury's verdict of death, constitutes a recommendation to the Court. This Court is required to perform an independent review of this matter pursuant to Ohio Law. Based on the sentencing verdict of the jury, this Court must now weigh the specific aggravating circumstance involving the aggravated murder of Sierah Joughin and the mitigating factors to determine whether the jury's recommendation of death as to that aggravated murder charge should be the final sentence of this Court.

Defendant James D. Worley was found guilty beyond a reasonable doubt of purposely causing the death of Sierah Joughin, while committing, or attempting to commit, or while fleeing immediately after committing or attempting to commit the offense of kidnapping. In addition, the jury determined beyond a reasonable doubt Defendant committed the aggravated murder for the

purpose of escaping detection, apprehension, trial or punishment for another offense committed by the Defendant.

When the Death Penalty recommendation is made, the trial Judge must then deliberate and render the final sentence. Guidance is provided by case law and pursuant to the requirements of Chapter 2929 of the Ohio Revised Code. Ohio Law requires the Court set forth its specific findings as to the existence of any mitigating factors pursuant to ORC Section 2929.04(B) as well as any other mitigating factors, the aggravating circumstance(s) a Defendant was found guilty of committing, and the rationale for the Court's reasoning behind the weighing process.

In determining this matter, this Court has considered and weighed all the appropriate matters required by law. This Court has considered the aggravating circumstance found by the jury beyond a reasonable doubt involving the aggravated murder of Sierah Joughin and the mitigating factors as disclosed during both the Trial Phase and the Sentencing Phase.

**FACTUAL BACKGROUND AND FINDINGS BY THE COURT AS TO THE SPECIFIC
AGGRAVATING CIRCUMSTANCE**

- 1. The aggravated murder was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by the Defendant.**

On July 19, 2016, Sierah Joughin was a 20-year-old college student living with her grandmother in rural Fulton County Ohio. On that date, Sierah decided to ride her bicycle to her boyfriend, Joshua Kolasinski's house. After a brief visit, Joshua and Sierah rode together. Sierah was on her bicycle, Joshua on his motorcycle. After riding together for a short period of time, Joshua returned home and Sierah continued on her bicycle ride. That was the last time she was seen alive.

Later that evening, Mr. Kolasinski tried to reach Sierah. He called Sierah's grandmother

and mother. It was at that time the family members became concerned about Sierah's welfare.

The Fulton County Sheriff's office was contacted. An extensive search for Ms. Joughin was then undertaken not only by law enforcement, but also by the public.

Later, on County Road 6 in Fulton County, Sierah's bicycle was found in a cornfield. Her sunglasses were found on the road. Across the road, investigators discovered the crime scene. At the crime scene, investigators found bloodstained corn leaves. Later testing revealed the blood was a DNA match for Sierah Joughin. Investigators also found a box of fuses, a screwdriver and sunglasses, all belonging to the Defendant. Tire tracks located in the field were later matched to the Defendant's Dodge pickup.

A passerby found a motorcycle helmet off the roadway adjacent to the crime scene. The motorcycle helmet was later revealed to have bloodstains on the exterior. The bloodstain matched the DNA of Ms. Joughin. The Defendant's DNA was also found on the helmet.

Investigators met with the Defendant at his home. After a discussion with the Defendant, investigators obtained a search warrant for the house, surrounding property and out buildings. In the northern portion of the barn located in the property, a number of items were discovered.

Among the items discovered was an air mattress containing the DNA of Sierah Joughin. In a green crate in that same area of the barn, investigators found a number of packaged items of lingerie, adult diapers, rope, duct tape, ball gags, sexual bondage items and a pair of Violet Vixen Metallic panties. The Violet Vixen Metallic panties were blood stained. DNA testing later revealed the blood stains matched Sierah Joughin. The packaged items found in the green crate matched items in which Ms. Joughin was dressed when she was discovered in her grave. The duct tape found in the barn contained the DNA of both Ms. Joughin and the Defendant.

Ms. Joughin's family and her boyfriend testified Sierah did not know the Defendant. The

Defendant stated in his interview with investigators he did not know Ms. Joughin.

Ms. Joughin's body was eventually found buried in a cornfield adjacent to County Road 7. Along the side of the road, investigators found a plastic glove containing the DNA of both the Defendant and Ms. Joughin. When discovered, Ms Joughin was wearing an adult diaper, and other clothing similar to the items found in Defendant's barn. She was "hog- tied" with rope similar to rope found in the Defendant's barn, handcuffed with an old handcuff which utilized a unique key identical to handcuff keys found in the Defendant's possession.

She was also found with a dog chew toy inserted in her mouth which had been modified to serve as a "ball gag". The coroner ruled death was caused by placing this gag in the victim's mouth cutting off the victim's air supply. The gag was placed with enough force to break Ms. Joughin's tooth.

The Court has presented the factual findings to provide background for the jury's verdict. The Court has not considered the aggravated murder itself as an aggravating circumstance. See State v. Johnson (2006), 112 Ohio St. 3d 210, 249.

MITIGATING FACTORS

The Court recognizes that mitigating factors are factors that, while they do not justify or excuse the crime of aggravated murder, nevertheless, in fairness and mercy are to be considered as they may call for a penalty of less than death. Mitigating factors are any factors about an individual or an offense which weigh in favor of the decision that a life sentence is the appropriate sentence.

1. The nature and circumstances of the offense;

This Court has weighed the nature and circumstances of the offense for any mitigating factors. The Court can find no significant fact relating to the nature and circumstances of the offense which it would consider as mitigating.

2. The history, character, and background of James D. Worley;

The Defendant, for the most part, was raised in rural Northwest Ohio. Defendant's father was in the military. After leaving the military he obtained some college education and began working in management at Johns Manville. His parents later divorced. His mother remarried a former drill sergeant.

The Defendant recalls being happy in his childhood. He indicated he had great respect for both his father and his stepfather. The Defendant was one of three siblings in the household. His older sister eventually left home and moved to California where she has served 27 years for the Los Angeles Police Department. She is currently a Sergeant. Defendant's brother suffers from mental disorders which required medication. His brother has always lived on the family homestead.

The Defendant's sister indicated in her statement that Defendant's father did have issues with alcohol and he would become abusive when he drank. She reported an incident where her father chased her mother around the house with a butcher knife. Defendant's sister never indicated the abuse was visited upon either herself or her siblings.

Defendant's sister further indicated her stepfather had raped her on at least two occasions and the Defendant had walked in while the rapes were occurring. The Defendant did not recall either of these events.

Although possessing an average IQ, the Defendant was not a good student. The Defendant indicated he was more interested in having fun than he was in studying. His grade

point average was certainly not spectacular. Otherwise, there is nothing remarkable about the Defendant's educational background.

The Defendant worked at various jobs and attempted to start several businesses. He was, for the most part, unsuccessful in his efforts at self-employment. He eventually determined as his mother was elderly, he needed to stop working outside the home and simply devote his time to caring for his mother. As a result, he started a small engine repair shop on the family homestead. It did not appear that this business was successful.

Dr. Fabian found the Defendant had only good feelings about his upbringing. Yet, Dr. Fabian indicated the Defendant did suffer trauma in early childhood. Dr. Fabian could not conclude specifically what trauma the Defendant did experience, only that Dr. Fabian's diagnosis clearly indicated such a trauma must have occurred.

The Defendant, in his statement to Dr. Fabian did state he had only good feelings about his upbringing. Dr. Fabian admitted that it was very difficult to examine Mr. Worley because of his lack of candidness and not being forthcoming with relevant information concerning his instant offending behaviors. Without reference to some specific trauma in childhood, it is difficult to give much weight to the issues of history, character, and background of the Defendant as a mitigating factor. The Court can find little in Defendant's history that gives rise to mitigating factors and therefore accords little weight to its analysis relating to the Defendant's history, character, or background.

3. Other mitigating factors which may favor a sentence of life without parole pursuant to

Revise Code Section 2929.03 (B) (7);

The Court has taken into consideration the Defendant did provide quality care for his mother and demonstrated a genuine concern for her welfare. The Defendant also appeared to

have a genuine concern for his brother's welfare. Defendant's brother has a history of mental health issues. The Court deems the Defendant's care and concern for his family to be a mitigating factor and gives some weight to that mitigating factor.

The Defense has relied heavily upon the report of Dr. Fabian, its mitigation specialist. The Court has reviewed the 61-page report of Dr. Fabian. The report sheds light on the relevant mental health and personality disorders from which the Defendant suffers.

The Defendant further suffered from numerous mental illness disorders. According to Dr. Fabian, the Defendant's expert, the Defendant suffered from the following conditions:

1. Sexual sadism disorder;
2. Fetishistic disorder;
3. Paranoid personality disorder;
4. Persistent depressive disorder;
5. Cannabis used disorder;
6. Attention deficit hyperactivity disorder, combined type (in attention and impulsivity);
7. Possible mild neurocognitive disorder due to concussive history;
8. Dual diagnosis;
9. Antisocial personality disorder;
10. Narcissistic personality disorder;
11. Obsessive compulsive personality disorder;
12. Attachment disorder;

The Court has reviewed Dr. Fabian's report and his testimony relating to the Defendant's various personality disorders and mental illness. There is no doubt that Dr. Fabian was well-qualified to make his determinations as to the Defendant's mental health.

As to Dr. Fabian's findings regarding the possible mild neurocognitive disorder due to concussive history, there is nothing definitive in Dr. Fabian's report indicating that the Defendant had received a concussion during his childhood. Dr. Fabian discussed this issue in terms of "possibility." The Defendant did report being in an automobile accident. He indicated he did not blackout. There was apparently some trauma. Whether the Defendant was concussed to the extent that damage occurred to his brain is speculative. The Court therefore gives this portion of Dr. Fabian's report little weight in considering it as a mitigating factor.

With respect to the cannabis use disorder, Dr. Fabian opines that Mr. Worley had used cannabis in larger amounts for a long period of time; has spent a great deal of time and activities necessary to obtain cannabis or use cannabis; has a strong craving, desire, or urge to use cannabis; and the Defendant has likely had difficulties in fulfilling major obligations for work due to cannabis use. Dr. Fabian also indicated the Defendant had continued to use cannabis even though it had caused personal problems in his life.

Dr. Fabian further indicated the Defendant lacked insight into his cannabis addiction. The Defendant was previously convicted for operating a cannabis growing operation. It is clear that the Defendant was a voluntary participant in smoking cannabis. He, along with many others, frequently lacked perspective as to the ultimate effects cannabis may have on the individual. Regardless, the Court gives little weight to this mitigating factor.

Dr. Fabian indicated the Defendant has a persistent depressive disorder which is "lower level" and "less severe" than a major depressive disorder. The diagnosis indicates the Defendant

may be irritable, angry, have a lack of energy, avoids social activities, loses interest in daily activities, and feels empty and sad. His clinical assessment of depression was in the mild clinical range. The Court gives little weight to this mitigating factor.

The Court is convinced the Defendant did suffer from the other diagnosed personality disorders and mental illnesses as described by Dr. Fabian. The Court does not believe that the Defendant's personality disorders and mental illnesses were so pervasive that the Defendant lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law. Were this true, the Court would surmise that the Defendant's past criminal conduct would have been far more pervasive than demonstrated in the record of this case – notwithstanding the Defendant's two prior felony convictions.

Dr. Fabian could not determine the Defendant's exact motivation for the current offense. On page 61 of this report, Dr. Fabian reports, "whether killing the victim was part of his fantasies or a way to eliminate a witness, I am uncertain of". Such is the difficulty the Court is experiencing in reviewing any and all of the personality disorders and mental illnesses from which the Defendant suffers. The Defendant made a more certain diagnosis less possible because of his lack of candidness and not being forthcoming with relevant information concerning the offense in this case. Dr. Fabian admits that it was necessary for Dr. Fabian to "construct" the roots of the offending behavior based on his assessment, past and present law enforcement records, review and research, and finally his experience with this type of offender.

Lastly, Dr. Fabian rightfully indicates, "I objectively am presenting potential mitigating evidence and I say the word "potential" because the jury must make meaning of mitigating and aggravating factors as they see fit. Their contemplation and decision as to what mitigating factors are relevant at sentencing may be different or the same as my investigation as to mitigating

factors.” (Page 42 of Dr. Fabian’s report.) The Court also must make its own determination as to whether the Defendant’s diagnosed mental illness and personality disorders constitute mitigating factors. The Court has concluded that the mental health infirmities suffered by the Defendant do constitute mitigating factors and should be given some weight.

The Court does believe that the diagnoses of personality disorders and mental illnesses as described by Dr. Fabian should be given some weight due to the cumulative nature of these mitigating factors.

**WEIGHING THE SPECIFIC AGGRAVATING CIRCUMSTANCE AND ALL
MITIGATING FACTORS**

Pursuant to ORC Section 2929.03(F), the trial Court is required to make certain findings. A trial Court must specifically provide reasons why the aggravating circumstance the offender was found guilty of committing were or were not sufficient to outweigh the mitigating factors. See State v. Fox (1994), 69 Ohio St. 3d 183; State v. Green (2000), 90 Ohio St. 3d 352. To satisfy the statutory and case law requirements, this Court has undertaken the weighing process. The Court has not considered the aggravated murder of Sierah Joughin as an aggravated circumstance.

The Court further acknowledges that the Defendant has no burden of proof. The Court has considered all of the evidence presented during both the trial and sentencing phases as it relates to the aggravating circumstance involving the aggravated murder of Sierah Joughin. The Court has also considered all of the mitigating evidence and mitigating factors presented at both phases of the proceeding. The Court has weighed the aggravating circumstance against all of the mitigating facts and mitigating evidence. The Court has weighed the mitigating factors individually and collectively.

Mitigating factors are factors about James D. Worley or the offense that James D. Worley committed that weigh in favor of the decision that a life sentence, rather than a death sentence, is appropriate. Mitigating factors are factors that lessen the moral culpability of the Defendant or diminish the appropriateness of the death sentence. The relevant mitigating factors to be considered by the Court have been previously outlined in this opinion. The Court has fully considered and weighed all of the mitigating factors carefully and fully.

The Defendant purposely caused the death of Sierah Joughin for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by the Defendant. In weighing the specific aggravating circumstance against the mitigating factors, the Court finds that the State of Ohio has proved beyond a reasonable doubt that the specific aggravating circumstance the Defendant was found guilty of committing, outweighs any and all the mitigating factors. The mitigating factors pale in comparison to the specific aggravating circumstance found by the jury. When weighed against the mitigating factors, the aggravating circumstance in this case, beyond a reasonable doubt, far outweighs any and all the mitigating factors.

There is no doubt the James D. Worley has mental health issues. These factors must be weighed, however, against the Defendant's desire to save himself from prosecution for the offense of kidnapping. In essence, these issues must be weighed against the purposeful killing of Sierah Joughin. The overall value of the mitigating factors when compared against the specific aggravating circumstance is minimal at best.

The Court has weighed all of the mitigating factors. When considered alone or together, those mitigating factors are not significant when compared to the aggravating circumstance in this case. Separately, or together, those mitigating factors have little weight to lessen the moral

culpability of the Defendant. The Court finds that the mitigating factors are simply insufficient when compared to the aggravating circumstance and the State has proven that the aggravating circumstances outweighs any and all the mitigating factors beyond a reasonable doubt.

CONCLUSION

After weighing all of the appropriate evidence, all mitigating factors, statements of Counsel, and all the statutory and case law required, it is the Decision of this Court that the specific aggravating circumstance in Count XII, involving the aggravated murder of Sierah Joughin, outweighs any and all the mitigating factors beyond a reasonable doubt. The Court, therefore, accepts the recommendation of the jury.

The Court ORDERS that James D. Worley is hereby sentenced to death for the aggravated murder of Sierah Joughin. The Court ORDERS that the execution date of James D. Worley shall be set for June 3, 2019, to be carried out by the appropriate authorities. The execution date shall be subject to further Order by a Court of competent jurisdiction. Defendant James D. Worley shall be remanded to the appropriate Ohio Prison institution to be held on death row pending his execution.

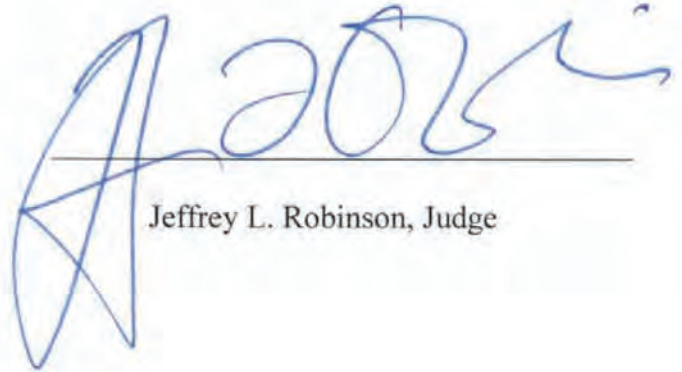
The Court herein ORDERS that the Fulton County Clerk of Courts shall forthwith deliver a copy of the entire case file to the Ohio Supreme Court pursuant to Ohio Law. The Court shall further appoint appellate counsel for the Defendant. The Court herein appoints capital certified appellate counsel as follows: Gary Crim #0020252 of Dayton, Ohio and Andrew Avellano #0062907 of Columbus, Ohio. The Court shall further provide a copy of this entry to the Clerk of the Supreme Court of Ohio along with the appropriate case disposition form required by the Supreme Court of Ohio.

Court costs shall be taxed to James D. Worley according to law.

JOURNALIZED _____

VOL _____ PG 1405

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "J. Robinson", written over a horizontal line.

Jeffrey L. Robinson, Judge

cc: Scott Haselman, Prosecutor
Merle Dech, Esq.
Mark Berling, Esq.
Mark Powers, Esq.
Corrections Center of Northwest Ohio

JOHN MATTHEW FABIAN, PSY.D., J.D., ABPP
BOARD CERTIFIED FORENSIC & CLINICAL PSYCHOLOGIST
FORENSIC & CLINICAL NEUROPSYCHOLOGIST

FORENSIC PSYCHOLOGICAL EVALUATION
FORENSIC NEUROPSYCHOLOGICAL EVALUATION
DEATH PENALTY MITIGATION EVALUATION

ORC 2929.04(B)

State of Ohio v. James D. Worley

3/31/18

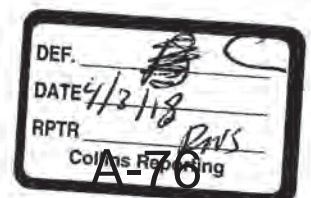
DEFENDANT: James Worley
CASE NUMBER: CR16-106
COURT: Court of Common Pleas, Fulton County, Ohio
DATE OF BIRTH: 04/08/1959
AGE: 58 Years
JUDGE: The Honorable Jeffrey L. Robinson
CHARGES: Aggravated Murder, Kidnapping
DATES OF EVALUATION: 01/14/2018, 01/15/2018

LEGAL REFERRAL:

Criminal Defense Lawyers, Mark Berling, Merle Dech, and Mark L. Powers, are representing Mr. James Worley in his capital murder death penalty case. Mr. Worley was recently convicted on all counts of murder and kidnapping in Fulton County, Ohio, with the alleged victim being 20-year-old Sierah Joughin. A grand jury returned a 19-count indictment against Mr. Worley and a range of charges in the case, including capital murder. He now faces the death penalty in the sentencing phase. The attorneys requested a mitigation evaluation. The mitigation specialist in this case is Gary Erickson who is a private detective and licensed private investigator. It should be noted that I relied upon the information developed by the defense team before my involvement, including the work by Gary Erickson, the investigator in this case.

STATEMENT OF NON-CONFIDENTIALITY/INFORMED CONSENT:

Prior to my examination with Mr. Worley at Corrections Center of Northwest Ohio (CCNO) in Stryker, Ohio, I informed him of the nature and purpose of the evaluation, including its limits of confidentiality. Mr. Worley had been informed by his lawyers that I was going to be the forensic psychologist and neuropsychologist on this case. He understood that this was a mitigation evaluation. He understood that this evaluation was initially confidential. He was aware that anything he initially told me and any testing he conducted was confidential. If he and his lawyers agreed to use this report in court, then the information would not be confidential within the criminal justice system, and the prosecuting attorneys and the judge would be able to get copies of this report. He also understood I could testify to this information in his court case to the jury. He understood these issues and agreed to proceed.



SOURCES OF INFORMATION/EVALUATIVE PROCEDURES:

- 1) Records prepared by Gary Erickson, investigator
- 2) Medical records from Dr. Joseph Steurnagel
- 3) Ohio Department of Rehabilitation and Control (ODRC) records
- 4) Court of Common Pleas Lucas County, Domestic Relations Division, Case #70694, *Lawrence Worley v. James Worley*
- 5) Evergreen Local School District records
- 6) Mission Health, St. Joseph and Mercy Hospital Ann Arbor records
- 7) St. Luke's Hospital records
- 8) Court Diagnostic and Treatment records
- 9) Washington State Department of Health, Certificate of Live Birth
- 10) Probation Development Section Adult Parole Authority records
- 11) Lucas County Common Pleas Court Pretrial/Presentence Division
- 12) Court Diagnostic and Treatment Center Records and Psychological Evaluation by Robert Hausch, social worker, and Barbara McIntyre, Ph.D.
- 13) Discussions with Attorneys Mark Berling and Merle Dech
- 14) Review of Internet search terms/websites
- 15) Visit of defendant's house and burial site of victim 01/15/2018
- 16) Lucas County Probation records
- 17) Fulton County Probation records
- 18) Notes from interview of past girlfriends
- 19) FBI interviews, snapshots, and photos from defendant's phone
- 20) Autopsy report
- 21) BCI Investigative reports
- 22) Barn photos
- 23) Farm photos
- 24) Letter to Honorable James Barber by James Worley
- 25) CCNO jail phone calls
- 26) Florence Sheperd medical records
- 27) Telephone discussion with sister, Cynthia Barlow
- 28) Forensic and clinical interviews with James Worley
- 29) Clinical Assessment of Attention Deficit, Adult Version
- 30) Clinical Assessment of Depression
- 31) Iowa Gambling Task
- 32) Maryland Addiction Questionnaire
- 33) Medical Symptoms Validity Test
- 34) Millon Clinical Multiaxial Inventory-III
- 35) Minnesota Multiphasic Personality Inventory-2
- 36) Wechsler Adult Intelligence Scale-IV
- 37) Wisconsin Card Sorting Test

BACKGROUND FAMILY HISTORY:

Mr. Worley was born in Tacoma, Washington. His biological mother's name was Florence and father was James. The social worker's records indicated that his mother was born in Indiana, but he reported his mother was born in Illinois. His mother was about 38 years of age and his father 39 when he was born. The social worker did find a Certificate of Live Birth from the Washington State Department of Health.

Mr. Worley has a brother named Mark Worley, and he is a full-blooded brother. I asked how old Mark is, and he said, "He was born on my birthday, two years after me. He'd be 56." I asked where Mark lives, and he said, "He lives in Delta, Ohio." He has a sister named Cynthia Suzette Barlow who is 62 and is full-blooded. She lives in Los Angeles, Huntington Beach.

I asked Mr. Worley about his biological parents' marriage, and he said, "My mom and dad got married, had a family in the early 1960s, and had problems. We went on a six-week vacation, came back, and after that they ended up getting divorced, I didn't see my dad for quite a while." I asked how long he went without seeing his father, and he said, "Oh, well I was little. I was only five years old. I don't know, it seemed like a long time, and over the years we had, you know child visitation rights, but for a long time it was once every six months for seven hours, so twice a year for seven hours each visit. And, then it went to every three months, and then eventually it went to every two months, and then once a month, and then once every couple of weeks, and each time the visitation period was for seven hours. We got to know our dad over time, and he was an executive with Mandel Corporation in Waterville. He had worked for that company his whole life, and after World War II that is, and my mom eventually remarried in - well, I guess it was the late 1960s, 1969 maybe, to my stepfather, Graydon Shepherd, who was a hard-working, honest person, and our stepfather was a hard-working, honest guy, a good person, and we had grew up on a farm and really looking back had a very good overall - I mean it was a lot of - we worked, we didn't play ball, but we had a good childhood I would say. I don't think my sister and my brother would claim otherwise."

I again asked Mr. Worley what he sensed was a problem between his parents leading up to their divorce. He said, "I really don't know, but I know my dad, when - I witnessed one fight and my dad was hitting my mom, beat her up, and I know that alcohol was involved, and really that's the extent of it. Dad was gone after that. He didn't go to jail or to prison. This was the early 1960s. People didn't get divorced in those days, but my parents ended up getting divorced, and we had babysitters because mom had to work. And really, just our childhood just passed by I guess, I know until mom remarried, but I would say - my sister would be able to give you - being 3-1/2 years older, being around 8 years old at the time, 8-1/2, she would've had a better handle on it. I would say alcohol and, I don't know - I would be speculating - trust issues, I mean mom was a good person. Dad was a good person, but something happened in their relationship and it did not last, and that's really all I can say."

I asked if he father his dad using alcohol a lot, and he said, "No. I was 5 years old, I didn't even know what alcohol was." I asked how many times he saw his dad and mom get into physical fights, and he said, "One time."

I asked if his mom or dad ever had any mental health history that was documented, and he said, "No." I asked if there were any criminal offenses, and he said, "No."

I asked if he lived with his mother after his parents' divorce, and he said, "Yes." I asked if he lived with his siblings as well, and he said, "Yes." I asked how often he saw his father, and he said, "Well, like I said, we didn't see him for a long time. I was five years old now, and when we did start seeing him, whenever that was, we would see him every six months for seven hours. And that went on for a number of years." I asked how he felt about that as a kid, and he said, "Well, we looked forward to it. We enjoyed it. Wished we could see him more, but you know, we just had to, you know, our lives went the way they went."

The mitigation investigator found some paperwork on the divorce, and Florence Worley indicated that she and the defendant, James Worley, were married on 12/25/1941, in Bloomington, Indiana. (It should be noted that children's dates of birth were: Cynthia Worley, 10/03/1955; James Worley, 04/08/1959; Mark Worley, 04/08/1961.) Florence Worley indicated the defendant, James Worley, had been guilty of gross neglected duty and extreme cruelty in a manner which will be shown to the satisfaction of this court at the time of the hearing thereon. Florence Worley also revealed the defendant, James Worley, had assaulted, molested, and threatened her life, and that this greatly disturbed her and unless the defendant was restrained from molesting the plaintiff, pending further orders by this court, it will cause irreparable harm and damage to the plaintiff. Wherefore the plaintiff prays that she be granted a divorce from the defendant and awarded custody of minor children, for her costs herein, including attorney's fees and that a temporary injunction restraining the defendant from molesting the plaintiff be issued forthwith, and for such other relief in law and equity as shall be proper and necessary. She then married Graydon Shepherd who died in 1984.

In a presentencing investigation report in 2000, Mr. Worley described his parents' divorcing when he was about 4 or 5 years of age. He remained in the custody of his mother after the divorce. He stated his mother remarried when he was about 10 or 11 years of age, and his father remarried on two separate occasions before his passing. He claimed he remained with his mother throughout his childhood upbringing. After his parents' divorce, the defendant had not seen his father for several years, and then later in the defendant's childhood, his father re-entered the picture and the defendant began seeing his father on various dates and various frequencies. He stated when he was at the age of 16 or 17, he and his brother moved in with their biological father and lived with their father for approximately three months until their father moved out. The defendant stated he and his brother picked up the rent and remained at the residence, even after their father moved out. He remained at this residence until about 21 or 22 years of age. He moved out from their mother's home and in with their father because of a strict upbringing with their step-father and mother, and they were searching for some freedom. The pre-sentence investigation indicated that after meeting the defendant, during his pre-sentence interview, it was clear that the defendant cares deeply about his mother.

I asked Mr. Worley how he would describe his bonding and emotional connection with his mother, and he said, "Very strong." I asked him to tell me about it, and he said, "Well, I loved her like anyone would love their mom, or at least the way I would hope someone would love their mom. Probably the most important overall person in my life, and I would say that probably the same for

my sister and my brother. She was a genuinely awesome person. I mean I would - I would really hope that everyone would have a mom like I had. I mean, I had a great mom, I really did."

I asked how she disciplined him, and he said, "Well, she - when we were little we'd get a spanking once in a while, but nothing excessive, and we learned from an early age that it didn't pay to be a liar and stealing - none of us ever had that in our blood. We worked. I mean, eight years old, I was doing chores. I worked all day. I didn't go play baseball and screw around, run around the town. I lived out in the farm, you know, out in the farm area, rural area, and I don't know. I guess mom - she'd yell at us if we did something, but I don't really - can really think back on anything really bad that we ever did when we was kids. I mean, nothing anything that other kids didn't do. I mean, me and my brother would bicker with each other, but that's just normal. I mean, I think we had it pretty normal or even better than that. I mean, a lot of kids, all they did was go and play all day and whatever they did, running their little gangs in town and then go home and sleep - we actually did productive things. We learned about animals. We learned about gardening. We - shoveled manure. We fed. We watered. We mowed. We were busy. We didn't just breathe air and shoot a basketball. And, I look back and I think it was a great thing. It was a blessing."

I asked about his emotional connection with his father, and he said, "Good, even though I had a hard time processing what I saw when I was little or when I was five years old. I realize that that was bad, but that's all I could really comprehend at the time, and then as I got older I would think about it and I would realize well that was bad, but I also knew that that one bad day shouldn't define someone, and I ended up with - overall I had a lot of - a lot of love and respect, and you know, from my dad. He was - yeah. Same goes for my step-dad. I mean, they were both pretty good guys."

I asked when his mother married Graydon, and he said, "Probably around 1969, 68, 69." I asked him to tell me about that relationship, and he said, "Well, we had moved from Waukegan - me and my sister were born in Washington State. We - my dad's job moved us to Waukegan, Illinois, and that's where my brother was born, so there was me, my sister, and my brother in Waukegan, Illinois, and then Johns Manville moved my dad to Waterville, Ohio. He was an executive with the company, and so we moved to Waterville, and it must have been - it was the early 60s, probably around '62, '63, 1962, '63. And, we ended up in Waterville and eventually by 1964 or '65 my parents were divorced."

I asked if his dad ever got remarried, and he said, "Yeah, he got married actually two more times, and he - the second marriage they dissolved or whatever, and then the third marriage lasted until his death in 1984. And, I actually liked both of the people that he married. His second and third wife, I actually liked them both."

I asked what his father did with his career, and he said, "Well, I guess about the only thing I can tell you is he worked for Manville, Johns Manville, and he was the head of accounts receivable for Manville Corporation, and they had an office on Dutch Road in Waterville." I asked what kind of education he had, and he said, "Did my dad have? I think he had some college under his belt after World War II, and ongoing whatever, you know, his company would require." I asked if his dad served in World War II, and he said, "Sure." I asked if he had any combat action, and he said,

"Well, only one out of every six soldiers in World War II saw combat. I mean, I always thought everybody saw combat." I asked to verify if he did not see combat, and he said, "No, he guarded prisoners. From what he told me, he worked at a place where they had POWs and held guard prisoners."

I asked if his mom worked, and he said, "Yes, she worked in Seattle during the war, and I can't remember what the company did, but they did something geared towards the war effort, and when the war ended dad came back to the Seattle area and they stayed in Washington State, and had me and my sister, and then eventually moved to Waukegan."

I asked if basic necessities were provided by their parents, and he said, "Yes." I asked if the county was ever involved in investigations for abuse or neglect, and he said, "No. Probably didn't even think they had that stuff back then."

I asked how many times he moved as a kid, and he said, "Well, I didn't know I was moving to Waukegan. I was little and I awoke to the world there. And, we moved from Waukegan to Waterville, was there for a few years, then we moved to the White House, Ohio area. Was there for maybe - I don't know, less than a year, and moved to where I actually own now - the property that I own now, or my sister owns, the farm in Fulton County." I asked if he moved about four times in childhood, including when he was an infant, and he said, "Yeah. By the time I was in third grade I lived in Fulton County." I asked if the farm is where they moved to and if he's lived there ever since, and he said, "Yes."

Mr. Erickson had interviewed collateral informant, sister, Cynthia. She said she had worked various jobs and was getting laid off, and she wanted to become a police officer and moved out to California. I asked if one of her friends had moved out to California, and he said, "Yes." She was tired of living in the middle of a corn field in Fulton County and did not have a whole lot of opportunities unless you were a farmer. She worked in an office and then progressed from there to the LA Police Department for a period of 27 years. She worked out of the West Traffic Division as a field supervisor with five to eight officers assigned to her. She also has a rental house to supplement her income. She reported not having prior criminal offenses and no use of illegal substances, including marijuana.

Cindy's report of her childhood and her parents is consistent with that shared with me by Mr. Worley. She reported hearing that her father had been arrested for a DUI in the late 1970s or early 1980s in Northwest Ohio. She said that a long time had lapsed since she and her brothers were born after their parents were originally married, because her mother had been in Seattle, Washington, and her father studied music at a school in New York.

She indicated her mother did not have a criminal conviction history and did not think that her mother ever went to college. Her mother then worked outside of the home with minimum wage jobs in factory and secretarial work.

She recalled her parents filed for divorce in the mid-1960s. She said they were not compatible. She said her father had been violent towards her mother at times. She said initially her father did

not consume much alcohol, but once he started to get established in management, he would have martinis with the guys. He would end up coming home after drinking and would argue with her mother by pushing her around, only when he was drinking. At one time he was really drunk and her mother attempted to use the phone to get help, and the father pulled the telephone cord out of the wall. He said, "I remember that, that was the fight I was telling you about."

She described her mother as always being very gentle, polite, quiet, and a kind person. She had garden parties at her residence in Waterville, and her father would host parties with personnel from work. She did not have an understanding of why her father attacked her mother. She noted that he would drink either vodka or gin. She recalled her father would empty the vodka or gin bottle and fill it half with water, which would set off her father.

Cynthia also recalled her father chasing around her mother with a butcher knife in the house. She and her brothers had observed this behavior. I asked Mr. Worley if he remembered seeing that, and he said, "I don't remember the butcher knife part, but I remember when he yanked the phone thing, and then Cynthia let mom out the side door and dad couldn't find her in the house, and she ran down the road to the gas station to call the cops, and then we never saw dad after that." Her father would upset the furniture, and she and her brothers were hiding from their father. The police were called, which occurred sometime in the 1960s.

Cynthia did not recall her brothers had ever been assaulted by their father. I asked Mr. Worley if he was fearful of his dad during this time, and he said, "No. Only if we did - I mean, I couldn't tell you if we ever got spanked by dad or not. Probably did. Just like a normal father and mother, really, but they ended up having a fight - that I know of, and that's the one Cynthia's talking about, and that, and then dad was gone. They separated. But, like I said, we went on that six-week trip, went through 36 states, Yellowstone, Grand Canyon, both oceans - I was in both oceans, Atlantic and Pacific on this trip, and they ended up still getting divorced after it. But - and it was a good trip." Cynthia continued to state that her mother told her that her father was not a bad person, but his behavior changed with the use of alcohol. Cynthia married Gary Barlow in 1974 and changed her name from Worley to Barlow, and then divorced him in 1980.

Cynthia had described her brother James Dean Worley as being a social individual. He liked to talk and goof around. I asked if he read this mitigation material, and he said no, "So I'm a social individual, is that good?" I told him it was.

Cynthia said he liked to talk and goof around. He played harmless pranks on people. He never assaulted anyone in the family. She did report being told one time someone's holding Jim, who slipped from their grasp and he landed on his head. I asked if he remembered this, and he said, "No." She said another time he was running and ran into a coffee table and hurt his head. She described him as being very active. I asked if he remembered any head injuries or falls as a kid, and he said, "No, but she does." She believes now he would be diagnosed with ADHD. She indicated at one point he had been given Ritalin during the mid-1960s. I asked if this was true, and he said, "No. Not that I am aware of. I don't think they even had Ritalin in the 1960s." He would run out in the driveway and sit in the water and mud, and yell and scream, and did it quite a bit for attention, wanting attention after his brother, Mark, was born a couple years later.

Mr. Worley said, "Oh, when I was five years old I'd go out back. This is - me and my mom laughed about this for years. I'd go out back and I'd go off the grass, and it was clay and I would sink in the clay, and I would be - I'd get stuck. I couldn't walk, and eventually if and when I get myself loose, my shoes would stay in the mud and I'd be barefoot, and my mom would just - she'd look out there and see that I was stuck, and the neighbors would even come over and say - it was like the - like terrible twos, but I was like maybe four years old. Okay, or three years old, and mom would just leave me out there stuck sometimes for a half hour, just to wear myself down. I was just a kid - a little kid. I don't - I've never been on any medicines. Ritalin - what's - I don't even think they had Ritalin, did they?"

She described her mother as working at being a good mother, and would pick up her brother and clean him up. She described her other brother, Mark, as being quiet and would excel in academics, and did well in school. She recalled her mother also reading Dr. Spock and would let Jim sit and scream in the middle of the puddle and would not do anything. She said her mother felt terrible and broke him of this habit.

Cynthia described her mother as marrying Graydon in about 1969. He was a gruff person who had previously been a drill sergeant in World War II, and had a lot of experience with firearms. Mr. Worley commented, "He wasn't a drill sergeant. He was a CB." I asked what that was, and he said, "He ran a bulldozer. He was a construction battalion, and he was in the Pacific Theater for fighting the Japanese and was on Guadalcanal, and a lot of the islands during some of the famous battles, and actually he had to kill four Japanese soldiers in battle during his stint of World War II. He was the most honest, hard-working man I've ever met in my life." Cynthia recalled that he had been a millwright. On the farm, they would grow their own vegetables and slaughter farm animals for their food. She was not aware of her step-father having a criminal conviction history. She was unaware of his education.

Cynthia's mother had told her that Jim had to repeat the second grade and that he would look out the window while in class. She saw his grade cards and noticed statements on his cards which indicated his attention needed to improve. Mr. Worley commented, "I had to repeat third grade, not second grade. One of the reasons was my parents got divorced. I started school. I made it to second grade and at the end of second grade we moved to White House, Ohio. I was in White House, Ohio, for part of a year and we moved, and we ended up at Evergreen High School for like the last half, and by the time they evaluated me, they decided I would be better off just to take a full third grade, once now that we're moved out to Fulton County - my school year was busted up in the moving and all that affected my ability to learn, I guess, in third grade, so I did third grade over."

Cynthia reported that Fulton County was known for not having a lot of employment opportunities. She said that her brothers did not get very much guidance regarding employment from their father. She noted that her brother worked at Zeiler Farms by running a tractor and loved that work. He then left the job because the owner died. He then worked in some other factory jobs. She described her brother as having been a really good and hard worker. He then worked in small machine repair on the farm, enabling him to stay at her residence and keep an eye on his mother. I asked if she was talking about Mark, and he said, "Me. Me. My brother's been disabled since he was 19."

She also said her mother was never afraid of her brother, but did indicate her brother was a very good cook and was good at cleaning the house, and was a 24-hour caregiver. I asked Mr. Worley about this and him taking care of his mother, and he said, "Well, mom got older and about - when she was about 87 or so, maybe 86 or so, she fell and she broke her hip." I asked if he was living with her at the time, and he said, "Yes. And so that put us into having her have an operation and then a recovery period at the Swanton Healthcare in Swanton, and then our family doctor, Dr. Steurnagel, oversaw the place, so I - mom recovered there and had under 100 days for recovery and then I brought her home. And, then a few years went by and she fell in the bathroom and broke her ankle really bad. Now, this - this, especially being a few years older, and she was around 90 years old at the time - this was hard on her. I found her about an hour after this happened. And, she had her ankle repaired and then back into Swanton Healthcare she went, and the one thing I'd like to emphasize is the, you know, the first time with the hip and being in the nursing home - just like anyone would be, I was kind of leery of what the place was about, and everything, one, passed my smell test, two seemed to be good, and three worked out good, so when she returned with the broken ankle a few years later, I felt comfortable with her being there, plus our doctor, who we trusted, oversaw the place. He was the medical person in charge of the, you know, the top of the tier - the head doctor of the Swanton Healthcare. Well, we come to find - found out was that they were giving my mom Vicodin and the doctor who repaired the ankle had put an Aircast boot on her, which is a soft cast, which is removable. It's - it's a boot. You've probably seen them, and it has airbags in it, and it can be removed so that the leg could be washed. And, it's more comfortable, especially for an elderly person. And, unfortunately, I'd say less than 60 days later, my mom, in her words, sensed impending doom, those are my mother's words, took the boot off and her leg was basically dying. The boot had not been adjusted and her leg had not been washed. She had pain and they just kept dropping Vicodin down her throat, and basically this thing was exposed in all its splendor at that time. So, Swanton Healthcare immediately took action to try to correct the problem, which would be a normal thing to do, and they did. And, a period of time went by and the boot was put back on, but it was watched very closely at that point and adjusted according to doctor's recommendation. And, I need to stress that the owners and Dr. Steurnagel, and myself were the last people to find out that there were a problem, because the head nurse of the facility decided she knew more than what the orthopedic doctor who issued the Aircast boot knew, and decided to just set the boot, adjust it, blow the airbags up, set it and forget it, and that literally caused - it was, it was slowly killing mom. Well, she went to Toledo Hospital. They reinflated the veins in her leg. The skin on her leg had completely died off. I mean, it was - it looked like - her leg looked like a piece of sausage. It was bloated. It was red. It was terrible. And, we did seek - after she was out of the hospital and out of danger, we did seek legal advice on that, and not to try to obtain money, but try to create effective changes to where this wouldn't happen to someone else, but we could not move forward because of the expense, the cost, and the realization that it would really be a moot process. She went through a lot of - a lot of - a very, very traumatic time, and we all did once we realized that we had been lied to. Several times a day we'd ask hey are you adjusting the boot? Yes. And what this led to was, once mom was home, the realizations pretty much swept over me."

“Now, my sister's in California. My brother's disabled. I provide housing for him on the property. We want to keep him close, keep him home, keep him where he has someone to fall back on, keep his car running, keep a roof over his head, and so I did that. And, what it did was, I realized one day that if you wanna do something and you wanna do it right, you do it yourself. So, I could not consider having my mom at her age going into a nursing home to live the rest of her life, especially after what had just happened. So, I had to make a decision in my life. Do I continue to work and try to make money, or do I stop everything and take care of mom? The decision was easy. I stopped everything and became her full-time caregiver. That's how this started.

I asked Mr. Worley about the nature of his mother's death or passing, and he said, "Well, I really - I was taking care of her full time. It was 24/7. My brother would come up when asked and watch her from like 1:00 to maybe 6:00 or 7:00, and I would be just - I'd be generally on the property or going to get medicine, or going food shopping, but like 99% of the time I was literally home, because that's what it is. It's 24/7 care. And, it was, well it was, ya know, bathroom and meals, and just everything that goes along with it, medicines, and you know, keeping an eye on her to make sure that something wasn't going wrong. It was intense. I cannot tell you - if you know anyone who is doing elder care, that was in the position I was in, it is the hardest thing a person can do is to try to take care of an elderly person. Because, number one, they want to keep doing for themselves, so when you have your back turned, if they need to go to the bathroom, they won't want to bother you, and when nobody's looking. What I'm saying here is the - if you're really on it and you're really honestly not leaving the person go, keeping them clean, keeping them fed, keeping them safe, it's the falls that take people out, that most old people in nursing homes, they'll hit the button and want help to go to the bathroom. Nobody shows up. And after 5 or 10 minutes they say of geez, the toilet's only 10 feet away, I can make it. They don't make it. They fall. They break a hip. They break an arm. They break their neck, and that's what's going in the nursing home. Hands down. Seen it again and again and again. To keep my mother from suffering that fate, I stepped in and literally, 24/7, using electronic doorbells where she was at, you know, wireless doorbell system to alert me if, you know, if she said my name and I didn't hear her, she hit that button. I would hear the doorbell and I would be there instantly, because otherwise, guess what. She's going to try to go to the bathroom on her own, and once you fall when you're elderly, that's - that's the end of it. It's game over. You cannot allow that to happen. So, what I'm saying is to do elder care for the person I love most in this world, I was 110% dedicated and I really didn't know what I was getting into, and I asked a lot of questions, received a lot of help from a lot of different directions, and I did pretty doggone good. But, I was arrested on 07/22/2016, and between that date and 05/12/2017, I had no physical contact with my mom other than a few letters sent to the nursing home where she was taken, and I really cannot report on what happened to her during the last 300 days of her life. I just - I was - I'm trapped in a cell at CCNO and my mom was trapped in a nursing home. My brother is disabled and he would go and see her. I would send letters and say hey, go and see her, every day, every other day, because when mom was in the nursing home and I was present, she didn't go to the nursing home and just stay there. In the morning, I went to the nursing home. Afternoon - I went there and I'd stay there until she went to bed at night. I was there every day and most of the day, and I asked questions about her care, especially during that boot crisis, and come to find out we'd been lied to several hundred times. Yes, we're adjusting the boot. Yes, she's doing fine, and at the end of the day we found out that they'd just been dropping Vicodin down her throat, and that the head nurse ordered everyone not

to touch the boot. And, it literally almost killed her."

I asked if he was in jail for this case when she passed, and he said, "Yes." I asked how long it was after he was arrested that his mother died, and he said, "Roughly 300 days, about 10 months later. I was arrested on 07/22/2016. Mom passed away on 05/12/2017."

I asked Mr. Worley about his father's death, and he said, "Well, I can't tell you much. He retired in 1982, or I guess - no - 1981, '82 he retired, and he and his wife, Terry, decided to move down to Florida, to Clearwater, Florida, and they left in 1982. I didn't see my dad after that when he left. That was the last time I saw him was right before he moved. And, apparently, he had an operation, and I want to say a prostate operation, and he was released from the hospital and the next day after his release, he went to use the bathroom and he never came back out. He died in the bathroom, to my understanding, so had a heart attack I believe was the cause of death, but I think it's all connected somehow." I asked again if he died in 1982, and he said, "1984, yes, he died in '84. They were down in Florida a couple years and then he had, I believe, it was a prostate." I asked if he would have been around 30 years of age, and he said, "I was 25."

I also asked Mr. Worley about the nature of his brother's condition (Mark), what it was and what services and needs he had, and he said, "My brother was stellar in school and he had awesome grades, mostly A's, and he went into college right after graduation, and he took some pretty tough stuff, civil engineering, electrical engineering, a lot of engineering stuff. And, he worked a job at a restaurant. My dad was friends with the owner of a restaurant - a number of restaurants in Toledo. My dad knew all the restaurant guys on Toledo. And, apparently what happened was he lost his job, no fault of his own, and he was going to college, and he was the kind of person that if he had something he needed to do, he did it. He didn't - he's like me, he didn't screw around. And, he didn't eat right for maybe a month to two months, because he had lost his job and we didn't know it, and here we got all kinds of food. I'm his brother. He's got a sister. My mom and step-mom have a farm out there. My dad, you know, pretty wealthy guy, well to do, and Mark never asked for any help, but he just - the doctors back then said they thought it was triggered by him not eating correctly. And what happened was he developed a chemical imbalance of the brain, and he was later diagnosed, if I'm correct, as being schizophrenic, which I - it was explained to me that there's a broad spectrum of that, it's not just like one degree mark on the wheel, there's just - it's all over the place. But, he was given the wrong medications for years and so forth, and he's had it pretty tough, and he's handled it very, very well. And, once he was able to get himself pulled back together to where he could function on his own, for the most part, as a family we've tried to provide housing for him out near us instead of just having an apartment somewhere, and just to keep him close and keep him loved, and just to make things good for him, and that was part of the scope of my - by taking care of mom, I also did my best to take care of my brother. My sister was married and moved to California in like 1987. Probably around 1992 my brother moved into the mobile home, and in I want to say 2010 I put a newer mobile home in for my brother to upgrade his - that housing for him so he could stay at the place. So basically, what I'm saying is I did everything that I humanly and financially could to keep him squared away, and of course, I was taking care of mom. And, the last six years of my life was pretty much doing the elder care."

I asked where his brother, Mark, is now, and he said, "Well, when I was arrested he lived at home for a number of months, but he doesn't have the ability to mow the yard, plow the driveway of snow, stuff like that, fix anything, a pipe or, you know, if anything went bad he just doesn't have the ability to deal with it. So, he - I'm sure reluctantly, moved and he now lives Ohio, in apartment." I asked if Mark is able to talk to me, and he said, "Yes. Mark functions, but he has to prepare himself to do tasks. Like, if I needed a hand, let's say I had to push a car into the shop to work on the brakes or something, I would tell him well ahead of time, maybe the day before or at least an hour, three or four hours before I needed to do it, so that he would know and have himself geared up and ready to take on that task. He could go to the food shopping, he could go to see his doctor - those things, but that was really about all he ever does. He'd go to the store, go see his doctor, go to the dentist - that's pretty much the end of it."

Cynthia's statement to the mitigation investigator continued to describe her brother, Jim's, care-taking of their mother. He, for example, kindly got diapers for their mother. As she advanced in years, he was very cautious in setting things up, including a baby monitor which would alert him when she got out of bed, and would assist her 24 hours a day so she would not be injured. He told her that he was a mama's boy. He had used disposable gloves assisting with the care of their mother and work around the farm.

Cynthia had talked about her brother, Jim, as being hard-headed relative to employment and had some static with bosses. Her statement appears to indicate he was motivated for work and would find ways to come up with money. Mr. Worley commented, "I always tried to work, always." She reported him wanting to get into the mobile home moving business, and then he cleaned up his truck and got his LLC in order to move these homes. He often put forth a lot of work and effort but never got any returns on his ideas. She said that Jim was very disappointed with this. She described her brother as being very respectful towards her and her mother. She reported that he had met a couple girlfriends, including a woman named Olive and one other girlfriend.

I did review the Toledo Blade and other media articles. In one of them, Mr. Worley was interviewed and stated that he did not like to admit that he and his family were poor. He described the family as working hard and earned everything they ever had. He said he was proud and protective of his family. However, sheriff's office reports show contentious interactions between Worley and his brother Mark, and his mother, Florence, at that time. In July 2015, Mr. Worley called to report his brother was off of his medication and was kicking down the door. Two years earlier, deputies checked on a report of possible elder abuse against the mother. A nurse practitioner treated Ms. Shepherd after a fall and contacted authorities. The nurse described Mr. Worley as seeming to be agitated and frustrated to be at the hospital. She was able to speak with Ms. Shepherd about the way her son treated her, and Ms. Shepherd described that he was just like his father in the way that he talked to her. The nurse reported no signs of physical abuse to the mother.

Current Discussion with sister, Cynthia Barlow

I interviewed Mr. Worley's sister Cynthia, who is now 63 years of age. Cynthia described Jim from his mother's description as always looking out the window. He often stared into space. She reported her mother said that Jim was on Ritalin as a youth. She reported being three years older than her brother. She said that he was held back a year. She was always at the next level of schooling. She reported that her brother did not perform well in school, and "got a lot of D's and F's, and did not pay attention very well." I asked her to describe her mother and father's marriage and relationship. She said she was told that her parents got married in 1942 to keep her father from being drafted in World War II. He was drafted in World War II anyway. She reported at some point her mother was in Seattle and her father lived in Chicago, and they had a long-distance relationship before Cynthia was born. She reported her father was in the military in Europe and then went to Pearl Harbor. After the war her mother moved to Seattle and her father studied music in New York. Apparently, they did not want to get divorced because it was not a popular thing back then. They were involved with social workers when they were children and make the marriage better. Cynthia was born in 1955. They were married for about 13 years before Cynthia was born.

Cynthia reported prior to her mother's death, she would pick her up at her home and take her to Indiana to visit family, and they would spend time together. She said her mother would share information about her life to Cynthia. She reported being born in 1955 and Jim was born in 1959.

She described her father as being "violent." He was a business manager. He was not bad until he was hanging out with some guys and drinking after work. They would get drunk. He would come home drunk or drink at home and become very violent. He would beat on her and chase her around with a butcher knife. He tried to stab her. He pulled the phone out. She was about 8 years old at the time, and said, "I was terrified because mom was screaming as he chased her with a knife and swearing. There was more than one incident. I remember hiding behind the chairs and the police came and took him away. There was another time, I don't remember how it ended exactly, but I called mom to come up the stairs with me and I got in my room, because I think I was 11. I put a lock on my door because Jim would come in and steal my change. He would go buy some candy, so I put a lock on my door. Our dad chased our mom and he was beating on her. She ran up the stairs. I remember letting my mom in my bedroom and I let her in the window, and we ran to the neighbors." Cynthia reported, "I guess I had a feeling that my dad could kill my mom. I didn't even know if they had domestic violence laws then. I remember they tried to get divorced. I was about 10 years of age. Going through the divorce process between when I was 10 and 13. I didn't know if they held it against him in business. If you could not handle your family and keep them under control, you would not be able to do that with a business. I remember hearing that from my father."

Cynthia described her mother as being a nice, friendly person and worked hard, but also was in business with their father. "She was submissive and afraid of him." I know she felt like she was trapped in the marriage but she did not complain. I remember dad drank a lot, including vodka and gin. She would pour out the alcohol and put water in. I asked her if she ever discussed any domestic abuse or childhood trauma with Jim. I was about 11 and he was about 8, so some of this

stuff was happening when we were too young to do that. We would have been awfully young. Cynthia said her mother and father eventually got divorced when she was about 12 years of age and Jim would have been about 9. The children lived with their mother. Her mother then started seeing and dating Graydon Shepherd. Her mother married Graydon Shepherd in 1968 on Valentine's Day. Graydon died in 1984. Cynthia described him as another drinker. She said he yelled a lot but was not violent. She reported that the family moved into the barn where Jim was living at the time of the offense in 1968. She reported that her mother worked different shifts and that Graydon would come after Cynthia to have sex with her when she was about 16. "He grabbed me and threw me down and tried to rape me." I experienced penetration which would meet the definition of rape. Both of those times my brother, Jim, walked in." She reported that Graydon tried to rape her a number of times. She said that she and her brother Jim never processed or talked about any of this. Cynthia said she never told anyone about the sexual abuse.

I talked to Cynthia about my concern about an incestuous relationship with his mother such as seen through his letter writing to his mother. I had concerns whether there was any type of inappropriate or sexual relationship between them. Cynthia did not believe that her mother or brother had any type of inappropriate incestuous sexual relationship. She again highlighted that her mother was submissive and that she was abused by both their father and stepfather. She said that Jim never even remotely came onto her (Cynthia). She denied any knowledge of Jim participating in any type of inappropriate sexual behavior such as masturbation in public. She denied any knowledge of him abusing pornography as a youth. She did recall their father placing and keeping Playboy magazines on a coffee table when they were young. Cynthia added that when Jim was a toddler, he would run outside to different mud puddles and sit in it and start screaming and yelling. She remarked that her mother thought this was very odd. When asked if Jim had friends growing up, she reported that he did have friends from school. She reported him playing with the neighbors, but she did not recall if he had an ability to exhibit imaginative play or be creative with play. She did not spend much time with Jim, because she was older. She did not recall him ever being violent with any of his friends.

Cynthia also talked about her brother, Mark, whom she described as being a more studious child. He did really well in school. She described him as a straight A student. He had a high IQ and went into civil engineering in college. She described him working as a waiter and after a few days he had a nervous breakdown. She did not remember them ever giving him a formal diagnosis. They never could figure out what it was. "They just said he was bipolar and that's all they could think of. I feel like I did not know who he was." She described her brothers fighting frequently. There was a lot of sibling rivalry between them.

Cynthia described leaving the home in 1973. She reported that she had a boyfriend named Gary Barlow whom she later married. Her boyfriend, Gary, did not like the idea of Graydon coercing her to have sex with him. At some point, she was living with Gary and his family. She and Gary got married on 07/22/1974. "I got married to avoid going back to live with my stepfather." They lived in the Northwest Ohio area and they divorced in 1980. He moved to Florida. She had a mobile home and she moved back behind her mother's house. She lived there for a few years and then moved to Florida. She was working factory-type work, milling and drilling screws. She got married again and moved to California in about 1988. She said she was never in a real significant

relationship since then. She was dating two guys in California.

Cynthia described her brother Jim as "keeping everything in the house spotless and he took great care of their mother." She described him as being able to take care of her mother and they would either use diapers or something cloth, and they would cut them up in order to grab their mother in. She said he always avoided looking at his mother's private areas. He always said that he "didn't want to look where he came from." He said her brother never did anything remotely similar to the nature of the instant offense. She said, "I was very shocked. I can't even tell you how shocked I was when I heard all this." Cynthia described her brother Jim as dating in the past. She had met at least one female he dated. She remembered he dated a girl named Lois, and Cynthia met her once and said she was crazy about him, and they seemed to get along pretty well.

I talked to Cynthia about her leaving her family. She said she did not want to be in contact with her stepfather who sexually abused her. She wanted to start a different life and she did not like the weather in Ohio. She reported calling and talking with her family members regularly. "I'd try to make an effort and I would talk to my mom and call the home phone at least once a week or so."

We talked about the nature of the instant offense and Cynthia stated she never had any idea that Jim was ever sexually deviant. He did not look at pornography or masturbate or talk about sex.

Various Collateral Informant Interviews

BCI agent interviewed Tina Thatcher. She recalled dating and becoming friends with Mr. Worley in about 2006. She described him as lacking self-confidence and being shy whenever he was around women. He was not the type of person to initiate conversations, especially a conversation with a woman. She described him as having a "weird personality," but denied that he ever got angry or had a bad temper. Her relationship with him was not sexual. She said she was just ending her marriage when she met Worley.

BCI special agents also interviews his sister, Cynthia, by telephone. She noted that she was a sergeant with the Los Angeles Police Department working nights primarily on the streets doing accident reconstruction. She said her brother, Jim, does not usually call her and that she is the one usually calling them, including Jim and her other brother.

BCI officers interviewed Olive Wilson on 05/18/2017, who is someone who had dated Mr. Worley. She said she had dated him for about one and a half to two years. It was mostly a long-distance relationship. She would spend an occasional weekend with Mr. Worley at his mother's residence, or he would spend an occasional weekend with her. She stated they broke up because of his drug use. He was smoking marijuana and would do some other type of drugs with friends but never in front of her. She described as being all happy, smiling, and affectionate towards her. She described him as acting strange at times and believed everyone was out to get him. She advised that he would give her money, and she told him that she did not need his money because she had a job. There were times that he would call and say that he could not come because he had to bail his friend out of jail. She stated there was one time when Mr. Worley went to pick up his friend's daughter from school on his motorcycle without his friend giving him permission. She said they

had sex on occasion. She said there was nothing unusual about their sex life. He claimed to have to take medication for erectile dysfunction, but she never saw him take any type of medication. She advised that he would use condoms when having sex. They broke up because of the drug use that he was involved with.

ACADEMIC HISTORY:

School record transcripts from ODRC indicated that he had a 10.8 grade level for reading, 9.4 grade level for mathematics, and 10.0 grade level for language, and an overall 9.99 grade level for academics.

Mr. Worley graduated from Evergreen High School in Metamora, Ohio, in 1978 and he had a 1.593 grade point average on a 4.0 scale. He has had no further education.

Mr. Worley told me that he attended public schools in Ohio while growing up. He said he was never placed in a special education or behavioral class, never had suspensions, or failure of grades.

School records gathered by the mitigation investigator indicated that he attended Evergreen School District around 1964. He had a variety of vaccinations. In 1970/1971, age 12, his IQ was 97 and 43rd percentile. He attended Evergreen High School in Metamora, Ohio, and he entered Evergreen High School in August 1974 when he was in the ninth grade, and he left in June 1978, and graduated from 12th grade. He received a series of A's, B's, C's, D's, and F's, passing, unsatisfactory and satisfactory, and ending grade point average of 1.593.

I again asked Mr. Worley he had a history of special education, and he said, "I took the Stanford test - IQ test, and I was a 114. I got an A." I asked how he knew that and when it was, and he said, "Oh, I took it in the '90s, sometime in the '90s, but it was the Stanford test. Does that sound familiar? And, I got an A in algebra at Owens Technical College in 1999. I got an F in algebra at Evergreen High School in 1976 or 7, because I didn't give a fuck about high school. I showed up. I partied my balls off. I started going to the bar in eighth grade - eighth to ninth grade, clear through high school, dating and partying. I lived at the Wind Jam Apartments, which was a swinging place, and it was all about smoking weed and just having fun, and having race cars. That's what I did in high school."

An official transcript from Owens Community College in Toledo, revealed that he attended during the spring semester in 1999, a summer semester, as well as fall of the same year, and he summer semester of 2000. He earned an F for Structural 1 during the spring semester of 1999, "a what," a B for Reinforcing 1 during the summer of 1999, a C for Applied Algebra, "A C for Applied Algebra," in the fall of 1999, as well as a B for intro into the Welding Processes during the fall of 1999. He withdrew from Structural 1 during the summer of 2000 and he earned a total of six hours and an ending grade point average of 2.0.

MILITARY HISTORY:

Mr. Worley has no military history.

EMPLOYMENT HISTORY:

I asked Mr. Worley about his employment history after high school. I asked him to tell me everywhere he has worked. He said, "I work at home when I was little, and then I did a few tractor driving jobs just here and there, after school. My first real job was between my sophomore and senior year, if I worked, I guess part time, full time, part time. I had a hog farm and was taking care of hogs. The job encompassed cleaning up, feeding, watering, whatever, and then as soon as I graduated my dad knew the Toledo employment agency guy and I got a job working for Art Iron, and I worked for them for three and a half years until I was laid off in '82 or '83, because steel prices fell through and, you know, that industry was taking a clobbering. And, so I got another job working in a machine shop and I was making Army tank tracks, and for the M1 tank, and I did that for three or four years until about '86 when I got laid off, because they decided that they had enough Army tank tracks made. And, after that I worked farm work, and I worked for a neighbor down the road for about four years, full time. I might have been laid off a little bit during the winter, but basically full-time work for about four years or so, driving equipment, doing repair and operating the equipment. And, then I got into - I started up my lawn service business. I worked for a company where a friend worked at Toledo Turf Equipment, which would have been at Alexis and Telegraph Road, and I realized that a lot of the people - they sold equipment for golf courses and for lawn services, and I realized that a lot of these lawn service guys seem to be doing pretty good. Nice trucks, decent equipment. Seemed to have pretty good lives, and I thought well I can do that, and so I started buying - piecemealing together my own lawn service, and in 1990 I started it. I called it Luxury Lawn, and I started out with no work, and within a short period of time I was making \$1,200 a week maybe. And, it depended on the weather. If it didn't rain you didn't cut the grass, and some companies in Toledo took me on. I had routes. I did - I did like - one day I would do like Maumee area. The next day I would do the Toledo area. The next day I would do maybe over around Slavonia, Ohio, and so forth. But, one of the companies was Noneman Realty, and I got about a third of their apartment complexes, but it was a busy, time-consuming, hard-working job. It encompassed keeping everything working, being on time, working around wet weather issues, and it put a lot of stress on me." I asked how long he did that work, and he said, "I did it until 07/04/1990, when I got into the accident with Robin Gardner. It was that job and an accident that I had previous to that job that set the stage for what happened on 07/04/1990."

I asked how long he went to prison for, and he said, "I accepted a plea bargain deal. I was told by my attorney, that if I did so, the prosecutor and the judge were of a mind to grant me what was called shock release, and that I would do 30 to 60 days and this thing would be behind me. And, so after a couple of months of pondering what to do and also talking to my attorney, who was Judge Sachsor in Swanton, Ohio, which was Mark Powers' - my attorney now, my personal attorney now is Mark Powers, but when he started when he was young, it was Sachsor and Powers. Anyway, Judge Robert Sachsor and I asked him what I should do, and he said well, I guess you should probably cooperate and get this thing behind you. And, so I pled to the abduction charge, because it was my understanding that number one, I was told if I went to trial it would cost

\$10,000.00, and number two, if I lost at trial, I was looking at up to 25 years. And, I was told that if I accepted the plea that the madness would stop, that I would be able to pick up my life in a couple of months." I asked how long he spent in prison, and he said, "I was told I'd get a 4 to 10 year sentence, and I did the minimum."

I asked after he got out of prison where he worked, and he said, "I got out of jail and I did some odd jobs. I got to think here now, because I'm tired. You got to remember I didn't go to bed 'til 4:00." I asked where he worked after four years of prison, and he said, "Okay, I came home and I worked for a company called Dukes Industries for less than a year, and while I was working there another company recognized my repairability and offered me a job, and the name of that company was Sky Reach, and I worked for them for one year, and eventually left that employ - was unemployed for a while, drew unemployment, and I decided that I would go into the skilled trades at that point, and I pursued a career with the Local 55 Iron Workers." I asked if he received training for that, and he said, "I worked as a permit hand for a couple of years and did real well. I worked every week just about full time out of the year at high pay, at the high pay scale, and then I heard through the grapevine that they were going to yank the permit - the permits away from people, you're not really a union member but you're working under the union with what's called a permit. And, so I wanted to stay working, because I work, and I was told that if I joined the union, because of my age and my skills, that I would be placed in the apprenticeship, but I would be put in like third year. I wouldn't be starting cold turkey like some kid out of high school. Instead of taking four years of apprenticeship they would start me like in the third year, and then fourth year, and then you graduate, become full-fledged iron worker, high pay, and then you do what's called journeyman upgrading throughout the rest of your career. Okay. Well, none of that transpired. I gave up my permit. Joined the union. They never started me at third year. I was in an industrial accident. It must have been - it must have been in the fall of 1999, and I pushed a guy out of the way and I ended up getting clobbered, and it put me - it put me, I wasn't kept in the hospital but I had to go to the hospital, and I was basically banged up for a long time. My leg was purple from my groin to my toes for months. And, I decided that I needed to make some money and I thought that I would create a small grow room (growing marijuana) down in the basement, and that's how that got started, which later - April the next year I got arrested for. So, I joined the Iron Workers. I took a drastic pay cut, went down to like ten bucks an hour, was down at the union hall with my hand up waiting to go wherever job they put me on with like a bunch of high school kids. I should've never gave up my permit. And, slowly starving to death and then I was at a job site in Bowling Green, Ohio, and this 4 x 4 come flying across the parking lot like an arrow - about this high off the ground, eight foot 4 x 4. We saw it coming, but it's like a cruise missile aimed right at us. It's - we're like maybe 100 yards away. And, I pushed one guy - I had a guy on both sides of me. I couldn't go one way because there's a guy there and I shoved the other guy out of the way, and as I did that I tried to jump up in the air so this thing would miss me and it hit me in the leg right here. In the thigh, and it just clobbered me, and it gave me a Workman's Comp case, and everything just went downhill from then - from there on, my health and my employment. And, I ended up going to jail then, which I wouldn't have gone to jail, except I wrote the judge a two - two, 19-page letter about the raid, and to shut me up he put me in jail for two years."

I asked how long he was caretaking for his mother before she died, and he said, "Between five and six years." I asked what his last job was before that, and he said, "Well, I worked for - I tried - well I worked for myself. I had a transportation company and I did expedite, and I hauled molds per call to plants that made bottles, and I'd run in and out of Canada, and ya know, Indiana, and Ohio."

Mr. Worley reported at some point, even as young as 10, he was cleaning the Fulton County Fairs. He said, "Well, I - you know, the fairs only last a week, but I did such a good job, because I try my best when I do something, okay. If you tell - if you ask me to do something and I say I'm gonna do it, it's done. I was invited down to the State Fair. They wanted me to take over the Ohio State Fair for cleaning it, which is a hell of a responsibility, 17 days of massive mayhem mess. He emphasized that he was a hard worker and had tried to always stay employed when in the community.

The mitigation records indicated that because of financial difficulties, Mr. Worley filed bankruptcy in the Northern District of Ohio, Western Division, Case Number 98-3497. He had been residing with his mother, as well as his brother. He said, "I had been hurt. Started to grow a grow room. Got - well, they raided the place in April and got caught with the grow room. And, so I couldn't go back to work and I had bills that I couldn't pay. Powers told me, he said, well if we do a bankruptcy, that way when this thing's over you'll have a clean slate and you can get started. I never would have gone to prison in 2000 if I'd kept my mouth shut and not written that God damned letter to the judge." I asked the year he went bankrupt, and he said, "In 2000."

There was a Fulton County Job and Family Services information indicating that on 07/19/2011, Jim Worley was in to apply for financial assistance for him and his elderly mother.

The mitigation specialist also developed a history of employment records for Mr. Worley. He had enrolled in an apprenticeship class on 05/01/1979, from the Iron Work Team Local 55. He had been suspended in 1982 for nonpayment of dues. On 04/01/1999, he was reinstated for the apprenticeship class. He was again suspended on 09/30/2000. He worked for Service Product Buildings in 1999 and 2000, and worked at Build and Manage Incorporated in 1999. He then was employed at Hugh Moore in June 1999, and worked at Thatcher Resteel Incorporated in March 1999. He worked at Henry Gurtzweiler in 1999, and Dynamic Contracting in 1998. He worked at Gurtzweiler at different times in 1998, as well as Dynamic Contracting. He invested in the Private Sharing and Unity Plan in care of Northwestern Ohio Administrators, and applied forms were approved for termination of benefits in March 2003. He worked with Joel Doheng Supplies in 1995 and 1997, and worked as a mechanic. He also worked with a man named Ned Newlin, and worked as a truck driver from 2000 to 2003.

Mr. Worley worked for about three years in 1982 at Art Iron Incorporated, in Toledo, and three months at Shininger Incorporated in Delta, Ohio. He then was employed at Vulcan Industries in Toledo, until about 1986. He worked three more years for an area farmer. He also worked on the grounds crew for multiple county fairs.

Mr. Worley last operated FES Shop Services from his property. He was licensed from March 2010 to December 2012 as a drive-away operator, a trailer transporter.

He also had sold marijuana, selling 100 to 200 pounds of marijuana weekly.

It should be noted that the mitigation specialist also found Hartland of Waterville Nursing Home records regarding Mr. Worley's mother reflecting "Psychiatric/Social History: There was physical abuse and her husband beat her." His mother also had been diagnosed with Alzheimer's or unspecified dementia with behavioral disturbance, major depressive disorder, and anxiety disorder, and cognitive and communication deficit. As of 08/25/2016, a progress note indicated that his mother's mental status was sadness, and there were family issues and conflict. She had a mood disorder. The patient had a severe, chronic disability that is attributable to her condition other than mental illness that is closely related to mental retardation, because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation and requires treatment or services similar to those required for persons with mental retardation.

RELATIONSHIP HISTORY:

Mr. Worley is a heterosexual male. He had a serious relationship with a woman named Olive Wilson. I asked him to tell me about the relationship with Olive, and he said, "She was very nice. She was beautiful and she was nice, and a pretty wholesome girl. She got married young, broke it off. I don't know, she hooked up with another guy for a while and broke it off, and I was like the third guy she'd ever gone out with. She pursued me." I asked how old he was at that time, and he said, "Well, I don't know. Probably - well, I came home from the grow room - two years for the grow room. That would have been - and I bought the van. I started the expedite business. I just got the van. Probably like 44." I asked how long he dated Olive, and he said, "I want to say three and a half years, even though she thinks that it was a year and a half." I asked if he ever lived with Olive, and he said, "I stayed at her place a lot. No, but I kept my residence technically."

I asked how many women he has lived with, and he said, "Well, I never married anybody. They'd stay at my place. I'd stay at their place. We would - I'd pick 'em up wherever they lived. I wouldn't say lived with. Well, Judy and me didn't work out, but I stayed at her place most the time for two years. And this girl named Debbie that I cared a lot for back - for like a year back in the '80s, and Judy was like in the mid '90s, and Olive was in like - must have been about 2004, '05, '06 with her."

I asked if he had ever been married, and he said, "No." I asked why, and he said, "Well, I take that seriously. I watched my mom and dad fall apart at five years old and I didn't want to have illegitimate kids." I asked if he has any children, and he said, "No children."

Mr. Worley's mother, Ms. Sheperd, was interviewed for his prior court case. This was actually an investigation of a missing person from 1996, missing person of Claudia Tinsley. Ms. Sheperd was then asked if James had ever brought female friends home, and she stated he never did. She did state that in high school he had a girlfriend. She and another girl were killed in an automobile

accident, and James did not date any other person on a steady basis. She added that James had always been nice to girls.

MENTAL HEALTH HISTORY:

Mr. Worley denied any inpatient psychiatric treatment history. He had seen a court-ordered therapist for the prior offense in 1990. I asked him to tell me about that, and he said, "Well, I didn't want to be there, because I felt pretty boxed in and I was upset how things were going, and what my options were to either go to trial, and I was told it would cost \$10,000. I got sent to see that guy and my - my consent was to giving just minimal..." I asked if this was before or after his plea, and he said, "Before. You have to go before. Before I was sentenced anyways." I asked if it was counseling, and he said, "No, it was to the presentence investigation guy. It was the only meeting I ever went to." I asked if it was a probation officer or therapist, and he said, "I don't know what he was, but he was the guy that said that I was gonna dig a hole and bury him. Remember that guy?"

I asked Mr. Worley if he ever tried to commit suicide, and he said, "No." I asked if he had ever had homicidal thoughts, and he said, "No. You mean wanting to go out and kill people? For real? No." I asked if he has heard voices when no one was there, and he said, "No. It's called mind broadcasting." I asked if he had ever seen things that other people haven't seen, and he said, "Hallucinations? No." I asked if, other than in this case, has he ever been paranoid in a delusional sense where he lost contact with reality, and he said, "Other than this case? Who says I've lost contact with reality here?" I asked if he ever believed he has any special powers, and he said, "Yeah, the power to get into a mess that you can't get a fricking word in edgewise." I asked if he ever had his thoughts broadcasted on television or radio, and he said, "No." I asked if anyone ever controlled his thoughts or his mind, and he said, "No."

According to Bob Hausch, employee at Court Diagnostic and Treatment Center, the defendant's MMPI test results were within normal ranges. He stated the defendant has a personality disorder characterized by narcissistic and antisocial traits and that staff there did not feel as though Mr. Worley would be amenable to treatment services, and it was believed he would never fully admit to his true intentions or accept guilt in the present offense.

The mitigation specialist found a letter to the Honorable Charles Doneghy, Lucas County Court of Common Pleas Judge, 10/26/1990. There was a clinical interview and psychological that did not indicate that Mr. Worley suffered from a severe psychopathology. There was evidence of personality disorder not otherwise specified with narcissistic, antisocial, and inadequate features. The narcissistic features were indicated by a sense of entitlement and tendency to exaggerate his achievements and skills, and lack of empathy towards others. His entitlement was particularly indicated in expecting special treatment. He seemed rather manipulative as he attempted to present favorably and was frustrated when his instant offense was questioned. His antisocial features were indicated by an inconsistent work pattern over the past five years and nonconforming of social norms of lawful behavior, as well as aggression, and impulsivity. His arrest history is limited. His thought processes suggest an antisocial-styled thought pattern, and he admitted to extensive drug dealing for several years. His inadequacy was particularly evident in limited interpersonal

relationships with men and women, and less stability in employment, both of which affect his self-esteem. Several indicators of depression were evident. He minimizes alcohol and drug usage, and is particularly evasive in discussing his use. He reluctantly admitted he used poor judgment.

Mr. Worley described his mother as the most caring person on the face of the earth as she would do anything to help anybody. His father died in 1984 at the age of 64 and retired from Johns Mandeville in 1982. He had open heart surgery ten months before his death. He reported his parents were divorced in 1965, at least indirectly related to his father's drinking. He recalled his father beating his mother pretty bad. They were divorced about six months after this occurred. He indicated his younger brother suffered from a mental breakdown a few years ago. He was uncertain of the diagnosis, but indicated his brother was prescribed Prolixin and Lithium. He did not feel that discipline at home was either severe or unfair.

While in school, Mr. Worley frequently skipped classes and could not recall being suspended from school. He was involved in activities with other male friends including football games, hunting, fishing, plastering mailboxes, vandalism, etc. He did not date during high school and had been involved in a relationship for one year.

He described himself as being a womanizer as he had a lot of girlfriends. He had a relationship with Louise, whom he dated during high school, but she was killed in a car accident in December 1977. He felt she was the only person he could talk to. He dated a woman but had not had a serious relationship for the last five years.

Mr. Worley started drinking on weekends at the age of 18 or 19. He denied blackouts and recalled having hangovers on one or two occasions. While in high school he smoked five to ten marijuana cigarettes with friends several days a week. He admitted to smoking cocaine but would not clarify how much or how often.

He worked hauling grain by a truck, and lawn service, as well as Toledo Turf Lawn Equipment Company. He worked at Vulcan Industries from 1983 to 1986. He reported holding a job for about 3-1/2 years and left because the company closed in that U.S. government ended the defense contract at Vulcan. His first employment was at Arts Iron between 1979 and 1982. He denied ever being fired from a job or having any other work-related problems, other than those mentioned above.

He admitted to Court Diagnostic and Treatment officials that he was a heavy drug dealer between 1980 and 1986, and that he would deal 100 to 200 pounds of marijuana per week. He knew a farmer named Adrian who grew marijuana.

Records reflected that James Worley had a few long-term relationships with women and acknowledged he was a womanizer during his last adolescence. There appeared to be a pattern of being increasingly unstable in employment as he worked some jobs for two to three years until the mid-1980s, and since then has only held onto jobs for a few months.

He was diagnosed by this clinician with cannabis abuse and cocaine abuse, personality disorder not otherwise specified, with narcissistic, antisocial, and inadequate features.

Probation records indicate prior psychological testing results from about 1970-71, indicating IQ of 97.

During the evaluation, and upon interviewing Mr. Worley's sister, it became apparent there was likely a neurodevelopmental condition of ADHD present for him. During my interview, he did acknowledge symptoms related to potential ADHD condition. His mother and his sister both said he was a daydreamer as a youth. He reported some difficulties with distractibility and being easily bored as a youth. He was distracted with school work. He had a tendency to rush through his school work. He sometimes acted without thinking. He did not pay close attention and was not very focused. He denied symptoms relevant to hyperactivity such as restlessness or running around the room or always being on the run or feeling like he was run by a motor. He again said he was easily bored and needed to be stimulated.

Mr. Worley reported some history and symptoms of depression including sad mood, isolation, lack of hope and poor motivation. He lacked much insight into the nature and roots of his depression. He never had counseling or medications for his depressive condition.

MEDICAL HISTORY:

The mitigation specialist found medical college hospitals in Toledo records reflecting that on 06/13/1994, Mr. Worley had treatment for a scalp laceration and head contusion. He was employed in Dukes Industries at the time. His bleeding had been controlled with minimal intervention. He said he had been hit by another individual at work when they had been involved in an altercation. I asked if he had been knocked out, and he said, "No." I asked what happened, and he said, "Well, the boss wanted us to - I forget what it was. We had to do something to a truck and a machine was running, and so we shut the machine down and the guy that run the machine was this great big giant black guy, a lot bigger than me, and he went off on us and he started yelling at me, and I don't like being yelled at, and he basically punched me a few times and cut the top of my - he had big rings and cut the top of my head open. And, that's pretty much Dave Wilson, Tom's dad, I've worked with him and he was right there when it happened."

I asked Mr. Worley if he has a history of any type of head injury, and he said, "Yeah, I've been in car accident in 1982 where I went through the windshield, and I actually think I - went up onto the hood of the car that I was in. I was in a Trans Am, yeah, I think I actually hit the bumper of the car. And when I came - I landed - got on the seat with the windshield all over me - went through the windshield and then got shot putted back into the car. Well yeah, that banged me up pretty bad. That was in like '82." I asked if he was knocked out during that incident, and he said, "No, but I think I came close to getting knocked out." I asked if he received any treatment at the time, and he said, "They took me to MCO, which is now the University of Toledo Hospital. And, ever since then - since that accident - if your head was a basketball, right in the very middle of my head I've had a dull pain, like at the top of my brainstem. It's just, I've learned to live with it when I've had this - since that accident. I don't know if it's from getting my vertebrae jammed or what the

deal was. I don't know - but it was caused from that. And, it doesn't - it doesn't really affect me, but I know - I mean I can feel it."

Records indicated he had treatment at St. Joseph's Hospital in Ann Arbor, Michigan, for a hernia, 04/29/1997. He said, "I worked at Jack DeLane Supplies, and that was my, 82 miles one way to work and that was like my service providers were up in that area, and I - if I went up there and had the operation it wouldn't cost me versus trying to have it around the Toledo area."

He was treated on 11/24/1999, at Steven's Hospital for pain in his left thigh. He said, "That's when I shoved the guy out of the way and we got clobbered by the 4 x 4."

Mr. Worley had seen Dr. Joseph Steurnagel on 03/06/2010. He was exhausted because he had had no sleep. Screenings for drug abuse were negative. Mr. Worley had always reported interrupted sleep and could not relax.

The records indicated that he had a history of German measles, measles, chicken pox, influenza, sprains, lacerations, and concussion or head injury.

I reviewed the medical records of his mother, Florence Sheperd. She had diagnoses of depression, atrial fibrillation, dementia, hypothyroidism, and hypertension as of 11/01/2016.

SUBSTANCE USE HISTORY:

Mr. Worley reported using substances at an early age. He said, "I started smoking weed when I was 13 years old." I asked how many years he smoked marijuana, and he said, "Since 1972." I asked how often he smoked marijuana, and he said, "Just whatever I smoked on any given day, maybe next to nothing or nothing to a few doobies to a whole bunch. It depends. If there's a big party or something, it wasn't like packs of cigarettes like you smoke a pack or two a day, or whatever." I asked if he ever thought he had a problem with his marijuana use and if it ever negatively affected his life in any way, and he said, "Well, no not really, but I wish it would've not cost like it does. That's why I grow my own weed. That's why I had to have a place to stash my weed. A hidden place to stash my weed, so my weed wouldn't get found." I asked if he was dealing, and he said, "No. Passed all that, dude." I asked if he trafficked years before, and he said, "Yeah. Dude, I was a mule. They don't know this. I hauled a few million dollars' worth of weed. I was hauling 200 pounds a week for like five years in the 80's." I asked if he made a lot of money, and he said, "I got paid in weed and money, yeah, I didn't do too bad. The weed only cost \$300, \$250 to \$400 a pound back then. Now it's a couple of thousand, \$3,000.00 a pound. You realize things have changed."

I asked in the last couple of years how often he was using marijuana, and he said, "I'd smoke a joint - at least a joint every day." I asked if he ever developed tolerance to marijuana, and he said, "Oh yeah, you don't - when you're first starting out, everything - just like an alcoholic, there's people I know that drink. They can drink a case of beer and they don't even - you wouldn't even know they even drank one beer. I mean, yeah, I guess if that's how you want to sum it up. I never liked cocaine or any other drugs. I tried them, I sold a little bit of those drugs - not for a very long

period of time.

I asked if he has ever used PCP, and he said, "Possibly in the 70's." I asked if he has ever used cocaine, and he said, "Yes, in the 80's." I asked how often he used cocaine, and he said, "Not a lot. I didn't like it." I asked him about how often he has used it, and he said, "Well, there was a period of time, probably '81, '82 to like '83 or '84, just whenever it would happen. It wasn't like I did it every day. I don't care for it. I've never done meth. I've never done heroin. I did acid back in the '70s and '80s, the early '80s, but I think it was more strychnine than anything else, and I didn't care for that. But, everybody was doing it." I asked how much cocaine he was using at his heaviest point, and he said, "Dude, heaviest point. I could go two-three weeks with doing none and I might go three or four days and do some each day. It wasn't like I did it like it was the center of my universe. I don't drink very often, hardly at all, and you'll ask me how often do you drink, and I'd tell you hardly at all, but I'd have a drink - a few drinks each year. Do I have them all at once during a three or four day period, or is it every six months, I don't know."

I again asked Mr. Worley about his cocaine use, and he said, "Very minimal and there were a lot of things. There's still people I know out there that are just absorbed by that shit. I don't have anything to do with it." I asked him how often he was using it in the 80's, when he was using, and he said, "Just recreational with - whenever - only when other people were around - would happen to have - when it happened to happen." I asked if he used heroin or any type of opiates, and he said, "No. Are you kidding me?"

I asked how much alcohol he drank, and he said, "Not very much. I've only been drunk a few times in my life, and I watched my dad beat the shit out of my mom when I was 5 years old. I ain't have much of a hollering for alcohol."

I asked if he had ever had any alcohol or drug treatment programming, and he said, "No, but I think my first prison thing I went to every kind of self-help thing that I could, just to do it. Not that it was going to get me anywhere, but I did it. And, I did other things. I took classes when I could. I took Red Cross stuff. I did everything."

Lucas County Common Pleas Probation Department Records from the 1990 case indicated that he admitted to extensive use and sales of marijuana from ages 14 to 1984. He had used two to three times per week. He started cocaine in powder form in 1980. He was drinking three to four alcoholic beverages per month.

The probation records indicated there were concerns about his alcohol and drug abuse pattern related to his offense such as cultivating marijuana, and he has not acknowledged a pattern of use and refuses treatment.

Prior probation reports indicated that he had been using marijuana beginning around age 13 or 14, and was using it on weekends only for several years. He had been using marijuana up to two to three times per week. He was also drinking approximately two to four drinks of alcohol monthly.

Probation records also indicate that he tried cocaine once in 1980.

LEGAL HISTORY:

Mr. Dech, attorney for Mr. Worley, had attempted to send me information concerning all the web pages and websites that Mr. Worley had viewed. The Dropbox information that he sent me did not manifest itself clearly. I could not see any type of images or websites that he was reviewing. Mr. Dech noted that Mr. Worley had searched about 6,000 pornographic websites with a number of them (I believe at least 1,500) being bondage websites. He also said there was forensic evidence outlining his viewing of bondage websites within two hours of the instant offense.

The Court Diagnostic and Treatment Center records indicated that as a juvenile Mr. Worley was placed on probation for four months when he was 13 or 14. He stated two older males, who he was with one night, stole a minibike. He said he had nothing to do with it.

Officials with the Fulton County General Court and Lucas County Court Juvenile Hall indicated James D. Worley did not have a juvenile conviction history in either jurisdiction.

Adult criminal records include the following:

- 10/17/1979, Toledo Reckless Operation of a Vehicle, \$15.00.
- 07/03/1985, Swanton, Ohio, Assured Cleared Distance, license suspension.
- 1985, Disorderly Conduct. No disposition.
- 07/21/1986, Swanton, Starting/Backing Vehicle, convicted.
- 01/14/1988, Napoleon, Speeding, no disposition.
- 01/11/1988, Upper Sandusky, Assured Clear Distance, no disposition.
- 06/05/1990, Toledo, Ohio, Assured Clear Distance, \$75.00.
- 06/03/1997, Eastern District, Connecticut, Expired License, \$62.00.
- 11/19/1997, Eastern District, Connecticut, Speeding, \$75.00.
- 10/17/2000, Fulton County, Ohio, Illegal Manufacturing of Drugs and Weapons While Under D, two years ODRC.

It should be noted on 07/16/1990, Mr. Worley had been indicted for kidnapping and felonious assault and physical harm specifications at case number CR90-6581, Common Pleas Court in Lucas County. On 09/04/1990, James D. Worley withdrew his former plea of not guilty and entered a plea of guilty to a lesser offense of abduction. On 10/29/1990, he was committed to the Ohio Department of Rehabilitation and Correction and conveyed to the Orient Prison for a period

of not less than 4 years and no more than 10, until released according to law. He filed a motion on 11/06/1999, for super shock probation. On 12/02/1991, the motion for super shock probation was not well taken, and the same was hereby overruled. On 02/01/1993, a motion for reconsideration was filed by the defendant. On 02/05/1993, a motion for reconsideration for shock probation was filed and was not well taken and was overruled. He received petitions for release regarding his motion for super shock probation and he was eventually released from ODRC. The petitions for release was signed by 151 individuals on behalf of him.

A presentence report by Lucas County Common Pleas Court, Pretrial, Presentence Division, dated 09/04/1990, reflected that he was not known to have any juvenile convictions, either misdemeanor and/or felonies, and did not have previous felony or misdemeanor convictions as an adult.

The presentence investigation indicated that Mr. Worley admitted to extensive use in the sales of marijuana from ages 14 to 25. He admitted to current moderate use between two to three times a week and admitted to trying cocaine in powder form in 1980, and also admitted to selling cocaine. He admitted to trying hash and LSD on several occasions. He admitted to drinking three to four alcoholic beverages per month and denied any type of abuse. He was single and had zero dependents and had been unemployed and claiming previous self-employment.

The Ohio Department of Rehabilitation and Correction (ODRC) records reflected that James Worley was originally admitted for an abduction from Lucas County on 11/08/1990. His vocational furloughs on 10/01/1993 and his regular parole was on 12/01/1993, and release was on 01/10/1995. On 10/17/2000, he was admitted for illegal manufacturing of drugs/weapon or disability from Fulton County, Ohio, for a two-year term. His expiration of stated term was on 09/03/2002. He had been a technical aid, tutor, porter, student and food service worker from 2000 to 2002.

The Lucas County presentence report from 1990 abduction case indicated the following information: On 07/04/1990, Robin Gardner was riding her bicycle in a westerly direction near White House, Ohio. According to Gardner, she noticed a red flatbed truck pulling a trailer past her, heading in the opposite direction. A few moments later the same truck and trailer, operated by the defendant, struck the victim's bicycle from behind, causing her to fall and tumble into a small ditch alongside the road. At this time, the defendant, who had stopped the truck, approached the victim and asked, "Oh my God, are you alright?" The defendant then managed, most likely as a result of the victim's disorientation, came up from behind her and struck her on the head with an unknown instrument. He then allegedly dragged her to the side of the truck, opened the passenger door, grabbed a flathead screwdriver, and placed it on her neck. He then said, "Do what I say or I'll kill you. I'm serious, I'll kill you." The defendant then forced the victim into the truck and snapped a handcuff on her right wrist. At this time, the victim managed to break free, escaping through the driver's door. A motorcyclist, William Sahloff, who had noticed the struggle inside the truck, had stopped alongside the road and subsequently allowed the victim to climb aboard his motorcycle. Mr. Sahloff then drove the victim to her home in White House, and police authorities were contacted. It should be noted the victim suffered a deep laceration just below her right knee, which is believed to have been caused during the struggle by the flat screwdriver. The defendant was arrested on the present indictment on 07/17/1990.

Mr. Worley was interviewed for the presentencing interview by the officer. He stated he was operating his truck and flatbed trailer loaded with lawn mowing equipment, heading west. The victim's bicycle was traveling in the other direction and was located on the far left-hand side of the road. He claimed the victim crossed the road directly in front of him, causing him to strike her with his right front quarter panel. He alleged that at the time he approached the victim, who was hysterical and yelling, and she stated that the whole situation was his fault. The defendant then indicated that he began to panic because his insurance company had told him a few months earlier that if he had one more offense they may drop his insurance or raise his rate substantially. The defendant stated that he and the victim argued about the incident for a few minutes and that she looked as though she was going to get on her bicycle and leave the scene. He indicated at this time he remembered that he had a pair of handcuffs in his vehicle and he felt he needed to detain the victim at the scene until police authorities arrived. The defendant then admitted to handcuffing the victim's right wrist.

The Court Diagnostic and Treatment records indicated that Mr. Worley stated that he cuffed the victim's one wrist and intended to put the other cuff on his seatbelt. He planned on waiting until someone came back and have them call the police. As further explanation why he tried to restrain the victim, he stated he was worried about insurance. He wanted the police to hear both sides of the story. Although Mr. Worley verbally acknowledged he should not have done this, he did not seem to acknowledge the behavior was inappropriate. He minimized having the handcuffs with him, stating that they were novelty. He did admit he had a knife in his truck, which had a handle on it, which looked like a gun. He reported he bought this when he was driving a truck and he had run into some pretty rough characters. This court diagnostic report indicated that the motorcyclist, who helped assist the victim, indicated that he saw a red truck with both doors open and two people in the cab who appeared to be fighting. He went past the truck, stopped, looked back, and saw the bicycle near the rear of the truck, and that a woman came running to him, yelling that the man was trying to kill her. She got on the motorcycle and then Mr. Worley came up to the man, and the man told Worley to back off and stay right there, and that he was going to get the police. The White House Police Department arrived at the house where the victim was, and she had a pair of handcuffs with one cuff attached to her right wrist. She informed the officer that a man had tried to kill her and hit her with his truck. She had a large contusion on the right side of her head, various scratches, and lacerations about her extremities, and apparent stab wound to the right leg just above the knee.

A park ranger was the first person to talk with Mr. Worley after the accident occurred. She stated Mr. Worley came from the end of the truck to the Park Ranger. Worley reported to the Ranger that he had really messed up and could be in a lot of trouble. He was highly excited and seemed very upset. He was asked to wait by his vehicle. Then he came back and wanted to tell his side of the story before they listened to her. He later admitted to the Waterville Police Department that he had put handcuffs on her because he was frightened and he did not want her to run away.

The Court Diagnostic Treatment report indicated that the clinician was concerned that he was evasive about his alcohol and drug use, and it is likely he drinks more heavily and abuses drugs more than he is willing to admit. They noted unstable employment and work-related problems,

and a few long-term relationships with women.

With regards to the instant offense, Mr. Worley reluctantly admitted he used poor judgement in attempting to restrain the victim because he had trouble with his truck. His explanation for restraining the victim seems highly suspect, as well as illogical. He had difficulty recognizing this when we discussed it. He denied any other ulterior motives, as well as deliberately striking the victim or threatening her. There does not appear to be inconsistencies with what the victim reported to the police and what she reported to the presentence officer. It appears that Mr. Worley could have had intentions of kidnapping and raping the victim. If he was granted probation, he does not appear amenable to psychotherapy based on denial of the critical aspects of this offense and only minimally acknowledging the abduction charges.

During the current evaluation, Mr. Worley wanted to share with me the nature of the 1990 abduction case. He has been adamantly consistent that this was essentially some type of accident in which Ms. Gardner pulled out in front of him on a bicycle and he accidentally hit her. I asked him to tell me about this, and he said, "Okay. The night before this happened, I ran into Jeff Krise at a Bar. I hadn't seen him in a long time. He said I live in the house right by the White House Laundromat. The next day I had to work, because we had rainy weather. I had a couple accounts that I had to mow and it was okay with the owners for me to show up on the Fourth of July, so I took off in the morning and I knocked those jobs out, and I was in - right near White House, so I thought I'd go swing over and see Jeff. I pulled in his driveway and here's Jeff, and his yard's this deep with grass, it's like knee-high. And, I mowed his yard. And, they're like well we haven't seen you in a while, and we're talking. And, as this is going on, their overlooking at my truck and they look in it and they see the handcuffs, alright. And, they go oh, what are these for. I said, just esthetics. They're a dollar - they're 99 cents. They're not police-grade handcuffs. You could break them like this, dude. Okay. I think they might have been chrome covered plastic with release levers. That's the kind of handcuffs they were, alright. So, we talk for a while. He had to move his car. I said I got to get going and I took off. I drove through downtown White House. I turned, went through a couple roads. I'm on Obie Road. I hadn't even probably gone a mile. I'm going down the road in the westbound lane, pulling the trailer and chick - Robin Gardner's riding her bike. She's in the eastbound lane, and I'm coming up behind her and she's like - and then at the last second she's in front of me. I slammed the brakes on. Bang. Hit her. She goes down into the grass. I got out, ran around the front, because I got a tongue and all that - I went around the front of the truck and I asked her if she was okay. That is all true. Then, she turned around, got up and looked at me, and said why did you hit me. I didn't hit her. She turned in front of me. That's how she got hit and it all makes sense if you digest this - you're not stupid, just hear me out. Okay. So, I look at her and I go I didn't hit you, you turned in front of me, and she says no I didn't, and we get into a conversation about that. Then she decides - I'm going to leave and I said no you're not, you're going to stay here until the police get here, and she says no, I'm going to take off. I took her bike from her, took it down to where the trailers - not in between, but right there. Put her on the kickstand, walked back over to her, picked up conversation. Now, at this point in time, she - we've got in some more words. I can't recall word for word what was said, and she started to take a couple steps towards her bike, and that's when I said you're not going, you're staying here, and I grabbed her by the wrist. And, at that point, she looked at me and she's like, you know, let go of me. Whatever was said, I can't recall it, okay. And, I said, no, you're going to stay here until the

cops come. Period. I reached in. I grabbed the handcuffs. I put it on her right wrist. My friends scolded me, back when this happened, I mean it was not a smooth move, and I was trying to connect it to the door of the truck - the outside door of the truck. Now, if I'm trying to kidnap her, what the fuck would I be doing that for, when the guy on the motorcycle pulled up. Okay. As soon as he pulled up, I stopped. She took off, ended up getting on the bike and she left. Now, she goes home and she calls - they call the cops. The mother goes hysterical. What happened. She's got these handcuffs hanging off her wrist. All you had to do was go click and they come right off. I was told they had to use a grinder, cutters, whatever, okay. Let me finish here. So, I'm waiting for the cops. The cops don't show up. The cops won't show up. Finally, a forest ranger shows up, and I walked over and I told her and I said I got in an accident. There's a bike over there. The person riding the bike left. There's going to be some shit. I'm waiting for the cops. He says, well just continue to wait. I heard a call that there'd been an accident out here. I don't know what's going on, but I'll wait down here. I'm watching - he goes, I'm watching the Oak Openings. I said that's fine. I'm not going anywhere. I'm waiting for the cops. Thirty-three minutes pass, okay, and he showed up about 20 minutes after this thing had happened - after she left, he showed up. So, the cops finally show up like 10-15 minutes later. I told them what happened. I told 'em what I did, and they went - and there was four of them. They were younger guys and they were real nice. And, I sat down on the back bed of the truck and I was sitting there, and then the guy - the head of the four guys come over and he asked me, he says look, this just doesn't make sense to us. And I go, look, I was driving this truck. I hit that bike. The chick that was on the bike left. I was trying - I was going to hook her to the door of the truck. I told him we got in an altercation, and he goes yeah, but we got a problem here. And, I'm like what's that, and he goes you don't fit the description we're being given, and I said what's the description, and he said she's saying it's a big heavysset, like 250-300 pound fat guy with blonde hair, blonde beard. And, I told them, I said look, I'm driving this truck, hit that bike, so they're real cool, they're - everything's cool. After a while the guy says, comes over and he says, look, until we figure out what's going on, another patrol car pulled up and he goes we'd like to put you just in the back of the patrol car. And, so they put me in the back of the patrol car and that's where I sat. So, when Robin Gardner went home, the cop shows up and they ask them. And, I think it was Lieutenant William Zabo, Waterville Township Police he asked her what happened to your knee. Dude, the woman was like this - see my fingers, okay, see how big that is, and it was in the shape of an S. She said, oh, he threatened to kill me. He stabbed me in the knee with a screwdriver. This is all in the report records. This is - she said this to the grand jury. She pointed out the screwdriver and Zabo, this cop, took all my screwdrivers. I got a work truck full of tools. They went to the BCI crime lab, came back - negative, okay. Her story's falling apart. She's saying that she wasn't - she was riding her bike off the road. I got skid marks on the road placing my truck where? Square in my lane. How could I have hit her if I didn't swerve off the road to hit her. This was not an attack. Number two: Her story falls through at the BCI crime lab, so they call her back in for a second Grand jury testimony at a different date, and they produce - there was a lock back knife that has a little handle on it, it looks like a gun, so when it's in the sheath, it looks like lock back a little itty bitty gun, but it's just a lock blade knife. I hold it in my hand like this, reach under the deck and cut screens and stuff from around spindles. It's nothing but a fricking knife. They open it up, lay it down in front of her, and say is that what he stabbed you with in the knee. Yeah, that's it. She changed her story. It goes down the BCI. It comes back negative. So, now that this stuff just isn't making any sense, so the medical examiner gets involved, and guess what his report says. There's no way possible that either one of these

items could have caused that wound, because it was a 16th of an inch - it was - it was a 1/4 to 3/8 of an inch long. I'm not even sure of the dimensions. You have to look at the medical examiner's report. She landed on her hands and her knees, and she got a ding on her fucking knee. That's what happened, and she said I stabbed her."

There was a presentence investigation report from a 2000 offense. According to the Toledo Police Department, Investigator Stevens, on 04/17/2000, various law enforcement personnel from the Fulton County Sheriff's Department personnel in coordinated efforts in conducting a consent search. The primary purpose of the search, initiated by the Toledo Police Department, was in an attempt to locate a missing person. There was concern with an ongoing attempt to locate a missing person from 1996.

The missing person was Claudia Tinsley. Mr. Worley said, "I went down and met with Detective Dumas, and went through everything, and I left there, dude. I'll just say I felt good. I didn't think there was a problem. He and I, I think, saw everything eye to eye. I don't think he suspected me of shit, and four years went by and these guys showed up at my door. I was recovering from my leg getting smashed. It was still April and my leg was still banged up, and I looked out there and these guys are out there."

The search was executed at his house including various law enforcement personnel and Florence Shepherd and her sons, James and Mark Worley. During the initial part of the search, two long guns, a handgun, ammunition, and several marijuana plants were found in various locations in the house. Upon discovery of the firearms and plants, James Worley was placed under arrest by the Fulton County Authorities. Units from the multi-area Narcotics Task Force responded to the scene and confiscated marijuana evidence. Fulton County Deputy Trejo confiscated the weapons and ammunition evidence.

Mr. Worley's self-report at the time indicated that he had the marijuana out of desperation. He described himself as a hard-working person, but he lost his ability to work due to a work-related accident. He said he was behind on his bills and financial commitments. He said he was suffering from a lot of anxiety and stress. He described himself as "injured, broke, and dependent on my mom."

Nature of Instant Offense

The instant offense is capital murder with Mr. Worley, the defendant, at age 57, and the alleged victim, Sierah Joughin. Ms. Joughin was 20 years of age at the time of the instant offense. He was charged with aggravated murder and abduction in this instant offense. Ms. Joughin disappeared while riding her bike on a country road in rural Fulton County. Her body was found three days later in a cornfield near Worley's home. She was last seen riding her bike at around 6:45 with her boyfriend in Metamora, about 20 miles west of Toledo. Search warrants released indicate that the cell phone evidence shows Mr. Worley was at a spot where Joughin's bike was found for two hours on the day she went missing. Warrants revealed that Ms. Joughin was found in a shallow grave in a cornfield about one mile west and one mile south from Worley's property. Mr. Worley initially told investigators he had been riding a motorcycle and he lost his helmet,

screwdriver, sunglasses, and fuses after it broke down. Ms. Joughin disappeared 07/19/2016, while riding her bicycle in rural Fulton County. Her body was discovered in a cornfield three days later. Investigators have found, on his three-acre home property, what they describe as a bloody secret chamber concealed by hay bales inside the barn; also containing a freezer and outfitted with carpet and handcuff restraints. Authorities also found hidden cameras, including a "nanny cam," as well as several pairs of women's underwear and one soaked in blood, and lengths of rope, zip ties, a ski mask, and pepper spray, duct tape, firearms, and ammunition.

The warrant records also indicated that when he was apprehended by law enforcement, Mr. Worley had fresh marks on his arms and bruises on his lower legs. He had told law enforcement that he had been riding his motorcycle in the area where Joughin disappeared, and that his bike had broken down, and he in fact pushed it through the cornfield, and lost his helmet, screwdriver, sunglasses, and fuses. The police did recover his possessions in the field and his helmet was covered in blood with a partial palm print that appears to match Worley's.

The Ohio Attorney General's Office, Bureau of Criminal Investigation, investigative report dated 07/22/2016, indicated that on 07/20/2016, Sheriff Roy Miller of the Fulton County Sheriff's Office contacted the Ohio Bureau of Criminal Investigation regarding a missing person investigation. Sierah Joughin, 20 years, was reported missing on Tuesday, 07/21/2016, at about 23:00 hours. Sheriff Roy Miller utilized a canine to search the area where Joughin was last seen by her boyfriend. Multiple items belonging to Joughin were located on the road and within the cornfield on County Road 6, north of County Road T, aided in completing the examination of the crime scene on 07/22/2016 at 1030 hours.

On Thursday, 07/21/2016, investigators learned of a person of interest in the disappearance of Joughin, whose name was James Worley. He was interviewed as a resident and was taken into custody on Friday, 07/22/2016 at about 18:45 hours. Special agents for BCI found a possible clandestine grave that was located by a volunteer search team on County Road 7. Agents had already removed some of the dirt from the suspected grave and smelled a strong odor of decomposition, and suspecting that decomposing remains could be present, they requested initial assistance with examination of the scene and collection of potential evidence. The grave consisted of loose dirt surrounded by harder clay with well-defined round shovel marks. Once loose dirt was removed and sifted it became clear it was clandestine grave of the remainder of a young, adult, white female with brown hair. She was positioned with her head to the east and her feet to the left. Her stomach was toward the bottom of the grave. Her hands were secured behind her back with black handcuffs and her legs were bent at the knee, and her feet were bound with black-colored duct tape. Her body was hog-tied with her hands and feet bound together with a white rope behind her back. Her head was positioned close to the surface with her face pointing upward. Reddish-brown stains from her nose flowed down her face to the left and right. Suspected straw was found in her hair. A yellow cone-shaped object was inside her mouth and the object in her mouth was held in place by a rope tied around her neck. The remains were clothed in a white lace material brassier, white cotton socks, and a white adult diaper with reddish-brown stains.

The BCI report indicated on Thursday, 07/21/2016, FBI task force came to the home of James Worley. They had previously spoken with Worley about the disappearance of Sierah Joughin. During the interview he made statements about being in the area of the disappearance and leaving personal items behind. They returned to the home to speak with Worley about the disappearance and asked for permission to search his property for Sierah Joughin. Contact was made with James Worley. He appeared to be upset that investigators had returned. He had an aggressive and controlling demeanor but allowed investigators to come inside his home to speak with him. He allowed a small number of investigators to walk through the home to check for the victim. He then took all of the investigators to his workshop and barn. He asked that everyone remain together and became nervous and agitated if a member stepped away to take a phone call. He allowed the investigators to enter the north end of the barn, but later became agitated when investigators opened a green storage crate. They noted there was female clothing inside the crate. When asked about it, he became defensive and told them he often gave the items to women he dated. He then ushered the investigators out of the barn and other areas of the property. He allowed investigators to look in a chicken coup and a mobile home used by his brother. He spoke with the investigators at length about his workshop. Officers asked for and received permission from him to collect DNA and fingerprint standards through multiple investigations on his property. They found a hidden compartment in the floor. The compartment was nearly flush with the dirt floor. The compartment was covered by a piece of wood that measured about 40 inches by 40 inches. The wood had 20 drilled holes that were evenly distributed over its surface. Removal of the wood covering revealed a buried chest freezer. The interior of the freezer was lined with brown-colored carpet. Swabs were collected from each side of the freezer walls and they tested positive for human blood. There was a green storage crate examined for potential evidence. The interior of the crate contained numerous items of potential evidence. Many items had been placed inside the crate in clear plastic bags that were labeled, including a leather mask and bindings, pantyhose, lace and bra and panties, black lace, dress, daisy-duke shorts, white beach dress, white romper, lace panties, a red skirt, black mini-dress, thigh-hi socks, thongs, and mask, leggings, pink lace teddy, brown rope, unopened clothes line rope, romper/leggings, black lace teddy, and personal hygiene items. They also found duct tape with hairs and fiber material.

It is my understanding that through the trial, law enforcement found bondage equipment and lingerie. They also found duct tape with evidence of DNA for both Mr. Worley and the victim. They also found adult diapers, white tube socks, and lacy tube top. The items were similar to what the victim was wearing when the investigators found her body. Ball gags were also found inside the bin. Items of rope, duct tape, and zip ties were found. There was a large deep freezer found under the floorboards of the barn. It is also my understanding that through the trial there was evidence that between January and June 2016, Mr. Worley paid to watch pornographic material from different websites. He had different accounts to purchase pornographic videos online. The investigators found a loaded Smith & Wesson handgun, a rifle with cartridge in the chamber, and a shotgun. All were hidden in a frame tool holder. He was prevented from owning firearms due to previous felony conviction.

FBI agents had analyzed the victim and Mr. Worley's cell phone records showing that between 8:01 p.m. and 8:05 p.m. on 07/19/2016, the day the victim disappeared, the phone signals were within the general area of one another. BCI forensic scientists provided a list of items confiscated

from Mr. Worley's vehicles and barn which presented positively for presence of blood evidence. They included a motorcycle helmet and boots worn by Mr. Worley, pink female undergarment, socks worn by the victim, paper towels, and a bag and carpet samples from inside a freezer found buried in the barn floor. Swabs performed on the victim's body produced no evidence of semen. It is also my understanding that during the trial there was evidence that Mr. Worley had allegedly searched on pornographic websites for "hog tied and teen," "rape," "hitchhiker," "helpless," and "gag" prior to the homicide.

Mr. Worley had visited over 6,000 pornographic images and Web sites. He had searched Ashley Madison on a regular basis. There was also a ground of thumbnails and videos labeled BDSM, which includes bondage and discipline (B&D) and dominance, and submission (D&S), and sadism and masochism (S&M). I could not find or locate and search the specific websites, thumbnails, screen captures, etc., but the fact that he had BDSM data will be discussed below.

PRISON INSTITUTIONAL ADJUSTMENT

An Ohio Department of Rehabilitation Correction Inmate Evaluation report dated 11/23/1992 and 12/02/1992, indicated Mr. Worley had a history of being a library aide in the education work department. He was outgoing with the highest ratings for factors such as attitude, initiative qualities/quantities, attendance, dependability, safety/housekeeping, increasing knowledge of skills. He had a very positive attitude towards staff and fellow inmates. He established quality standards in his work and was dependable. James Worley had completed a course of study with the vocational division, State Department of Education and Building Maintenance, and was entitled a Certification of Achievement on 08/02/1991. On 05/29/1992, he was awarded a Certification in Recognition of the Successful Completion of the Oral Reasoning and Discussion Group. He completed a minimum of 18 hours of Instruction and Principles and Cause of Mental Attitude, 06/03/1992. He completed the NA 12-Step group on 07/10/1992. He received a certificate after completion of the NA Recovery Test on 11/06/1992. He had been awarded a Certificate of Excellence by the JC Commercial Driver's License, court instruction on 12/15/1992. He completed the CPR and Training for the Advanced Professional Rescuer on 05/02/1992. He successfully completed the Adult and Children of Alcoholics Group on 10/20/1991. He completed the NA 12-Step group on 07/10/1992. He underwent training for Infant, Child, and Adult Rescue after completing the community CPR course of instruction, 02/01/1992. He received Emergency and First Aid in Trauma and Shock Control Training and a standard First Aid course of instruction on 08/31/1991. He was also awarded a certificate after successfully completing training for Continuity of Pilot Project in the Madison Correctional Institution on 06/04/1993.

ODRC records indicated that Mr. Worley had been a career technical school aid tutor, porter, student and food services worker from 2000 through 2002. Mr. Worley commented, "I worked food service for like 2 weeks and then I taught - I took schooling, and then I was good at what I did and they asked me to stay on to be a tutor and teach, so that's what I did. See, I'm a certified master mechanic. I'm not a mechanic. Like, I really know my shit."

Records from the Correction Center in Northwest Ohio reflect an incident report dated 08/26/2016, indicating Mr. Dean Worley should be removed for 23-hour restriction, because he was very quiet and respectful towards staff and others on the unit.

On 11/16/2016, Mr. Worley and another inmate were yelling at each other. Mr. Worley was requested by an official to talk to them, but he ignored orders while continuing to stare at the other offender. Mr. Worley was taken to medical crew by medical and placed in lock down.

CURRENT NEUROPSYCHOLOGICAL & PSYCHOLOGICAL TESTING RESULTS:

Intellectual Functioning

Mr. Worley was administered the Wechsler Adult Intelligence Scale-IV (WAIS-IV) to assess for his current intellectual functioning. He had a Full Scale IQ of 98, 45th percentile, and average range. Verbal Comprehension Index was a standard score of 102, 55th percentile, and average range; Perceptual Reasoning Index was the same with a standard score of 102, 55th percentile, and average range; Working Memory Index was a standard score of 105, 63rd percentile and average range; and Processing Speed Index was a standard score of 84, 14th percentile, and below average range.

VERBAL COMPREHENSION SUBTESTS			PERCEPTUAL REASONING SUBTESTS		
	Scale Score	Percentile		Scale Score	Percentile
Similarities	10	50	Block Design	10	50
Vocabulary	10	50	Matrix Reasoning	7	16
Information	11	63	Visual Puzzles	14	91
Verbal Comprehension Index = 102 Percentile = 55			Perceptual Reasoning Index = 102 Percentile = 55		

WORKING MEMORY SUBTESTS			PROCESSING SPEED SUBTESTS		
	Scale Score	Percentile		Scale Score	Percentile
Digit Span	12	75	Coding	7	16
Arithmetic	10	50	Symbol Search	7	16
Working Memory Index = 105 Percentile = 63			Processing Speed Index = 84 Percentile = 14		

Attention Functioning

The Processing Speed Index on the WAIS-IV assesses visual scanning, perceptual discrimination, speed of mental operation, psychomotor speed, attention and concentration, short-term visual memory, visuomotor coordination, numerical ability, and cognitive flexibility. Processing Speed Index was below average (84th percentile). Symbol Search was below average (16th percentile). Coding was below average (16th percentile).

Memory Functioning

Mr. Worley was administered an auditory, verbal, learning, and memory word list task of 12 words across three trials (4, 5, 6). Immediate recall of the word list during all three trials was mildly to moderately impaired (5th, 4th, 5th percentile). His immediate recall total across the three trials was mildly impaired (10th percentile). He was then administered a second list of 12 words as a distractor list, after the first list was given three times. His recall on the second list was above average (6 of 12 words recalled, 86th percentile). However, short delayed recall after the distractor list of the first list was mildly impaired (10th percentile). Long delayed recall of the initial list was also mildly impaired (12th percentile). Forced choice recognition was mildly to moderately impaired and he had difficulties recognizing words that were on and off the original word list.

He was then administered a verbal short story task, assessing immediate and delayed recalled structured information. His recall of phrases after the first trial was below average (19th percentile). Phrase two recall was average (25th) percentile. Immediate recall of both phrases was average (34th percentile). Immediate recall of themes was average (50th percentile). Delayed recall of phrases was average (31st percentile), while delayed recall of themes was above average (75th percentile).

Visual memory was also tested in which he was given a number of complex figures to recall across three trials (5, 8, 8). His recall of the first trial was above average (75th percentile), and by trial three the results were the same. Immediate recall and recognition across the three trials in total was above average (92nd percentile). Delayed recognition of the same was above average (82nd percentile). Forced choice recognition skills were average (50th percentile).

His visual memory was more intact than auditory and verbal learning and memory.

Language Functioning

Verbal Comprehension Index on the WAIS-IV is known to assess abstract verbal reasoning, semantic knowledge, verbal comprehension and expression, general information acquired from culture, and crystallized verbal knowledge. Verbal Comprehension Index was average (55th percentile). Verbal abstract reasoning abilities on a Similarities task was average (50th percentile), while vocabulary and knowledge of words was average (50th percentile). Information was average (63rd percentile).

Visuospatial/Perceptual Reasoning Functioning

On the Neuropsychological Assessment Battery, visual discrimination skills in which he had to discriminate between a target shape and then other shapes with one of them being the same as a target shape was below average (27th percentile). A design construction task assessing perceptual reasoning in which he had to put together plastic pieces to formulate a complex design, the results were average (50th percentile).

The Perceptual Reasoning Index on the WAIS-IV measures visuospatial processing and problem solving, perceptual reasoning, visual-motor construction, nonverbal abstract problem solving, inductive reasoning, and visuospatial reasoning, as well as the ability to form abstract concepts and relationships without the use of words, ultimately assessing fluid reasoning. Perceptual Reasoning Index was average (55th percentile). Block Design was average (50th percentile). Matrix Reasoning was below average (16th percentile). Visual Puzzles was superior (91st percentile). Working Memory Index was average (63rd percentile). Digit span was average (75th percentile). Arithmetic was average (50th percentile). Processing Speed Index was below average and a weakness for Mr. Worley (14th percentile). Symbol search was below average (16th percentile). Coding was below average (16th percentile).

Executive Functioning

On the Neuropsychological Assessment Battery, planning and cognitive flexibility on a Mazes task was average (54th percentile). Verbal abstract reasoning skills on a Categories task in which he was given photos of different people and information about them, and he was asked to discriminate and differentiate different groups based on the information, results were below average (16th percentile).

Mr. Worley was also administered the Wisconsin Card Sorting Test (WCST), which is a test of nonverbal abstract reasoning skills and the ability to perform concepts and solve problems with limited feedback. He struggled on this test and only completed four categories, which was below average (11th and 16th percentile). Trials to complete in the first category were 14, which was below average (11th to 16th percentile). He had one failure to maintain set, which was average (> 16th percentile). He had difficulties learning on the task over time (2nd to 5th percentile). Perseverate responses were mildly impaired (7th percentile), as were perseverative errors. Conceptual levels of responses were mildly impaired (6th percentile).

Many of the studies on the Wisconsin Card Sorting Test point out that when there is neuroimaging during card sorting assessment, the dorsolateral area of the prefrontal cortex is typically activated. This is the neocortical brain region/area of the prefrontal cortex and is heavily interconnected with a variety of other cortical brain regions, sending and receiving inputs from most sensory brain regions, as well as subcortical brain regions like the basal ganglia. This area of the brain (dorsolateral prefrontal cortex) is relevant to executive functioning, working memory and attention, mental set shifting, abstract reasoning and problem solving, motor planning, and reward evaluation.

He was then administered the Iowa Gambling Task, which is a test of decision making and impulsive decision making, when impaired. The objective is for the individual to select low reward and low loss cards and avoiding high winning and even higher loss cards. Results indicated average performance (38th percentile).

Effort

Mr. Worley was administered the Medical Symptoms Validity Test (MSVT) to assess for cognitive effort and ability to learn and recall a word list. The results indicated good effort and normal range of memory.

Psychopathology

Mr. Worley was administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) to assess for psychopathology, personality, and emotional functioning; 6/4 code type, indicating that he is paranoid, distrusting of other people, and makes excessive demands on others for attention and sympathy. He is very dependent, immature, narcissistic, and self-indulgent. He does not get along well with others and is suspicious of the motivation of others and avoids deep emotional and intimate involvement with other people. He has expressed hostility and anger, becomes irritable, argumentative, and resentful. He is unrealistic and grandiose in self-appraisals, and essentially believes he is better than he really is. His high scale 6 of paranoia is indicative of having ideas of persecution, guarded, distrustful, feels he is mistreated by others, and is likely to blame others. He is likely to be withdrawn, hostile, and argumentative interpersonally. His Validity Scales do not indicate he was overly defensive or exaggerating in his self-report style. He presents as experiencing mild emotional distress. He likely experiences a mild dysphoric mood. He is very sensitive to criticism of others. He presents as having difficulties dealing with and expressing his anger. He has a low self-esteem and believes he is unattractive, awkward, clumsy, useless, etc. He believes that no one understands him. He again had significant evidence of persecutory thinking and feels targeted, controlled, or victimized by outside forces. He is again quite suspicious of the motivations of others, and has difficulty forming and trusting relationships. Depression and low self-esteem are relevant to his intrapersonal makeup. He also reported over-control hostility and likely stuffs his hostile emotions but may explode and blow up at access to provocation. He represses much of his emotional makeup. He feels like he is uncomfortable and unhappy, and he does not find daily life interesting or rewarding. He expresses regret and remorse for past bad deeds. He presents as, again, looking at the world as a threatening place, and feels misunderstood and mistreated. He believes people are talking about him.

Mr. Worley presents as a man who on one hand is egocentric and exaggerates his skills and talents, but on the other hand has a very low self-esteem and is inadequate. He has difficulties with family and/or authority. While he has a social and interpersonal façade, and wants to make a good impression, he has a number of interpersonal deficits and cannot relate to other people. He reported a low energy, and again there is depression to his psychological makeup. He is uncomfortable and anxious in social situations. He is lonely, unhappy, uninvolved, isolated, and estranged from others while blaming others for his short comings and problems. He feels the world is very threatening, he feels misunderstood and blames others, and feels as though he is being punished. He is

suspicious and distrustful. He lacks interest in life and does not have a positive emotional engagement with others in his life. He lacks the energy that is needed to effectively deal with life. He gives up quickly and does not care about what is happening to him, as he does not believe anything can be done to improve his life. He views himself as shy. He has difficulties meeting other people with a clear picture of self-doubt. He is reluctant to admit to any form of psychological problems and lacks insight into them. He reported some use of alcohol and drugs.

Mr. Worley was administered the Millon Clinical Multiaxial Inventory-III (MCMI-III), to assess for current psychopathology, personality, and emotional functioning. The results on this protocol indicate he was somewhat defensive and portrayed himself in a positive light. He again portrayed himself in a socially desirable manner. He had no tendency to over-report psychopathology.

Most importantly, Mr. Worley presented with a compulsive personality style in that he is behaviorally and cognitively rigid, and presents as organized, meticulous, and a perfectionist who relays himself as over-conforming, cooperative, compliant with rules, and moralistic. In my opinion, this covers up deep-seated thoughts, feelings, and behaviors that are contrary to him putting himself in a positive light. He is likely to repress his emotions and is very emotionally over-controlled. He presents his life and life style as living in a pattern of behaviors and rules that must be followed. He likely is concerned about social and interpersonal rejection. He tries to avoid criticism, has a fear of making mistakes, and is fearful of gaining others' disapproval. He likely stuffs his anger and again is very over-controlled with hostility and represses deep-seated emotions.

Mr. Worley also does not have intimate and close relationships with others. He is likely to be more introverted, isolated, passive, but in some ways dependent. He likely has difficulties with social and interpersonal connection and communication. He prefers isolative activities.

Along these lines, he also has mild fears of social rejection and disapproval.

He denied any significant evidence of mental illness such as anxiety, psychosomatic, or somatoform disorder, bipolar disorder, substance dependence, or PTSD. He did report some mild symptoms of depression. There is no evidence of thought disorder. While he has evidence of depression, it is not to the point of severe depression that would lead to difficulties in life functioning.

I administered Mr. Worley the Clinical Assessment of Depression (CAD) initially to assess current functioning. This test assesses current levels of depression and anxiety. His Depressed Mood Scales and mild clinical risk range (96th percentile), Anxiety/Worry scales in the mild clinical risk range (85th percentile), Diminished Interests Scale in the mild clinical risk range (91st percentile), and Cognitive and Physical Fatigue Scale was in the mild clinical risk range (90th percentile). His CAD Total Scale score was in the mild clinical risk range (95th percentile). All Validity Scales were in the typical range. He was not exaggerating or minimizing psychopathology.

I also wanted to assess his functioning before the instant offense and around the time of the instant offense. It should be noted this test is designed to examine current symptoms of depression and anxiety. When I asked him to answer the questions based on his retrospective analysis, how he was functioning at the time of the instant offense, this test does not formally assess for this retrospective analysis. Obviously, I am examining this with caution and realize that it is actually not a valid protocol when it assesses a retrospective mental state. He reported normal range and no evidence of elevations for depressed mood, anxiety/worry, diminished interests, but cognitive and physical fatigue was in the mild critical risk range (93rd percentile). His overall CAD Total Scale was in the normal range and not elevated.

Mr. Worley was administered the Maryland Addiction Questionnaire to assess for substance abuse, diagnosis, and treatment planning. He was not inconsistent in his responding. He was not defensive on the protocol. Mr. Worley did not have elevation on the Emotional Distress Scale. He is somewhat resistant to treatment as compared to others entering substance abuse treatment programming. He also was not overly admitting to addiction problems and his Admission of Problems Score was low. His Alcoholism Severity Score was low compared to those entering treatment. His Drug Abuse Severity Score was average compared to those entering substance abuse treatment programming. He denied having problems with alcohol or drug abuse. He denied craving substances. He denied significant cognitive problems. The Social Anxiety Scale and Antisocial Behavior Scales were both average. He believes he can stop drinking any time he chooses and that he can control his drinking by willpower alone. He reported using marijuana quite a bit. He has a moderate history of drug abuse. He believes he can control his drug abuse and described himself as a casual drug user. He really wants to stay sober and clean. He wants to be honest about his problems.

DSM-5 DIAGNOSTIC FORMULATION:

Sexual Sadism Disorder

Fetishistic Disorder

Other Specified Personality Disorder with Paranoid, Antisocial, Narcissistic, and Obsessive Compulsive Traits

Persistent Depressive Disorder

Cannabis Use Disorder

Attention Deficit Hyperactivity Disorder, combined type (inattention and impulsivity)

Possible Mild Neurocognitive Disorder Due to Concussive History

FORENSIC OPINION:

Attorneys Mark Berling and Merle Dech referred me to examine their client, Mr. James Worley, for forensic psychological and neuropsychological evaluation relative to mitigating factors that could be considered at sentencing by the jury. At the time of writing of this report and finalizing the report, Mr. James Worley was found guilty of the murder and kidnapping of Sierah Joughin. The jury found Mr. Worley guilty of 19 counts and all 17 charges.

Under the Ohio Statute ORC 2929.04(B), I would consider (7) any other factors that are relevant to the issue of whether the defendant should be sentenced to death.

Mitigation and the Law

Mitigation investigations by the defense are required pursuant to the law, including holdings and opinions by the United States Supreme Court, such as in *Lockett V. Ohio* (438 U.S. 586, 1978), in which the court held that sentencing authorities and courts must have the discretion to consider at least some mitigating factors rather than being limited to a specific list of factors.

Another case, *Tennard v. Dretke* (542 U.S. 274, 2004), found that the Supreme Court held that all relevant mitigating factors must be considered in the penalty phase of a death penalty case.

When considering these cases, the United States Supreme Court has established law that requires mitigating evidence to be considered by the trier of fact.

Furthermore, there have been ineffective assistance of counsel claims established by the United States Supreme Court, such as in *Wiggins V. Smith* (539 U.S. 510, 2003), which held that ineffective assistance of counsel in death penalty mitigation must meet requirements, including the defense counsel's performance was deficient and that the deficiency unfairly prejudiced the defendant. Failure to investigate information relevant to mitigation usually stems from neglect and insufficient funding or trial strategy.

Defense counsel has an obligation to conduct thorough investigation into the defendant's background. In addition to case law outlining a legal requirement to investigate mitigation in death penalty cases, the ABA Guidelines for death penalty defense (the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, rev. ed. 2003), which establishes that counsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty. The Guidelines further recommend a capital offense team can consist of at least two attorneys, investigator and mitigation specialist, and one of the members of the team should be qualified to examine the defendant for the presence of mental or psychological disorders.

Typically in these cases, there is a mitigation specialist or investigator assigned to the court case before mental health expert witnesses, such as myself, are appointed. My appointment as a forensic psychologist and neuropsychologist in this case to examine Mr. Worley is firmly established in the law through United States Supreme Court holdings and through the ABA

Guidelines in death penalty case representation. This mitigation evaluation in some ways is a biased assessment investigation, as I am not required as an expert to examine aggravating factors that the prosecution may want to prove in order to secure a death penalty conviction at the sentencing phase. Therefore, my evaluation, in part, is biased pursuant to the law and the requirements of mitigation investigation. I objectively am presenting potential mitigating evidence and I say the word "potential" because the jury must make meaning of mitigating and aggravating factors as they see fit. Their contemplation and decision as to what mitigating factors are relevant at sentencing may be different or the same as my investigation as to mitigating factors.

Background History Summary

In summarizing Mr. Worley's life, he was born in Tacoma, Washington. He was raised by his biological parents who were about 39 and 38 years of age when he was born. He has two full-blooded siblings including a brother, Mark, and a sister, Cynthia. Mark is about 56 years of age while Cynthia is about 63 years of age.

During my evaluations with Mr. Worley, he presented as very emotionally dull and shallow concerning his emotional depth and insight into his feelings, and interconnectedness with his family. He presents with significant intimacy deficits (explained more below).

When asked about his parents' marriage, he believed his parents got married and started a family in the 1960s. Cynthia was older and was able to provide me with more information about her parents' marriage. She described her father as being a violent alcoholic at times. They divorced when Cynthia was about 13 and Mr. Worley was about 9. Mr. Worley told me that he would go some periods of time without seeing his father. He said at times he did not see his father for about six months and they would go visit him a couple times a year. There were times where he would see him every few months or once a month. As noted, his father served in the military and apparently had service in World War II. Mr. Worley stated that he witnessed one domestic violence incident with his parents and his father beat his mother up. "I know that alcohol was involved. I really don't know the extent of it." Cynthia added that she had witnessed her father physically abuse her mother on more than one occasion, and that he was a violent alcoholic at times. Again, Mr. Worley did not offer much insight into his parents' divorce. While he was quite young at the time of the divorce (around 5 to 9 years of age), he again did not offer much insight and did not seem to have talked with his parents about the nature of their divorce. He denied regular abuse by his father to his mother other than the one domestic violence incident he recalled. He also did not have much information as to his exposure to his father's alcohol use.

Following his parents' divorce, Mr. Worley lived with his mother and siblings. Because of the limitations seeing his father, he reported not having a very significant or emotionally attached relationship with his father.

As highlighted above, Mr. Worley's mother, Florence, indicated that her husband, James, had been guilty of grossly neglected duties and extreme cruelty. She reported that he had assaulted, molested, and threatened her life, and it is my understanding that these court documents led to the divorce and custody of the children to the mother.

Mr. Worley has been inconsistent throughout other interviews and evaluations, saying he lived with his mother throughout his childhood and adolescent development. Apparently, at age 16 or 17, he and his brother moved in with their biological father briefly, for a few months. They lived with their father for about three months until their father moved out and then Mr. Worley and his brother continued to pay rent and remained at the residence until Mr. Worley was about 21 or 22. He said he had difficulties and reportedly he and his brother moved out of their mother's house because their stepfather was too strict. As noted, Mr. Worley's sister, Cynthia, reported marked conflict with their stepfather, who had attempted to rape her and even succeeded on at least one occasion.

Therefore, both father and stepfather figures were unstable and abusive.

During my evaluation, I had concerns about Mr. Worley's connection and attachment to his mother, especially due to the nature of his criminal sexually oriented offenses. He said he had a very strong relationship with his mother. "I loved her like anyone would love their mom." He described her as a genuine and awesome person. He said there was no evidence of abuse between them, and when I asked him if there were any sexually inappropriate or incestuous behaviors between Mr. Worley and his mother, he became quite irritated and was offended and shocked that I would ask him such a thing. I do not have any evidence of abuse by his mother. There is evidence of maternal psychopathology with dementia, but not evidence of other mental illness or addiction, or parental deviance. Of the sexual psychiatric cases I have examined, maternal prostitution and parental deviance is common, and I had no such information.

Similarly, when I talked with Mr. Worley about his relationship with his father, he said it was good, even though he had a difficult time processing the domestic violence incident when he was about 5 years old. However, the psychological effects in a number of domestic violence incidences would be more intense than just one.

Mr. Worley stated his father eventually got married two more times and his mother was married one more time to a man named Graydon. He again denied any knowledge or history of abuse in the family other than the one domestic violence incident. He denied any sexually inappropriate behaviors or experiences with his siblings.

As noted, Cynthia had recalled her father chasing her mother around with a butcher knife in the house. Mr. Worley did not recall this exact incident with the knife, but he did remember his father yanking the phone out of the wall. Cynthia described fear of her father and was scared that he would hurt her mother, although Mr. Worley denied this fear.

Developmentally, I do not have any knowledge of any type of developmental delays, and do not have any knowledge of his mother using alcohol or drugs during her pregnancy. I do not have any information concerning any prenatal disruptions or abuse while Mr. Worley's mother was pregnant with him. I also do not have any history of knowledge of developmental delays for Mr. Worley. Cynthia did describe her brother as being a daydreamer. The finding of being a daydreamer has been noted in qualitative studies of sexual homicide offenders.

I asked Cynthia about her brother, Jim's social functioning. She said that he liked to talk and goof around. She said he never assaulted anyone in the family. She noted that he had some friends outside of the family. She was somewhat disconnected from him during their adulthood as she moved. She talked with myself and the mitigation investigator about her belief that he had ADHD as a youth. She had noted him spacing out and being prescribed Ritalin. Cynthia also noted her brother had poor grades and apparently had to repeat the second or third grade. When I talked with Mr. Worley about his schooling, he said he attended public schools and reviewed his grade point which was low at 1.5. His ODRC reading level was around the tenth grade. As noted, he had a number of jobs during his adulthood and it seems he always tried to be employed. He was never homeless. He also seemed to depend on his mother quite significantly leading up to this offense. He also said that he was working primarily as a caretaker for their mother up to the time of her passing.

Along these lines, I talked with Mr. Worley about his mother's passing. He was taking care of her 24/7 along with his brother's assistance. The three of them were living on their property. Mr. Worley was devastated about his mother's death. He also recalled his father passing in about 1984. Mr. Worley also described his brother's condition. He noted that his brother was an outstanding student and eventually married, and was intellectually brilliant, but suffered some type of breakdown. He described his brother as developing a chemical imbalance of the brain and believed that he was diagnosed with schizophrenia and was provided disability by the state.

To summarize Mr. Worley's childhood, again, he seemed to lack an emotional depth and insight into his relationships with his parents. I have concerns about a potentially incestuous relationship with his mother. Given the nature of his sexually deviant behaviors, the dark side of his life, and the fact that he was simultaneously caretaking for his mother, and was essentially isolated and withdrawn from society, something does not seem right to me.

When contemplating Mr. Worley's relationship history, he had a relationship with a woman who was a friend of his sister. He described her as very nice, but she broke their relationship up and married someone else. He said he was interested in females and described himself as a heterosexual male. He never married anyone but dated occasionally and was able to mention a few names of women he dated. He was a bit guarded and lacked any type of depth in talking about these relationships with women. When asked why he never got married, he stated he took this seriously and was sensitive to his parents' divorce and did not want to follow suit. He did talk about having some sexual relations with prostitutes (sexual behaviors will be explained below).

We talked about possible substance abuse history for him. He stated he started smoking marijuana when he was about 13. Mr. Worley had been using substances on a regular basis and eventually was trafficking drugs in the 1980s. He was making a lot of money doing this and was smoking regularly. At times during the evaluation, he did not believe he had a problem with marijuana, thinking it negatively affected his life. As noted, he had been charged with cultivating and selling marijuana on his property. In the 1980s he smoked a lot of marijuana on a regular basis and developed a tolerance. I also believe this drug use detrimentally affected his motivation. He said he experimented with other drugs such as PCP and LSD in the 1970s. He said he was more

attracted to marijuana than other drugs. He did not drink alcohol much.

Mr. Worley's Psychiatric/Psychological and Neuropsychological Conditions

The following reveals Mr. Worley's mental health history, and psychological and psychiatric conditions related to my interview and testing, with the nature of his criminal offending.

It was very difficult to evaluate Mr. Worley due to his denial of not only his criminal offense history but also his psychiatric symptoms. He also lacked the depth as to his emotional functioning and interconnectedness with other people. He seemed to lack insight into childhood issues and traumatic events. He also presented as not having any problems and certainly could not provide any insight or discussion into the nature of his offenses, particularly the 1990 abduction and this current kidnapping and murder of Sierah Joughin. Subsequently, there is some speculation on my end, but, after examining the approximately 488 murder cases in my career, and a dozen or so of them being sexual homicide cases, I can lend some insight into his criminal mindset. It should also be noted that many individuals who have severe paraphilic disorders (sexual deviancy disorders) that I believe Mr. Worley has, also have deep-rooted denial and deep-rooted sexual fantasy systems that they do not typically acknowledge. The only time they may acknowledge them is after intensive inpatient sex offender treatment therapy, along the lines of civil commitment.

Along these lines, I cannot definitively say that Mr. Worley is a serial offender or serial killer, but I do have grave concerns about the nature of the 1990 abduction and its likely sexually oriented motive, with the current sexual-related homicide.

Turning to his psychiatric diagnoses, I utilized the Diagnostic and Statistical Manual of Mental Disorders-5 (DSM-5) published by the American Psychiatric Association in rendering psychiatric diagnoses in this case.

His psychiatric diagnoses include:

Sexual Sadism Disorder

Fetishistic Disorder

Other Specified Personality Disorder with Paranoid, Antisocial, Narcissistic, and Obsessive Compulsive Traits

Persistent Depressive Disorder

Cannabis Use Disorder

Attention Deficit Hyperactivity Disorder, combined type (inattention and impulsivity)

Possible Mild Neurocognitive Disorder Due to Concussive History

It is my opinion with a reasonable degree of psychological and neuropsychological certainty that Mr. Worley does have a neurodevelopmental disorder of ADHD. Neurodevelopmental disorders are impairments of the growth and development of the brain or central nervous system. They can affect the patient's emotion, learning ability, self-control and memory. Neurodevelopmental disorders are a group of conditions in the developmental period. They manifest often before a child enters grade school and characterized by developmental deficits and impairments in personal, social, academic, or occupational functioning. The range of developmental deficits varies from very specific limitations of learning or control of executive functions to global impairments of social skills or intelligence. In my opinion, he has ADHD with evidence of difficulty processing information. His Processing Speed Index score on his WAIS-IV currently was in the below average range. In addition, he presented as someone who did very poorly in school with a 1.5 grade point average. I did not have any records of special education or learning disabilities, but I do have concerns about his ability to process information. Processing of information is a hallmark of learning disability as well as ADHD. Again, neurodevelopmental disorders are a group of disorders in which the development of the central nervous system and/or brain is disturbed. This can include developmental brain dysfunction which can manifest as neuropsychiatric problems or impairment motor functioning, learning language, or nonverbal communication. Again, he had difficulties with ADHD with attention as well as impulsivity developmentally more so than hyperactivity.

When we turn to the neuroanatomy of ADHD, there are a number of studies that will look into brain structure and function. Conversion data from neuroimaging, neuropsychology, and neurochemical studies, consistently point to the involvement to the frontostriatal network that is likely a contributor to pathophysiology of ADHD. This network typically involves the lateral prefrontal cortex, the dorsolateral anterior cingulate cortex, the caudate nucleus, and putamen. The growing literature demonstrates that abnormalities affect other cortical regions including the cerebellum. Anatomical studies and research suggest widespread reductions in volume throughout the cerebrum and cerebellum, while functional imaging studies suggest affected individuals activate more diffuse areas than controls during the performance of cognitive tasks. Individuals will often have reductions in volume and have been observed in a total cerebral volume, the prefrontal cortex of the basal ganglia (striatum) and the dorsolateral anterior cingulate cortex, the corpus callosum, and the cerebellum. Hypoactivation (diminished activation) of the dorsolateral anterior cingulate cortex and the frontal cortex and the basal ganglia have also been reported.

In this case, I do have concerns about Mr. Worley's inattention and impulsivity leading to low frustration tolerance, irritability, and need for stimulation and proneness to boredom that serves as a potential nexus with nature of the instant offenses. In essence, Mr. Worley needs stimulation to his brain to keep him activated. Obviously, Mr. Worley's ADHD condition would also likely detrimentally affect his ability to succeed in school, leading to very poor grades. It should also be noted that approximately 5% of all normal individuals will have a diagnosis of ADHD, whereas approximately 40% of all criminal offenders and violent offenders will have an ADHD condition.

I also want to focus on the frontostriatal circuit of the brain in which neural pathways connect the frontal lobe regions with the basal ganglia that mediate motor, cognitive, and behavior functions within the brain. The frontostriatal circuits are part of the executive functions of the brain which include selection and perception of important information, manipulation of information and working memory, planning and organization, behavioral control, decision making, and adaptation of changes.

Along these lines, not only do we have processing speed deficits in this case, but we also have evidence of impairments on a card sorting task that is part of this frontostriatal neurocircuitry.

The Wisconsin Card Sorting Test is a neuropsychological test assessing abstract reasoning, ability to form concepts, and shift mental set, pushing the person to display flexibility in the face of changing schedules of reinforcement. Significant impairments on the card sorting task suggest some brain dysfunction that may be related to acquired brain injury, neurodegenerative disease, or mental illness. Essentially, the card sorting assesses frontal lobe executive functioning such as strategic planning, organizing, utilizing environmental feedback to shift cognitive sets, and directly behavior toward achieving a goal and modulating impulsive responding. The neuroimaging studies with the card sorting test include activation of the frontoparietal regions and the striatum area of the brain. The anterior cingulate cortex of the temporoparietal junction also represented an attentional network for error detection. The right dorsolateral prefrontal cortex is perhaps the most significant finding to our studies. The role of the right distal and right prefrontal cortex is noted to be important in inhibiting responses, moving the focus of attention and engaging in attention with a new target. Again, this area of the brain is important in facilitating executive functioning including working memory and selective attention, conscious decision making, reasoning, inhibition, and appreciating outcome prediction of behavior.

While his deficits in processing speed and auditory attention and executive functioning are likely due in part to ADHD, I am concerned about a history of concussions and mild traumatic brain injuries that may have impacted his brain functioning, leading to a mild neurocognitive disorder. Such a disorder includes evidence of modest brain dysfunction due to traumatic brain injury in one or more areas of neuropsychological functioning that we do have here.

In summarizing his neuropsychological testing, performance was intact overall for verbal comprehension and language skills, visuospatial and perceptual reasoning skills, and decision making on a Gambling Task. He had some difficulties on the Verbal Categories Task assessing verbal abstract reasoning. When considering neuroimaging of verbal analytical reasoning, negative correlations have been observed in the right inferior frontal gyrus, dorsoanterior cingulate cortex, and in the temporoparietal junction. There are concerns in this case as to nonverbal and verbal abstract reasoning skills for Mr. Worley, and the anterior cingulate cortex of the brain again may be of concern.

When taken together, all of this neuropsychological assessment, I again have most concerns with an underlying attention deficit/hyperactivity disorder (ADHD) attentional condition related especially to processing speed and auditory attention, as well as nonverbal and verbal executive

functioning, reasoning skills, as well as verbal learning and memory skills. These impairments may also be due to a mild neurocognitive disorder related to the effects of multiple concussions.

A number of the areas of the brain, as noted above, are under concern with primary focus on the dorsolateral area of the prefrontal cortex, again noted for decision making, disinhibition, management of cognitive processing, cognitive flexibility, and planning. This area of the brain has also been known to be involved in both risky and moral decision making. I do have concerns about how the neuropsychological functioning noted, and deficits of some executive functioning can be related to the neuroanatomical area of the brain responsible for executive functioning. This information may provide insight into at least part of the nature of the instant offenses. In my opinion, Mr. Worley has a sense of need for stimulation and proneness to boredom. He is at risk for low frustration tolerance and essentially has a brain that is thirsty for stimulation and cortical arousal, which can be served by his constant use of pornography which satiates his attention.

As noted, I believe that Mr. Worley does have a condition of attention deficit/hyperactivity disorder (ADHD) with evidence of inattention and impulsivity symptoms more so than hyperactivity. This is a severe neurodevelopmental condition present in childhood through adulthood. The history of concussions and their potential effects on brain structure and functioning would be enhanced with the use of neuroimaging in this case.

From a mental health standpoint, Mr. Worley has evidence of a persistent depressive disorder, formally labeled dysthymic disorder. This is a continuous long-term form of chronic depression that is lower level and less severe than major depressive disorder. Individuals with this disorder often feel hopeless, lack productivity, low self-esteem, and feelings of inadequacy. He may experience irritability, anger, lack of energy, avoidance of social activities, loss of interest in daily activities, feeling empty and sad. His Clinical Assessment of Depression clearly indicated some evidence of anxiety and depression. His total score on the CAD was in the mild clinical risk range. Obviously, his depression and anxiety symptoms would be certainly affected by his legal situation. Although, I believe that he was depressed for many years.

In addition to the history of depressive symptomatology, there is also evidence of comorbidity with his substance use disorder to cannabis. In addition to the long history of persistent depressive disorder and chronic dysthymia, it is my opinion that he has a dual diagnosis condition of cannabis use disorder. In my opinion, he minimizes his cannabis use history and believes he can control his use, and never had any type of interpersonal, occupational, or lifestyle dysfunction, although I believe otherwise. Cannabis use disorder is considered with the following criteria, a problematic pattern of cannabis use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:

1. Cannabis is often taken in larger amounts or over a longer period of time than it was intended to.
2. There is a persistent desire or unsuccessful effort to cut down or control cannabis use.
3. A great deal of time is spent in activities necessary to obtain cannabis, use cannabis, or recover from its effects.

4. Craving or a strong desire or urge to use cannabis.
5. Recurrent cannabis use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued cannabis use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of cannabis.
7. Important social, occupational, or recreational activities are given up or reduced because of cannabis use.
8. Recurrent cannabis use in situations in which it is physically hazardous.
9. Cannabis use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by cannabis.
10. Tolerance, as defined by either a need for markedly increased cannabis to achieve intoxication or desired effect and markedly diminished effect with continued use of the same amount of the substance.
11. Withdrawal, as manifested by the characteristic of withdrawal syndrome for cannabis or cannabis is taken to relieve or avoid withdrawal symptoms.

It is my opinion, Mr. Worley has used cannabis in larger amounts for a longer period of time than it was intended, he has spent a great deal of time in activities necessary to obtain cannabis or use cannabis, and he has a strong craving, desire, or urge to use cannabis, and he has likely had difficulties with fulfilling major obligations for work due to his cannabis use. He has also likely continued cannabis use despite having persistent, recurrent social or interpersonal problems caused by his use of cannabis. He has continued his carelessness despite knowledge of having persistent or recurrent physical or psychological problems, again which he lacks insight into. He has likely developed a tolerance to cannabis as well.

There is a large body of literature that will focus on dual diagnoses relevant to cannabis use disorder and depression. One major 3-year follow up study suggests there is a significant relationship between cannabis use and a diagnosis of depression.

Mr. Worley also qualifies for a severe personality disorder. Individuals with a sexual homicide history often have joint diagnoses of personality disorder and paraphilic disorder, which will both be described below.

In general, based on DSM-V criteria, a general personality disorder includes the following criteria:

A) An enduring pattern and/or experience of behavior of deviance markedly from the expectations of the individual's culture. This pattern is manifested in two or more of the following areas:

- 1) Cognition (ways of perceiving and interpreting self, other people, and events;
- 2) Affectivity (a range intensity, lability, and appropriateness of emotional response;
- 3) Interpersonal functioning;
- 4) Impulse control.

- B) The enduring patterns, inflexibility, and pervasive across a broad range of personal and social situations.
- C) The enduring pattern leads to clinically significant distress or impairment in social, occupational, and other areas of functioning.
- D) The pattern is stable and of long duration. Its onset can be traced back to at least adolescence or early adulthood.
- E) The enduring pattern is not explained as a manifestation or a consequence of another mental disorder.
- F) The enduring pattern is not attributable to physiological effects of substances or another medical condition.

Personality traits, again, are enduring patterns of perceiving or relating to and thinking about one's environment and one's self that are exhibited in a wide range of social and personal context. When personality traits are inflexible, maladaptive, and causing significant functional impairment or subjective distress, they then constitute personality disorders. Again, the essential feature of personality disorders are an enduring pattern and/or experience a behavior that deviates markedly from the expectations of an individual's culture are manifested in at least two of the following areas, including cognition, affectivity, interpersonal functioning, or impulse control.

As noted, during my evaluations with Mr. Worley, he had a tendency to minimize and deny psychological, emotional, and psychiatric symptoms. He had a tendency to portray himself in a positive light. I administered another psychological test aimed at looking at psychopathology and personality functioning. On the MMPI-2, there was evidence of a paranoid personality in which he is distrustful, suspicious, and basically believes others are trying to harm him. He distrusts the motivations and intent of other people, and then therefore avoids deep emotional and intimate involvement with them. He is very guarded, reserved, distrustful, and feels persecuted. He is withdrawn, hostile, and extremely sensitive to the criticism by others. He expects others to criticize, ridicule, and hurt him. While he is suspicious about the motivations of others, he again has difficulty forming an intimate and trusting relationship. It is my opinion he also has evidence of antisocial personality disorder. The cause of paranoid personality disorder is unknown. Researchers believe a combination of biological and environmental factors can lead to paranoid personality disorder.

The DSM-V Paranoid Personality Disorder criteria include the following:

Criterion A, a pervasive distrust and suspiciousness of others such as their motives are interpreted as malevolent, beginning by early adulthood and present in a variety of contexts as indicated by four or more of the following:

1. Suspects without sufficient basis, that others are exploiting, harming, or deceiving him.
2. Is preoccupied with unjustified doubts about the loyalty or trustworthiness of friends or associates.
3. Is reluctant to confide in others because of unwarranted fear that the information will be used maliciously against him.
4. Reads hidden demeaning or threatening meanings in benign remarks or comments.

5. Persistently bears grudges.
6. Perceives attacks on character or reputation not apparent to others and is quick to react angrily or counteract.
7. Has recurrent suspicions without justification regarding fidelity of spouse or sexual partner.

It appears that he has at least a few to several of these symptoms. He has likely looked at others in a hypervigilant fashion for potential threats, he is guarded, secretive, and is emotionally cold and lacking in intimacy. It should be noted that there is some evidence for increased problems of paranoid personality disorder in relatives of probands with schizophrenia and for a more specific familiar relationship with delusional disorder, persecutory type.

Mr. Worley also qualifies for Antisocial Personality Disorder traits as an adult. Antisocial Personality Disorder includes the following criteria:

- A. A pervasive pattern of disregard for and violation of the rights of others, occurring since 15, as indicated by three or more of the following:
 1. Failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts or grounds for arrest.
 2. Deceitfulness as indicated by repeated lying and use of aliases, or conning others for personal profit or pleasure.
 3. Impulsivity and failure to plan ahead.
 4. Irritability and aggressive as indicated by repeated physical fights or assaults.
 5. Reckless disregard for safety of self or others.
 6. Consistent irresponsibility as indicated by repeated failures to sustain consistent work behavior or other financial obligations.
 7. Lack of remorse as indicated by being indifferent to rationalizing having hurt, mistreated, or stolen from another.
- B. The individual is at least 18 years.
- C. There is evidence of cognitive disorder with onset before age 15.
- D. The occurrence of antisocial behavior is not exclusively during the course of schizophrenia or bipolar disorder.

In this case, Mr. Worley obviously has broken the law and failed to conform to social norms with respect to lawful behaviors. There is evidence, in my opinion, of conning others, impulsivity, reckless disregard for safety of self or others, irritability, aggressiveness, and a lack of remorse. Mr. Worley did not appear to have evidence of conduct disorder by age 15. He certainly has antisocial personality traits in adulthood.

When considering risk factors for antisocial personality disorder, it is certainly more common among the first-degree biological relatives to those with the disorder than in the general population. Within the family as a member with antisocial personality disorder, males more often have antisocial personality disorder and substance use disorders. Adoption studies have indicated both genetic and environmental factors contribute to the risk of developing antisocial personality disorder. Both adopted and biological children of parents with antisocial personality disorder have increased risk of developing antisocial personality disorder. There have also been a number of

studies targeting the neuroimaging of the antisocial personality disorder. He would be at risk for decreased amygdala volume and orbitofrontal cortex volume and functioning. Other research has indicated there is a reduced volume in the prefrontal regions of the prefrontal cortex.

It is my opinion that Mr. Worley also qualifies for traits if not a full Narcissistic Personality Disorder. Narcissistic Personality Disorder has the following criteria:

A pervasive pattern of grandiosity (fantasy or behavior), need for admiration, and lack of empathy beginning by early adulthood and present in a variety of contexts, as indicated by five or more of the following:

1. Has a grandiose sense of self-importance (exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements).
2. Is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love.
3. Believes that he is special and unique, and can be understood by, or should associate with, other special or high-status people.
4. Requires excessive admiration.
5. Has a sense of entitlement.
6. Is interpersonally exploitative (takes advantage of others to achieve his own ends).
7. Lacks empathy and is unwilling to recognize or identify with the feelings and needs of others.
8. Is often envious of others or believes that others are envious of him.
9. Shows arrogant, haughty behaviors or attitudes.

In this case, Mr. Worley has evidence of lacking of empathy and there is some grandiosity and a definite sense of entitlement. He is interpersonally exploitive. He likely does not have a full narcissistic personality disorder, but definitely has traits. There is a lack of neurobiological studies of narcissistic personality disorder. There is some literature suggesting gray matter abnormalities in those with narcissistic personality disorder relevant to smaller gray matter volume in the left anterior insula, which is also relevant to having lack of empathy. Many of these studies assessing the neurobiological underpinnings of antisocial personality and narcissistic personality provide insight into the fact that they do poorer in identifying facial emotion in facial emotional recognition tasks than other psychiatric control participants. It also should be noted that individuals with narcissistic personality traits have severe evidence of underlying feelings of inadequacy, low self-esteem, self-doubt, and interpersonal failure.

The final personality disorder that warrants some attention in this case, at least with traits, includes obsessive compulsive personality disorder. The following criteria are noted, including a pervasive pattern of preoccupation with orderliness, perfectionism, mental and interpersonal control, at the expense of flexibility, openness, and efficiency, beginning by early adulthood and present in a variety of contexts, including four or more of the following:

1. Is preoccupied with details, rules, lists, order, organization, or schedules to the extent that the major point of the activity is lost.
2. Shows perfectionism that interferes with task completion, for example, is unable to complete a project because his overly strict standards are not met.

3. Is excessively devoted to work and productivity to the exclusion of leisure activities and friendships, which are not accounted for by obvious economic necessity.
4. Is over conscientious, scrupulous, and inflexible about matters of morality, ethics, or values (not accounted for by culture or religious identification).
5. Is unable to discharge worn-out or worthless objects even when they have no sentimental value.
6. Is reluctant to delegate tasks or work to others or to work with others unless they submit to exactly his way of doing things.
7. Adopts a marginally spending style toward both self and others (money is viewed as something to be hoarded for future catastrophes).
8. Shows rigidity and stubbornness.

In this case, Mr. Worley does present with a tendency to work excessively and be devoted to work and productivity at the exclusion of other leisure activities. He is inflexible about managing morality, ethics, or values, he is unable to discard worn-out or worthless objects, and is likely to be a hoarder.

The neuroimaging studies relevant to obsessive compulsive personality disorder have been associated with a greater striatal surface area localized to the caudate tail, smaller ventral volumes, and a greater cortical thickness in the right prefrontal cortex. There is likely evidence of smaller ventral striate and volumes and greater cortical thickness in the orbital frontal cortex.

Attachment Disorder

I had special concerns about the triad of personality disorder symptoms relevant to paranoid, narcissistic, obsessive compulsive, and antisocial personality disorder traits for Mr. Worley. In my opinion, he viewed the world in a suspicious way, expected other people to hurt him, and he viewed the world as suspicious, and believed others would treat him in a malevolent fashion. While he had a tendency to exploit others and was entitled, grandiose, believing he had no faults, and was upstanding, this was a veneer for an underlying extremely damaged low self-esteem and inadequate sense of self while having a tendency to engage in antisocial acts and be above the law. When we have these severe personality disorders, especially the antisocial, narcissist, and paranoid types, I will first look at the individual's early relationship and attachment with primary caregivers. Typically, there is a damaged and/or disorganized attachment to primary caregivers.

Attachment theory is proposed by early interactions between child and caregiver with the core of the attachment theory germane to the affected emotional bond that is also between the caregiver and infant, which is the developmental nucleus of identity formation, intrapersonal regulation, and interpersonal attitudes. The attachment bond between child and primary caregiver, especially between child and mother as the behavioral systems function throughout human evolution is to protect the infant from danger by seeking the security of a caregiver and guardian, and ultimately enhancing the child's likelihood of survival and eventual reproduction. This bond promotes comfort during stressful periods, reduces negative affect, and allows the infant to develop in a healthy, realistic, and coherent sense of self.

Early patterns of emotional bonding and attachment between caregivers and infants later serve to regulate emotion and behavior. A child's formative experiences with primary caregivers not only provide the foundation of a person's basic sense of self but influence strategies and capacities he/she possesses to navigate various life span developmental changes. Experiences and attachment with caregivers influence development of sense of self, a sense of others in the world, capacity for a sense of self in the context of interpersonal relationships, and ability to regulate emotional experience. Early insecure and damaged attachments have a high risk of later developmental psychopathology. As noted, attachment is the emotional ties develop between and infant, child, and caregiver, and the behavioral system that evolves as a result. A human infant has an important biological need for proximity to a caregiver to feel protected, particularly in times of danger and stress. This need serves as the impetus for attachment. The dependent child forms a primary attachment to the caregiver which serves as a basis to facilitate the regulation of feelings and behaviors that emerge when there are threats to the child's sense of safety. Insecure attachments predict relationship and behavioral difficulties, deficits in empathy and social competence. Evidence suggests a secure attachment in infancy provides protection from psychopathology and mental illness.

In this case, the criminal offending, his psychiatric disorders, his personality disorders, and paraphilic disorders all point to a damaged attachment system between Mr. Worley and his primary caregivers. In this case, there is no question that he had a damaged attachment system between he and his father, as there was a divorce and his father appeared to be a dysfunctional individual with a chronic history of substance and some evidence of domestic violence and aggressive behaviors toward the mother. He then went long periods with little or no contact with his father. I asked Mr. Worley at length, as well as his sister, about any potential damaged attachment between he and his mother, which I would expect and assume would have occurred in this case. However, he continued to state that he was extremely close with his mother and I cannot conclude, based on the lack of information, that there was a significant damaged attachment between Mr. Worley and his mother. He seemed to be too dependent on her over time. He essentially always lived with her, and importantly, had never lived with any other women. In my opinion, he had significant problems with intimacy skills and the ability to become close and attached to women in normal relationships, for example. Rather, he would masturbate excessively, and was detached and withdrawn from interpersonal relationships, especially with women. His adult relationships with men were also skewed and warped in that he would simply smoke marijuana and watch pornography with male friends. Obviously, there is some evidence of severe interpersonal detachment and dysfunction for Mr. Worley.

Sexual Paraphilic Disorders

Finally, and perhaps most importantly, is the evidence of a paraphilic disorder system for Mr. Worley. The term paraphilia denotes any intent and persistent to sexual interest, other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. A paraphilic disorder is a paraphilia that is currently causing the stress or impairment or a paraphilia whose satisfaction has entailed personal harm or risk of harm to others.

In this case, it looks to me as though Mr. Worley has two paraphilias that are interconnected. The primary paraphilia is Sexual Sadism. The diagnosis of Sexual Sadism includes the following diagnostic criteria:

- A) Over a period of at least six months, recurrent, intense sexual arousal from physical or psychological suffering of another person, as manifested by fantasies, urges, or behaviors.
- B) The individual has acted out any sexual urges with a non-consenting person, or the sexual urges or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

In my opinion, Mr. Worley has definite evidence of sexual sadism. One could argue that he did not fulfill the six-month criteria of recurrent, intense sexual arousal from the physical or psychological suffering another person as manifested by fantasies, urges, or behaviors. Many times we diagnose based on behavioral criteria in criminal offenses. In this case, the initial 1990 abduction was not a formal sexual offense, but one could surmise that the handcuffing and abduction, and potential kidnapping would have led to a sex offense if he had not gotten caught. Although this is speculative, it does deserve some attention. Obviously, the nature of this instant offense includes a breathable gag-ball mouth restraint with a combination of dressing the victim in a diaper. In my opinion, Mr. Worley had sexual fantasies that turned into deviant sexual practices and a paraphilic disorder related to kidnapping the victim and dominating her, having fantasies of bondage and having a potential fetishistic disorder to diapers and utilizing them in a sadistic fashion. Mr. Worley's current sexual offense is clearly indicated in that he had intense sexual arousal for the physical and psychological suffering of the victim, and he acted on these sexual urges and fantasies with a non-consenting person with the main goal of making them suffer and to humiliate them.

When we look at fetishistic disorder, the DSM-V criteria include the following:

- A) Over a period of at least six months, recurrent, intense sexual arousal from either the use of nonmoving objects or highly specific focus on nongenital body parts, as manifested by fantasies, urges, and behaviors.
- B) Fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of function. The use of the fetish objects are not limited to articles of clothing, usually cross-dressing (as in transvestic disorder) or devices specifically designed for the purpose of tactile genital stimulation (example, vibrator).

In my opinion, there is evidence of nonmoving objects, including diapers that he utilized to intensify sexual arousal and that were blended in with his sexual sadistic symptoms. In essence, Mr. Worley used handcuffs in the 1990 abduction and then used a diaper in the instant offense, as well as bondage equipment to fulfill his sexual fantasies. There is a heightened sexual deviance condition when there are two or more paraphilic disorders versus just one (sexual sadism and fetishistic disorder in this case). When we look more at sexual sadism, there are a number of other traits that may be important to consider. In my opinion, some of these factors obviously are speculative, because Mr. Worley denied both the abduction from 1990, the instant offense, and any type of sexually deviant behaviors, thoughts, or fantasies. In my opinion, Mr. Worley likely

was aroused by the criminal offense with Ms. Joughin. He certainly exercised power of control, domination over the victim, and the way she was dressed with the bondage gag ball, suggests that he certainly humiliated and degraded the victim. I do not know how long he had engaged in these behaviors with the victim, but certainly they appear to be torturous acts with inflicting severe cruelty and humiliation on her. Other signs of sexual sadism were not present. For example, I did not see that he mutilated sexual parts of her body. I did not see that there was evidence that he kept trophies of the victim (although if he kept her underwear this could be considered a trophy). I did not see that he mutilated nonsexual parts of her body, and I did not see that there was any insertion of objects into the victim's bodily orifices. There was evidence that she was abducted and confined. There was evidence that she was buried in a ditch. I did not see that there was any evidence of gratuitous violence toward the victim, although there may have been evidence of blunt force trauma to the head to gain control over the victim.

As noted, the sexual sadistic traits are certainly connected with the use of bondage erotica-type paraphernalia, as well as the use of the diaper. What is important to this case conceptualization regarding his mental state and psychiatric diagnoses, is the fact that this Mr. Worley displayed very obsessive and compulsive paraphilic and sexually deviant behaviors. It is my understanding from his attorneys, that Mr. Worley was very obsessive with his use of the internet searching for pornography, especially being obsessed with bondage and BDSM erotica-type material even within a couple of hours of Ms. Joughin's kidnapping. BDSM is different from sexual sadism. BDSM is a variety of often erotic practices or role playing involving bondage discipline, dominance, and submission, sadomasochism and other related interpersonal dynamics. The key issue here is that it is consensual and that an individual can engage in sadomasochism but the partner has to be consensual, whereas sexual sadism involves a non-consenting person and is a victim of a crime and a sexually oriented offense. While we have criminal sexual behaviors relevant to the kidnapping and murder, as well as the crime scene analysis, and Mr. Worley's internet search terms, we unfortunately do not have good evidence as to his thought process, his sexual fantasies, or his intersexual life. I have worked with many sex offenders from low risk to high risk, and especially the civilly committed, more dangerous sex offenders who are more likely to have ingrained paraphilic disorders, and often these high risk individuals will not admit to their deviant sexual practices or their criminal sex offenses.

Mr. Worley is one of these individuals who is quite defensive, certainly has rationalizations and justifications in his mind about his deviant sexual acts, but will never give these up in an interview or evaluation. Mr. Worley continued to deny any type of deviant sexual activities, denied his 1990 and current offenses, and was unable to offer any insight into the motivations of his behaviors. Along those lines, he also minimized any type of deviant sexual practices regarding his use of pornography and search terms, for example. He also provides a ridiculous and ludicrous analysis of his bondage equipment in his barn and the trap door in his barn through justifying any remotely deviant sexual practices as him wanting to start an adult pornography studio in his barn. His denial and justifications, and rationalizations for his behaviors are extremely thick with lack of insight and desire to be candid and honest about his deviant sexual issues and practices.

Unfortunately, to many forensic cases, and especially to death penalty mitigation cases, individuals who commit sexual homicide often will deny not only the offenses, but any type of deviant sexual practices. This denial prevents us from fully understanding their mindset, which would provide data as to their psychiatric diagnoses. Therefore, there is some speculation on my part, but after examining almost 500 murder cases and approximately 600 to 700 sex offenders in my career, I do have a good idea as to the inner workings of Mr. Worley's mindset. The "proof in the pudding" here in this case is the behavioral evidence noted in the crime scene germane to the bondage equipment in the barn, the prior abduction case, and the nature of how Sierah Joughin was murdered.

Reportedly in this case also is the combination of a severe personality disorder marked by antisocial, narcissistic traits with the sexual deviance/paraphilic diagnoses of primarily sexual sadism and fetishistic disorder. Once we arrive at these diagnoses, one may then ask the common sensical question as to why does this type of behavior happen? Obviously, this is a biopsychosocial phenomenon and a nature-nurture phenomenon as all behavior and psychiatric diagnoses are. Again, Mr. Worley's denials do not assist us in being able to delve into more definitive elements of his mindset. Although, the research and my experience with these type of offenders points toward a sophisticated and obsessive, as well as dysfunctional deviant sexual fantasy process. Mr. Worley's sexually deviant behaviors and the nature of this sexual homicide are certainly triggered by obsessive deviant sexual fantasies. It is extremely rare for a sexual murderer or sexual offender to admit to and discuss these deviant sexual fantasies and behaviors.

When considering the overall mitigation in this case as its relevance to psychiatric and psychological factors to the crime, again, it is my opinion within a reasonable degree of psychological certainty that Mr. Worley qualifies for a neurodevelopmental disorder of attention deficit/hyperactivity disorder with symptoms more related to inattention and impulsivity than hyperactivity. He has mild brain dysfunction in auditory attention, processing speed, and nonverbal abstract reasoning and problem solving, that may be related to ADHD, and the effects of repetitive head injuries. Further neuroimaging may be informative to better understanding his brain structure and function and hence his cognitive, emotional, and behavioral functioning. He also qualifies for a persistent depressive disorder that is long term, mild, chronic depression and a dual diagnosis including evidence of long-term cannabis use disorder, which he minimizes. Mr. Worley presents as an individual with a severe personality disorder with evidence of antisocial, narcissistic, obsessive compulsive, and paranoid traits. Finally, he qualifies for paraphilic disorders of sexual sadism and fetishistic disorder, the latter with sexual interest and obsessional behaviors and fantasies relevant to diapers and bondage equipment. Obviously, the fetishistic disorder, in my opinion, also integrates with his sexual sadism as he likely humiliated and demeaned, dominated, and potentially tortured the victim in a sexually sadistic fashion. Basically, the fetishes towards bondage and bondage equipment and diapers would be relevant to an overall sexual sadism diagnosis as he used those objects to fulfill his sadistic sexual fantasies.

Along those lines, there are studies on sexual sadists and sexual homicide investigations. Sexual murder cases and the sexual homicide offenders have different motivations, sexual behaviors, and levels of violence related to their crimes. The sexual homicide research typically indicates that these offenders are motivated by anger, antisocial personality, dominance and control, and sexual

deviance pertinent to sadism. Not all sexual murderer cases are paraphilic in nature, but this one clearly is. It is my understanding the presence of paraphilic behavior in sexual murders is about 50%. Sexual sadism perhaps is the most likely paraphilic disorder found in these type of criminal offenses. A significant minority of sexual homicide offenders have prior sex offenses (at least one-third), at least half of the sexual homicide offenders have a history of prior non-sexual violent offenses, which is present here. Again, the prior abduction was a violent offense and may have been cut short of a sex offense.

In my opinion, the pathway to sexual homicide in this case is sexual motivation caused by sexual sadism. In my opinion, he had recurrent, intense, sexually arousing fantasies that were aimed at BDSM, sexual sadism, bondage, as well as fetishistic-type behaviors. There seemed to be sexual excitement in the nature of the offense as there was evidence of fetishism and sexual sadism with the bondage, gag ball and diapers, and her being hog-tied. This coupled with his internet search terms of bondage leading up to the instant offense suggests a very deeply ingrained paraphilic disorder. His sex offending behaviors, including domination, control, and the fetishistic behaviors, as well as the sadistic nature of the offense suggests that these behaviors are sexually exciting to Mr. Worley. It is very intriguing to me that there was no semen found at the crime scene. The sexual offense commenced likely with him searching and fantasizing about bondage and potentially rape, then analyzing the crime scene with the hog-tie, the bondage gag ball, followed by the victim being wrapped in a diaper. This case is motivated by well ingrained sexual paraphilic disorders. In some cases where sexual homicide is committed and when sexual sadism is a motivation, the death of the victim may be anticlimactic and the excitement may be found in the pre-offending phase and the fantasy phase, and the process of the sex offense rather than the completion of the murder and terminating the victim's life. This may be why no semen was found at the scene. This offense seemed to be a well-planned out, sexually oriented offense that was motivated by deep sadistic/fetishistic sexual fantasy that did not apparently culminate in an orgasm. It is possible that he had an orgasm prior to committing the offense upon his search terms, for example. Sexual fantasies are a major precursor to sexually sadistic homicides.

When turning to an analysis of sexual fantasy, they may act as a coping strategy to guard against unbearable trauma in early life and difficulty with social and intimate sexual relationships later on, which I believe is the case here. It is very interesting that Mr. Worley's only intimate relationship with a women at the time of the instant offense was with his mother, and this appeared to be an emotionally intimate and rather not sexually or physically intimate relationship. There is significant research that many sex offenders (including non-sexual murders) utilize fantasy and masturbation to relieve underlying stress. Further, sex offenders often have poor coping skills in their abilities to deal with negative emotionality and affect including anger, loneliness, humiliation, depression, and anxiety. In fact, these negative emotionality factors often lead sex offenders to have increased deviant sexual fantasies and masturbatory practices. The crime scene analysis and his paraphernalia in the barn, coupled with his prior abduction and internet searches suggest that Mr. Worley had an obsessive-compulsive paraphilic-type sexual disorder that he likely had some volitional impairments with. His internet search terms include incessant and obsessive interests of bondage and rape and he would also masturbate in the barn while viewing pornography.

Fantasy may also likely start a plan around an offense, be related to victim selection, stimulate sexual arousal, lead to increased sexual activity, regulate an offenders mood state, and allow them to feel in control over threats, and stimulate grandiosity and omnipotence. It is also interesting that Mr. Worley's mother and sister both stated that he had a history of early daydreaming and fantasy life when he was a youth. This finding has often been common amongst individuals who commit sexually-motivated murders. His ADHD also provides a need for stimulation and a low cortical arousal neurocircuitry condition of the brain.

It has also been said that deviant sexual fantasy can promote or lead to sexual homicide when combined with early traumatic experiences, including child sexual abuse, social withdrawal, and/or sexual difficulties. In this case, Mr. Worley continues to deny any sexual abuse such as by his mother and was extremely defensive and psychologically hurt when I suggested this. However, there is marked evidence of social withdrawal and isolation in this case, coupled with chronic depression and severe drug use to cannabis. In my opinion, Mr. Worley had a depressive condition and emotional loneliness and isolation, and he would withdraw into deep sexually deviant fantasies that eventually led into obsessive-compulsive-type paraphilic tendencies with the obsessions being fantasies, and the compulsions the behavioral acting out. If Mr. Worley was a repeat offender, he would be more obsessed by his sexual fantasies. Individuals who act out their sexual fantasies usually become compulsive, and therefore there is an obsession (fantasies) and compulsion (attempts or complete sex offenses).

The paraphilic connection between sexual sadism and fetishistic disorder also is aggravated with the personality pathology of Mr. Worley, including evidence of antisocial, narcissistic, obsessive-compulsive, and paranoid personalities. Individuals with severe personality disorders also lack intimate connection with other people, have poor empathy, have a preference for short-term relationships, have impersonal and uncommitted sexual behavior relationships, engage in sexual promiscuity, and favor relationships with prostitutes, for example. These factors are all evident in this case. In sexual murder cases that are driven by paraphilic disorders like this one, sexual sadism is the most commonly found paraphilic disorder (estimated about 70%).

Another area that is critical to consider in evaluating the sexual homicide offenders noted above is a lack of intimacy and findings of negative emotionality such as depression, anxiety, coupled with a condition of emotional loneliness. I cannot say with a reasonable degree of psychological certainty, any motivation in this case lies with a retribution/ revenge motive related to sexual abuse as a youth. Again, I have reservations in this case as I believe there was some type of inappropriate emotional and/or sexual connection between Mr. Worley and his mother. Nonetheless, there was significant evidence of emotional loneliness, social withdrawal, and isolation in this case with him. It appears as though Mr. Worley was emotionally lonely from either childhood and early adolescence to adulthood. Emotional loneliness has been a common finding in the literature on sexual homicide where it is often referred to with social isolation. There is evidence of a feeling of lack of emotional connectedness to those around him and a lack of intimate successful relationships. Many of these offenders describe feeling alone and shut off from the rest of society. They are socially awkward and they retreat into their own world with deviant sexual fantasy. In my opinion, Mr. Worley was emotionally detached from society, lacked the ability and confidence to make good friends, had severe feelings and perceptions of self-inadequacy and then he would

retreat into his own internal world due to fear of rejection. I am unclear if Mr. Worley was also sexually acting out anger towards his mother or to women who have rejected him in the past. It is very possible that given his lack of success with women and his seemingly emotionally incestuous relationship with his mother, that Mr. Worley was acting in a vengeful fashion towards women relevant to the nature of the instant offense and his sexual fantasies about bondage and rape.

As noted, I do highlight the evidence of deepened sexual fantasy playing a significant role in the etiology of sexual homicide, even in this case. Individuals with sexual sadism and fetishism, and multiple paraphilic disorders, certainly have deep rooted sexual fantasies. The sexual fantasies are established early in life and exist in the context of social isolation and emotional loneliness and withdrawal. In many cases, the sexual fantasies do not involve the killing of the victim.

If there was early emotional trauma and there was a psychological trauma model to the sexually motivated homicide, the psychological trauma at a young age would be thought to disrupt normal personal development to the point where the youth and adolescent takes refuge in a fictional fantasy world in which he dominates others. As highlighted, when early trauma is present, some offenders may be avenging some of the sexual abuse suffered in childhood (again this is speculation given the fact that we do not have any proof or self-report of sexual abuse in this case). I cannot say that Mr. Worley fully fits the avenger typology of the sexual homicide offender. I also cannot say that Mr. Worley had a strong homicidal impulse relevant to having strong urges to take another person's life, characterized by intense feelings of anxiety and worry, which makes trying to kill someone difficult to resist. I also cannot say that he had a strong homicidal impulse related to intense feelings of hatred of his mother. He would not open up about any type of intimacy issues with his mother or with any type of prior dating relationships. I do not have any evidence of a catathymic reaction relevant to Mr. Worley describing a significant event in his life during childhood or young adulthood which he attached great significance in terms of understanding their homicides.

However, I do have some evidence of very strong negative affect, including depression, which may have been attached and fused with his sexual identity. He does have significant evidence of paranoia and distrust, and believes he will be hurt by others. This paranoia may be used with anger related to acting out aggressively during sexual acts. However, much of his sexual homicide offense again is motivated by sexual sadistic and fetishistic fantasies. In my opinion, these fantasies were dominated by an emotional loneliness. This is a fairly common finding in sexual homicide perpetrators. Social isolation can be seen as a state of psychological suffering, which could lead to sexual violence. Emotional loneliness is a critical feature of sexual homicide. If loneliness has been perceived as a result of childhood victimization which may be present here, this inner experience may serve as a major precursor for development of deviant sexual fantasies. In my opinion, there is evidence of emotional loneliness and social isolation for Mr. Worley who lacked intimate relationships with other people. The only physical and sexual relationships he has had were likely with prostitutes. He did not have emotional skill sets to have deeply connected physical, emotional, and sexual relationships with women. In fact, he became obsessed and compulsive with deviant sexual fantasies and would look at the internet incessantly while masturbating to relieve the deviant sexual fantasies, especially to BDSM. It is most likely that he would retreat in the sexual fantasy life and his fantasies became more intense leading up to the instant offense as can be seen during his search terms that outline his fantasies (and time spent

searching on his computer). These fantasies then build up leading to the nature of the instant offense in which he acted out his fantasies. Whether killing the victim was part of his fantasies or a way to eliminate a witness, I am uncertain of.

We again do not know everything about the etiology of sexual sadism. There is some evidence of increased fronto-temporal preoccupation during pain observations in those with sexual sadism. At least one study of sexual sadists showed greater amygdala activation when viewing pain pictures. Neuroimaging assessments with sexual sadists are very rare and have small sample sizes. There is one recent study assessing neuroimaging of rapists (not clear sample of sexual sadists), where neuroscientists found abnormal white matter integrity in rapists in the internal capsule in the thalamus, caudate, and globus pallidus, and in the white matter tracts near the angular gyrus, posterior cingulate, frontal pole, lateral occipital cortex, and genu compared to controls. This study indicated abnormalities in white matter abnormalities in rapists. Findings indicate abnormalities in white matter connectivity in brain regions involved in reward/motivation and moral judgment.

As can be seen, there are a host of neurological and psychosocial elements and etiological factors related to Mr. Worley's criminal history and the nature of the sexual homicide. It was very difficult to examine this individual because of his lack of candidness and being forthcoming with relevant information concerning his instant offending behaviors. Ultimately, I had to, in some ways, construct the roots of his offending based on my assessment with him, past and present law enforcement records of his offenses, review of the research, and my experience with these types of offenders. The mitigating factors include psychiatric and neuropsychiatric disorders, chemical dependency, as well as trauma based early in childhood.

Respectfully submitted,

John Matthew Fabian

/s/ John Matthew Fabian

e signature

John Matthew Fabian, PSY.D., J.D., ABPP
Board Certified Forensic & Clinical Psychologist
Forensic & Clinical Neuropsychologist

U.S. Const. amend V

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

U.S. Const. amend VI

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

U.S. Const. amend VIII

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

U.S. Const. amend XIV

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