IN THE SUPREME COURT OF OHIO

STATE OF OHIO	*	
Appellee,	*	Case No. 2006-1126
- vs -	*	Appeal taken from Clark County Court of Common Pleas
JASON DEAN,	*	Case No. 05 CR 348
Appellant.	*	**This is a death penalty case**

MERIT BRIEF OF APPELLEE STATE OF OHIO

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STATEMENT OF THE CASE

Dean was indicted by the Clark County Grand Jury on May 2, 2005, for charges as follows: (See Indictment, Doc. 1).

Sixteen Count Indictment Against Dean

Victim	Date	Charges
Andre Piersoll Count 1	April 10, 2005	Murder (attempt) [O.R.C. §2903.02(A)] Attempt: [O.R.C. §2923.02(A)] Firearm Specification [O.R.C. §2941.141]
Yolanda Lyles Count 2	April 10, 2005	Murder (attempt) [O.R.C. §2903.02(A)] Attempt: [O.R.C. §2923.02(A)] Firearm Specification [O.R.C. §2941.141]
Piersoll/Lyles Count 3	April 10, 2005	Agg. Robbery- Gun [O.R.C. §2911.02(A)(1)] Firearm Specification [O.R.C. §2941.141]
N/A Count 4	April 10, 2005	Weapons Under Disability [O.R.C. §2923.13(A)(2)]
609 Dibert Count 5	April 12, 2005	Discharging Gun Into House [O.R.C. §2923.161(A)(1)] Firearm Specification [O.R.C. §2941.141]
604 Dibert Count 6	April 12, 2005	Discharging Gun Into House [O.R.C. §2923.161(A)(1)] Firearm Specification [O.R.C. §2941.141]
Shanta Chilton Count 7	April 12, 2005	Murder (attempt) [O.R.C. §2903.02(A)] Attempt: [O.R.C. §2923.02(A)] Firearm Specification [O.R.C. §2941.141]
Hassan Chilton Count 8	April 12, 2005	Murder (attempt) [O.R.C. §2903.02(A)] Attempt: [O.R.C. §2923.02(A)] Firearm Specification [O.R.C. §2941.141]

Victim	Date	Charges
Shani Applin Count 9	April 12, 2005	Murder (attempt) [O.R.C. §2903.02(A)] Attempt: [O.R.C. §2923.02(A)] Firearm Specification [O.R.C. §2941.141]
Jaida Applin Count 10	April 12, 2005	Murder (attempt) [O.R.C. §2903.02(A)] Attempt: [O.R.C. §2923.02(A)] Firearm Specification [O.R.C. §2941.141]
N/A Count 11	April 12, 2005	Weapons Under Disability [O.R.C. §2923.13(A)(2)]
Titus Arnold Count 12	April 13, 2005	Aggravated Murder – Prior Calculation [O.R.C. §2903.01(A)] Complicity [O.R.C. §2923.03] Firearm Specification [O.R.C. §2941.141] Spec. 1: Course of Conduct [O.R.C. §2929.04(A)(5)] Spec. 2: Felony/murder [O.R.C. §2929.04(A)(7)] (robbery/prior calculation and design)
Titus Arnold Count 13	April 13, 2005	Aggravated Murder – Aggravated Robbery [O.R.C. §2903.01(B)] Complicity [O.R.C. §2923.03] Firearm Specification [O.R.C. §2941.141] Spec. 1: Course of Conduct [O.R.C. §2929.04(A)(5)] Spec. 2: Felony/murder [O.R.C. §2929.04(A)(7)] (robbery/prior calculation and design)
Titus Arnold Count 14	April 13, 2005	Agg. Robbery- Gun [O.R.C. §2911.02(A)(1)] Firearm Specification [O.R.C. §2941.141]
N/A Count 15	April 13, 2005	Weapons Under Disability [O.R.C. §2923.13(A)(2)]
N/A Count 16	April 21, 2005	Weapons Under Disability [O.R.C. §2923.13(A)(2)]

Crim. R. 16(B)(1)(e) Certification Hearing
Conducted At Dean's Request And In Dean's Presence

Pursuant to Crim. R. 16(B)(1)(e), the State filed an updated witness list about three weeks before the start of jury selection. Doc. 125 State's Witness List, filed April 18, 2006. Relative to Dean's former girlfriend, Crystal Kaboos, her address was listed as "c/o Stan Erter, Clark County Prosecutor's Office." Two days later, the State filed, again pursuant to Crim. R. 16(B)(1)(e), a certification that disclosure of the address of Crystal Kaboos "may subject Ms. Kaboos to physical harm or coercion." The basis for that belief was noted as "information gained during the ongoing investigation of the case." In the Certification Document, there was no further disclosure of any specifics; no allegations were made against Dean, nor were allegations made against any individual or group. In the Certification Document, the State went on to note it had provided Dean with videotapes of police interviews with Kaboos. Doc 126, State's Certification Document, filed April 20, 2006.

Pursuant to a request by Dean, the Court afforded Dean a hearing on the certification matter. In convening the Certification Hearing, the Court said:

> The Court: Thank you. You can be seated. Case No. 05-CR-348, State of Ohio versus Jason Dean. Parties are before the Court this afternoon due to a certification that was filed by the State of Ohio some time last week, a certification that a disclosure of a certain witness' address may subject that witness to physical harm and coercion; ***and I understand that the defense wanted to have a hearing on the matter.*** Certification Hearing, April 24, 2006, p. 1. (Emphasis added).

The Court went on to ask defense counsel Mayhall how he wanted to proceed.

> The Court: Did the parties want to proceed just by way of – I don't know, just by statements of counsel? ***Is that what you intended Mr. Mayhall?*** (Emphasis added).
>
> Mr. Mayhall: [Defense Counsel] ***That's fine with me, Your Honor.*** (Emphasis added).

> The Court: All right. Does the State maybe want to put on the record a little more detail as far as the facts surrounding that certification that it's made to the Court? (sic).

Certification Hearing, April 24, 2006, p. 4-5.

Assistant Prosecutor Wilson accommodated Dean's request to make statements for the record. Wilson first noted that the State was under no obligation to place factual allegations in the Certification Document. By providing Dean with video interviews of witness Kaboos, the "...State of Ohio has taken several steps to make sure that the defendant's right to prepare for this trial is protected." Wilson noted that Dean had been provided with a transcript of Kaboos' testimony from the bind over hearing. Wilson noted that the State would make Kaboos available for a face-to-face interview with Dean's counsel. Wilson noted that "there's been threats to shoot [Kaboos] in the face..." and "There's also threats, you know, that people are going to get her if – if she can be found...." Certification Hearing, April 24, 2006, pgs. 6-7.

Significantly, Wilson did not accuse Dean, nor did Wilson accuse any particular individual or group, of being behind these threats.

The hearing proceeded as follows.

> The Court: Thank you, Mr. Wilson. Mr. Mayhall, any response?
>
> Mr. Mayhall: [Defense Counsel] Two brief responses. One is that we have received two videotapes labeled statements of – of Crystal Kaboos, one of which is blank so we've only gotten one of them so far. The one we were able to is use about 30 minutes long. (sic). The other – I understand safety—***I understand the nature of the State's concern, but is that information that – are these threats emanating from the defendant or*** – or is there some way we could limit disclosure so that the – the witness' address does not get to the people that the State has worried about, people who have made these threats? Certification Hearing, April 24, 2006, p. 7. (Emphasis added).

In response to defense counsel's question "...are these threats emanating from the defendant...?", Assistant Prosecutor Wilson stated as follows.

> Mr. Wilson: [Assistant Prosecutor] Well, I mean, I would have no concern about Mr. Mayhall and Mr. Butz or their investigator having the address; however, the defendant and the defendant's ability to communicate with his family, his friends, or his codefendant, codefendant's friends, if we get in a situation where those people know that address, then, again, her safety is at risk. Certification Hearing, April 24, 2006, pgs. 7-8.

At this point in the proceedings, the Court declined to order the State to disclose Kaboos's address. The parties went on to discuss general procedure for the Court's review of statements pursuant to Crim. R. 16(B)(1)(g), in light of the defense already being in receipt of the statements of all but one of the State's prospective witnesses. There was general discussion about review of evidence by the defense ballistics expert. There was general discussion about conducting a suppression hearing. There was general discussion about procedure for jury selection. Nothing further was said about the certification matter, nor was anything further said about threats, nor was anything further said about Jason Dean, Dean's family, or codefendant Joshua Wade, or Wade's family. Certification Hearing, April 24, 2006, pgs. 8-17.

About a week and a half later, Dean filed a motion to recuse Judge Rastatter for presiding over the Certification Hearing Dean himself had requested. Doc. 138, Motion to Disqualify, filed May 3, 2006. The Court promptly overruled the motion, holding that the rules of *State v. Gillard*, 40 Ohio St. 3d 226 (1988) had not been breached. Doc 143, Entry, filed May 5, 2006.

Dean responded with an Affidavit of Disqualification to this Court. Doc. 149, Affidavit of Disqualification, filed May 10, 2006. Judge Rastatter responded to the Affidavit of Disqualification, and Dean's counsel moved to withdraw because of what Judge Rastatter said in the response to the Affidavit of Disqualification. Doc. 155, Motion To Withdraw, filed May 15, 2006. The Disqualification action was subsequently denied by the Chief Justice of this Court. Doc 155A, Judgment Entry (Ohio Supreme Court), filed with the trial Court on May 15, 2006.

Prior Robbery Plus Recent Escape Attempt
Justified Leg Shackles

Before the capital case against Dean was transferred to Judge Rastatter's docket, Judge Rastatter presided over a 2 count indictment against Dean for an unsuccessful attempt to escape from the Clark County jail. The docket sheet (accessible by linkage through this Court's website at http://12.150.181.49/) revealed that Dean was indicted on August 29, 2005, for one count of attempted escape and one count of vandalism. Less than one month later, Dean pled guilty before Judge Rastatter, and was sentenced to 6 years in the penitentiary. Dean was transported to the penitentiary on September 26, 2005. These events (the attempted escape, the indictment, the guilty plea, and the sentencing) took place during the pendency of capital murder charges against Dean, where Dean had been incarcerated since his arrest on April 21, 2005, and with Dean having been under a capital indictment since May 2, 2005. During the period of the escape attempt, the guilty plea and the sentencing before Judge Rastatter, the capital case against Dean was still on the docket of Judge O'Neill.

Six months after his guilty plea to an escape attempt from County jail, Dean filed a motion to appear in his impending capital trial (now assigned to Judge Rastatter) without security restraints of any sort. Doc 62, Defendant's Motion To Appear Without Restraints, filed March 7, 2006. In that motion, Dean made no reference to his guilty plea to attempted escape and felony vandalism. In response, the State left the matter to the discretion of the Court, noting that restraints would be appropriate in circumstances where a defendant was a threat of harm to others, disruptive in the proceedings, or posed an escape risk. Doc. 99, State's Response, filed March 30, 2006.

The Court, now acting through Judge Rastatter, having in the interim been assigned the capital case by Judge O'Neill, promptly issued a written ruling denying Defendant's motion to appear without restraints. In entirety, the Court ruled as follows:

> This matter is before the Court on the defendant's motion to **APPEAR WITHOUT RESTRAINTS OR SHACKLES** which was filed on March 7, 2006.
>
> "No one should be tried while shackled, absent unusual circumstances." State v. Adams, 103 Ohio St. 3d 508 (2004) (quoting State v. Kidder, 32 Ohio St. 3d 279 (1987). "However, shackling is left to the trial court's sound discretion." Id. (quoting State v. Richey, 64 Ohio St. 3d 353 (1992). Courts have upheld restraints in trials of defendants with a documented history of violence or escape attempts. See Kennedy v. Cardwell, 487 F. 2d 101 (6th Cir. 1973). Ohio courts have even allowed the use of electronic stun belts when specifically justified. See State v. Filiaggi, 86 Ohio St. 3d 230 (1999) and Adams, supra.
>
> ***In 1993, the defendant herein, Jason B. Dean, was convicted of robbery, an aggravated felony of the second degree, where he was sentenced to four to fifteen years in the Ohio State Penitentiary (Clark County, Ohio Common Pleas Court Case Number 93-CR-53). In 2005, while being detained in Clark County Jail on capital murder charges, the defendant attempted to escape. As a result of that escape attempt, the defendant was convicted of attempted escape, a felony of the third degree, and vandalism, a felony of the fifth degree, and sentenced to six years in the Ohio State Penitentiary (Clark County, Ohio Common Pleas Court Case Number 05-CR-772).***
>
> Because the defendant herein has both a documented history of violence and a recent escape attempt, his motion to **APPEAR WITHOUT RESTRAINTS OR SHACKLES** is OVERRULED. Doc 114, Entry, filed April 3, 2006, p. 2. (Emphasis added in the second to last paragraph, all other emphasis supplied).

Just before the start of voir dire, Dean renewed his motion to appear without restraints. The Court reminded counsel that the motion to appear without restraints had been overruled. Tr. Vol. 1, pgs. 3-4. Shortly thereafter, Dean moved for a mistrial on grounds that prospective jurors saw the shackles. The State responded that the shackles were around Dean's feet, and Dean's feet were under the table, such that the restraints were not easily visible. The Court overruled the motion for mistrial, against reminding defense counsel that the motion to appear without

restrains had been overruled. Defense counsel responded that they were unaware of the Court's prior ruling. Tr. Vol. 1, pgs. 21-25. The dispute over notice by the defense of the ruling regarding restraints was reiterated in the disqualification action against Judge Rastatter that was subsequently overruled by the Chief Justice of this Court. Doc 155A, Order Denying Disqualification, filed May 15, 2006.

Defense counsel went on to voir dire some prospective jurors about the leg shackles. One juror thought the leg restraints were "probably just procedure." Tr. Vol. 1, pgs. 42-43. Another juror didn't notice the leg restraints until it was pointed out by defense counsel. That same juror acknowledged that Dean's hands were free. Tr. Vol. pgs. 73-74. Neither juror expressed consternation regarding the restraints, or any sort of predisposition to assume guilt due to the restraints.

Before the jury was empanelled, defense counsel noted for the record that jurors were by that time familiar with Dean being in leg restraints, such that Dean's in-custody status during the expected jury view would not be new information. Tr. Vol. 5, pg. 962.

Near the end of the trial, just before the testimony of the State's witness, inmate Jason Manns, the Prosecutor noted for the record that Dean's leg restraints were identical to those worn by Manns and the earlier State's witness, inmate Andre Piersoll. Since it was by that time no secret that Dean was in custody, just like Piersoll and Manns, the Prosecutor suggested that it "would be showing the jury that this [leg shackling] is very simply a standard procedure that when individuals are transported, you know, to the Court from the jail that they're in leg shackles." Tr. Vol. 12, pgs. 2306-2307.

Jurors Not Effected By Disqualification Controversy

As a result of the filing of the affidavit of disqualification, the proceedings for jury selection were adjourned. Following action by the Chief Justice to deny disqualification of Judge Rastatter, jury selection proceedings were resumed. In the interim, the disqualification action had been reported in the Springfield News-Sun. Defense counsel asked for a voir dire of those prospective jurors who were familiar with the story. Voir dire was conducted of six prospective jurors who reported they were exposed to the story. None expressed concern, and none thought the controversy bore any relation to guilt or innocence of Dean. Neither the defense nor prosecution challenged these jurors for cause. Tr. Vol. 5, pgs. 765-800. The defense did challenge for cause one prospective juror, not for biased views as a result of the story, but for what was perceived as a purposeful disregard of the Court's admonition against exposure to any news about the case. The Court overruled that challenge. Tr. Vol. 5, pgs. 864-874. No challenges were made regarding other prospective jurors who acknowledged a passing familiarity with the disqualification controversy. (Prospective juror's friend mentioned the controversy, Tr. Vol. 5, pgs. 899-902; prospective juror's mother mentioned the controversy, Tr. Vol. 5, pgs. 915-918; a prospective alternate juror scanned the news headlines, Tr. Vol. 5, pgs. 926-929; prospective alternate juror's friend mentioned the disqualification story, Tr. Vol. 5, pgs. 930-931; a prospective alternate juror overheard a conversation by shoppers waiting in line at the grocery store, Tr. Vol. 5, pgs. 938-940).

Self Representation Denied Due To Dean's Admission Of Duress

The first event in what ultimately ended in the denial of Dean's supposed wish to represent himself came after the testimony of eyewitness Rose Haile. Haile had just completed her direct examination with identification of photos of the deceased Titus Arnold laying in the street. Tr. Vol. 6, 1147-1151.

Just before cross-examination of Haile, and out of the hearing of the jury, Dean expressed dissatisfaction with defense counsel. Significantly, however, Dean asked the Court to disregard a statement he made about representing himself.

> The Court: All right. Is there a matter you wanted to take up with the Court, Mr. Dean?
>
> The Defendant: Yes. At this point I'm uncomfortable with Mr. Butz and Mr. Mayhall [defense counsel] continuing with my case. I don't feel as though they're in a position to adequately defend me. It's my understanding that I'm due to adequate defense and a fair trial. I don't feel – at this point it's impossible for me to receive a fair trial and for Mr. Butz and Mr. Mayhall to adequately defend me.
>
> The Court: And does this have something to do with the conflict that was going on between the Court and your attorneys last week?
>
> The Defendant: This is just all the issues that have arisen lately. The conflicting statements that witnesses have made, the pictures that he showed to the jury and the family just to get some kind of reaction from the family without acknowledging what he was going to do and continue to leave it on there. It's just I don't feel I'm being defended adequately. ***Would like to either seek legal counsel elsewhere, or I can defend myself.*** (Emphasis added)
>
> Mr. Mayhall: [Defense Counsel] ***Don't say that.*** (Emphasis added).
>
> The Defendant: ***Move to strike my last statement from the record.*** (emphasis added).
>
> Mr. Butz: [Defense Counsel] I will say, Judge, that what the discussion Mr. Dean and I had right before I brought this to the bailiff's attention was did I feel better or relieved based on what occurred yesterday; and I told him, quite frankly, no. So, you know, that –
>
> The Court: What occurred yesterday?
>
> The Defendant: Pertaining to the matter that you continuously overruled their wish to withdraw from my case. And if they wish not to defend me, how is it possible for them to defend me properly? It's a very simple matter.
>
> The Court: All right. Did defense counsel have a statement to make?
>
> Mr. Butz: No.

Mr. Mayhall: No. Tr. Vol. 6, pgs. 1156-1157.

The dialogue between the Court, Dean and defense counsel continued. Although the exchange was tense, neither Dean nor defense counsel moved the Court for any sort of relief. Tr. Vol. 6, pgs. 1157-1166.

Later in the trial, after Officer Hupman identified photos and tangible objects from the Titus Arnold homicide scene, counsel notified the Court that Dean wanted to fire them. The Court responded that the matter would be addressed following the lunch break. Vol. 7, pgs. 1272-1273. After the lunch break, Dean told the Court he believed his attorneys weren't being aggressive because they were intimidated by the disqualification controversy. Dean said he wanted to represent himself. Tr. Vol. 7, pgs. 1322-1331. The Court recessed for an hour.

After that recess, the Court referenced legal authority regarding self representation, being *Feretta v. California*, 422 US 806 (1975), *State v. Reed*, 74 Ohio St. 3d 534 (1995), *State v. Taylor*, 98 Ohio St. 3d 27 (2002), *State v. Gibson*, 45 Ohio St. 2d 366 (1976), and *State v. Thompson*, 33 Ohio St. 3d 1 (1987). The Court arranged for Dean to be examined for competence. Dean told the Court he would not request a continuance if he were permitted to represent himself. Dean acknowledged facts regarding self representation and the nature of the charges and potential penalties against him. Tr. Vol. 7, pgs, 1336-1341.

At this point of the dialogue between the Court and Dean, Dean said his request for self representation was being done "under duress."

The Court: And is this something you want to do voluntarily?

The Defendant: Yes.

The Court: All right. Well –

The Defendant: ***I would just like the record to reflect that I'm doing this under duress due to you continually not addressing that issue of Mr. Butz's and Mr. Mayhall's alleged unethical conduct.*** (Emphasis added).

The Court: All right. ***Well, that's going to be a problem because I'm not going to accept your waiver of counsel if you're telling me it's under duress.*** All right. Because you're essentially saying that the Court's forcing you to do this, and I'm not going to put you or myself in that position. So what I'm going to do is I'm going to recess for the afternoon. I'm going to try to contact Dr. Smalldon and see when he can get here. Hopefully, first thing in the morning. And I'm going to order that we reconvene tomorrow morning a 9 o'clock, and that's going to do two things. One, it's going to give us the opportunity, hopefully, to hear from Dr. Smalldon, on the issue of competence, and No. 2, it's going to give you a night to sleep on this and think about it. Certainly, you can change your mind. ***But if you feel that you're doing this under duress, then that's going to be a problem. I'm not going to let you – I'm not going to let you do it because that's just not going to be appropriate.*** So tonight you can think about whether or not you really want to do this. ***If it's your voluntary decision or if you feel like you're being pressured into doing it and tomorrow when we reconvene, we can discuss that.*** Do you have any questions at this time? (Emphasis added).

The Defendant: No. Tr. Vol. 7, pgs. 1341-1342.

When the Court reconvened the following day, the Court and Dean then engaged in the following colloquy:

The Court: You want to represent yourself?

The Defendant: Absolutely.

All right. Well, I've had the evening to think about it; as I told you yesterday when I was citing the case law, that you do have a constitutional right to represent yourself. ***The problem I foresee or the problem I see, as I indicated yesterday, is your statement that you were doing this under duress. And I told you yesterday that*** – (Emphasis added).

The Defendant: ***I just – I made that statement just so that would be made for the record on future reference for the appeal.*** (Emphasis added).

The Court: Well, I understand that. The problem is it's one of those things where, you know, you've said it; and now it's out there, and I have concerns about letting you waive your right to an attorney because the way it appears, at least by your statement, is that I'm indirectly forcing you to do that.

> The Defendant: That's not the case at all. ***As I said, the only reason I did that was for that to be on the record for future reference for my appeal in the process of this. I fully understand what I did, why I made that statement. That's the only reason why I made that statement.*** I don't feel in any way that you're biased against me, have a vendetta against me. I feel completely confident to defend myself. ***That's the only reason I made the statement was so that it would be on the record for future reference of my appeal.*** Tr. Vol. 8, pgs. 1355-1356. (Emphasis added).

After more dialogue, the Court overruled Dean's request to represent himself on grounds that his waiver of counsel was not voluntary, based upon Dean's statement that he was under duress. Tr. Vol. 8, pgs. 1356-1362. After that, Dean addressed the Court as follows:

> The Defendant: ***If that's the case, you know, I would retract the statement that I made yesterday that I feel as though I'm doing any of this under duress because I've made it very clear that I'm fully aware that I – I have constitutional rights, as you stated; and I feel now as though my constitutional rights are being violated, not only the 6th Amendment right but the 14th Amendment right to defend myself. If necessary, I would like to retract any statements I made or any reference I made to being under duress if that's the case. Strike that from the record.*** However you guys go about doing that. I feel at this point it is impossible for Mr. Mayhall and Mr. Butz to defend me adequately in any way, shape, or form. And I – I need to defend myself because the truth needs to be come out here; (sic) and the way they're doing it, it can't happen. It just can't happen. My constitutional rights are being violated. You stated that yourself. This is – this is – this is – I can't understand this at all. Do I have the right to defend myself? Is my constitutional right to defend myself? I would like to be granted that. That's all I ask. Tr. Vol. 8, pgs. 1363-1364.

After more dialogue, the Court stated it had made it's ruling, and the trial resumed as before. Tr. Vol. 8, pgs. 1364-1369. In short order, however, Dean himself made the following statement in front of the jury.

> The Defendant: Your honor, I want the Court to be aware that I was requested to represent myself. (sic) You denied that right. That's what I want everyone in the courtroom to know. That's what's been transpiring that right now, I want the jury to be known that. (sic). It's been taken in secret in the other room. I've been denied my constitutional rights. I would like the record to do that reflect that. (sic) If it don't, I want the jury to know that. I have I've done nothing wrong in this courtroom. (sic)

> The Court: I think the jury's aware of that fact right now, that he wanted to represent himself; and for various legal reasons, the Court wouldn't let him do that. The jury knows that now.
>
> The Defendant: Thank you.
>
> The Court: Thank you. Tr. Vol. 8, pgs. 1372-1373.

The self-representation controversy ended by the afternoon break the same day. Dean apologized to the Court. Tr. Vol. 8, pgs. 1507-1510.

> The Court: You can be seated. Thank you. We're back on the record. The jurors have not been brought back into the courtroom. I've got a message that the defendant has something to say.
>
> The Defendant: Yes, Your Honor. I just wanted to apologize for my outburst earlier. I'd like, if you could, relay that message to the jury.

Over the objection of the prosecution, and with the express assent of the defense, upon bringing the jury into the Courtroom, the Court addressed the jury as follows:

> The Court: You can be seated. Ladies and gentleman, during the recess, Mr. Dean apologized to the Court for what he said in his outburst. He wanted you to know that he apologizes to you as well. Tr. Vol. 8, pgs. 1507-1510.

Case Before The Court On Appeal As Of Right

The jury returned a guilty verdict on all counts. Tr. Vol. 13, pgs. 2709-2720. This event followed delivery of guilt phase jury instructions that were in form expressly approved by the defense. Tr. Vol. 13, pgs. 2704-2706. The mitigation phase opened with an express waiver by Dean of a Pre-Sentence Investigation, and a mitigation mental examination. Tr. Vol. 14, pgs. 2726-2727. Before presentation of evidence, the State announced that due to merger, it was proceeding on Count 13 (aggravated murder: felony murder-robbery; prior calculation and design) and not Count 12 (aggravated murder: prior calculation and design). Tr. Vol. 14, pgs. 2727-2728. After presentation of mitigation evidence, it was noted for the record that mitigation psychologist Dr. Smalldon had been paid 12,500 dollars for his services, but was not being

called to testify for Dean. Tr. Vol. 14, pgs. 2776-2779. The mitigation phase jury instructions were given with the express assent of the defense. Tr. Vol. 14, pg. 2779. The jury returned a death sentence. Tr. Vol. 14, pgs. 2822-2826. The trial Court imposed a death sentence. Doc 188, Sentencing Entry, filed June 2, 2006. The case is now before this Court on appeal as of right.

STATEMENT OF THE FACTS

During a three day crime spree, Dean acted as an avenger for his brother and then as a hit man for a drug dealer. In acts of robbery, attempted murder and murder, Dean proved to himself what he later wrote to his girlfriend Rhonda about his crimes: "I don't say things. I do things. I'm not a man of words. I'm a man of action. I'm a man among men." Tr. Vol. 12, pgs. 2443-2446; State's Exhibit 477A.

Robbery And Attempted Murder At The Mini Mart

Andre Piersoll knew Jason Dean. They had done time together. Piersoll was back on the street at a local Springfield bar when Piersoll ran into Jason Dean's brother, Mark. Due to strong familial resemblance, Piersoll mistakenly thought Mark was Jason. Mark corrected Piersoll and identified himself, not as Jason Dean, but as Jason's brother, Mark. Mark used his own cell phone to call his brother Jason about meeting Piersoll, and Mark allowed Piersoll and Jason to chat on Mark's cell phone. Tr. Vol. 9, pgs. 1691-1699; Tr. Vol. 9, pgs. 1708-1710.

During the early AM hours of April 10, 2005, Yolanda Lyles saw Andre Piersoll on the street and agreed to give him a ride home. Piersoll and Lyles, who was driving, stopped at the Selma Road Mini Mart. Piersoll went into the store. While inside the store, Piersoll ran into Jason Dean. Piersoll and Dean had a short and friendly conversation. Piersoll came back to Lyles's car and sat in the front passenger seat. Dean came up to the window and asked them if they wanted to buy some pills, and they said no. Lyles still had her purse on her lap from when she gave money to Piersoll for the purchases at the Mini Mart. Lyles and Piersoll saw that Dean was with a juvenile, whom they both later learned was named Josh. Lyles and Piersoll saw Dean and the juvenile drive off. Lyles and Piersoll remained in Lyles car at the Mini Mart parking lot They stayed in the parking lot to talk with Piersoll's friend, Neil Scott.

About ten minutes later, Piersoll saw Dean lurking in the shadows by the air pump. Seconds later, Piersoll heard Lyles say "Oh, shit." At that time, Lyles saw Jason Dean rush from the side of the store brandishing a gun. Lyles heard Dean say "Give me the money." While still rushing up on the car, Dean started firing his gun, with bullets coming through the front windshield of Lyles car. As Neil Scott ran, Piersoll saw Dean pointing the gun. But Piersoll heard only clicking, as though the gun was out of bullets.

Lyles and Piersoll were shocked and bloody. They decided to transport themselves to nearby Mercy Hospital. As Lyles drove to Mercy Hospital, Piersoll saw that Dean was pursuing them. The headlights of Dean's car were off. Lyles and Piersoll were pursued "all the way up Limestone", until Dean turned off on a side street.

Lyles and Piersoll were treated for cuts from the windshield glass that had been shattered by the bullet strikes. Piersoll was also treated for a bullet wound to the arm.

For transcript citations for these facts, see Appendix A to the State's brief, being a summary of the evidence presented. Note especially, testimony of Yolanda Lyles, Tr. Vol. 8, pgs. 1571-1611, Tr. Vol. 9, pgs. 1619-1637. Appendix A Summary pgs. 38-39; testimony of Andre Piersoll, Tr. Vol. 6, pgs. 1037-1057 (suppression hearing), Appendix A Summary p. 10 and Tr. Vol. 9, pgs. 1677-1710 (trial testimony) Appendix A Summary p. 40; testimony of Neil Scott, Tr. Vol. 9, pgs. 1670-1676; Appendix A Summary p. 39-40; testimony of emergency room Dr. Guy Newland, Tr. Vol. 9, pgs. 1718-1735, Appendix A Summary pgs. 40-41. For scene processing, evidence recovery and photos, see testimony of police officer Dave Emmel, Tr. Vol. 9, pgs. 1646-1656, Appendix A Summary pg. 39; Detective Darwin Hicks, Tr. Vol. 6, pgs. 1029-1037 (suppression hearing), Appendix Summary p.10, Tr. Vol. 9, pgs. 1657-1670

(trial testimony), Appendix A Summary 39; police officer Doug Pergram, Tr. Vol. 9, pgs. 1637-1645; Appendix A Summary p. 39.

Although the gun was never recovered, (Dean's girlfriend Kaboos said Dean traded it for drugs with a guy named "Bub" Tr. Vol. 11, pgs. 2125-2126), it was a .25 caliber semiautomatic pistol. A fired bullet recovered from the lining of Andre Piersoll's coat had class characteristics consistent with a weapon manufactured by Raven. Tr. Vol. 9, pgs. 1646-1656 (bullet recovery), Tr. Vol. 10, pgs. 2001-2003 (ballistics testing), Appendix A Summary, pg. 52.

The .25 caliber weapon used at against Piersoll and Lyles at the Mini Mart was consistent with ballistics evidence recovered from the subsequent Dibert Ave. drive-by shooting that took place two days later, on April 12, 2005. A fired .25 caliber bullet recovered from the Dibert drive by shooting (April 12, 2005) also had class characteristics consistent with a weapon manufactured by Raven. Tr. Vol. 9, pgs. 1764-1773 (bullet recovery), Tr. Vol. 10, pgs. 2013-1015 (ballistics testing), Appendix A Summary pg. 52.

There were also similarities between the ballistics evidence from the Mini Mart shooting and the Titus Arnold murder that took place three days later, on April 13, 2005. Cartridge casings recovered at the Mini Mart (April 10, 2005) were manufactured by Federal, (Tr. Vol. 10, pgs. 1912-1917 (casing recovery), Tr. Vol. 10, pgs. 2000-2001, 2017-2018 (ballistics testing), Appendix A Summary, pg. 52, and an unfired .25 caliber bullet was recovered from the Titus Arnold homicide scene (April 13, 2005) was also a Federal brand. Tr. Vol. 8, pg. 1511 (bullet recovery), Tr. Vol. 10, pgs. 2005-2007, 2110, 2015-2016 (ballistics testing), Appendix A Summary pg. 51.

After the Mini Mart shooting, Dean told his then girlfriend Crystal Kaboos that he did the shooting at the Mini Mart because the guy had stolen money from his brother. Tr. Vol. 11, pgs.

2117-2118, Appendix A Summary pg. 57. Later, Dean told his cellmate, who was also his lifelong friend, Jason Manns, that he, Jason Dean, had coincidentally run into the guy at the Mini Mart. Jason Dean told Manns that he, Jason Dean, did the shooting because the guy had robbed his brother. Tr. Vol. 12, pgs. 2323-2325, Appendix A Summary, pg. 60.

Jason Dean Hired By A Ripped Off Drug Dealer

A young man named Joshua Farmer was best friends with Jeff Bowshier. Jeff Bowshier's sister, Angel Bowshier, was living with, and had a child by, Jason Dean's brother, Mark Dean.

One day, during the time frame of March and April 2005, Joshua Farmer was present at a meeting between Jeff Bowshier and Jeff's brother, Danny Bowshier. Jeff and Danny Bowshier's cousin, T. C. Bowshier, was also present. Present as well was a guy named Adonte Cherry, whose street name was "Tuna." Jeff Bowshier was upset because he, Jeff Bowshier, had been ripped off for 42 pounds of marijuana. During this meeting, Tuna reported that the rip off had been orchestrated by a black guy named William Calhoun, whose street name was "Oz", and by another guy, whose street name was "Draztik."

Later, Farmer was in a car with the Jeff, Danny and TC Bowshier. Jeff Bowshier was driving. They all drove down on Dibert Ave. looking for Draztik's car. Draztik drove blue four door Delta 88. They couldn't find Draztik's car. Tr. Vol. 10, pgs. 1853-1865, Appendix A Summary, pg. 48.

Devon Williams, whose street name was "Draztik", testified for the State. Devon Williams knew William Calhoun, whose street name was Oz. Devon Williams heard from Joshua Farmer that Jeff Bowshier suspected himself, Devon Williams, and Oz as being the people who ripped off Jeff Bowshier's dope. Devon Williams was upset because Oz had falsely accused him, Devon Williams, of orchestrating the rip off of Jeff Bowshier's dope. About a week

and a half before the drive by shooting at his house, Devon Williams talked it out with Jeff Bowshier. Devon Williams went to Jeff Bowshier's workplace, which was a car customizing shop called One Stop Custom. One Stop Custom did all the work on Devon Williams car. After this talk, Devon Williams thought that Jeff Bowshier had been assured that he, Devon Williams, was not involved in the rip off against Jeff Bowshier. Tr. Vol. 10, pgs. 2049-2051, Appendix A Summary pg. 53-54.

One of the Bowshier brothers, Kevin Bowshier, testified for the State. Kevin Bowshier was the brother of Jeff and Danny Bowshier. Their sister was Angel Bowshier, who was living with, and had a child by, Jason Dean's brother, Mark Dean. Kevin Bowshier knew his brother Jeff Bowshier had been ripped off. Kevin Bowshier heard that William Calhoun, whose street name was Oz, was responsible for the rip off. Jeff Bowshier wanted the dope taken back from Oz. Jason Dean was the one who was supposed to get the dope back from Oz. Tr. Vol. 12, pgs. 2461-2466, Appendix A Summary pg. 65.

Jason Dean's lifelong friend, and latter day cellmate, Jason Manns, tied together the Dibert Ave. drive by and the Titus Arnold murder. Manns explained how both crimes were part of Jason Dean's job for Jeff Bowshier. In pertinent part, Manns testified as follows:

> Q: [Prosecutor Schumaker] Okay. Did he [Jason Dean] make any statements to you concerning a drive-by shooting type of incident that occurred here in the city of Springfield?
>
> A: [Jason Manns] Yes.
>
> Q: Why did he tell you that that incident occurred?
>
> A: He was paid to do it.
>
> Q: For what reason?
>
> A: Because the individual – the individual that had robbed a person of marijuana was suspected of living there or having association with that house.

Q: Okay. And did he tell you the reason that Titus Arnold died?

A: He told me – he told me two different things. One, that he was paid to do it. And another was – let me – he was paid to do it because the same individual that paid him to do the drive by was having problems with Titus Arnold. Tr. Vol. 12, pgs. 2323-2325.

On cross examination, the questioning went as follows.

Q: [Defense Counsel Mayhall] And when Jason Dean told you this was some kind of a contract, that's to make him look like a tough guy; and people don't mess with him in the penitentiary.

A: [Jason Manns] You'll have to ask him.

Q: Beg your pardon?

A: You'll have to ask him that.

Q: Did he say how much he was paid to do this murder?

A: Between 15 and 20,000 dollars.

Q: I'm sorry?

A: Between 15 and 20,000 dollars.

Q: And what did he do with the money?

A: I don't know.

Q: How much was he paid to do the drive by on Dibert?

A: Didn't say specifically.

Q: But a lot of money?

A: He said 15, 20,000 to do several different things.

Q: I'm sorry?

A: To do several things.

Q: And you didn't take that as his intent to look like a big guy in the penitentiary?

A: No. Tr. Vol. 12, pg. 2329.

Additional questioning on cross examination went as follows:

Q: [Defense Counsel Mayhall] I'm going to hand you what's been marked as **Defendant's Exhibit D**. I said hand it to you. You can take it.

A: [Jason Manns] (Complies with request)

Q: ***And that's an inner office communication from one police officer to another about the Arnold murder, right?*** (Emphasis added).

A: Yeah.

Q: And that was in Jason Dean's discovery packet?

A: That's the first time I ever seen it.

Q: ***And it's in there, it's a tip they received about Mr. Arnold's killing being a contract.*** (Emphasis added).

A: That's the first time I ever seen it.

Q: That's what it says, isn't it?

A: I believe if I know how to read right, yes, sir.

Q: Okay. So again, you had access to Jason Dean's discovery pack.

A: For approximately ten minutes.

Q: Well, you didn't say that before.

A: I'm saying it now. Tr. Vol. 12, pgs. 2332-2333.
See also Appendix A Summary, pgs. 59-62, testimony of Jason Manns.

Although no cash was recovered during the subsequent search of Dean's house, Andre Piersoll did testify about Dean referring to a large amount of cash. After the crimes, both Jason Dean and Andre Piersoll happened to be locked up together. At that time, Dean told Piersoll that he'd pay a "five stack" to Piersoll and Yolanda Lyles if they would not testify against him. Piersoll explained that a "five stack" meant five thousand dollars. Tr. Vol. 9, pgs. 1699-1701.

Jason Dean's other girlfriend, Rhonda Sions, also tied the murder of Titus Arnold back to Dean's job for Jeff Bowshier. Dean told Sions that the murder of Titus Arnold was a case of mistaken identity. Dean was looking for Oz. Dean said that after he and Josh Wade came out of the Night Owl Tavern, he and Wade thought Titus Arnold was Oz. By the time Dean realized they didn't have Oz, it was too late. Wade had already shot and killed the person they mistakenly thought was Oz. Tr. Vol. 12, pgs. 2355-2356, Appendix A Summary, pg. 62.

Guns Blazing On Dibert Avenue

Two days after the shooting of Piersoll and Lyles at the Mini Mart, and one day before the murder of Titus Arnold, Devon Williams was at home at 609 Dibert Ave. Williams, who went by the street name "Draztik", was watching television with his girlfriend Shanta Chilton. Shanta Chilton's two school aged children were asleep in a bedroom. Visiting and watching television with them was Shanta's brother, Hassan Chilton. Also watching television was Shani Applin, and Shani's infant daughter, Jaida Applin. When he got home from work earlier in the evening, Williams had to park his car across the street, in front of 604 Dibert Ave., because there wasn't a spot open in front of his own house.

Just before midnight, the group heard gunfire coming from just outside the front of their house. The home video security camera, with a view of the front porch and sidewalk area, was activated, but the group saw nothing. Williams grabbed his gun, a Hi Point .45 caliber semi-automatic pistol, and went outside to investigate. Williams saw that his car had been shot up, and he and his girlfriend Shanta Chilton went to the car to investigate the damage. Hassan Chilton, Shani Applin, and Shani Applin's infant daughter, Jaida, stayed on the front porch. As Shanta Chilton and Devon Williams looked at the gunfire damage to Williams' car, Shanta saw headlights of a car coming up the street. Shanta was afraid the car coming up the street was

involved in the shooting, so she headed for the front porch. Devon Williams stayed behind at his car, bending down to see if there had been any damage to the wheel rims of the car.

Just as Shanta made it to the front porch, the car stopped in front of the house. Gunfire came from the car, directed to the front porch. Shanta saw that a white boy was driving the car, and she saw the flames of gunfire coming from the car. Shanta dropped to the porch floor. Hassan Chilton, who had been standing on the porch holding the infant Jaida, dove into the front room and stayed down. Shani Applin, who had been standing on the porch next to Hassan and her infant child, also dove into the front room and stayed down.

While he was inspecting the wheel rims of his car, Devon Williams had set his gun down. When the second round of gunfire started, Williams was standing right next to the car from where the gun shots were coming. That car was a small Buick, silver or gold in color. Williams identified Jason Dean as the driver of the car from where the gun shots were coming. As Dean was behind the wheel, Williams could see a juvenile on the passenger side shooting toward the people on the porch at his house, 609 Dibert Ave.

Shanta Chilton, Hassan Chilton, and Shani Applin testified that the bullets were whizzing past them as they dove for cover. Hassan Chilton showed where there was a bullet hole in the sleeve of the coat he was wearing as he held the infant Jaida Applin. Fortunately, no one had been hit. The neighbor from across the street at 604 Dibert, Laroilyn Burd, testified about the bullets crashing through her window during the first round of shooting at Devon Williams car.

Jason Dean's girlfriend, Crystal Kaboos, was in the back seat of Dean's Buick Riviera when Dean and Wade did the drive by shooting on Dibert Ave. Kaboos testified that Dean said his brother, Mark Dean, wanted them to look for a particular house. Dean said they were also to look for Oz's house. Dean didn't say why they were to be searching for these particular houses.

Kaboos got into the back seat. Josh Wade was driving. Jason Dean was in the front passenger seat. Dean was armed with his .25 caliber pistol. This pistol was silver colored, with wood grain on the side. Josh Wade was carrying Dean's big black .40 caliber handgun. Kaboos testified that "We were riding down Dibert and I was in the backseat of the car; and they shut the lights off on the car, and Jason [Dean] put his window down. Jason [Dean] was sitting in the passenger seat. Josh Wade was driving, and they both stuck their guns out the window and just fired off shots. Tr. Vol. 11, pg. 2105. Kaboos ducked down and covered her ears. Although she stayed down, she was sure that the car turned around. Kaboos said she couldn't remember what happened after the car turned around. See testimony of Crystal Kaboos, Tr. Vol. 11, pgs. 2098-2099, 2123 (the .25 and .40 caliber guns belonged to Dean); Tr. Vol. 11, pgs. 2105-2107 (testimony about the Dibert Ave. drive by shooting). See also Appendix A Summary, Crystal Kaboos testimony, pgs. 55 to 59.

For transcript citations to the facts of the Dibert drive by shootings, see Appendix A to the State's brief, being a summary of the evidence presented. Note especially the testimony of Shani Applin, Tr. Vol. 9, pgs. 1783-1793, Appendix A Summary p. 41-42; testimony of Laroilyn Burd, Tr. Vol. 9, pgs. 1736-1753, Appendix A Summary, pg. 41; testimony of Hassan Chilton, Tr. Vol. 10, pgs. 1876-1901, Appendix A Summary pgs. 48-49; testimony of Shanta Chilton, Tr. Vol. 9, pgs. 1793-1820, Appendix A Summary pg. 42; testimony of Devon Williams, Tr. Vol. 10, pgs. 2038-2062, Appendix A Summary pgs. 53-54. For scene processing, evidence recovery and photos, see testimony of police officer David Allen, Tr. Vol. 10, pgs. 1912-1917, Appendix A Summary pg. 49; testimony of police officer Travis Baader, Tr. Vol. 9, pgs. 1774-1783, Appendix A Summary pg. 41; testimony of police officer Mike Beedy, Tr. Vol. 9, pgs. 1825-1835, Appendix A Summary pgs. 42-48; testimony of police officer Neil Davis, Tr. Vol. 10, pgs.

1873-1876, Appendix A Summary pg. 39; testimony of police officer David Emmel, Tr. Vol. 9, pgs. 1761-1763, Appendix A Summary pg. 39; testimony of police officer Dana Lewis, Tr. Vol. 9, pgs. 1764-1773, Appendix A Summary pg. 41; testimony of police officer Jeffrey Meyers, Tr. Vol. 9, pgs. 1821-1824, Appendix A Summary pg. 42; testimony of police officer Doug Pergram, Tr. Vol. 9, pgs. 1637-1645, Appendix A Summary pg. 39; testimony of ballistics scientist Timothy Duerr, Tr. Vol. 10, pgs. 1995-2012, Appendix A Summary, pgs. 50-53; testimony of police evidence technician Mark Parsons, Tr. Vol. 8, pgs. 1545-1569, Appendix A Summary, pgs. 19-38; testimony of police evidence technician Jeffrey Steinmetz, Tr. Vol. 8, pgs. 1452-1542, Appendix A Summary pgs. 19-38; testimony of ballistics scientist Timothy Shepherd, Tr. Vol. 10, pgs. 1979-1994, 2012-2035, Appendix A Summary, pgs. 50-53.

Robbery And Murder Of Titus Arnold

The day after the Dibert Ave. drive by shooting, Dean told his girlfriend Crystal Kaboos that he and Wade were going to the Night Owl Tavern. Kaboos could not come along. Dean said that he and Wade would look for someone to lure out of the bar and then rob them. Dean and Wade were dressed in black. Tr. Vol. 11, pgs. 2108-2110.

The night of the murder of Titus Arnold, Rhonda Boyd was the bartender at the Night Owl Tavern Danny Mansfield was the owner. Mansfield used a video security system that would continuously record all activities in the bar. Boyd knew Jason Dean's brother, Mark Dean, from the time some years back when Mark Dean had been permanently banned from the bar. The night of the murder of Titus Arnold, Boyd saw a short guy who looked just like Mark Dean, but was not Mark. The short guy was with a tall young guy. They came in together and went right for the pool table. They did not order any drinks. A few minutes later, the short guy and the tall guy left the bar. About 15 minutes after the short guy and the tall guy left, Boyd saw

police lights flashing up the street. She didn't hear anything from outside, because of the music and noise inside the bar. Boyd narrated the video from the bar that night, showing where the short guy and the tall guy came in and out of the bar. Boyd identified the short guy in the bar that night as Jason Dean. Testimony of Rhonda Boyd Tr. Vol. 6, pgs. 995-1012 (suppression hearing). Appendix A Summary pg. 9, Tr. Vol. 6, pgs. 1220-1232, Recalled for cross examination Tr. Vol. 12, pgs. 2258-2260, Appendix A Summary, pg. 14. Testimony of Danny Mansfield, Tr. Vol. 6, pgs. 1205-1220, Appendix A Summary pg. 14. State's Exhibit 4B, Night Owl Tavern Security Video, State's Exhibit 3A, photo line up of Jason Dean.

A short distance away from the Night Owl Tavern was a group home for troubled youth called Visions For Youth. Michelle Cherry was the third shift (midnight to 8 AM) youth counselor, and Titus Arnold worked the second shift. Michelle arrived at the facility about 20 minutes before midnight to relieve Titus Arnold. Arnold decided to walk home. Michelle knew that Arnold usually carried with him some money, although not much more than 10 or 15 dollars. At the same time Arnold left the group home, Michelle walked up to the second floor. About two minutes after she reached the second floor, she heard gunshots. She looked out a second floor balcony and saw Arnold laying in the street. Two men were standing over Arnold. One was tall and one was short. Michelle ran outside and saw that Arnold had been shot in the head. Michelle called 911. Tr. Vol. 6, pgs. 1093-1113, Appendix A Summary, pg. 11. The emergency squad arrived at 2 seconds past midnight. Testimony of paramedic Brian Miller, Tr. Vol. 7, pgs. 1236-1246, Appendix A Summary pg. 14.

At the same time, Theodor Panstingel and his girlfriend Allison Nawman were at their home across the street from the murder scene. They heard gunshots and looked outside. They both saw the same thing. They saw a man laying in the street. A short white guy was standing

over the man who was laying in the street. When Allison screamed, the short white guy looked in their direction. They went outside and saw the short white guy running for a nearby car that already had its brake lights lit up. The short white guy jumped in the car and the car drove off. Allison was sure the short white guy got into the passenger seat of the car. Theodor and Allison went up to the man laying in the street. They saw the man had been shot in the head and had no life signs. Theodor took off his shirt and used it to cover the man's face. Testimony of Theodor Panstingel, Tr. Vol. 6, pgs. 1170-1189, Appendix A Summary, pg. 13; testimony of Allison Nawman, Tr. Vol. 6, pgs. 1190-1204, Appendix A Summary, pg. 14.

At the same time, Leo Banks was in his car, which was stopped for a red light at a nearby intersection. Banks heard gunshots. Banks looked up and saw two men running down the street. One was tall and one was short. Tr. Vol. 6, pgs. 1114-1123, Appendix A Summary pg. 11.

At the same time, Rose Haile was in her car. A car sped past her and suddenly stopped in a parking lot. Two men jumped out of the car. One was tall and one was short. Right by where the car had stopped, a man in a gold coat was walking down the street. The two men who had just got out of the car started chasing the man in the gold coat. The chase was heading directly toward Haile. While the short guy was still chasing the man in the gold coat, the tall guy went back to the car and opened the passenger door. The tall guy and the short guy were side by side when Haile saw blue flashes and heard two gunshots. The man in the gold coat fell to the street. The tall guy and the short guy hovered over the body for a couple of seconds and then ran back to the car. They drove off. Haile got out and saw that the man in the gold coat was a black man who had been shot in the head. Tr. Vol. 6, pgs. 1124-1155, 1166-1169, Appendix A Summary pgs. 11-12.

The night of the murder of Titus Arnold, twin sisters Kari and Terri Epperson were visiting their birth mother, who lived across the street from the murder scene. The Eppersons were cousins with Josh Wade, where the deceased father of the Epperson twins was the brother of Josh Wade's dad. A couple of days before, the Epperson twins were together when they had run into Josh. They saw that Josh was with another guy, who they later learned was Jason Dean. The night of the murder, Terri looked out the window and saw a car pull up and park. She saw a man being chased down the street by two other men. Terri got her baby's diaper bag and walked down the stairs. Kari was in bed when she heard squealing tires. A few seconds later, Kari looked out her bedroom window. At the same time, Terri was on the front porch of their mother's house. Looking out her window, Kari saw the passenger door of the car open up, and a blue neon light was coming from the inside of the car. Terri saw the same thing from the front porch. From their separate vantage points, Kari and Terri saw a guy get out of the car and run toward the middle of the street. The guy stopped and fired two gunshots. Both Kari and Terri saw fire come from the gun. Kari couldn't see at whom the guy was shooting. Terri could see that the guy was shooting at the man who was being chased down the street. The guy who did the shooting turned. From their separate vantage points, both Kari and Terri saw that the guy who did the shooting was their cousin, Josh Wade. Later, Kari and Terri went to the end of the street and saw there was a body laying in the street. Terri picked out Josh Wade's photo as the man who did the shooting. Testimony of Kari Epperson, Tr. Vol. 8, pgs. 1390-1416, Appendix A Summary pg. 19; testimony of Terri Epperson, Tr. Vol. 8, pgs. 1416-1449, Appendix A Summary, pg. 19.

Based upon comparisons with shell casings recovered at the murder scene, the gun used to murder Titus Arnold was a Hi Point S&W .40 caliber semi automatic pistol that was seized

from a small table in the kitchen of Jason Dean's house. When the SWAT team arrested Dean on April 21, 2005, the first and second through the door surprised Dean as Dean stood in his kitchen. The SWAT officers yelled several times for Dean to get down. Instead, Dean stood and grinned. The SWAT officers saw Dean's gaze become fixed on a small table. They rushed up on Dean and took him to the kitchen floor. The SWAT officers looked to see that Dean's gaze had been fixed on a .40 caliber semi automatic pistol, which was laying in the open on a table a few feet from where Dean had been standing. The gun was fully loaded, with nine rounds in the magazine and one round in the chamber. Later, Dean told a cell mate, Terry Smith, that he knew police had recovered the murder weapon from his house. Testimony of ballistics scientist Timothy Shepherd, Tr. Vol. 10, pgs. 1982-1993, Appendix A Summary pgs. 51-53; testimony of detective Doug Estep (first through the door), Tr. Vol. 10, pgs. 1919-1921, 1932-1938, Appendix A Summary pg. 49-50; testimony of police officer William Harrington (second through the door) , Tr. Vol. 10, pgs. 1947-1953, Appendix A Summary pg. 50; testimony of Terry Smith, Tr. Vol. 11, pgs. 2064-2091, Appendix A Summary pgs. 54-55.

The night of the murder of Titus Arnold, Kevin Bowshier was visiting at Mark Dean's house. Kevin and Mark were watching the fights that came on television at midnight. Kevin and Mark were drinking alcohol and doing cocaine. The fights were over, so the time was about 1:00 AM. Jason Dean and Josh Wade came into Mark's house. Dean and Wade were acting "jumpy and antsy." Dean said they had "smoked somebody", and Wade pulled a bullet out of his pocket for display to Kevin and Mark. Dean said the dude ran and he, Jason Dean, tackled him before the dude got shot. Dean said they ran up on the dude to rob him, and that they got six bucks. (Dean also told cell mate Terry Smith that he got six dollars. Tr. Vol. 11, pg. 2078-2079.) Dean and Wade left Mark's house. While they were at Mark's house, neither Jason Dean nor Josh

Wade did any of Kevin and Mark's drugs. Kevin Bowshier thought Dean was making up that story, until the next day when Bowshier heard about the Titus Arnold homicide. Testimony of Kevin Bowshier, Tr. Vol. 12, pgs. 2461-2482, Appendix A Summary pg. 65.

The day after that, Crystal Kaboos was in Dean's bedroom with Jason Dean. There was commotion in the hallway outside the bedroom. That commotion was Josh Wade, who was excitedly telling Jason Dean to come out in the hallway. Dean did so and then came back in the bedroom, throwing an edition of the Springfield News-Sun on the bed. The headline story was about the murder of Titus Arnold. Dean told Kaboos to read the story. Regarding the crime, Dean said they saw the guy walking down the street. Dean said they stopped their car. Dean said he got out and pointed the silver gun at the guy. Dean told the guy to get down, but the guy wouldn't get down. Dean said the guy tried to run and Dean tried to fire his gun, but his gun was on safety. (An unfired .25 caliber bullet was recovered from the murder scene. State's Exhibit 18, Tr. Vol. 8, pg. 1511) Dean said Josh Wade got the big gun and shot the guy. In a bragging fashion, Dean said they got six dollars in the robbery. A news story about the shooting also came on television. Dean excitedly told everybody to gather around and watch. While the story aired, Dean was laughing. Testimony of Crystal Kaboos, Tr. Vol. 11, pgs. 2113-2118, Appendix A Summary pg. 56-57.

Other facts pertinent to the case are set forth in detail in Appendix A to the State's brief. The recitation of facts and references to exhibits in Appendix A Summary are incorporated into this brief as if fully and completely rewritten into the State's Statement of Facts.

LAW AND ARGUMENT

Response To Proposition Of Law No. 1: Dean's Request To Represent Himself Was Properly Denied On Grounds The Request Was Not Voluntary, Where Dean Insisted He Was Doing So Under The Influence Of Duress

The record shows the trial Court was poised to grant Dean's request to represent himself, until during the required colloquy Dean declared that ***"I would just like the record to reflect that I'm doing this under duress due to you continually not addressing that issue of Mr. Butz's and Mr. Mayhall's alleged unethical conduct."*** Tr. Vol. 7, pg. 1341. (Emphasis added). The trial Court's ultimate determination to deny Dean's request as not being voluntary, far from being error, was the only appropriate decision available.

Where the law requires a court to find the defendant's request to represent himself as being "voluntary", no trial judge could ignore Dean's "duress" comment. *State v. Taylor,* 98 Ohio St. 3d 27, P. 45 (2002). In Dean's case, the response by the trial Court was eminently appropriate.

> The Court: All right. ***Well, that's going to be a problem because I'm not going to accept your waiver of counsel if you're telling me it's under duress. All right. Because you're essentially saying that the Court's forcing you to do this, and I'm not going to put you or myself in that position.*** So what I'm going to do is I'm going to recess for the afternoon. I'm going to try to contact Dr. Smalldon and see when he can get here. Hopefully, first thing in the morning. And I'm going to order that we reconvene tomorrow morning a 9 o'clock, and that's going to do two things. One, it's going to give us the opportunity, hopefully, to hear from Dr. Smalldon, on the issue of competence, and No. 2, it's going to give you a night to sleep on this and think about it. ***Certainly, you can change your mind. But if you feel that you're doing this under duress, then that's going to be a problem. I'm not going to let you – I'm not going to let you do it because that's just not going to be appropriate. So tonight you can think about whether or not you really want to do this. If it's your voluntary decision or if you feel like you're being pressured into doing it and tomorrow when we reconvene, we can discuss that.*** Do you have any questions at this time? (Emphasis added).
>
> The Defendant: No. Tr. Vol. 7, pgs. 1341-1342.

When the proceedings reconvened the next day, the trial Court and Dean engaged in the following dialogue.

> The Court: You want to represent yourself?
>
> The Defendant: Absolutely.
>
> The Court All right. ***Well, I've had the evening to think about it; as I told you yesterday when I was citing the case law, that you do have a constitutional right to represent yourself. The problem I foresee or the problem I see, as I indicated yesterday, is your statement that you were doing this under duress. And I told you yesterday that –***
>
> The Defendant: ***I just – I made that statement just so that would be made for the record on future reference for the appeal.***
>
> The Court: Well, I understand that. ***The problem is it's one of those things where, you know, you've said it; and now it's out there, and I have concerns about letting you waive your right to an attorney because the way it appears, at least by your statement, is that I'm indirectly forcing you to do that.***
>
> The Defendant: That's not the case at all. ***As I said, the only reason I did that was for that to be on the record for future reference for my appeal in the process of this. I fully understand what I did, why I made that statement. That's the only reason why I made that statement.*** I don't feel in any way that you're biased against me, have a vendetta against me. I feel completely confident to defend myself. ***That's the only reason I made the statement was so that it would be on the record for future reference of my appeal.*** Tr. Vol. 8, pgs. 1355-1356. (Emphasis added).

By this point in the proceedings, not only had Dean informed the trial Court his decision was made under "duress", but Dean had emphatically sealed that comment "so that it would be on the record for future reference of my appeal." Being fully informed that acting under duress and voluntary action were mutually exclusive concepts, the trial Court made the only proper decision available, and that was to deny Dean's request to represent himself. Tr. Vol. 8, pgs. 1356-1362.

Dean reacted to the decision by the trial Court to state that "If necessary, I would like to retract any statements I made or any reference I made to being under duress if that's the case."

Tr. Vol. 8, pg. 1363. After more dialogue, the trial Court stated that the ruling stands. Tr. Vol. 8, pgs. 1364-1369.

It is significant to the disposition of this assignment of error that Dean does not articulate a rationale as to how the trial Court supposedly mishandled the self representation situation. Instead, Dean offers the simplistic argument that his right to self representation was denied, as if a bare request mandates the outcome. Moreover, Dean skips over the colloquies about duress. Where the record shows ample and fair grounds for the decision by the trial Court to deny Dean's request to represent himself, and Dean doesn't explain how or why that decision was wrong, his Proposition of Law Number 1 lacks merit.

Response To Proposition Of Law No. 2: Where The Dispute Over Disqualification Action Did Not Create A Legal Conflict Between Dean And His Counsel, There Was No Error In Declining To Allow Dean's Counsel To Withdraw During The Trial

There is no doubt that the action to disqualify Judge Rastatter and its aftermath was a tense situation for the parties and the trial Court. However, that tension did not create a legal conflict of interest between Dean and his counsel, as Dean claims in this Proposition of Law. The case of *Holloway v. Arkansas*, 435 US 475 (1978) involved one attorney who was appointed to represent three codefendants with divergent trial postures, and that undoubtedly would cause a "conflict of interest" as contemplated by the Sixth Amendment. No such Sixth Amendment issue exists in this case.

What Dean terms a "conflict of interest" is no more than a distraction by his counsel, where their attention was temporarily focused on their own dispute with the trial Court, and the trial Court's own understandable consternation over the disqualification matter. Counsel brought their concerns to the attention of the trial Court (Doc 155, Motion to Withdraw, filed May 15, 2006), and the matter was fully played out on the record. The trial Court prudently required

counsel to stay on the case and move on with the trial. And that is exactly what the parties and the trial Court did for the next two weeks.

Dean's counsel were trial veterans and they did what trial veterans do: they got over it and moved on. There was no error in the trial Court requiring them to stay on and move on.

Response To Proposition Of Law No. 3: The Dispute Over The Disqualification Controversy Did Not Amount To A Bias Against Dean Or Dean's Entitlement To A Vigorous Defense

In the many dialogues between Dean and the trial Court, it was evident that Dean was articulate, had a strong personality, and had no qualms against making his views known to the trial Court. It is thus significant that Dean informed the trial Court, during the height of the disqualification controversy, that "I don't feel in any way that you're biased against me, have a vendetta against me." Tr. Vol. 8, pg. 1356. What Dean accurately perceived was tension between the trial Court and Dean's counsel over the disqualification controversy. Dean accurately perceived that the tension between the trial Court and Dean's counsel did not compromise the integrity of the trial Court to afford him a fair trial.

Now that the trial is over and the outcome was not what Dean had hoped for, he should not be allowed to contradict himself and claim the trial Court was biased against him. When Dean told the trial Court "I don't feel in any way that you're biased against me, have a vendetta against me." (Tr. Vol. 8, pg. 1356), he was speaking the truth. And, in the succeeding two weeks of trial, if Dean had changed his mind about what he perceived to be the trial Court's attitude about affording him a fair trial, there is no doubt Dean would have made that view known. That did not happen, and the best evidence of the integrity of the trial Court comes from Dean's own words.

The tension between the trial Court and Dean's defense counsel rose and subsided during jury selection. After that, and for the next two weeks, the task at hand was the trial of the case, where the State presented 56 witnesses and hundreds of exhibits. Nowhere in that extensive record does Dean or his counsel claim bias by the trial Court, and nowhere in that extensive record does Dean retract what he told the trial Court when the trial first commenced.

Judicial bias has been defined as "a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts." *State ex rel. Pratt v. Weygandt,* 164 Ohio St. 463 (1956). Tension between a trial Court and defense counsel is not bias.

The record shows Proposition of Law No. 3 has no factual support. Apart from Dean's own words that contradict a claim of bias by the trial Court, the record regarding the Dean's unsuccessful motion for mistrial over the Kaboos polygraph comment reveals the opposite of judicial bias. When Dean's counsel moved for a mistrial, the trial Court did much more than say "Overruled." Instead, the trial Court sent the jury away and entertained extensive argument. Significantly, the trial Court did not accuse defense counsel of baiting State's witness Kaboos into revealing her polygraph exams, of which the defense was aware. The trial Court broke for lunch and studied up on the law. After lunch, the trial Court entertained more argument from the parties, and once again did not accuse the defense of manipulating the process or causing the problem from which they sought to benefit. It was only after extensive consideration did the trial Court overrule Dean's motion for mistrial. Tr. Vol. 11, pgs. 2149-2179. What Dean received in response to his motion for mistrial was full and fair consideration, and that fact contradicts his

present claim of bias, as does his own words to the trial Court that "I don't feel in any way that you're biased against me, have a vendetta against me." Tr. Vol. 8, pg. 1356.

Response To Proposition Of Law No. 4: Where The Certification Hearing For Confidentiality Of Kaboos's Address Was Conducted In Open Court And By The Express Request, Consent, And Participation Of Dean, And In Light Of Extensive Pre-Trial Discovery By The Defense Regarding Kaboos, Any Grounds For Error Were Either Waived Or Invited

Dean was formally notified pursuant to the State's supplemental witness list that ex-girlfriend Crystal Kaboos would be a witness against him. Doc. 125, State's Witness List, filed April 18, 2006. Her address was listed as "c/o Stan Erter, Prosecutor's Office." However, Dean already had a videotape of a half hour long interview between Kaboos and police. Certification Hearing, April 24, 2006, pg. 7. Dean knew that the State was not going to make an unrestricted release of the address of Kaboos, since the State filed a Certification Document stating as much. Doc 126, State's Certification Regarding Witness Address, filed April 20, 2006. Significantly, the State's Certification Document merely stated a generic threat to the safety of Kaboos. No accusations were made against any individual or group.

Through counsel, Dean asked for the Certification Hearing. The record would thus suggest that none of the myriad errors Dean now claims emanated from the Certification Hearing would be present, but for Dean's request for the Certification Hearing. In any event, at the Certification Hearing, Dean did not object to restricted disclosure of the address of Kaboos. Instead, Dean probed for alternatives to unrestricted disclosure of Kaboos's address. Dean was readily granted an alternative. The State readily agreed to facilitate a face to face interview between defense counsel and Kaboos, as well as further turnover of her taped interviews with police. Certification Hearing, April 24, 2006, pgs. 1-7.

Apparently sensing the eminent fairness of the State's position, the trial Court responded with the solitary question "All right. Anything further, Mr. Mayhall?" And, also apparently sensing the eminent fairness of the State's position, defense counsel Mayhall responded with a crisp "No, sir. Thank you." Certification Hearing, April 24, 2006, pg. 7.

Thus, the substantive portion of the Certification Hearing lasted mere minutes. There were no verbal battles, no insistence on inflexible positions, no expressions of outrage from the State, Dean, or the Court. As much as a cold record can reflect, it appeared that the matter was resolved to the satisfaction of Dean, Dean's counsel, the State, and the Court; without any of the animosity, acrimony, and accusations of wrongdoing that Dean would level in the succeeding two weeks.

It is significant that the remainder of the Certification Hearing was occupied with general housekeeping matters. Certification Hearing, April 24, 2006, pgs. 7 to 16. As much as a cold record can reflect, neither Dean or his counsel sensed any prejudice emanating from the trial Court over the Kaboos situation, since not one word of protest or concern was spoken for the remainder of the time on the record. As much as a cold record can reflect, Dean and his counsel considered the matter over and done with, since they readily went on to other matters, and did not revisit the Kaboos situation. And, as much as a cold record can reflect, the trial Court considered the matter over and done with, since the trial Court promptly moved on to housekeeping matters, and did not revisit the Kaboos situation. Certification Hearing, April 24, 2006, pgs. 7 to 16.

Had the trial Court been personally troubled with the Kaboos situation, the record would have revealed some sort of consternation. If consternation were present, the trial Court might have admonished Dean, faulted defense counsel for facilitating a threat to witness safety, or

ordered a security crackdown. None of those things happened. And, after it was evident that the State and the defense were getting along just fine regarding the Kaboos situation, the trial Court promptly moved on.

It is also significant that the Certification Hearing was convened at Dean's request. The Criminal Rules do not contemplate a hearing as a precondition to non-disclosure of a witness address. Instead, the Criminal Rules provide that the State file a Certification Document, noting for the record that it intends to not make public the address of a particular witness. Crim. R. 16(B)(1)(e).

The trial Court is not involved in the Certification by the State. The trial Court does not become involved, unless and until the defendant moves the Court for some sort of relief. Crim. R 16(B)(1)(e). That request for relief was made by Dean, and the trial Court promptly accommodated Dean's request with a hearing in open court. In other words, Dean asked for a hearing, and Dean received a hearing. Dean should not be allowed to premise error on the trial Court giving him the hearing he requested.

It is also significant that, during the Certification Hearing, not one word of accusation against any specific individual or group was made by the State, until Dean insisted to know whether the State contended that Dean was behind the threats to Kaboos's safety. Even then, the State's response was tempered with a generalized concern that Kaboos's address should not fall into the hands of Dean and Wade's supporters on the street. Certification Hearing, pgs. 1-7.

The distinction is stark between Dean's case and the case of *State v. Gillard*, 40 Ohio St. 3d 226 (1988). In *Gillard*, the problematic communication between the trial Court and the State was conducted *ex parte*. In Dean's case, the communication Dean claims is problematic was

made on the record, in his presence, by his insistence, and in open court. In Dean's case, there were no *ex parte* communications.

In *Gillard*, the State accused Gillard of witness intimidation, and, since the proceeding was *ex parte*, Gillard had no "chance to deny or explain the allegations." *Gillard*, at pg. 229. In this case, Dean insisted to know if the State was claiming any linkage between Dean and the threats to Kaboos. In answer to Dean's express question, the State placed the response on the record, in Dean's presence, and in open court. Dean did not choose to deny or explain the State's allegations, perhaps because the State did not accuse Dean himself of any particular wrongdoing. Certification Hearing, April 24, 2006, pgs. 1-7. Regardless of Dean's rationale for his lack of response to the State's answer to the question he posed, Dean had the opportunity to respond, and that is what makes all the difference under *Gillard.*

The type of give and take that took place in the Certification Hearing requested by Dean is no different than what takes place in an ordinary bond hearing. Bond hearings occur daily and routinely in any criminal court in this State. In any ordinary bond hearing, the trial Court would entertain argument from the State, which could often involve inflammatory claims of wrongdoing by the defendant. No one would contend that the trial Court is thereby precluded from presiding over the trial. This would be so because the defendant, and the defendant's counsel, would be present in that bond hearing to challenge and refute the inflammatory claims of wrongdoing. Consequently, what is legally problematic are not allegations of wrongdoing against the defendant, since allegations of wrongdoing against the defendant are routinely made in bond hearings. Since bond hearings are conducted in open court, allegations by the State of wrongdoing by the defendant are not improper, do not cause bias in the trial judge, and do not

mandate recusal by the trial judge. The *Gillard* rule precludes inflammatory accusations against the defendant being made in an *ex parte* setting, and that did not happen in Dean's case.

The rule of *Gillard* is that allegations of wrongdoing by the defendant are improper when made *ex parte*, "...for the defendant has no chance to deny or explain the allegations." *Gillard*, at pg. 229. The *Gillard* rule was not breached in Dean's case any more than it would be breached in any ordinary bond hearing, since neither Dean's Certification Hearing, nor an ordinary bond hearing, involve *ex parte* communications.

The doctrine of waiver precludes relief by Dean in two respects. First, the event Dean contends to be error (Certification Hearing conducted by the judge who presided over his trial) took place with his consent and approval. The time to object to Judge Rastatter presiding over the Certification Hearing was before the hearing started, not after the hearing was over. That Dean might say he was ignorant of the supposed law, until after the hearing was over, does not relieve him of waiver by not raising error at the appropriate time. Second, Dean never claimed the rationale offered by the State for address confidentiality of Kaboos was legally insufficient. Instead, Dean happily accepted the discovery accommodations from the State of advanced copies of video interviews between the police and Kaboos, along with an opportunity for a face to face interview between defense counsel and State's witness Kaboos. These two facts constitute a waiver of any error stated in Dean's Proposition of Law No. 4. *State v. Miller,* 105 Ohio App. 3d 679, 691, (1995); *State v. Walker,* 66 Ohio App. 3d 518, 522, (1990).

In similar fashion, Dean should "...not be permitted to take advantage of an error which he himself invited or induced." He is precluded from doing so by the doctrine of invited error. *State v. Bey,* 85 Ohio St. 3d 487, 493 (1999).

In sum, there is no error where the Certification Hearing was conducted in open court, with Dean's presence and participation. Any prospective or hypothetical error nullified by either the doctrine of waiver or by the doctrine of invited error. In any event, Dean's Proposition Of Law Number 4 does not state grounds for relief.

Response To Proposition Of Law No. 5: Where Dean Moved The Court To Appear Without Restraints, And The Trial Court Denied The Motion By Written Decision That Referenced Dean's History Of Violence And An Escape Attempt While Under Capital Indictment, Dean's Claim He Was Shackled Without A Hearing Is False

There is no doubt a defendant with a history of violence and an escape attempt while under a capital indictment could lawfully be shackled during his capital trial. Not only would shackling be lawful under these facts, not to do so could be seen as a reckless and dangerous abdication of responsibility by a trial Court. Given these facts that would undoubtedly justify shackling, the only issue under the law would be the manner by which the trial Court received and acted upon these facts. If these facts were received by the trial Court through passing and unsworn commentary from some random court security officer, action to shackle on that flimsy foundation would be problematic. On the other hand, if the same facts were received by the trial Court such that the information was valid, accurate and corroborated, a decision to shackle should be unassailable.

In Dean's case, the trial Court had first hand knowledge regarding Dean's escape attempt while under capital indictment, where the same judge in Dean's capital case presided over the criminal case against Dean for trying to break out of jail. Moreover, the trial Court received face to face corroboration of the truth of that charge from Dean himself, who verified the facts through his plea of guilty. In addition, the trial Court had judicial notice of Dean's earlier

conviction of robbery, where that case had been brought in the same court with a predecessor judge.

By filing a written request to appear without restraints, Dean can hardly complain that the trial Court responded to his written request with a written decision. And, denial of that request to appear without shackles should not have come as a surprise, where Dean had just months before pled guilty attempted escape. If Dean was willing and able to effect an escape attempt in a jail setting, where he was enclosed by steel bars and surrounded by law enforcement personnel, should he expect unrestricted movement in an open courtroom?

A fair reading of Dean's claim of error suggests he would concede shackling would be appropriate, under the very grounds relied upon by the trial Court. This is so because Dean does not suggest otherwise. Instead, he premises error on the means by which the trial Court apprised itself of the facts that would otherwise justify shackling. Dean's contention is that a trial Court can apprise itself of facts to justify shackling only by way of a "hearing", and he didn't get a "hearing."

In the context of a decision to shackle, it is easier to describe what is not a "hearing." It does not constitute a "hearing" where a trial judge asks the court security officer if the defendant should be shackled, and then shackles the defendant on the bare say-so of the court security officer. Nor is it acceptable to adopt a blanket policy to shackle. *State v. Elmore*, 1991 Ohio App. LEXIS 5434, at 5-7 (4th Dist. 1991) ; *Deck v. Missouri*, 544 US 622, 629-630 (2005).

On the other hand, the law does not proscribe a specific manner by which the trial Court should apprise itself of facts to justify a decision to shackle. Specifically, the United States Supreme Court has not referred to shackling in context of a "hearing." Instead, The United States

Supreme Court had referred to shackling through a "determination" by a trial Court. *Deck v. Missouri*, 544 US 622, 629-630 (2005).

In Dean's case, the trial Court certainly made a "determination" that shackling was justified, and the basis for that "determination" was personal knowledge of the trial Court, bolstered by Dean's plea of guilty to attempted escape in a face to face appearance before the same judge who subsequently denied his request to be free of restraints. In complete part (Dean recites only one line of the decision in his Merit Brief to this Court), the "determination" of the trial Court is as follows:

> This matter is before the Court on the defendant's motion to **APPEAR WITHOUT RESTRAINTS OR SHACKLES** which was filed on March 7, 2006.
>
> "No one should be tried while shackled, absent unusual circumstances." State v. Adams, 103 Ohio St. 3d 508 (2004) (quoting State v. Kidder, 32 Ohio St. 3d 279 (1987). "However, shackling is left to the trial court's sound discretion." Id. (quoting State v. Richey, 64 Ohio St. 3d 353 (1992). Courts have upheld restraints in trials of defendants with a documented history of violence or escape attempts. See Kennedy v. Cardwell, 487 F. 2d 101 (6th Cir. 1973). Ohio courts have even allowed the use of electronic stun belts when specifically justified. See State v. Filiaggi, 86 Ohio St. 3d 230 (1999) and Adams, supra.
>
> In 1993, the defendant herein, Jason B. Dean, was convicted of robbery, an aggravated felony of the second degree, where he was sentenced to four to fifteen years in the Ohio State Penitentiary (Clark County, Ohio Common Pleas Court Case Number 93-CR-53). ***In 2005, while being detained in Clark County Jail on capital murder charges, the defendant attempted to escape.*** As a result of that escape attempt, the defendant was convicted of attempted escape, a felony of the third degree, and vandalism, a felony of the fifth degree, and sentenced to six years in the Ohio State Penitentiary (Clark County, Ohio Common Pleas Court Case Number 05-CR-772). (Emphasis added).
>
> Because the defendant herein has both a documented history of violence and a recent escape attempt, his motion to **APPEAR WITHOUT RESTRAINTS OR SHACKLES** is OVERRULED. Doc 114, Entry, filed April 3, 2006, p. 2.

Dean makes no claim that the trial Court mishandled his appearance in Court once shackling was ordered. Instead, his contention rests on the false premise that the decision to shackle was made without a "hearing." Since the record reveals the decision to shackle rests on eminently solid grounds, Dean's Proposition Of law Number 5 lacks merit.

State's Response to Proposition of Law No. 6 The Trial Court Did Not Abuse Its Discretion When After Affording The Defense One Year To Prepare, It Declined To Disrupt The Flow Of The Trial With More Continuances

Counsel were appointed for Dean on May 9, 2005. Doc. 4, Entry Of Appointment, filed May 9, 2005. Jury selection commenced on year later, on May 8, 2006. Tr. Vol. 1, pg. 1. Dean's counsel worked hard and diligent during the time between appointment and trial. All four of the continuance denials Dean now aggrieves came after the jury was empanelled. Two of the four continuance requests (time to sober up Dean's brother Mark, Tr. Vol. 13, pgs. 2537-2543, and time for Dean's mother to feel better, Tr. Vol. 14, pgs. 2734-2735) would have required indeterminate delays that would have been inconsistent with the orderly administration of the trial. Moreover, it might have been that Dean's brother and mother were seeking to manipulate the proceedings with their simultaneous unavailability more than three weeks into the proceedings. The trial Court should not be faulted for keeping the case moving, especially where defense counsel went on to represent that Dean didn't want his brother Mark to testify. Tr. Vol. 13, pgs. 2541-2542. Furthermore, defense counsel represented that Sarah Barrett could immediately present the same testimony as could the unavailable mother. Tr. Vol. 14, pgs. 2734-2735.

One of the four requests (a "five or ten minute" continuance before cross-examination of State's witness Terry Smith Tr. Vol. 11, pg. 2079) was as a practical matter granted through lengthy sidebars, both before Smith's direct examination and before Smith's cross examination.

The last of the four (a continuance to again talk with Dean about his ever-changing intent to speak or not speak) was of no import, where Dean went ahead and gave a brief unsworn statement that was neither outrageous, inflammatory nor detrimental to the mitigation case.

It is long and well settled that the grant or denial of a continuance is within the broad and sound discretion of the trial judge. This would be especially so where the continuance requests come after empanelling of a jury. *State v. Unger,* 67 Ohio St. 2d 65, 67, N.E.2d 1078, 1080 (1981). Error is not present unless the Court committed an abuse of discretion. An abuse of discretion must show that the trial judge's attitude was unreasonable, arbitrary, or unconscionable. *State v. Adams,* 62 Ohio St. 2d 151, 157, 404 N.E.2d 144, 149 (1980) citing *Steiner v. Custer,* 137 Ohio St. 448 (1940).

The trial Court's response to keep the proceedings moving was well within the bounds of a proper and fair exercise of discretion. Dean has failed to show error.

Response To Proposition Of Law No. 7: Dean's Contention That The Trial Court Prohibited Him From Conferring With Counsel Is False

The record reveals that until the final seconds before the defense rested its case in chief, Dean and his counsel were on the same page that Dean would not testify. Seconds before the defense rested, Dean surprised his counsel by expressing an intent to testify under oath. Counsel asked for time to confer with Dean. The Court granted that request. Ten minutes later, the parties went back on the record for the defense to announce that Dean decided not to testify. Thus, the record shows that Dean was continuously conferring with counsel. Tr. Vol. 13, pgs. 2553-2562. Relative to the Terry Smith matter, the trial Court declined delay the cross examination of Smith. In doing so, the trial Court did not prohibit or restrict contact between Dean and his counsel. Accordingly, the premise of Dean's Proposition of Law Number 7 that he was prohibited from conferring with counsel is false.

The record in Dean's case shows the right of Dean to confer with his counsel was neither denied nor prohibited. The Sixth Amendment is not implicated unless the trial Court would refuse to allow a defendant to confer with his counsel. The necessary fact of refusal to allow Dean to confer with counsel is not present in this case, and consequently the Sixth Amendment is not implicated, either in the Terry Smith matter or in Dean's decision not to testify.

The necessary fact of a prohibition against conferring was present in the case of *Geders v. United States* 425 US 80 (1976), where the trial Court flatly prohibited discussion between the defendant and his counsel during an overnight break in the trial. In contrast, the Sixth Amendment does not permit a defendant, while the trial is taking place, to dictate the pace and order of the proceedings with a whimsical request for a halt to confer with his counsel. A criminal trial is not intended to proceed like a football game, where there is a huddle before every play. This analogy holds even where the defendant himself is on the witness stand and is refused a break before cross examination to huddle with counsel. "... [W]hen a defendant becomes a witness, he has no constitutional right to consult with his lawyer while he is testifying. He has an absolute right to such consultation before he begins to testify, but neither he nor his lawyer has a right to have the testimony interrupted in order to give him the benefit of counsel's advice." *Perry v. Leeke*, 488 US 272, 280 (1989).

The events aggrieved by Dean in his Proposition Number 7 took place during trial proceedings while the jury was waiting in the side room. Moreover, Dean conferred with counsel at all times, and the trial Court did not interfere with that right. Neither the facts nor the law support Dean's Proposition of Law Number 7, and it should be rejected on that basis.

Response To Proposition Of law No. 8: Statements Of The Defendant Dean In The Form Of Jail Calls And Letters To His Friends Were Probative The Element Of Prior

Calculation And Design, As Well As The Course Of Conduct Specification And Were Properly Admitted Against Him

The State had the burden to prove beyond a reasonable doubt that the murder of Titus Arnold was neither an accident nor an afterthought, but rather was done with prior calculation an design. Dean's own words, over the telephone, and in letters, showed the murder of Titus Arnold was not a mistake, was not an afterthought, and nobody's fault but Dean's own. Dean's own words were thus probative of elements of the charges against him, and were thus admissible under Evidence Rule 4303(A).

Dean flatly and wrongly claims his own words, spoken and written, were probative of nothing in the charges against him. From that false foundation, Dean goes on to rail against "prejudice", in that his own words made him appear to be heartless and accepting responsibility for the death of Titus Arnold. The evidence of which Dean now aggrieves did that very thing: Dean's own words made him appear heartless and accepting responsibility for the death of Titus Arnold. Nowhere in any of Dean's statements does he claim a lack of involvement in the murder. And, even though Dean always acknowledged that Wade fired the fatal bullet, Dean always couched responsibility for the murder in terms of "we." Granted, the evidence was "prejudicial" to Dean, in that the evidence supported the State's proof of his guilt. However, being "prejudicial" in this regard means the evidence was "probative", and thus fully admissible against him.

During the proceedings below, Dean did not claim that the jail calls and letters were inadmissible, and his Proposition Of Law No. 8 is thus non-justicable due to waiver. *State v. Miller,* 105 Ohio App. 3d 679, 691, (1995); *State v. Walker,* 66 Ohio App. 3d 518, 522, (1990). What Dean did claim below was that portions of his words were irrelevant and should be redacted, and that is exactly what he received: extensive redactions from his words and letters.

Tr. Vol. 12, pgs. 2378-2401. Because Dean's counsel were trial veterans and not inclined to make frivolous objections, they made no claim that Dean's spoken and written words were in their entirety inadmissible. Dean should not now be permitted to claim error where none was claimed below.

The question of relevance is left to the sound discretion of the trial Court. "The question of whether evidence is relevant is ordinarily not one of law but rather one which the trial court can resolve based on common experience and logic." *State v. Lyles*, 42 Ohio St.2d 98, 99 (1989). As such, the admission of relevant evidence is left to the sound discretion of the trial court. *State v. Sage*, 31 Ohio St.3d 173, 180 (1987). This Court has held that it will not interfere with a relevancy issue unless it finds the trial court abused its discretion. *O'Brien v. Angley*, 63 Ohio St.2d 159 (1980). Dean's argument to this Court is that the evidence was "prejudicial", not that the evidence was not "relevant." Thus, even if Dean's Proposition Of Law No. 8 was justicable, Dean has failed to show the evidence in question was not "relevant."

Response To Proposition Of Law No. 9: Where A State's Witness, In Response To Defense Cross Examination, Makes A Solitary Reference To Polygraph Exams Taken By That Same Witness, A Mistrial Motion Is Properly Overruled And A Proper Curative Instruction Was Given

After completion of the direct testimony of the Dean's girlfriend Crystal Kaboos, she was cross examined by Dean's counsel about whether her courtroom testimony differed from what she had said before. After this back an forth process had gone on for some time, Dean's counsel focused on the issue of whether Dean's and Wade's clothes were removed from the dryer by Kaboos, or whether Dean and Wade's clothes were sitting on top of the dryer when Kaboos first saw them. Dean's counsel believed (erroneously so) Kaboos testified before the Grand Jury that when she first saw Dean and Wade's clothes, they were sitting on top of the dryer. Dean's counsel sought to trap Kaboos in a supposed inconsistency, since she had just testified on direct that she took Dean and Wade's clothes out of the dryer and placed them on top of the dryer, so she could dry her own clothes. The materiality of this supposed inconsistency was never made apparent.

aboos became exasperated over this line of questioning. The dialogue reads as follows.

> Q:[Defense Counsel Mayhall] Okay. Let's ask – the question was asked "We kind of skipped over this. Are you aware of any clothes that were washed?" And your answer was "Yes. The reason I know exactly what Jason was wearing was because his clothes and his shoes were on the drier – were on the drier when I went to put my laundry in the drier after I washed it." In the drier, not on the drier.
>
> A:[Crystal Kaboos] Because I took them out.
>
> Q: That's not what you said.
>
> A: I put them on the drier when I put my clothes in the drier. That's not what I said. I didn't lie about it.
>
> Q: And so with regard to the lies that you did tell, you told the police that Jason said he'd shot Titus Arnold. And that was a lie, right?

A: Yes.

Q: And you told the police that you weren't in the car on this Dibert incident if that's where you were. We really don't know where you were.

A: ***No. But I've taken three polygraph tests to prove that I was telling the truth.*** Tr. Vol. 11, pgs. 2148-2149. (Emphasis added).

The trial Court sent the jury away and Dean moved for a mistrial. The trial Court entertained argument from the parties and then broke for lunch. After lunch, the trial Court entertained more argument from the parties, and eventually overruled Dean's motion for mistrial. Tr. Vol. 11, pgs. 2149-2179.

The jury was called back. The trial Court gave the following curative instruction.

> The Court: During the course of cross examination of the last witness, Crystal Kaboos, she made the following statement: "No, but I have taken three polygraph tests to prove I was telling the truth." That was an improper statement. Any reference to polygraph exams are inadmissible. Polygraph results are not admissible in a court of law. They cannot be relied upon. They're not scientifically proven to be accurate. And, accordingly, it's irrelevant and inadmissible testimony. I would note for your observation that although she said she took three polygraph exams to prove she was telling the truth, she never indicated one way or the other what the results were. You're not to speculate on what the results were. You're not to consider this testimony at all, either now, during the course of the remainder of the trial, during your deliberations. It's highly improper. You're to disregard those statements. And you shouldn't draw inferences one way or the other from that statement; and with that instruction in mind, for the record, if there's anyone here that doesn't feel the can comply with that instruction, now's the time to let the Court know by a show of hands. (No response) All right. The Court, seeing that none of the jurors or the alternate jurors have raised their hand, the Court can presume that the jurors will follow that instruction of the Court. And at this time we will continue with the cross examination of Crystal Kaboos. Tr. Vol. 11, pgs. 2179-2181.

In his contention that the trial Court abused its discretion in overruling his motion for mistrial, Dean does not articulate any rationale as to how the trial Court supposedly mishandled the matter. Instead, Dean contends that Kaboos was an "important" witness for the State. Dean's rationale for error is that because Kaboos was an "important" witness for the State, the 14 words

she uttered on cross examination about her own polygraph testing mandated a mistrial. In other words, for Dean, once an "important" State's witness blurts out 14 words about the witness's own polygraph testing, the die has been cast, and there is nothing more to do other than declare a mistrial and discharge the jury.

In advancing his Proposition of Law to this Court, Dean would have a rigid rule laid down: Where an "important" witness for the State blurts out a few words about their own polygraph testing, a mistrial is mandated and no curative instruction would be sufficient to rectify the matter. A rule of this sort would contradict this Court's holding in *State v. Franklin*, 62 Ohio St. 3d 118, 127 (1991) that "mistrials need be declared only when the ends of justice so require and a fair trial is no longer possible"

Relative to the curative instruction, Dean's sole grievance is that the trial Court stated "[Kaboos] never indicated one way or the other what the results were", referring to Kaboos having said she "took three polygraph exams." By making this statement of fact, Dean contends that trial Court "invaded the province of the jury", and his conviction should therefore be reversed. The State disagrees.

Where acceptance of Dean's claim of error would require adoption of an inflexible rule for the declaration of a mistrial, his Proposition of Law Number 9 lacks merit.

Response To Proposition Of Law No. 10: Mere Prior Knowledge Of The Case From Press Accounts Is Of No Import Where Not A Single Prospective Juror Claimed A Preconceived Notion Of Guilt As A Result Of Prior Publicity

Each and every reference by Dean to juror commentary amounts to nor more than a bare knowledge by a prospective juror of some part of the case due to media publicity. There is not one solitary instance where a prospective juror articulated any sort of belief in the guilt or innocence of Dean as a result of that prior publicity. The case of *Irvin v. Dowd*, 366 US 717

(1961), holds that the constitution is implicated where a jury cannot be seated that does not have a preconceived notion of the defendant's guilt, by reason of prior publicity. That is a far cry from implicating the constitution simply when a prospective juror had been exposed to prior publicity. Dean's references to prospective jurors who knew something about the case from prior publicity is irrelevant to a viable claim of error.

The same analysis applies to those jurors who were exposed to news about the disqualification action that brought about a recess in jury selection. None of the six expressed any sort of belief that the dispute had anything to do with the guilt or innocence of Jason Dean. These types of events are ordinary to any case and are irrelevant to a viable claim of error.

Response To Proposition Of Law No. 11: There Is An Abundance Of Evidence To Support The Charges Against Dean

Regarding the Dibert Ave. drive by shootings, Crystal Kaboos said Dean was present (Tr. Vol. 11, pgs. 2105-2107), Devon Williams saw Dean driving the shooter car, (Tr. Vol. 10, pgs. 2045-2048) and Dean himself bragged to his friend Jason Manns that he did the Dibert Ave. drive-by. Tr. Vol. 12, pgs. 2323-2325. Thus, there is direct and circumstantial evidence to support Dean's presence at the Dibert Ave. drive by shooting.

Relative to prior calculation and design, the broad picture is that Dean was hired by Jeff Bowshier to get Jeff's 42 pounds of marijuana back from Oz. On the night Titus Arnold was murdered, Dean and Wade had just left the Night Owl Tavern, and were wheeling around the corner when they saw Titus Arnold walking home. They thought Titus was Oz, and saw the opportunity to score points with Jeff Bowshier by taking out Oz. They chased Titus. Dean started clicking his .25 caliber gun at Titus, but Dean couldn't get it to shoot. Wade rushed back to the car to get the big gun, and Titus was dead before they realized they killed the wrong guy.

Instead of telling Kevin Bowshier, Jeff's brother, that they killed the wrong guy, Dean simply said they "smoked somebody" in a robbery. As record support for this narration, the State would respectfully commend to the Court Appendix A to this brief , being a detailed summary of the evidence, with record citations for each item of evidence and testimony.

Response To Proposition Of Law No. 12: Where Dean Concedes Waiver Below, Admission Of A Photo of The Victim (State's Exhibit 10V) Was Not An Abuse Of Discretion, And Plain Error Is Not Shown Simply Because Murder Photos Show Blood

The State sought to a number of photographs of the deceased Titus Arnold, the crime scene, and the autopsy. After argument at sidebar from Dean's counsel, and input from the Court, the State agreed to reduce the number of photographs it would offer for admission. The trial Court then used sound discretion to admit the photographs. The admission of the photographs fairly afforded the State with an opportunity to meet the elements of the charges, and Dean, through counsel, persuaded the State to offer for admission only a bare minimum of graphic photos of the victim. The adversary process worked as intended, and there was no violation of the Rules of Evidence. As a result of this process, Dean preserved a single objection to a single so-called 'gruesome" photo, being State's Exhibit 10V. Tr. Vol. 12, pg. 2500-2501.

It was the unfortunate nature of the case that the victim, Titus Arnold, was struck down by a bullet fired from a powerful weapon. It was also the unfortunate nature of the case that the bullet entered Arnold's neck and exited his forehead. Rules of evidence are not intended to change the nature of the case, and the evidence to prove the purposeful murder of Titus Arnold was graphic, because the crime itself was graphic.

Early in the trial, Dean made a blanket and perfunctory objection to any picture portraying blood. Tr. Vol. 8, pg. 1474. The trial judge, prosecutor, and defense counsel then

went through every picture that portrayed blood. The State, through that process, decided to reduce the number of photographs it intended to offer for admission. Tr. Vol. 8, pgs. 1476-1479.

At the end of the guilt phase, the trial judge, defense counsel, and the prosecutor once again went over each picture of the autopsy and other pictures portraying any type of blood. The judge used his discretion to determine if each and every picture was appropriate to admit. Tr. Vol. 12, pgs. 2501-2505. These facts of the record show that after a give and take process, the trial Court exercised thoughtful judgment in the admission of graphic evidence. These facts show an exercise of discretion as is intended by the Rules of Evidence. *State v. Maurer*, 15 Ohio St. 3d 239 (1984).

Dean preserved his objection to one photograph, State's Exhibits 10V (victim in the street). There was no object to admission any other of the other photographs on grounds they would be considered "graphic." Tr. Vol. 12, pg. 2500-2501. Dean's counsel were trial veterans and would know that a graphic crime produces graphic evidence. It stands to reason that these trial veterans would not make a frivolous objection that bloody photos can't be admitted in a murder case. It s also noteworthy that, as trial veterans, defense counsel objected to the autopsy photos (State's Exhibits 118 to 123, Tr. Vol. 7, pgs. 1247-1271) not because they were "graphic, but rather on grounds of authentication, Tr. Vol. 12, pgs. 2502-2504. Consequently, Dean's Proposition Of Law Number 12 (admission of "gruesome" photos) is properly preserved only as to State's Exhibit 10V.

Dean's lack of trial objection to any other claimed "gruesome" photos renders his Proposition of Law Number 12 invalid on grounds of waiver. *State v. Miller,* 105 Ohio App. 3d 679, 691, (1995); *State v. Walker,* 66 Ohio App. 3d 518, 522, (1990). Any claim of error is thus limited to narrow grounds of "plain error." Error is deemed plain only if it was of such great

import that the conviction of the defendant was rendered fundamentally unfair. *State v. Fears,* 86 Ohio St. 3d 329, 332 (1999). In Dean's case, there was no error, let alone plain error.

Under Ohio law, properly authenticated photographs, even if gruesome, are admissible, if relevant and of probative value, or are illustrative of testimony and other evidence. On the other hand, graphic photographs should not be needlessly repetitive, or lacking a relation to proof of an element of the crime. *State v. Maurer*, 15 Ohio St. 3d 239 (1984).

Where the State was tasked with proof of a purposeful murder with prior calculation and design, the nature of the wound to Titus Arnold was directly pertinent to the murder charge against Dean. Moreover, given the robbery charge, the configuration of the victim's body and possessions, especially where witnesses placed the perpetrators hovering over the body, made the street scene photos pertinent to the charges against Dean.

The determination whether photographs meet the test for admissibility rests in the sound discretion of the trial judge. *State v. Phillips,* 74 Ohio St. 3d 72, 77 (1995) citing *State v. Slagle,* 65 Ohio St. 3d 597, 602 (1992). This Court has repeatedly held that it will not interfere with the trial court's balancing of probative value versus prejudice "unless it has clearly abused its discretion, and the defendant was materially prejudiced thereby." *Phillips* 74 Ohio St. 3d at 78 citing *Slagle* 65 Ohio St. 3d at 602 quoting *State. v. Hymore,* 9 Ohio St. 2d 122, 128 (1967).

The admission of crime scene, victim, and autopsy photographs in no way deprived Jason Dean of his right to a fair trial, due process, or a reliable determination of guilt. To ensure that the photographs were not repetitive or gruesome, the judge took the time to review each and every photograph, after full and fair argument from both sides of the case. There was no error in this process, plain or otherwise.

Response To Proposition Of Law No. 13: Beyond Being Non-Justicable Due To Waiver, Neither *Crawford* Nor *Davis* Purport To Render Hearsay Inadmissible, And The Evidence About The Rip Off Of Jeff Bowshier Did Not Amount To "Testimonial" Evidence Under The Sixth Amendment Confrontation Clause

The evidence about Jeff Bowshier having his dope ripped off by Oz was not admitted to prove the truth of the mater asserted. Whether or not Jeff Bowshier had dope, whether or not Bowshier's dope was ripped off, and whether or not Oz was responsible for the rip off, was not in controversy and was of no consequence to the outcome of the case. What was pertinent, however, was the motive behind what turned out to be a murder of mistaken identity, where Dean found out too late that Titus Arnold was not "Oz", who was supposed to be behind the rip off of dope from Jeff Bowshier.

In the recent case of *Crawford v. Washington*, 541 US 36 (2004), Crawford was charged with assault and attempted murder of his wife. His defense was self defense. Right after the assault took place, the wife was interviewed by police. Her statements negated any contention that the assault against her was prompted by any right of the husband to defend himself. Due to the particular rules of evidence in the State of Washington, the wife could not testify as a State's witness. Despite this prohibition against her live courtroom testimony, the State presented the tape of her statement to police, to counter Crawford's claim of self defense. Of course, Crawford could not cross-examiner his wife, because his wife was never on the witness stand.

Given these facts, the *Crawford* Court found a violation of the Sixth Amendment Confrontation Clause: Crawford was accused of a crime against his wife, and she "testified" against him, without any ability on his part to confront his accuser.

In a subsequent case, *Davis v. Washington*, 2006 US LEXIS 4886, the basic facts once again involved out of court statements by the very victim the defendant was charged with assaulting. Accordingly, it should come as no surprise that there was extensive analysis under the

Six Amendment Confrontation Clause: the defendants were charged with crimes against victims who "testified" against them, without any ability on their to confront their accuser.

It should be no surprise that during proceedings below, Dean did not raise any objection under the Sixth Amendment Confrontation Clause. Dean was not charged with possession of marijuana, let alone 42 pounds of marijuana. Dean was not charged with conspiracy to sell drugs. Since Dean was not charged with anything of the sort, evidence about Jeff Bowshier and his dope dealing did not present a Confrontation Clause issue, Dean's trial counsel, veterans of the courtroom, knew that and did not raise a frivolous objection under the Sixth Amendment Confrontation Clause. Thus, the brand new claim by Dean that the evidence was inadmissible under the Sixth Amendment Confrontation Clause is non-justicable due to waiver. *State v. Miller,* 105 Ohio App. 3d 679, 691, (1995); *State v. Walker,* 66 Ohio App. 3d 518, 522, (1990).

Neither *Crawford* nor *Davis* purported to wipe out the normal rules of hearsay. *Crawford* and *Davis* elucidate valid issues under the Confrontation Clause, where victims of crimes "testified" against the accused, without the ability of the accused to confront the accuser. These facts are not present in Dean's case, and he has thus failed to show error, even beyond the fact his Proposition of Law No. 13 is non-justicable due to waiver.

Response To Proposition Of Law No. 14: Dean's Trial Counsel Were Not Ineffective

Relative to the guilt phase side, counsel have no obligation to voir dire on racial issues. Since this case had a tangential link with racism - by Dean's "moon cricket" reference - trial counsel made a strategic decision to avoid the topic. Trial counsel may well have decided that branding Dean a racist and asking prospective jurors to set that aside could be harmful to Dean's eventual request for mercy. "Trial counsel, who saw and heard the jurors, were in the best position to determine the extent to which prospective jurors should be questioned." *State v.*

Cunningham, 105 Ohio St.3d 197, 215, 824 N.E.2d 504, 525 (2005). This Court has further found that "'the conduct of *voir dire* by defense counsel does not have to take a particular form, nor do specific questions have to be asked." *State v. Braden*, 98 Ohio St.3d 354, 373, 785 N.E.2d 439, 461 (2003). "[C]ounsel 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, 538, 747 N.E.3d 765, 793 (2001). In fact, this Court has opined that "the decision to *voir dire* on racial prejudice is a choice best left to a capital defendant's counsel." *State v. Watson*, 61 Ohio St.3d 1, 13, 572 N.E.2d 97, 108 (1991) Also, when it comes to strategic decisions made during *voir dire*, this Court has emphatically concluded "we will not second-guess trial strategy decisions such as those made in *voir dire*." *State v. Cornwell*, 86 Ohio St.3d 560, 569, 715 N.E.2d 1144, 1153 (1999).

Counsel did voir dire two prospective jurors about Dean's leg shackles, and received a "ho hum" response. Tr. Vol. 1, pgs. 42-43, 73-74. It would be well within prudence for counsel to read those responses as an indicator that further interrogation about Dean's restraints would create an adverse issue in the minds of the jurors that would not be present if they just let the matter alone. Dean certainly can't say counsel were oblivious to the issue of Dean's restraints, since they moved for a mistrial on grounds that prospective jurors saw Dean in the leg restraints. Tr. Vol. 1, pgs. 21-25.

Regarding the so-called biased jurors, Dean acknowledged that the neither were excludable for cause under *Morgan v. Illinois*, 504 US 719 (1992). Where each of the two stated they could consider all sentencing options, counsel are not ineffective simply because those two, along with ten colleagues, returned a death verdict.

Regarding counsel being "prepared to defend", it is the State, not the defense, who presents evidence at a motion to suppress. Tr. Vol. 6, pgs. 969-970. Dean received his hearing on the suppression of the photo lineups, and it is inexplicable why Dean now makes a contrary claims to this Court. Dean Merit Brief, pg. 103, Tr. Vol. 6, pgs 969- 1057 (suppression hearing). Counsel did in fact cross examine Terry Smith, and their request for a few minutes to gather their thoughts didn't mean they were ineffective. Counsel could not be expected to make a frivolous objection that bloody photos should be excluded from a murder case. Counsel were not ineffective because Jason Dean's brother Mark showed up drunk when he was supposed to testify. Moreover, testimony Mark Dean would have harmed Dean's case, especially in light of the testimony of Kevin Bowshier, who was with Mark when Jason showed up and bragged that he and Wade had just "smoked somebody." Testimony of Kevin Bowshier, Tr. Vol. 2461-2482. In the balance of Dean's guilt phase claims, he faults his attorneys for not objecting proper jury instructions and proper argument by the State. Counsel are not obligated to make frivolous objections, and counsel are not ineffective because they comport themselves as seasoned trial attorneys.

Relative to his claim of ineffective assistance on the mitigation side, in his Reply Brief to this Court, Dean should explain why he chose not to request a Pre-Sentence Investigation. Dean should explain why he chose to forego a mitigation psychologist exam. And, most importantly, Dean should explain why he didn't call Dr. Smalldon to the stand for mitigation testimony.

Dean should explain the import of the following portion of the mitigation phase proceedings.

> Mr. Schumaker: [The Prosecutor] The first thing I'd like to place on the record, it's my understanding, Your Honor, that Dr. Jeffrey Smallden (sic) is not going to be called as a witness. ***I'd just like the record to reflect, apparently at least from what I've seen, that Dr. Smallden was allocated 12,500 dollars to***

fully explore mitigation in this case. Obviously, I don't know exactly why he's not being called, but I'm assuming that it's a matter of trial strategy that he has no mitigation to offer. So I wanted to put on the record that trial counsel have been vigorous in their efforts to develop that sort of testimony, and apparently it hasn't been fruitful.

The Court: Did the defense have anything to put on the record?

Mr. Butz: [Defense Counsel] No.

The Court: All right. Well, I think the entries would reflect that the Court ear-marked 7500 dollars for Dr. Smallden to inquire to investigate, I guess, certain mitigation with respect to the defendant. And then I received an affidavit from him along with a motion for an additional 7500 dollars because he indicated that he had been working zealously in that effort and that he needed more money. The Court gave him an additional 5000 dollars so the total of 12 and a half thousand dollars so it appears as though he has been working diligently toward that objective so –

Mr. Butz: ***And – but the only thing I would say for the record is we're not – not calling Mr. Smallden because he didn't do something we asked him to do, if that makes sense.*** Tr. Vol. Tr. Vol. 14, pgs. 2776-2779.

It is disingenuous for Dean to claim his counsel were ineffective during the mitigation phase, while ignoring his decision to keep Dr. Smalldon off the witness stand. In his Reply Brief to this Court, Dean should explain this contradiction.

Response To Proposition Of Law No. 15: It Is Not Misconduct To State Fair Commentary On Facts In Evidence

In support of this claim of error, Dean does no more than point out commentary by the prosecutor regarding facts in evidence and label that commentary as improper. There is nothing wrong with securing a commitment from a prospective capital juror that he or she could actually sign their name to a death verdict, if the facts and the law warrant such a verdict. Titus Arnold was a sympathetic victim who was a good citizen and who bore no fault in his death. There is no rule of State or federal that that requires a criminal trial to be sanitized of any reference to the victim as something other than an artifact on an autopsy table. It was part of the admitted

evidence that Dean minimized Arnold's worth as just a "moon cricket". The State is not precluded from commentary on that evidence simply because it would carry a negative racial stereotype. The State is entitled to argue fair inferences from the evidence, and is not thereby restricted to a rigid and unitary view of any one item of evidence. The State is entitled to argue to the jury that the evidence compels a death verdict. There was nothing improper in the conduct by the prosecution.

The test for prosecutorial misconduct is whether the conduct was improper and, if so, whether it prejudicially affected substantial rights of the defendant. *State v. Braden*, 98 Ohio St.3d 354, 368 (2003); *State v. Hessler*, 90 Ohio St.3d 108, 125, (2000); and *State v. Smith*, 14 Ohio St.3d 13, 14, (1984). The touchstone of this analysis is the fairness of the trial, not the culpability of the prosecutor. *State v. Noling*, 98 Ohio St.3d 44 (2002); *Smith v. Phillips*, 455 U.S. 209, 219 (1982). Dean had a fair trial, and the prosecutor did nothing wrong.

Response To Proposition Of law Number 16: The Phase In The Jury Instructions About The "Guilt Or Innocence Of The Defendant" Is A Reference To The Presumption Of Innocence And Does Not Shift Any Burden Of Proof Onto Dean

It is standard protocol in any criminal case, and it was no different in Dean's case, that the jury is instructed that "The defendant is presumed innocent until his guilt is established beyond a reasonable doubt." Tr. Vol. 13, pg. 2625. The subsequent instruction to the jury that "Your duty is confined to the determination of guilt or innocence of the defendant" is a reference back to the presumption of innocence. Tr. Vol. 13, pg. 2672. There is nothing improper in that instruction. Moreover, Proposition of Law Number 16 is non-justicable due to waiver. *State v. Miller,* 105 Ohio App. 3d 679, 691, (1995); *State v. Walker,* 66 Ohio App. 3d 518, 522, (1990).

Response To Proposition Of Law No. 17: The Trial Court Properly Limited The State's Evidence In The Mitigation Phase To That Pertinent To The Course Of Conduct and Felony Murder Aggravators

After entertaining competing arguments from the State and the defense, the trial Court issued a considered decision. The trial Court determined that: (1) that certain autopsy photographs were not admissible, (2) that the evidence of the attempted murder counts was relevant to the O.R.C. §2929.05(A) specification, and (3) that the remaining evidence was relevant to support the aggravating circumstance-- that Dean committed the homicide with prior calculation and design and that Dean committed the homicide during the course of an aggravated robbery Tr. Vol. 14, pgs. 2730-2731.

By making these determinations, the trial court fulfilled its responsibility in determining which evidence was admissible for the mitigation phase. *See, State v. Getsy*, 84 Ohio St. 3d 180, 201 (1998); *State v. Heinish* 50 Ohio St. 3d 231 (1990). The trial court should be given wide discretion in its individual decisions concerning admissibility of evidence, and Dean has failed to show how these decisions resulted in a clear and prejudicial abuse of discretion. *See*, *State v. Hancock*, 108 Ohio St. 3d 57, 76 (Ohio 2006) (quoting *O'Brien v. Angley*, 63 Ohio St.2d 159, 163 (1980).

Response To Proposition Of Law No. 18: Proportionality In Capital Sentencing Is An Exercise Of State Law Where Comparisons Are Primarily Made Amongst Capitally Sentenced Defendants

It was a known factor in the State's case against Dean that the juvenile, Josh Wade, fired the fatal bullet into the head of Titus Arnold. It was also a fact that became known to the jury that Titus Arnold was killed as part of Jason Dean's quest to recover Jeff Bowshier's dope from Oz. When Dean's .25 caliber gun wouldn't shoot, Wade ran back to the car to get the "big gun", to kill the person they thought was Oz, but found out too late wasn't Oz. Although it is clear that

Wade fired the fatal shot, it is equally clear that when Titus Arnold was shot, Jason Dean wanted the person whom he thought was "Oz" dead. Later, when Dean bragged about, and wrote letters about, the murder of Titus Arnold, credit was always couched in the plural, as in Dean and Wade acting together to "smoke somebody" like he said to Kevin Bowshier.

Proportionality in capital sentencing is a matter of State law. *State v. Getsy*, 84 Ohio St. 3d 180 (1998). Proportionality in capital sentencing is not addressed by the federal constitution. *Getsy v. Mitchell*, 2007 US App. LEXIS 17620 (6th Cir, en banc. 2007).

Response To Proposition Of Law No. 19: The Trial Court Relied On Proper Factors To Reach Its Sentencing Decision

Reference by the trial Court that one of the unharmed victims in the course of conduct was an infant child is a proper subject of consideration, since that event constituted a component of the course of conduct capital specification. Consideration of the age of this particular victim does not amount to improper consideration of a capital specification regarding the purposeful killing of a child under 13. Dean was 32 at the time of the crimes, and giving Dean's troubled childhood minimal weight was consistent with Dean being far into adulthood, as opposed to being the product of Dean's "causal nexus" notion. That Dean led a juvenile into a crime spree culminating in a murder is not a matter that would mitigate Dean's sentence. The sentencing decision by the trial Court was based on its written sentencing decision, not on extemporaneous commentary after the sentence was imposed.

Response To Proposition Of Law No. 20: The Jury Need Not Be Given Express Instructions Regarding The Manner In Which The Jury Is To Consider An Unsworn Statement

Dean's claim of error is premised on the notion that a capital sentencing jury must be expressly instructed regarding the manner in which it is to consider an unsworn statement of a defendant. The is no such law, and Dean's claim of error accordingly has no validity. Dean then proceeds to boot strap from this fanciful proposition of law to the contention that the failure to expressly instruct the jury how to treat an unsworn statement has the same effect as an express instruction to ignore the unsworn statement. Even if these fanciful notions were the law, Dean has waived any hypothetical error by failing to raise the matter below. *State v. Miller,* 105 Ohio App. 3d 679, 691, (1995); *State v. Walker,* 66 Ohio App. 3d 518, 522, (1990).

Response To Proposition Of Law No. 21: Although Distinct And Discrete Crimes Are Linked As A "Course Of Conduct" Under A Capital Specification, Those Distinct And Discrete Crimes Do Not Merge To Preclude Separate Non-Capital Sentences.

Dean's Proposition Of Law Number 21 is founded on the fanciful notion of law that a linkage of discrete crimes by a "course of conduct" capital specification pursuant to O.R.C. §2929.04(A)(5) causes those discrete crimes to merge to a single crime for sentencing purposes under O.R.C. §2941.25(A). Such a proposition lacks foundation in law or logic. Even a single assault, where a single set of gunshots were fired into a car that happened to be occupied by four victims, constitutes dissimilar crimes against those victims. *State v. Dixon*, 2004 Ohio 2775, at P 32-33 (1st Dist 2004).Cf. *State v. Talley*, 2006 Ohio 5322, at P. 62 (8th Dist 2006). A gun specification is a sentencing provision, and not a separate offense. Consequently merger analysis under O.R.C. §2941.25(A) is inapplicable. *State v. Williams*, 2003 Ohio 3950 at P. 18-21 (8th Dist. 2003).

Relative to shooting at victims huddled together on the front porch of a dwelling, being 609 Dibert Ave., there is a separate animus as to the habitation, just as there would be a separate animus to a hypothetical fifth victim standing on the porch. Firing gunshots at known victims standing on the porch of the dwelling poses an independent threat to any unseen victims who may be inside the dwelling. The General Assembly intended that both offenses be separately punished. Cf. *State v. Grant,* 67 Ohio St. 3d 465, 474-475 (1993).

Response To Proposition Of Law 22: Beyond Being Non-Justicable Due To Waiver, The Reasonable Doubt Instruction Was Straight Out Of O.J.I. And Undoubtedly Proper

The reasonable doubt instructions aggrieved by Dean was straight out of O.J.I.. See 4 O.J.I. §403.50; O.R.C. §2901.05(D). *State v. Van Gundy,* 64 Ohio St. 3d 230, 235-236 (1992). Not surprisingly, Dean's trial counsel did not object to the instruction. A claim never made below is waived, and this Court should reject Proposition Of Law No. 22 on that basis. *State v. Miller,* 105 Ohio App. 3d 679, 691, (1995); *State v. Walker,* 66 Ohio App. 3d 518, 522, (1990).

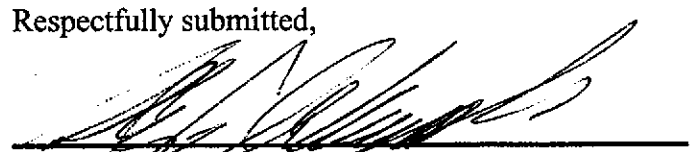
Response To Proposition Of Law No. 23: This Court Has Repeatedly Held Ohio's Capital Sentencing Law Is Constitutional

Dean's claim that the Ohio capital sentencing scheme is unconstitutional should be summarily rejected as was done in *State v. Treesh,* 90 Ohio St. 3d 460, 463, footnote 1 (2001).

CONCLUSION

For the reasons expressed, Dean's claims of error lack merit. Accordingly, this Court should affirm the conviction and sentence imposed by the Clark County Court of Common Pleas. Furthermore, this court should independently determine that a sentence of death is appropriate.

Respectfully submitted,



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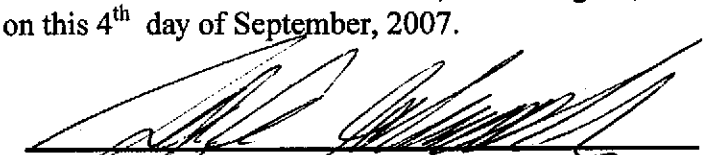
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Merit Brief of Appellee State of Ohio has been hand delivered to Joseph Wilhelm, Counsel of record, Assistant State Public Defender, Office of the Ohio Public Defender, 8 E. Long St., 11th Floor, Columbus, OH 43215-2998, on this 4th day of September, 2007.



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Counsel of Record For Appellee

APPENDIX

State v. Dean
Clark County Court Of Common Pleas
Case No. 05-CR-348
Pre-Trial, Trial And
Mitigation Transcript Summary

Law Enforcement Witnesses

Allen, David : Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 10, pgs. 1912-1917. Summ. p. 49.

Baader, Travis: Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 9, pgs. 1774-1783. Summ. p. 41.

Bauer, Brett: Springfield Police Officer. Arnold homicide. Tr. Vol. 8, pgs. 1375-1385. Summ. p. 18.

Beedy, Mike: Springfield Police Officer. Dibert Ave. drive by shooting and search of defendant's and co-defendant's homes. Tr. Vol. 9, pgs. 1825-1835. Recalled Tr. Vol. 10, pgs. 1959-1978. Summ. pgs. 42-48.

Davis, Neil: Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 10, pgs. 1873-1876. Summ. p. 48.

Emmel, David: Springfield Police Officer. Mini Mart and Dibert Ave. shootings. Tr. Vol. 9, pgs. 1646-1656. Tr. Vol. 9, pgs. 1761-1763. Summ. p. 39.

Estep, Douglas: Lead Detective, Springfield Police. Tr. Vol. 6, pgs. 970-995 (suppression hearing). Summ. p. 9. Tr. Vol. 10, pgs. 1919-1943. Recalled Tr. Vol. 11, pgs. 2191-2256. Summ. p. 49-50. Tr. Vol. 13, pgs. 2435-2437 (Defense case in chief). Summ. p. 65.

Harrington, William: Springfield Police Officer. Search of defendant's home and car. Tr. Vol. 10, pgs. 1947-1953. Summ. p. 50.

Hicks, Darwin: Detective, Springfield Police. Mini Mart shooting. Tr. Vol. 6, pgs. 1029-1037 (suppression hearing). Summ. p.10. Tr. Vol. 9, pgs. 1657-1670. Summ. p. 39.

Hupman, Casey: Springfield Police Officer. Arnold homicide. Tr. Vol. 7, pgs. 1282-1320. Summ. p. 15.

Icenhour, Edward: Springfield Police Officer. Handwriting exemplars from defendant. Tr. Vol. 12, pgs. 2261-2270. Summ. p. 59.

Kranz, Michael: Springfield Police Officer. Arnold homicide. Tr. Vol. 8, pgs. 1385-1390. Summ. pgs. 18-19..

Lewis, Dana: Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 9, pgs. 1764-1773. Summ. p. 41.

Meyer, Jeffrey: Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 9, pgs. 1821-1824. Summ. p. 42.

Pergram, Doug: Springfield Police Officer. Mini Mart and Dibert Ave. shootings. Tr. Vol. 9, pgs. 1637-1645. Summ. p. 39.

Powell, Scott: State Parole Officer. Defendant's prior record. Tr. Vol. 6, pgs. 1091-1092. Summ. p. 11.

Turner, Louis: Springfield Police Officer. Search of co-defendant's home. Tr. Vol. 10, pgs. 1954-1959. Summ. p. 50.

Vincent, Ronald: Clark County Clerk Of Courts. Tr. Vol. 6, pgs. 1088-1090 (guilt phase). Summ. p. 11. Tr. Vol. 14, pgs. 2756-2761 (mitigation phase). Summ. p. 68.

Woodruff, Ann: Clark County Telephone Technician. Statements of defendant. Tr. Vol. 12, pgs. 2292-2306. Summ. p. 59.

Forensic Science Witnesses

Duerr, Timothy: Forensic Criminalist with the Miami Valley Crime Lab. Ballistics.Tr. Vol. 10, pgs. 1995-2012. Summ. pgs. 50-53.

Parsons, Mark: Springfield Police CSI. Arnold homicide and Dibert Ave. drive by shooting. Tr. Vol. 8, pgs. 1545-1569. Summ. pgs. 19-38.

Rhea, Rebecca: BCI Questioned Documents Examiner. Defendant's letters to Manns and Sions. Tr. Vol. 12, pgs. 2270-2291. Summ. p. 59.

Roggenbeck, Robin: BCI Fingerprint Examiner. Gun seized from defendant's home. Tr. Vol. 10, pgs. 1901-1911. Summ. p. 49.

Steinmetz, Jeffrey: Springfield Police CSI. Arnold homicide and Dibert Ave. drive by shooting. Tr. Vol. 8, pgs. 1452-1542. recalled for testimony regarding the seizure of Dean's car. Tr. Vol. 9, pgs. 1836-1851. Summ. pgs. 19-38.

Shepherd, Timothy: Forensic Criminalist with the Springfield Police. Ballistics. Tr. Vol. 10, pgs. 1979-1994, recalled Tr. Vol. 10, pgs. 2012-2035. Summ. p. 50-53.

Medical Witnesses

Miller, Brian: Paramedic, Springfield Fire Department. Arnold homicide. Tr. Vol. 7, pgs. 1236-1246. Summ. p. 14.

Newland, Dr. Guy: Emergency Room Doctor at Mercy Hospital. Mini Mart Shooting. Tr. Vol. 9, pgs. 1718-1735. Summ. pgs. 40-41.

Stewart, Dr. Robert: Clark County Deputy Coroner. Arnold homicide. Tr. Vol. 7, pgs. 1247-1271. Summ. pgs. 14-15.

Civilian Witnesses

Applin, Shani: Dibert Ave. Shooting Victim. Tr. Vol. 9, pgs. 1783-1793. Summ. pgs. 41-42.

Banks, Leo: Citizen eyewitness. Arnold homicide. Tr. Vol. 6, pgs. 1114-1123. Summ. p. 11.

Barrett, Sarah: 16 Year Live-In Of Dean's Brother David. Tr. Vol. 14, pgs. 2769-2774. (mitigation phase). Summ. pgs. 68-69.

Bowshier, Kevin: Friend Of Dean. Statements and conduct of defendant. Tr. Vol. 12, pgs. 2461-2482. Summ. p. 65.

Boyd, Rhonda: Barmaid, Nite Owl Tavern. Arnold homicide. Tr. Vol. 6, pgs. 995-1012 (suppression hearing). Summ. p. 9. Tr. Vol. 6, pgs. 1220-1232. Recalled for cross examination Tr. Vol. 12, pgs. 2258-2260. Summ. p. 14.

Burd, Laroilyn: Resident of 604 Dibert Ave. Dibert drive by shooting. Tr. Vol. 9, pgs. 1736-1753. Summ. p. 41.

Buskirk, Victoria: Civilian Eyewitness. Arnold homicide. Tr. Vol. 7, pgs. 1273-1281, recalled Tr. Vol. 8, pgs. 1369-1374. Summ. p. 15.

Cherry, Michelle: Counselor at Visions For Youth. Arnold homicide. Tr. Vol. 6, pgs. 1093-1113. Summ. p. 11.

Chilton, Hassan: Dibert Ave. Shooting Victim. Tr. Vol. 10, pgs. 1876-1901. Summ. pgs. 48-49.

Chilton, Shanta: Dibert Ave. Shooting Victim. Tr. Vol. 9, pgs. 1793-1820. Summ. p. 42.

Epperson, Kari: Eyewitness, Cousin Of Dean. Arnold homicide. Tr. Vol. 8, pgs. 1390-1416 (guilt phase). Recalled Tr. Vol. 8, pgs. 1449-1450. Summ. p. 19.

Epperson, Terri: Eyewitness; Cousin Of Dean. Arnold homicide. Tr. Vol. 6, pgs. 1014-1028 (suppression hearing). Summ. pgs. 9-10. Tr. Vol. 8, pgs. 1416-1449. Summ. p. 19.

Farmer, Joshua: Criminal Associate of Bowshier Clan. Course of conduct specification. Tr. Vol. 10, pgs. 1853-1865. Summ. p. 48.

Haile, Rose: Citizen eyewitness. Arnold homicide. Tr. Vol. 6, pgs. 1124-1155 (direct); Tr. Vol. 6, pgs. 1166-1169 (cross-redirect-recross). Summ. pgs. 11-12.

Kaboos, Crystal: Girlfriend of Jason Dean. Statements and conduct of defendant. Tr. Vol. 11, pgs. 2092-2191. Summ. pgs. 55-59.

Kaech, Noel: Clark County Public Defender. Tr. Vol. 14, pgs. 2762-2769. (mitigation phase). Summ. p. 68.

Lyles, Yolanda: Mini Mart Shooting Victim. Tr. Vol. 8, pgs. 1571-1611, Tr. Vol. 9, pgs. 1619-1637. Summ. pgs. 38-39.

Manns, Jason: Cellmate and Friend Of Jason Dean. Statements of defendant. Tr. Vol. 12, pgs. 2310-2334. Summ. pgs. 59-62.

Mansfield, Danny: Owner of the Nite Owl Tavern. Arnold homicide. Tr. Vol. 6, pgs. 1205-1220. Summ. p. 14.

Mays, Alicia: Friend of Josh Wade. Conduct of defendant. Tr. Vol. 9, pgs. 1710-1716. Summ. p. 40.

Nawman, Allison: Citizen eyewitness. Arnold homicide. Tr. Vol. 6, pgs. 1190-1204. Summ. p. 14.

Nott, Forrest E. II: Owner Of A Car Customizing Shop. Dibert Ave. drive by shooting. Tr. Vol. 10, pgs. 1866-1872. Summ. p. 48.

Panstingel, Theodor: Citizen Eyewitness. Arnold homicide. Tr. Vol. 6, pgs. 1170-1189. Summ. p. 13.

Piersoll, Andre: Mini Mart Shooting Victim. Tr. Vol. 6, pgs. 1037-1057 (suppression hearing). Summ. p. 10. Tr. Vol. 9, pgs. 1677-1710. Summ. p. 40.

Scott, Neil: Citizen Eyewitness. Mini Mart shooting. Tr. Vol. 9, pgs. 1670-1676. Summ. p. 39-40.

Sions, Rhonda: Girlfriend of Jason Dean. Statements and conduct of defendant. Tr. Vol. 12, pgs. 2335-2461. Summ. p. 62-65.

Smith, Terry: Cellmate of Jason Dean. Statements of defendant. Tr. Vol. 11, pgs. 2064-2091. Summ. pgs. 54-55.

Williams, Devon: Dibert Ave. Property Damage Victim. Tr. Vol. 10, pgs. 2038-2062. Summ. pgs. 53-54.

Pre-Trial Hearings Summary

Continuance Hearing June 30, 2005 (Judge O'Neill) Colloquy with Dean about Motion To Continue (trial date July 7, 2005) and written time waiver. Hearing Transcript, pgs. 3-4. Parties jointly request a transcript of the juvenile bind over hearing of co-defendant Wade. Hearing Transcript pgs. 4-6.

Pre-Voir Dire Instructions to Prospective Jurors: Tr. Vol. 1, pgs. 25-33.

Preliminary Instructions To Jurors: Tr. Vol. 2, pgs. 513-526.

Colloquies Regarding Shackling

Renewed Defense Motion Regarding Shackling:

The Court: I understand that defense had a matter to bring up before we brought in the prospective jurors?

Mr. Butz: [defense counsel] Yes. If the Court please, Mr. Dean was brought from the first floor to the third floor in shackles. He remains in shackles. We'd filed a motion at an earlier time. I'm not sure what the Court's ruling was; but if the Court is intending to keep him shackled, we'd renew our motion and suggest that it's inappropriate. The jurors, part of which have already been tainted in that there was a large group in the hallway that probably saw Mr. Dean shackled.

The Court: The Court's previous ruling [Doc 114, Entry Overruling Motion, Section III, filed April 30, 2006] was that I overruled the motion for the defendant to appear without restraints and shackles, that being because of a prior violent offense of robbery and his prior conviction for attempted escape.

Mr. Butz: We'd renew the motion and rest on our earlier argument.

The Court: All right. Thank you. All right. You can bring the prospective juror in. Tr. Vol. 1, pgs. 3-4.

Mistrial Motion Regarding Shackling Overruled:

Tr. Vol. 1, pgs. 21-25. Defense counsel moved for a mistrial on grounds that prospective jurors saw Dean shackled. The prosecutor responded that the shackles are around Dean's feet, which are under the table, and a view by prospective jurors of the shackles could not be presumed. The following colloquy ensued.

The Court: All right. Well, the Court's ruling is that – and I issued this ruling several weeks ago when we were here. Yeah, I did, Mr. Butz. I don't know why you're shaking your head.

Mr. Butz: Because I never had it, Judge. If you did, I never heard it.

The Court: Okay, here's what happened. We were here for general motion hearing about three or four weeks ago where you guys submitted all your general motions, probably 40 of them. One of them was for the defendant to appear without shackles and restraints. I submitted an entry the following day overruling it in writing submitted to you. [Doc 114, Entry Overruling Motion, Section III, filed April 30, 2006]. That issue has been overruled. He's got a prior robbery offense. He's got a prior attempted escape, and that issue was overruled. And I submitted it to you, and now you're shaking your head at me like I don't know what I'm talking about. Tr. Vol. 1, pgs. 21-22.

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Mr. Mayhall: Two things. We just wanted to let the Court know that we do – we think we're going to need to voir dire on the issue of the defendant being shackled. That was our plan on doing that. Also, in not – with respect for the Court's ruling but for the purposes of the record, we would note that the defendant was brought back in to the courtroom shackled under the custody of two deputies while all the jurors who were presently seated in the courtroom were waiting in the hallway. So they saw the defendant brought up in the elevator, through the hallway, into the courtroom shackled and in custody. That's all. Tr. Vol. 1, pg. 24.

Voir Dire Regarding Shackling:

Mr. Mayhall [defense counsel] And I notice that the prosecutor had you look at Mr. Dean to see if you could sign a verdict in his case. When you did that, did you notice that he's wearing shackles?

Juror 227: I noticed it earlier when I came in.

Mr. Mayhall: And what did you think about that?

Juror 227: I just think its probably for the protection of everybody.

Mr. Mayhall: Okay. So you – do you think Mr. Dean is a man that people need to be protected form before we've heard any evidence?

Juror 227: No, I don't. I'm sure it's probably just procedure.

Mr. Mayhall: Okay. And there will be a lot of talk about presumption of innocence and the State having the burden of proof. Does the fact that he's shackled, does that indicate some evidence to you that – that he is guilty of what he's charged with?

Juror 227: No.

Mr. Mayhall: You'll be able to set that aside?

Juror 227: Yes. Tr. Vol. 1, pgs. 42-43.

Additional Voir Dire Regarding Shackling:

Mr. Butz: [defense counsel] Did you notice that Mr. Dean is wearing shackles?

Juror 231: I did not notice until you said that.

Mr. Butz: What would that tell you?

Juror 231: That he probably came from the jail.

Mr. Butz: Okay. Would it suggest anything else to you?

Juror 231: No.

Mr. Butz: Okay. Would it suggest to you that he's a bad guy?

Juror 231: Well, I – just that he probably came from the jail.

Mr. Butz: Can you infer anything else from the fact that he's wearing shackles?

Mr. Schumaker: [prosecutor] I'll object, Your Honor. I think it's been asked and answered several times.

The Court: I'll sustain the objection.

Mr. Butz: All right. So in short, you didn't notice but I pointed it out to you now and –

Juror 231: Right, right.

Mr. Butz: And you know now that he's been taken from the jail?

Juror 231: That he's been arrested for something.

Mr. Butz: We'll pass for cause, Your Honor.

The Court: Thank you. Mr. Schumaker or Mr. Wilson.

Mr. Schumaker: Miss Breese, I'm sorry to belabor the obvious; but, I mean, Mr. Butz asked you about the shackles. You don't see any handcuffs or anything on the defendant, do you?

Juror 231: No. Tr. Vol. 1, pgs. 73-74.

Record Reference To Shackling:

Mr. Mayhall: [defense counsel] Just for the record, Judge, Mr. Dean has been walking back and forth to chambers in front of all the jurors in shackles so the fact that he's in custody is something that's clear to every single juror so we don't think the fact that he'll be in custody at the [jury] view is any more prejudicial than what the jurors have already seen.

The Court: All right. Well, then certainly he has a right to be present; and the deputies will bring him to each location, and I take it he'll stay in the vehicle then.

Mr. Butz: [defense counsel] That is our expectation. Tr. Vol. 5, pg. 962.

Additional Record Reference To Shackling:

Mr. Schumaker: [The Prosecutor] The next thing that I would like to put on the record is something that I neglected to put on earlier, and that is that I do anticipate that the next witness will be Jason Mans.(sic) He is in the jail. We brought him here. He will be brought in here in leg shackles that are identical to those that have been on the defendant. Would indicate for the record that Andre Piersoll was brought from the jail in leg shackles identical to the defendant. I would also indicate that the defendant was brought from the jail in leg shackles that are identical to the witness. Thus, showing the jury that this is very simply a standard procedure that when individuals are transported, you know, to the Court from the jail that they're in leg shackles.

Mr. Butz: [Defense Counsel] So are you testifying to that?

Mr. Schumaker: I'm placing it on the record. That's – that's what occurred here.

Mr. Butz: They aren't the defendant in this case. That's the distinction.

Mr. Schumaker. That's fine. I just want to place on the record what has been done and to minimize any argument of prejudice to the defendant. Tr. Vol. 12, pgs. 2306-2307.

Pre-Trial Publicity Regarding Court Recusal Action

Defense counsel notified the Court of concern regarding recent headline stories regarding judicial recusal in the Springfield News-Sun. Upon agreement of the parties, the Court inquired of the array if any had read news reports since adjournment the previous Wednesday. Six raised their hands. Each of the six were then individually questioned regarding the matter. Tr. Vol. 5, pgs. 765-768. After the voir dire, neither party made any challenge for cause. Tr. Vol. 5, pgs. 769-800. In respect to prospective juror 266, the defense challenge for cause for violation of the admonition against reading news stories was overruled. Tr. Vol. 5, pgs. 864-874. In respect to prospective juror 277, no challenge due to exposure to news stories, but State challenge for cause sustained on grounds of familial influence. Tr. Vol. 5, pgs. 877-893. In respect to prospective juror 274, no challenges due to a friend's reference to news stories. Tr. Vol. 5, pgs. 899-902. In

respect to prospective juror 282, no challenges due to her mother's reference to news stories. Tr. Vol. 5, pgs. 915-918. In respect to prospective alternate juror 286, no challenges due to scanning the news headlines. Tr. Vol. 5, pgs. 926-929. In respect to prospective alternate juror 298, no challenges due to a friend's reference to recusal story. Tr. Vol. 5, pgs. 930-931. In respect to prospective alternate juror 304, no challenges due to overhearing conversation in a line at the grocery store. Tr. Vol. 5, pgs. 938-940.

Suppression Hearing Regarding Photo Identification

Douglas Estep: Detective, Springfield Police. Tr. Vol. 6, pgs. 970-995. Based upon conversation with Crystal Kaboos, Jason Dean was developed as a suspect in the killing of Titus Arnold. Based upon conversation with Kari and Terri Epperson, Josh Wade was developed as an additional suspect in the killing of Titus Arnold. Tr. Vol. 6, pg. 974. Photo spreads of Dean and Wade put together with the aid of a computer photo spread program. Tr. Vol. 6, pgs. 970-976. Rhonda Boyd, the barmaid at the Nite Owl Tavern, picked Jason Dean's photo from the array (**State's Suppression Hearing Ex. 3A; State's Suppression Hearing Ex. 3B** identifies by name the persons appearing in the spread) as one of the two individuals who left the bar just prior to the killing of Titus Arnold. Tr. Vol. 6, pgs. 975-980. Terri Epperson, an eyewitness to the killing of Titus Arnold, picked Josh Wade's photo from State's Suppression Hearing Ex. 2A (**State's Suppression Hearing Ex. 2B** identifies by name the person appearing in the spread) Tr. Vol. 6, pgs. 980-983. Detective Estep identified the security video from the Nite Owl Tavern, dated April 13, 2005, (**State's Suppression Hearing Exhibit 4B**) showing Dean and Wade leaving the bar minutes before the shooting of Titus Arnold that took place approximately 100 yards from the Nite Owl Tavern. Tr. Vol. 6, pgs. 983-987. Detective Estep's investigative notes marked as **Defendant's Suppression Hearing Exhibits 1 and 2**. Tr. Vol. 6, pgs. 991-992.

Rhonda Boyd: Barmaid, Nite Owl Tavern. Tr. Vol. 6, pgs. 995-1012. Boyd testified that the brother of Jason Dean, Mark Dean had been a patron of the Nite Owl Tavern, until Mark had been banned for vandalism five years previous. On the night of the shooting of Titus Arnold, April 13, 2005, two guys came in the bar, one of whom she recognized due to familial resemblance, to be Mark Dean's brother. About 15 minutes after Dean's brother and his friend left the bar, Boyd heard and saw police sirens nearby. Boyd identified the photo lineup (**State's Suppression Hearing Exhibit 3A**) and her notation that she picked Jason Dean's photo as being one of the two in the bar that night. Tr. Vol. 6, pgs. 1001-1002. Boyd identified and narrated the security video (**State's Suppression Hearing Exhibit 4B**). Tr. Vol. 6, pgs. 1002-1008.

Terri Epperson: Eyewitness. Tr. Vol. 6, pgs. 1014-1028. Terri looked out an upstairs window of her mother's house at 518 W. High St. and saw a tall guy being chased down the street by two other guys. Terri came downstairs and went onto the front porch of the house. In the parking lot across the street, she saw a man exit a car and start running down the street. The man who exited the car fired two shots at the tall guy she saw from the upstairs window. As the man who fired the shots came back to the car. Terri recognized that person as her cousin, Josh Wade. Terri identified the photo lineup (**State's Suppression Hearing Exhibit 2A**) and her notation that she picked Josh Wade's photo as the person she saw shoot the tall guy. Tr. Vol. 6, pgs. 1014-1026.

Darwin Hicks: Detective, Springfield Police. Tr. Vol. 6, pgs. 1029-1037. Hicks investigated a shooting of Andre Piersoll at the Selma Road Mini-Mart, which occurred on April 10, 2005. Piersoll, who survived, told Detective Hicks that he knew the person who shot by the name "JD." Detective Hicks identified the photo lineup that included a photo of Jason Dean (**State's Suppression Hearing Exhibit 6A**) and the companion photo lineup that identifies the person by name. (**State's Suppression Hearing Exhibit 6B**). Andre Piersoll picked Jason Dean out of the photo lineup (**State's Suppression Hearing Exhibit 6A**) as being the person who shot him. Tr. Vol. 6, pgs. 1029-1034. Detective Hicks investigative notes were marked as **Defendant's Suppression Hearing Exhibits 3 and 4.**

Andre Piersoll: Mini Mart Shooting Victim. Tr. Vol. 6, pgs. 1037-1057. On April 10, 2005, Andre Piersoll went inside the Selma Road Mini Mart and had a conversation with Jason Dean, who Piersoll knew from doing time together in the local jail. Piersoll left the Mini Mart and sat in the passenger side of the car being driven by his friend, Yolanda Lyles. A few minutes later, Dean rushed up to Piersoll and shot him in the arm. Dean didn't say anything before he started shooting. Dean continued to pull the trigger at Piersoll and another friend, Neil Scott, but the gun didn't fire, as if the gun was out of bullets. When the gun was clicking, Piersoll saw that it was Jason Dean holding the gun. Piersoll identified the photo lineup he was shown by Detective Hicks (**State's Suppression Hearing Exhibit 6A**) and his notation that he picked Jason Dean as the person who shot him. Tr. Vol. 6, pgs. 1037-1046. On cross examination, Piersoll said that back in 1998 or 1999, he was celled in the same pod with Dean for about 4 months. Piersoll said that when he was shot, he had $350.00 on him. Piersoll denied stealing anything from Jason Dean or any member of Dean's family. Tr. Vol. 6, pgs. 1052-1054. On redirect, Piersoll said that a couple of days before he was shot, he was drinking with Jason Dean's brother, Mark Dean. Piersoll asked the brother if he was Jason, and Mark said no. Mark called Jason on the cell phone and let Piersoll talk to Jason. Tr. Vol. 6, pgs. 1054-1057.

Trial Transcript Summary

Preliminary Instructions Regarding Opening Statements: Tr. Vol. 6, pgs. 1059-1060.

State's Opening Statement: Tr. Vol. 6, pgs. 1061-1080.

Defense Opening Statement: Tr. Vol. 6, pgs. 1080-1082.

Defense Motion For Mistrial Overruled: Tr. Vol. 6, pgs. 1083-1083. Defense moves for a mistrial based on comments during the State's opening statement, contending there was inappropriate commentary regarding victim impact, and inappropriate commentary that Dean was a racist and couldn't keep his mouth shut. The motion was overruled.

State's Case In Chief

Ronald Vincent: Clark County Clerk Of Courts. Tr. Vol. 6, pgs. 1088-1090. Vincent identified a certified copy of the judgment entry in Case No. 93CR-53, (**State's Exhibit 8**) being a robbery conviction of Jason Dean. There was no subsequent entry restoring Dean's right to possess or use a firearm.

Scott Powell: State Parole Officer. Tr. Vol. 6, pgs. 1091-1092. Powell identified Jason Dean as the individual who was the subject of the robbery conviction in Case No. 93CR-53 (**State's Exhibit 8**).

Michelle Cherry: Counselor At Visions For Youth. Tr. Vol. 6, pgs. 1093-1113. Cherry was the night shift (12:00 midnight to 8:00 AM) counselor at the Visions for Youth facility, a group home for troubled youth, located nearby to the Nite Owl Tavern and the homeless shelter. Cherry identified these locations on a map of the area. (**State's Exhibit 9**). Titus Arnold was the second shift (4:00 PM to 12:00 midnight) youth counselor, whom Cherry would relieve. Cherry identified a photograph of Titus Arnold. (**State's Exhibit 7**). By habit, Titus would carry 10 0r 15 dollars on his person, although it would not be unusual for Titus to have no money on his person. Normally, Titus would have some money on his person. On the day of the shooting, April 13, 2005, Cherry arrived at work at 20 minutes until midnight. After Titus had a phone call with his friend Franco, Titus told Michelle he would walk home. Titus left, carrying a book bag over his shoulder. About two minutes later, Michelle heard gunshots. Michelle looked out a second floor balcony and saw Titus laying in the street. Two men, one tall and one short, were standing over Titus. Michelle called 911, and identified a recording of the call that was played for the jury. (**State's Exhibit 5B**). Michelle ran outside and saw Titus laying on his back with a bullet hole through his head. The backpack was gone. Police arrived shortly thereafter. Michelle also testified that her nephew, William Calhoun, goes by the name of "Oz", and that her son goes by the name of "Tuna." Shanta Chilton is a close friend of her son Tuna, and Shanta's boyfriend goes by the name of "Draztik."

Leo Banks: Citizen eyewitness. Tr. Vol. 6, pgs. 1114-1123. On the night of the shooting, April 13, 2005, Banks was a passenger in a car stopped at a red light at the intersection of Yellow Springs and High Street. Banks identified his location on a map of the area. (**State's Exhibit 9**). Banks heard two gunshots. Banks saw two men running across High Street in back of the homeless shelter. One was tall and one was short.

Rose Haile: Citizen eyewitness. Tr. Vol. 6, pgs. 1124-1155 (direct); Tr. Vol. 6, pgs. 1166-1169 (cross-redirect-recross). At 11:50 PM on the night of the shooting, April 13, 2005, Rose was driving her car northbound on Light, intending to turn eastbound on High. That intersection is about a block away from the Nite Owl Tavern. Before Rose turned, a car traveling eastbound on High sped past her. As Rose turned eastbound on High, the speeding car stopped in the nearby parking lot of the homeless shelter. Two people got out of the car. One was tall and one was short. A man in a gold coat was walking westbound on High by the homeless shelter. The two people began chasing the man in a gold coat, who was running across the street, heading westbound on High. The chase was heading towards Rose. The tall pursuer went back to the car and opened the passenger side door. The short pursuer remained in the middle of the street. As the tall and short pursuer were side by side, Rose saw blue flashes and heard two gunshots. The man in the gold coat fell to the street. The distance between Rose and the shooting

was the same as the distance between the witness chair and counsel table. The tall one and the short one hovered over the body for a couple of seconds and then ran back to the car. The car drove off, heading eastbound on High. Rose got out of her car and saw that the victim was a black man, who was bleeding from gunshot wound in the forehead. Rose thought the pursuers were black because their clothes were baggy. Rose drove about four blocks away to the Executive Inn and called 911. Rose identified the recording of her 911 call, which was played for the jury. (**State's Exhibit 5C**). Rose identified a picture of the victim as he was laying in the street at the shooting scene. (**State's Exhibit 10**) Rose pointed out on the road diagram the location of the events she had described.

At sidebar, defense counsel noted that when the photo of the victim in the street was shown, the victim's fiancé and her mother exclaimed and left the courtroom, and that the fiancé made some sort of angry comment. The prosecutor responded that the fiancé knew what was coming, and that the fiancé had insisted on being present at the trial from the start to the finish. After more dialogue, the defense declined an immediate instruction or admonition, stating that "I don't think now is the appropriate time." Tr. Vol. 6, pgs. 1147-1151.

Pursuant to request from the defense, with counsel present in chambers, the Court examined in camera Rose's prior statement. (**State's Exhibit 11**). The Court concluded, relative to her videotaped statement, there was an inconsistency in that it appeared Rose told police the pursuers ran immediately after the shooting, although in court Rose testified that the pursuers hovered over the body for a couple of second before they ran. Tr. Vol. 6, pgs. 1153 -1155.

Colloquy With Jason Dean Regarding Dean's Dissatisfaction With Defense Counsel: Tr. Vol. 6, pgs. 1155-1166.

The Court: All right. Is there a matter you wanted to take up with the Court, Mr. Dean?

The Defendant: Yes. At this point I'm uncomfortable with Mr. Butz and Mr. Mayhall [defense counsel] continuing with my case. I don't feel as though they're in a position to adequately defend me. It's my understanding that I'm due to adequate defense and a fair trial. I don't feel – at this point it's impossible for me to receive a fair trial and for Mr. Butz and Mr. Mayhall to adequately defend me.

The Court: And does this have something to do with the conflict that was going on between the Court and your attorneys last week?

The Defendant: This is just all the issues that have arisen lately. The conflicting statements that witnesses have made, the pictures that he showed to the jury and the family just to get some kind of reaction from the family without acknowledging what he was going to do and continue to leave it on there. It's just I don't feel I'm being defended adequately. Would like to either seek legal counsel elsewhere, or I can defend myself.

Mr. Mayhall: [Defense Counsel] Don't say that.

The Defendant: Move to strike my last statement from the record.

Mr. Butz: [Defense Counsel] I will say, Judge, that what the discussion Mr. Dean and I had right before I brought this to the bailiff's attention was did I feel better or relieved based on what occurred yesterday; and I told him, quite frankly, no. So, you know, that –

The Court: What occurred yesterday?

The Defendant: Pertaining to the matter that you continuously overruled their wish to withdraw from my case. And if they wish not to defend me, how is it possible for them to defend me properly? It's a very simple matter.

The Court: All right. Did defense counsel have a statement to make?

Mr. Butz: No.

Mr. Mayhall: No. Tr. Vol. 6, pgs. 1156-1157.

The dialogue between the Court, Dean and defense counsel continued. Neither Dean nor defense counsel moved the Court for any sort of relief. Tr. Vol. 6, pgs. 1157-1166.

Theodor Panstingel: Citizen Eyewitness. Tr. Vol. 6, pgs. 1170-1189. On the night of the shooting, April 13, 12005, Panstingel was seated in the front room of his home at the corner of Race and High. Using a map (**State's Exhibit 9**), Panstingel pointed out the location of his home. Outside the house, Panstingel heard a big boom and looked out the window. Panstingel saw a man laying on his back in the street and another man standing up 3 feet away from the man laying in the street. The man standing up was short and wore a hoody type jacket. Panstingel's girlfriend Allison screamed, and the man in the hoody looked in their direction. The man in the hoody ran to a car that was parked in the homeless shelter parking lot and jumped in the back seat driver's side. When the man in the hoody jumped in the car, the brake lights of that car were lit. The car was a lighter color with a box shape. The car took off. Panstingel and his girlfriend Allison went outside to help the victim, who was bleeding from a head wound. The victim had no pulse. Panstingel took off his shirt and used it to cover the victim's face. Panstingel identified a photo of the victim as he laid in the street. (**State's Exhibit 10**).

Allison Nawman: Citizen eyewitness. Tr. Vol. 6, pgs. 1190-1204. On the night of the shooting, April 13, 12005, Nawman was seated in the front room of the home of her fiancé, Theodore Panstingel, located at the corner of Race and High. Using a map (**State's Exhibit 9**), Nawman pointed out the location of the home. Nawman heard a gun shot and looked out the window. She saw a man standing about 2 feet away from a man laying in the street. Nawman grabbed her phone and went outside to the porch. The man standing in the street ran to a nearby car. The man was short, white, and wore a hooded jacket. As the man was running, the brake lights on the car were already lit up. The man jumped in the car, but not in the driver's seat. The car drove off eastbound on High. Nawman took the victim's hand. The victim was not breathing. Her fiancé covered the victim's face with his shirt. Nawman identified a photo of the victim laying in the street. (**State's Exhibit 10**).

Danny Mansfield: Owner of the Nite Owl Tavern. Tr. Vol. 6, pgs. 1205-1220. Inside the Nite Owl Tavern, Mansfield had a four camera video (no audio) security system that continuously recorded activity in the bar. On the night of the shooting, April 13, 2005, Mansfield maintained a video tape and identified it as **State's Exhibit 4B**. Because Mansfield hadn't yet changed the time stamp, the video showed a time one hour earlier than the true time. Mansfield narrated the video, showing two men entering and then leaving the bar at 11:47 PM.

Rhonda Boyd: Barmaid of the Nit Owl Tavern. Tr. Vol. 6, pgs. 1220-1232. Recalled for cross examination Tr. Vol. 12, pgs. 2258-2260. On the night of the shooting, April 13, 2005, two young guys came into the Nite Owl Tavern where Boyd was a barmaid. On was tall and one was short. They went to the pool table. After five minutes, the two young guys went out the back door. One of the two guys resembled Mark Dean, a man known by Boyd as a former patron of the Nite Owl Tavern. Boyd narrated a security videotape (**State's Exhibit 4B**) showing the two young guys enter and then leave the bar. Boyd identified the photo lineup where she picked out Jason Dean's picture as one of the two guys who were in the bar that night. (**State's Exhibit 3A**) Boyd also did an in-court identification of Jason Dean. About 15 or 20 minutes after the two guys left, Boyd saw lights from emergency vehicles congregating nearby. Boyd heard nothing outside due to the noise and music from inside the bar.

Brian Miller: Paramedic, Springfield Fire Department. Tr. Vol. 7, pgs. 1236-1246 Paramedics arrived at the scene at 2 seconds past midnight. Springfield police were present and removed the victim's backpack. The victim was hooked to a heart monitor but registered no pulse. The victim was transported to Mercy Hospital, although there were no signs of breathing or consciousness. Upon arrival at Mercy Hospital at 8 minutes past midnight, the victim remained without life signs.

Dr. Robert Stewart: Clark County Deputy Coroner. Tr. Vol. 7, pgs. 1247-1271. The Court instructed the jury, with the agreement of the parties, that "difficult and disturbing" photos of the victim were about to be shown, and those who would be unable to maintain composure should leave the courtroom. Tr. Vol. 7, pgs. 1247-1248. Dr. Stewart identified a picture of the victim's face taken during autopsy proceedings. (**State's Exhibit 120**). The victim had a gunshot wound to the base of the neck (**State's Exhibit 118**) that exited the forehead. A photo of the entrance wound (**State's Exhibit 122**) did not reveal gun shot residue. Dr. Stewart identified a photo of the victim's jacket (**State's Exhibit 121**) showed a hole in the collar area, consistent with that which would be caused by a bullet. There were no muzzle marks or gunshot powder marks on the jacket. A photo was identified showing a contusion to the victim's head. (**State's Exhibit 119**). A photo was identified showing a metal fragment at the base of the victim's spinal cord. (**State's Exhibit 123**). Dr. Stewart used a diagram (**State's Exhibit 124**) to illustrate the victim's injuries. The bullet fragment recovered from the victim was identified. (**State's Exhibit 23**). The cause of death was a gunshot wound to the neck.

Victoria Buskirk: Civilian Eyewitness. Tr. Vol. 7, pgs. 1273-1281, recalled Tr. Vol. 8, pgs. 1369-1374. While in the front room of her home on Race street near the Nite Owl Tavern on the night of the shooting, Buskirk heard a car make an unusual sound like it was going to "blow apart." Buskirk looked outside and saw a silver colored car park across the street. Two

occupants, one who was tall and one who was short, got out of the car and went into the Nite Owl Tavern. About 15 minutes later, Buskirk heard the car start up again. Buskirk heard the car travel around the corner and within 15 to 30 seconds she heard two gunshots in rapid succession. Buskirk went outside and saw the victim laying in the street. She explained the locations on a diagram of the area (**State's Exhibit 9**) Buskirk identified a videotape made of the silver car (**State's Exhibit 125, 125A**) that was played for the jury. Buskirk testified that the sound made by the car in the video was similar to the sound made by the

Casey Hupman: Springfield Police Officer. Tr. Vol. 7, pgs. 1282-1320. Uniformed officers Hupman and Bauer responded to a call regarding a male shot in the area of Race and High streets. Hupman identified pertinent locations on the map of the area. (**State's Exhibit 9**). The victim was bleeding from a head wound. Hupman took pictures with a police issued digital camera. (**State's Exhibits 10, 10A, 10B, 10D, 10E, 10G, 10J, 10K, 10L, 10M, 10N, 10O, 10S, 10T, 10U, 10V, 10W, 10X, 10Y, 10LL, State's Exhibit 126, 127**). The victim's cell phone and cell phone holder were recovered from underneath a black pick up truck that was parked nearby. (**State's Exhibit 10R, 10S, 10T** - photos). Hupman identified the victim's cell phone and cell phone holder that was recovered from the scene. (**State's Exhibit 15, 15A** – tangible objects). There was a bullet hole in the front portion of the driver's side door of the black pick up truck. (**State's Exhibit 10D, 10E** – photos). Hupman identified shell casings recovered from the scene (**State's Exhibit 16 and 17** – tangible objects; **State's Exhibit 10J, 10K, 10L, 10M, 10N, 10O** - photos). Hupman identified the victim's knit hat (**State's Exhibits 22, 22A**), shirt (**State's Exhibits 13, 13A**), gold coat (**State's Exhibit 19, 19A**), back pack (**State's Exhibit 14, 14A**)

Colloquy Regarding Dean's Dissatisfaction With Defense Counsel And Self Representation : There was a brief colloquy regarding Dean's desire to fire his counsel. The prosecutor noted the Court had been provided with the *Hibler* case to establish protocol for the Court to follow. The Court announced the matter would be addressed during the lunch break. Tr. Vol. 7, pgs. 1272-1273. The matter was addressed in depth following the lunch break. Tr. Vol. 7, pgs. 1322- 1344. Dean told the Court that due to the controversy about recusal, he believed defense counsel were not effectively representing him, by lack of aggressive cross examination and an insufficient number of objections. Following a statement by the Court, Dean asked to represent himself. Tr. Vol. 7, pg. 1330. Following an hour recess (Tr. Vol. 7, pg. 1331), the Court went on the record out of the presence of the jury. The Court referenced legal authority, being *Feretta v. California*, 422 US 806 (1975), *State v. Reed*, 74 Ohio St. 3d 534, *State v. Taylor*, 98 Ohio St. 3d 27 (2002), *State v. Gibson*, 45 Ohio St. 2d 366 (1976), and *State v. Thompson*, 33 Ohio St. 3d 1 (1987). The Court arranged for Dean to be examined for competence and Dean said he would not request a continuance if he were permitted to represent himself. Dean acknowledged facts regarding self representation and the nature of the charges and potential penalties against him. Tr. Vol. 7, pgs, 1336-1341. In the following exchange, Dean said his request for self-representation was being made "under duress."

The Court: And is this something you want to do voluntarily?

The Defendant: Yes.

The Court: All right. Well –

The Defendant: I would just like the record to reflect that I'm doing this under duress due to you continually not addressing that issue of Mr. Butz's and Mr. Mayhall's alleged unethical conduct.

The Court: All right. Well, that's going to be a problem because I'm not going to accept your waiver of counsel if you're telling me it's under duress. All right. Because you're essentially saying that the Court's forcing you to do this, and I'm not going to put you or myself in that position. So what I'm going to do is I'm going to recess for the afternoon. I'm going to try to contact Dr. Smalldon and see when he can get here. Hopefully, first thing in the morning. And I'm going to order that we reconvene tomorrow morning a 9 o'clock, and that's going to do two things. One, it's going to give us the opportunity, hopefully, to hear from Dr. Smalldon, on the issue of competence, and No. 2, it's going to give you a night to sleep on this and think about it. Certainly, you can change your mind. But if you feel that you're doing this under duress, then that's going to be a problem. I'm not going to let you – I'm not going to let you do it because that's just not going to be appropriate. So tonight you can think about whether or not you really want to do this. If it's your voluntary decision or if you feel like you're being pressured into doing it and tomorrow when we reconvene, we can discuss that. Do you have any questions at this time?

The Defendant: No. Tr. Vol. 7, pgs. 1341-1342.

When the Court reconvened the following day, the Court took note that a juror received a speeding ticket the night before and made reference to the ticketing officer about her service as a juror. The Court also inquired of an alternate juror who was told that morning by her husband's co-workers about a news story regarding Dean wanting to fire his attorneys. After that questioning, neither party moved for relief, and the alternate juror was admonished to not discuss the matter with the other jurors. Tr. Vol. 8, pgs. 1345-1354.

The Court and Dean then engaged in the following colloquy.

The Court: You want to represent yourself?

The Defendant: Absolutely.

The Court: All right. Well, I've had the evening to think about it; as I told you yesterday when I was citing the case law, that you do have a constitutional right to represent yourself. The problem I foresee or the problem I see, as I indicated yesterday, is your statement that you were doing this under duress. And I told you yesterday that –

The Defendant: I just – I made that statement just so that would be made for the record on future reference for the appeal.

The Court: Well, I understand that. The problem is it's one of those things where, you know, you've said it; and now it's out there, and I have concerns about letting you waive your

right to an attorney because the way it appears, at least by your statement, is that I'm indirectly forcing you to do that.

The Defendant: That's not the case at all. As I said, the only reason I did that was for that to be on the record for future reference for my appeal in the process of this. I fully understand what I did, why I made that statement. That's the only reason why I made that statement. I don't feel in any way that you're biased against me, have a vendetta against me. I feel completely confident to defend myself. That's the only reason I made the statement was so that it would be on the record for future reference of my appeal. Tr. Vol. 8, pgs. 1355-1356.

After more dialogue, the Court overruled Dean's request to represent himself on grounds that his waiver of counsel was not voluntary, based upon Dean's statement that he was under duress. Tr. Vol. 8, pgs. 1356-1362. After that, Dean addressed the Court as follows.

The Defendant: If that's the case, you know, I would retract the statement that I made yesterday that I feel as though I'm doing any of this under duress because I've made it very clear that I'm fully aware that I – I have constitutional rights, as you stated; and I feel now as though my constitutional rights are being violated, not only the 6th Amendment right but the 14th Amendment right to defend myself. If necessary, I would like to retract any statements I made or any reference I made to being under duress if that's the case. Strike that from the record. However you guys go about doing that. I feel at this point it is impossible for Mr. Mayhall and Mr. Butz to defend me adequately in any way, shape, or form. And I – I need to defend myself because the truth needs to be come out here; (sic) and the way they're doing it, it can't happen. It just can't happen. My constitutional rights are being violated. You stated that yourself. This is – this is – this is – I can't understand this at all. Do I have the right to defend myself? Is my constitutional right to defend myself? I would like to be granted that. That's all I ask. Tr. Vol. 8, pgs. 1363-1364.

After more dialogue, the Court stated it had made it's ruling, and the trial resumed as before. Tr. Vol. 8, pgs. 1364-1369.

Just before cross examination of Victoria Buskirk, Dean made the following statement in front of the jury.

The Defendant: Your honor, I want the Court to be aware that I was requested to represent myself. (sic) You denied that right. That's what I want everyone in the courtroom to know. That's what's been transpiring that right now, I want the jury to be known that. (sic). It's been taken in secret in the other room. I've been denied my constitutional rights. I would like the record to do that reflect that. (sic) If it don't, I want the jury to know that. I have I've done nothing wrong in this courtroom. (sic)

The Court: I think the jury's aware of that fact right now, that he wanted to represent himself; and for various legal reasons, the Court wouldn't let him do that. The jury knows that now.

The Defendant: Thank you.

The Court: Thank you. Tr. Vol. 8, pgs. 1372-1373.

During the afternoon break the same day, Dean apologized to the Court. Tr. Vol. 8, pgs. 1507-1510.

The Court: You can be seated. Thank you. We're back on the record. The jurors have not been brought back into the courtroom. I've got a message that the defendant has something to say.

The Defendant: Yes, Your Honor. I just wanted to apologize for my outburst earlier. I'd like, if you could, relay that message to the jury.

Over the objection of the prosecution, and with the express assent of the defense, upon bringing the jury into the Courtroom, the Court addressed them as follows.

The Court: You can be seated. Ladies and gentleman, during the recess, Mr. Dean apologized to the Court for what he said in his outburst. He wanted you to know that he apologizes to you as well. Tr. Vol. 8, pgs. 1507-1510.

Brett Bauer: Springfield Police Officer. Tr. Vol. 8, pgs. 1375-1385. Bauer saw a young black male lying in the street in a pool of blood. Bauer pulled up the victim's white toboggan hat and saw a wound on the forehead. The victim had no life signs. Bauer took a statement from eyewitness Allison Nawman and wrote that she heard two gunshots.

Michael Kranz: Springfield Police Officer. Tr. Vol. 8, pgs. 1385-1390. Officer Kranz checked the victim for life signs but found none. Kranz cut the back pack off the victim's back. (**State's Exhibit 14A**). Kranz saw two shell casings about 50 feet from the body. The shell casings were together, a few feet apart.

Kari Epperson: Citizen eyewitness, cousin of Joshua Wade. Tr. Vol. 8, pgs. 1390-1416. Recalled Tr. Vol. 8, pgs. 1449-1450. During the month of April 2005, Kari was visiting her mother, who had a second floor apartment on High Street. Earlier in the month, while hanging out on Liberty Street, she saw her cousin, Josh Wade, walking down the street with a man she did not know. The dad of her sister Terri's child told her that the man whom Josh was with was Jason Dean. Kari identified the defendant as the man she saw with her cousin Josh Wade. On April 13th and 14th, Kari saw Josh and Jason together again at a Wendy's restaurant and riding together in a car. On the night of the shooting, April 13, 2005, Kari was in bed next to a window that looked out onto High Street. Kari identified the location on a map. (**State's Exhibit 9**). She heard squealing tires. A few seconds later, she looked out the window and saw a car parked in lot across the street. The driver's door was opened. Kari saw the glow of a blue neon light coming from inside the car. She saw a man jump out of the driver's seat and run into the middle of the street. The man fired two gunshots. She knew it was gunshots because she saw the fire from the gun and heard the shots. Kari didn't see anyone else, and did not see at whom the man was shooting. The man turned slowly back toward the car. At that point, Kari recognized the man as her cousin, Josh Wade. Wade took off running to the car. Wade shut the car door and

drove off on High towards Yellow Springs Street. Kari did not see anyone else get into the car with Josh. Kari ran outside. She, along with her sister Terri, saw a body laying in the street. At first, Kari said nothing about her recognition of her cousin Josh Wade as the shooter. Later, after "everything completely came out", Kari revealed that she could identify Josh Wade as the shooter.

Terri Epperson: Citizen eyewitness, cousin of Joshua Wade. Tr. Vol. 8, pgs. 1416-1449. On the night of the shooting, April 13, 2005, Terri was visiting her mother, Brenda, who lived in a second floor apartment on High Street. Intending to get her son's diaper bag out of her car parked outside her mother's apartment, Terri looked out the window before she went outside. Terri identified locations on a map. (**State's Exhibit 9**). When Terri looked out the window, she saw a car pull up and park in a parking lot across the street. Then, she saw a man jogging down the street being chased by two other men. Terri came down the stairs and lost sight of the street. As she stepped outside, she saw a the driver's door of the parked car opening up. Terri saw the glow of neon lights from inside the car. A guy got out of the parked car. The guy, who was wearing a white ball cap and a hooded sweat shirt, walked and then ran down the street. The guy stopped and fired two gunshots at the man who was being chased. Terri saw the guy point the gun, and she saw fire come out of the end of the gun and heard two gunshots. After shooting, the guy stopped and looked around. That's when Terri recognized the shooter as her cousin, Josh Wade. Terri has seen Wade some days earlier while she was hanging out on Liberty Street with her son's dad. Wade ran back to the parked car, got in and drove off. Terri went to the end of the street and saw the man who had been chased laying in the street. On April 27, 2005, Terri picked Josh Wade's photo out of a photo lineup as being the shooter. (**State's Exhibit 2A**).

Jeffrey Steinmetz and Mark Parsons: Springfield Police CSI. **Steinmetz:** Tr. Vol. 8, pgs. 1452-1542. Steinmetz processed the shooting scene at Race & High. Steinmetz identified the following photos and tangible objects. Tr. Vol. 8, pgs. 1454-1529. The spent bullet casings were .40 caliber Smith & Wesson. Tr. Vol. 8, pgs. 1504-1506. The live round from the sidewalk by the parking lot was .25 caliber. Tr. Vol. 8, pgs. 1510-1511. No money was recovered from victim or the victim's belongings. Tr. Vol. 8, pg. 1528-1529. Steinmetz also made a diagram of the Dibert Ave. shooting location. Tr. Vol. 8, pgs. 1461-1463. Steinmetz was recalled for testimony regarding the seizure of Dean's car. Tr. Vol. 9, pgs. 1836-1851. Pursuant to a search warrant, a Buick Riviera was seized from 415 Liberty Street on April 21, 2005. A videotape was made at the impound facility to show the unique mechanical malfunction sounds made by the car, as well as the unique illumination coming from inside the car. The videotape (with audio) was played for the jury and narrated by Steinmetz. Tr. Vol. 9, pgs. 1836-1851. **Parsons:** Tr. Vol. 8, pgs. 1545-1569. Parson photographed the victims back pack and contents at the police station. Tr. Vol. 8, pgs. 1547-1548. Parsons took photos of the shooting scene at 604 Dibert Ave. Tr. Vol. 8, pgs. 1549-1569. Parsons took photos of the shooting scene at 609 Dibert Ave. Tr. Vol. 8, pgs. 1557-1569.

Photos & Videos

State's Exhibit Number	Exhibit Description

9	Graphics chart, computer created, showing overall scene at Race & High. Tr. Vol. 8, pg. 1454-1455.
12	Graphics chart, computer created, showing the scene as focused on the 500 block of West High Street. Tr. Vol. 8, pgs. 1455-1461. Photo ID numbers 1 through 12, and measuring points A, B, C, and D are explained.
28	Photo of Race & High street sign. Tr. Vol. 8, pgs. 1479-1480.
29	Photo of exterior of 538 W. High St.. Tr. Vol. 8, pg. 1480.
30	Photo of pickup truck in relation to where the victim had been laying in the street. Tr. Vol. 8, pg. 1480.
31	Photo of pickup truck and with victim's belongings and blood on the street. Tr. Vol. 8, pg. 1481.

Photos & Videos

State's Exhibit Number	**Exhibit Description**
40	Photo of bullet and white shirt laying in the street Tr. Vol. 8, pg. 1481.
41	Photo close up of the bullet hole in the pick up truck door. Tr. Vol. 8, pg. 1482.
42	Photo of the exterior of 534 West High Street. Tr. Vol. 8, pg. 1482.
43	Photo of victim's backpack and pool of blood in the street. Tr. Vol. 8, pg. 1482.

44	Photo of cell phone and cell phone holder underneath the pick up truck. Tr. Vol. 8, pg. 1482.
45	Photo of white t-shirt and pool of blood in the street. Tr. Vol. 8, pg. 1483.
46	Photo of cell phone and cell phone holder underneath the pick up truck. Tr. Vol. 8, pg. 1483.
47	Photo of license plate area of the pick up truck. Tr. Vol. 8, pg. 1483.
48	Photo of the exterior of 532 W. High St. Tr. Vol. 8, pg. 1483.
49	Photo of street scene of the 500 block of West High Street. Tr. Vol. 8, pg. 1483.
50	Photo of red Chevy Blazer parked in the 500 block of West High Street. Tr. Vol. 8, pg. 1483-1484.

Photos & Videos

State's Exhibit Number	Exhibit Description
51	Photo of road flares used to mark the location of the spent bullet casings. Tr. Vol. 8, pg. 1484.
52	Photo of road flares used to mark the location of the spent bullet casings. Tr. Vol. 8, pg. 1484.
53	Photo of spent casings in relation to the license plate of the vehicle. Tr. Vol. 8, pg. 1485.
54	Photo of exterior of 530 West High Street. Tr. Vol. 8, pg. 1485.

55	Photo of road flares and spent bullet casings. Tr. Vol. 8, pg. 1485.
56	Photo close up of spent bullet casing. Tr. Vol. 8, pg. 1485.
57	Photo of road flare and spent bullet casing. Tr. Vol. 8, pg. 1485.
58	Photo of empty lot with the address of 522 West High Street. Tr. Vol. 8, pg. 1486.
59	Photo of the telephone pole used as measuring point C. Tr. Vol. 8, pg. 1486.
60	Photo of the identifying number on the telephone pole used as measuring point C. Tr. Vol. 8, pg. 1486.
61	Photo of the identifying number on the telephone pole used as measuring point C. Tr. Vol. 8, pg. 1486.

Photos & Videos

State's Exhibit Number	Exhibit Description
62	Photo of a car parked at 522 West High Street. Tr. Vol. 8, pg. 1486.
63	Photo of a car. Tr. Vol. 8, pg. 1487.
65	Photo of a house showing the address. Tr. Vol. 8, pg. 1487.
66	Photo of the telephone pole used as measuring point C. Tr. Vol. 8, pg. 1487.
67	Photo of live bullet laying on the sidewalk. Tr. Vol. 8, pg. 1487.

68	Photo of live bullet laying on the sidewalk. Tr. Vol. 8, pg. 1487.
69	Photo of tire marks in the street. Tr. Vol. 8, pg. 1488.
70	Photo of tire marks in the street. Tr. Vol. 8, pg. 1488.
71	Photo of tire marks in the street. Tr. Vol. 8, pg. 1488.
72	Photo of tire marks with ruler. Tr. Vol. 8, pg. 1489.
74	Photo of evidence placards in front of 538 West High St. Tr. Vol. 8, pg. 1489.
75	Photo of telephone pole used as measuring point A. Tr. Vol. 8, pg. 1489.

Photos & Videos

State's Exhibit Number	**Exhibit Description**
76	Photo of telephone pole used as measuring point A. Tr. Vol. 8, pg. 1489.
77	Photo of light pole used as measuring point B. Tr. Vol. 8, pg. 1490.
78	Photo showing evidence reference numbers. Tr. Vol. 8, pg. 1490.
80	Photo of blood pool with a 3 inch ruler. Tr. Vol. 8, pg. 1490.

81	Photo of gray-white T shirt and victim's belongings in the street. Tr. Vol. 8, pg. 1491.
82	Photo of victim's backpack. Tr. Vol. 8, pg. 1494.
84	Photo of evidence placards in the street in front of 538 West High Street. Tr. Vol. 8, pg. 1494-1495.
85	Photo of bullet hole in pick up truck. Tr. Vol. 8, pg. 1498-1499.
86	Photo of bullet hole in pick up truck. Tr. Vol. 8, pg. 1499.
87	Photo of bullet hole in pick up truck. Tr. Vol. 8, pg. 1499.
88	Photo of bullet hole with metric measuring ruler. Tr. Vol. 8, pg. 1499.

Photos & Videos

State's Exhibit Number	Exhibit Description
89	Photo of bullet hole with metric measuring ruler. Tr. Vol. 8, pg. 1499.
90	Photo of light pole used as measuring point C. Tr. Vol. 8, pg. 1500. Linear measurements given. Tr. Vol. 8, pgs. 1500-1504.
91	Photo of spent bullet casing. Tr. Vol. 8, pg. 1504-1505.
92	Photo of spent bullet casing, 40 caliber. Tr. Vol. 8, pg. 1505.
93	Photo of spent bullet casing. Tr. Vol. 8, pg. 1505.

94	Photo of spent bullet casing with a three inch ruler. Tr. Vol. 8, pg. 1505-1506.
95	Photo of tire marks in the street. Tr. Vol. 8, pg. 1510.
96	Photo of live 25 caliber bullet in the street area nearby to the parking lot. Tr. Vol. 8, pg. 1510.
97	Photo of live 25 caliber bullet in the street area nearby to the parking lot with a three inch ruler . Tr. Vol. 8, pg. 1510-1511.
98	Photo of tire marks in the street. Tr. Vol. 8, pg. 1516.
99	Photo of tire mark in the parking lot. Tr. Vol. 8, pg. 1519.

Photos & Videos

State's Exhibit Number	**Exhibit Description**
100	Photo of tire mark in the parking lot. Tr. Vol. 8, pg. 1519.
101	Photo of tire mark in the parking lot. Tr. Vol. 8, pg. 1519.
102	Photo of measuring point C. tr. Vol. 8, pg. 1519.
104	Photo of measuring point C. tr. Vol. 8, pg. 1520.
105	Photo of measuring point C. tr. Vol. 8, pg. 1520.
106	Photo of victim's gray muscle shirt with bullet hole and three inch ruler. Tr. Vol. 8, pg. 1529.

107	Photo of victim's gray muscle shirt with bullet hole and three inch ruler. Tr. Vol. 8, pg. 1529.
108	Photo of victim's white toboggan hat. Tr. Vol. 8, pgs. 1529-1530.
109	Photo of victim's white toboggan hat, showing bullet hole and three inch ruler. Tr. Vol. 8, pg. 1530.
110	Photo of victim's white toboggan hat, showing bullet hole and three inch ruler. Tr. Vol. 8, pg. 1530.
111	Photo of victim's gray shirt. Tr. Vol. 8, pg. 1530.

Photos & Videos

State's Exhibit Number	Exhibit Description
112	Photo of victim's gray muscle shirt with bullet hole and three inch ruler. Tr. Vol. 8, pg. 1529.
113	Photo of hospital identification tag on victim's shirt. Tr. Vol. 8, pgs. 1530-1531.
114	Photo of victim's gold jacket with blood stains. Tr. Vol. 8, pg. 1522.
115	Photo of bullet hole in jacket with three inch ruler. Tr. Vol. 8, pg. 1523.
117	Photo of the inside of victim's gold jacket showing a bullet hole. Tr. Vol. 8, pg. 1531.
125A	Video (with audio) of Dean's car. Played for jury and narrated by Officer Steinmetz. Tr. Vol. 9, pgs. 1836-1851.

128	Crime scene video. Played for jury and narrated by Officer Steinmetz. Tr. Vol. 8, pgs. 1463-1471.
129	Graphics chart, computer generated, of shooting scene at 609 Dibert Ave. Tr. Vol. 8, pgs. 1461-1463.
132	Photo of pick up truck with bullet hole at the towing facility. Tr. Vol. 8, pgs. 1533-1534.
133	Photo of pick up truck with bullet hole at the towing facility. Tr. Vol. 8, pg. 1534.

Photos & Videos

State's Exhibit Number	Exhibit Description
134	Photo of license plate of pick up truck at towing facility. Tr. Vol. 8, pg. 1534.
135	Photo of VIN of pick up truck at towing facility. Tr. Vol. 8, pg. 1534.
136	Photo close up of the bullet hole in the pick up truck. Tr. Vol. 8, pg. 1535.
137	Photo of inside panel of the door with the bullet hole. Tr. Vol. 8, pg. 1535.
138	Photo of bullet located in the inside panel of the door of the pick up truck. Tr. Vol. 8, pg. 1536.
140	Photo of victim's back pack at police headquarters. Tr. Vol. 8, pg. 1547.

141	Photo of victim's back pack at police headquarters. Tr. Vol. 8, pg. 1547.
142	Photo of victim's back pack at police headquarters. Tr. Vol. 8, pg. 1547-1548.
143	Photo of victim's back pack at police headquarters. Tr. Vol. 8, pg. 1548.
144	Photo of the contents victim's backpack at police headquarters. Tr. Vol. 8, pg. 1548.

Photos & Videos

State's Exhibit Number	Exhibit Description
145	Photo of exterior of 604 Dibert Ave. Tr. Vol. 8, pg. 1549.
146	Photo of exterior of 604 Dibert Ave. Tr. Vol. 8, pg. 1550.
147	Photo of bullet strikes that hit 604 Dibert Ave. Tr. Vol. 8, pg. 1550.
148	Photo of bullet strike marked with evidence placard 5. Tr. Vol. 8, pg. 1551.
149	Photo close up of bullet strike marked with evidence placard 5. Tr. Vol. 8, pg. 1551.
150	Photo close up of bullet strike marked with evidence placard 5. Tr. Vol. 8, pg. 1551.
151	Photo of bullet strikes that hit 604 Dibert Ave. Tr. Vol. 8, pg. 1551.

152	Photo close up of bullet strike in window at 604 Dibert Ave. marked with evidence placard 6. Tr. Vol. 8, pg. 1552.
153	Photo close up of bullet strike in window at 604 Dibert Ave. marked with evidence placard 6. Tr. Vol. 8, pg. 1552.
154	Photo of inside of the house at 604 Dibert Ave. where the bullet from the window would have traveled. Tr. Vol. 8, pg. 1552.

Photos & Videos

State's Exhibit Number	Exhibit Description
155	Photo of inside of the house at 604 Dibert Ave. showing evidence placards 5 and 6. Tr. Vol. 8, pgs. 1553.
156	Photo of inside of the house at 604 Dibert Ave. where the bullet from the window would have traveled. Tr. Vol. 8, pg. 1553.
157	Photo of inside of the house at 604 Dibert Ave. showing bullet strike marked with evidence placard 6. Tr. Vol. 8, pg. 1553.
158	Photo of inside of the house at 604 Dibert Ave. showing bullet strikes on the wall. Tr. Vol. 8, pgs. 1553-1554.
159	Photo of inside of the house at 604 Dibert Ave. showing bullet strikes on wall above the fireplace. Tr. Vol. 8, pg. 1554.
160	Photo close up of inside of the house at 604 Dibert Ave. showing bullet strikes associated with evidence placard 5. Tr. Vol. 8, pg. 1554.

161	Photo close up of inside of the house at 604 Dibert Ave. showing bullet strikes associated with evidence placard 6. Tr. Vol. 8, pg. 1554.
162	Photo of outside of 604 Dibert Ave. where the bullet strike marked with evidence placard 5 went through a porch pillar. Tr. Vol. 8, pg. 1551.
163	Photo of inside of the house at 604 Dibert Ave. showing bullet strikes on wall above the fireplace. Tr. Vol. 8, pg. 1555.

Photos & Videos

State's Exhibit Number	Exhibit Description
164	Photo close up of inside of the house at 604 Dibert Ave. showing bullet strikes associated with evidence placard 5. Tr. Vol. 8, pg. 1555.
165	Photo close up of inside of the house at 604 Dibert Ave. showing bullet strikes associated with evidence placard 6. Tr. Vol. 8, pg. 1555.
166	Photo of inside of the house at 604 Dibert Ave. where the bullet from the window would have traveled. Tr. Vol. 8, pg. 1555.
167	Photo of living room of 604 Dibert Ave. Tr. Vol. 8, pg. 1555.
168	Photo of inside of the house at 604 Dibert Ave. showing bullet strikes on the wall. Tr. Vol. 8, pgs. 1556.
169	Photo of living room of 604 Dibert Ave. Tr. Vol. 8, pg. 1556.

170	Photo of the outside of 609 Dibert Ave. Tr. Vol. 8, pg. 1557.
171	Photo close up of bullet strike on pillar at 609 Dibert Ave. Tr. Vol. 8, pg. 1557.
172	Photo close up of bullet strike on pillar at 609 Dibert Ave. Tr. Vol. 8, pg. 1557.
173	Photo of the outside of 609 Dibert Ave. Tr. Vol. 8, pg. 1557.

Photos & Videos

State's Exhibit Number	Exhibit Description
174	Photo close up of bullet strike on pillar at 609 Dibert Ave. with a three inch ruler. Tr. Vol. 8, pg. 1558.
175	Photo close up of bullet strike after exiting the pillar at 609 Dibert Ave. Tr. Vol. 8, pg. 1558.
176	Photo close up of back side of the pillar at 609 Dibert Ave. Tr. Vol. 8, pg. 1558.
177	Photo close up of back side of the pillar at 609 Dibert Ave. with a three inch ruler. Tr. Vol. 8, pg. 1558.
178	Photo of bullet strike on the porch floor at 609 Dibert Ave. associated with projectile no. 1. Tr. Vol. 8, pg. 1558-1559.
179	Photo close up of bullet strike at 609 Dibert Ave. associated with projectile no. 1. Tr. Vol. 8, pg. 1559.
180	Photo close up of bullet strike at 609 Dibert Ave. associated with projectile no. 1. with a three inch ruler. Tr. Vol. 8, pg. 1559.

181	Photo close up of bullet strike at 609 Dibert Ave. associated with projectile no. 1. with a three inch ruler. Tr. Vol. 8, pg. 1559.
182	Photo of the front door of 609 Dibert Ave. Tr. Vol. 8, pg. 1559.
183	Photo of bullet strike by the front door of 609 Dibert Ave. Tr. Vol. 8, pg. 1559.

Photos & Videos

State's Exhibit Number	**Exhibit Description**
184	Photo close up of bullet strike by the front door of 609 Dibert Ave. Tr. Vol. 8, pg. 1559.
185	Photo close up of bullet strike by the front door of 609 Dibert Ave. with a three inch ruler. Tr. Vol. 8, pg. 1559.
186	Photo of mailbox at 609 Dibert Ave. Tr. Vol. 8, pg. 1560.
187	Photo close of a bullet strike by the mailbox at 609 Dibert Ave. Tr. Vol. 8, pg. 1560.
188	Photo of a bullet strike on the front porch ceiling at 609 Dibert Ave. Tr. Vol. 8, pg. 1560-1561.
189	Photo of bullet path associated with evidence placard no. 1 at 609 Dibert Ave. Tr. Vol. 8, pg. 1561.
190	Photo of bullet path associated with evidence placard no. 1 at 609 Dibert Ave. Tr. Vol. 8, pg. 1561.
191	Photo of bullet path associated with evidence placard no. 1 at 609 Dibert Ave. Tr. Vol. 8, pg. 1561.

192	Photo of bullet path associated with evidence placard no. 1 at 609 Dibert Ave. Tr. Vol. 8, pg. 1561.
193	Photo of bullet path that struck the porch floor at 609 Dibert Ave. Tr. Vol. 8, pgs. 1561-1562.
194	Photo close up of bullet path that struck the porch floor at 609 Dibert Ave. Tr. Vol. 8, pgs. 1561-1562.

Photos & Videos

State's Exhibit Number	Exhibit Description
195	Photo close up of bullet path that struck the porch floor at 609 Dibert Ave. Tr. Vol. 8, pgs. 1562.
196	Photo close up of bullet path that struck the porch floor at 609 Dibert Ave. Tr. Vol. 8, pgs. 1562.
197	Photo of bullet strikes with evidence placards at 609 Dibert Ave. Tr. Vol. 8, pg. 1562.
198	Photo close up of bullet strikes with evidence placards at 609 Dibert Ave. Tr. Vol. 8, pg. 1562-1563.
199	Photo of projectile strike no. 2 at 609 Dibert Ave. Tr. Vol. 8, pg. 1563.
200	Photo of projectile strike no. 3 at 609 Dibert Ave. Tr. Vol. 8, pg. 1563.
201	Photo of projectile strike no. 4 at 609 Dibert Ave. Tr. Vol. 8, pg. 1563.

202	Photo of projectile strike no. 3 at 609 Dibert Ave. Tr. Vol. 8, pg. 1563.
203	Photo of projectile strike no. 4 at 609 Dibert Ave. Tr. Vol. 8, pg. 1564.
204	Photo showing where the bullets entered the house at 609 Dibert Ave. Tr. Vol. 8, pg. 1564.
205	Photo of inside of 609 Dibert Ave. showing bullet strike by the light switch. Tr. Vol. 8, pg. 1564.

Photos & Videos

State's Exhibit Number	Exhibit Description
206	Photo of the inside of 609 Dibert Ave. showing projectile strike no. 4. Tr. Vol. 8, pg. 1565.
207	Photo of the inside of 609 Dibert Ave. showing the path of projectile no. 4. Tr. Vol. 8, pg. 1565.
208	Photo of the inside of 609 Dibert Ave. showing the path of projectile no. 4. Tr. Vol. 8, pg. 1565.
209	Photo of the inside of 609 Dibert Ave. showing the path of projectile no. 4. Tr. Vol. 8, pg. 1565.
210	Photo of the inside of 609 Dibert Ave. showing the path of projectile no. 4. Tr. Vol. 8, pg. 1565-1566.
211	Photo of the inside of 609 Dibert Ave. showing projectile strike in the living room. Tr. Vol. 8, pg. 1566.
212	Photo of the inside of 609 Dibert Ave. showing projectile strike in the living room. Tr. Vol. 8, pg. 1566.

213	Photo of projectile strike inside 609 Dibert Ave. that went into the bedroom wall. Tr. Vol. 8, pg. 1566-1567.
214	Photo of projectile strike inside 609 Dibert Ave. that went into the bedroom wall. Tr. Vol. 8, pg. 1567.
215	Photo of dismantled porch pillar at 609 Dibert Ave. showing recovered bullet. Tr. Vol. 8, pg. 1567.
216	Photo of dismantled porch pillar at 609 Dibert Ave. showing recovered bullet. Tr. Vol. 8, pg. 1567.

Tangible Objects

State's Exhibit Number	Exhibit Description
13	Evidence bag containing gray-white T shirt with blood stains. Tr. Vol. 8, pg. 1491.
13A	Gray-white T shirt with blood stains. Tr. Vol. 8, pg. 1492-1493.
14A to 14LL	Victim's backpack with contents. Tr. Vol. 8, pg. 1495-1497
15A	Victim's cell phone. Tr. Vol. 8, pg. 1498.
15B	Victim's cell phone holder. Tr. Vol. 8, pg. 1498.
16	Spent bullet casing, Smith & Wesson 40 caliber. Tr. Vol. 8, pgs. 1504-1505.
17	Spent bullet casing, Smith & Wesson 40 caliber. Tr. Vol. 8, pgs. 1506.
18	Live .25 caliber bullet from the street nearby to the parking lot. Tr. Vol. 8, pg. 1511.

	Federal brand bullet. Tr. Vol. 10, pg. 2007.
19	Evidence bag used to hold the victim's gold jacket. Tr. Vol. 8, pg. 1521.
19A	Victim's gold jacket with bullet hole. Tr. Vol. 8, pg. 1521.
20	Evidence bag containing victim's gray shirt. Tr. Vol. 8, pg. 1523-1524.

Tangible Objects

State's Exhibit Number	Exhibit Description
20A	Victim's gray shirt with bullet hole in neck area. Tr. Vol. 8, pg. 1524-1525.
22	Evidence bag containing victim's white toboggan. Tr. Vol. 8, pg. 1525.
22A	Victim's white toboggan with bullet hole. Tr. Vol. 8, pg. 1525.
23	Evidence bag containing bullet fragment from victim. Tr. Vol. 8, pg. 1531-1532.
23A	Bullet fragment recovered from victim. Tr. Vol. 8, pg. 1532.
23B	DNA specimen card with victim's blood. Tr. Vol. 8, pg. 1532.
23C	Laboratory vial of victim's blood. Tr. Vol. 8, pg. 1532.
24A	Victim's Iceberg brand blue jeans. Tr. Vol. 8, pg. 1526.

25A&B	Victim's tennis shoes. Tr. Vol. 8, pgs. 1526-1527.
26A	Victim's socks. Tr. Vol. 8, pg. 1527-1528.
27A	Victim's underwear. Tr. Vol. 8, pg. 1528.
130A	Hi-Point brand handgun. Tr. Vol. 8, pgs. 1472-1474. Tr. Vol. 10, pgs. 1962, 1973-1974.

Tangible Objects

State's Exhibit Number	Exhibit Description
131	Magazine from gun. Tr. Vol. 8, pgs. 1472-1474. Tr. Vol. 10, pgs. 1962, 1973-1974.
139	Bullet recovered from the inside of the driver's door of the pick up truck. Tr. Vol. 8, pg. 1536-1537.
217	Bullet recovered from porch pillar at 609 Dibert Ave. Tr. Vol. 8, pg. 1568-1569. .40 caliber bullet, too degraded for comparison. Tr. Vol. 10, pg. 1994.

Yolanda Lyles: Mini Mart Shooting Victim. Tr. Vol. 8, pgs. 1571-1611, Tr. Vol. 9, pgs. 1619-1637. On the night of the shooting, April 10, 2005, Yolanda Lyles and her friend Andre Piersoll stopped at the Selma Road Mini Mart. Lyles, who was driving a Grand Am rental car, pulled directly in front of the store. Lyles had her purse in her lap to give Piersoll money for the store purchase. Jason Dean approached Lyles car. Dean displayed pills that looked like Valium. Dean asked Lyles and Piersoll if they wanted to buy some pills. They declined. Dean talked to some other people in the parking lot and then went to a nearby car. The car Dean went to had tinted windows and an unusual peach color. Dean had a conversation with a tall guy. Lyles later learned the tall guy was named Josh. After the conversation between Dean and Josh, Josh got into the driver's seat of the peach colored car. Josh stared at Lyles. Josh and Dean drove off. Piersoll returned to Lyles's car after making a purchase at the store. Neil Scott, an acquaintance, came to the passenger side and engaged in small talk. Dean, who was brandishing a handgun, suddenly emerged from the left side of the store. Dean rushed to the driver's side of Lyles's car. Dean was shouting to Lyles "Give me the money." Dean started shooting. Piersoll was hit in the

arm, and Lyles and Piersoll were struck by window glass flying from the bullet strikes to the Grand Am. Lyles drove off, racing to Mercy hospital to get treatment for their injuries. On the way to the hospital, Piersoll told Lyles they were being followed by their assailants, who were driving behind them with the headlights of their car out. Piersoll and Lyles got to Mercy hospital and were treated for their injuries. Lyles had minor cuts on her face from flying glass. Lyles made a report to police regarding the shooting. Tr. Vol. 8, pgs. 1571-1590. Reiterated Tr. Vol. 9, pgs. 1628-1637.

Some days after the shooting, Lyles was visiting her dad on Liberty Street. Lyles saw the peach colored car with tinted windows she had first seen at the Selma Road Mini Mart. . Dean and Josh were standing outside the car. Lyles recorded the license plate number of the car. Lyles called the police. Some days after that, Lyles saw Dean and Josh's pictures in the newspaper. Lyles identified Dean's picture that was on the front page of the Springfield News-Sun, edition dated April 22, 2005. (**State's Exhibit 218**). After seeing the picture in the newspaper, Lyles called police to say that Dean was the man who shot at them some days before. Tr. Vol. 8, pgs. 1590-1603. After seeing the picture in the newspaper, Lyles also wrote a letter to police with this information as well as the license plate number of the car she saw on Liberty Street. (**State's Exhibit 235**). Tr. Vol. 9, pgs. 1622-1627. Lyles identified photographs as follows: the Selma Road Mini Mart (**State's Exhibit 219 and 227**); the car she was driving (**State's Exhibit 221**); a photo of the back of the car she was driving (**State's Exhibit 222**); bullet holes in the windshield of the car she was driving (**State's Exhibit 223 and 224**); the interior of the car she was driving (**State's Exhibit 225**);and photos of Andre Piersoll (**State's Exhibit 230 and 231**). Tr. Vol. 8, pgs. 1603-1611.

Doug Pergram: Springfield Police Officer. Tr. Vol. 9, pgs. 1637-1645. Officer Pergram responded to the Selma Road Mini Mart shooting scene, as well as to Mercy Hospital. Officer Pergram took photographs and identified them as follows: the Selma Road Mini Mart (**State's Exhibit 219**); the license plate of Lyles's car (**State's Exhibit 220**); the front of Lyles's car (**State's Exhibit 221**); the rear of Lyles's car (**State's Exhibit 222**); bullet holes in the windshield of Lyles's car (**State's Exhibits 223 and 224**); interior of Lyles's car (**State's Exhibit 225**); spent shell casings (**State's Exhibit 226, 227, 228, 229**); photo of the face of Andre Piersoll (**State's Exhibit 230, 231**); the arm of Andre Piersoll (**State's Exhibits 232, 233**); evidence tag for the series of pictures (**State's Exhibit 234**).Recalled for the Dibert Ave. scene Tr. Vol. 9, pgs. 1753-1761. Pergram responded to the Dibert Ave shooting scene and identified photos as follows: outside of 604 Dibert Ave. (**State's Exhibit 240**); bullet hole through the front window (**State's Exhibits 241, 242**); bullet hole in the wall (**State's Exhibits 243, 244, 245**); bullet hole through the picture that was hanging on the wall (**State's Exhibit 246**); outside of 609 Dibert Ave (**State's Exhibit 247**); front door way area of 609 Dibert Ave. (**State's Exhibits 248, 249, 250**) bullet holes inside 609 Dibert Ave. (**State's Exhibits 251, 252, 253, 254, 255, 256, 257**); bullet holes in Devon's car (**State's Exhibits 258, 259, 260, 261, 262, 263, 264**); evidence tag for this series of pictures (**State's Exhibit 265**).

David Emmel: Springfield Police Officer. Tr. Vol. 9, pgs. 1646-1656. Recovered a spent bullet from the sleeve of Andre Piersoll's coat at Mercy Hospital (**State's Exhibit 236** – tangible object). Recalled for the Dibert Ave. scene, Tr. Vol. 9, pgs. 1761-1763. Recovered a spent bullet from inside 609 Dibert Ave. from the hallway floor. (**State's Exhibit 266** – tangible object).

Darwin Hicks: Springfield Police Detective. Tr. Vol. 9, pgs. 1657-1670. Identified the coat recovered from Andre Piersoll, showing a bullet hole in the left arm. (**State's Exhibit 237** – evidence bag, **State's Exhibit 237A** – the coat). Detective Hicks showed Piersoll a photo spread and Piersoll picked the photo of Jason Dean as the person who shot him at the Selma Road Mini Mart. (**State's Exhibit 6A and 6B**). On the map of the area, Hicks located the Visions for Youth center where Titus Arnold had worked. (**State's Exhibit 9**).

Neil Scott: Citizen eyewitness. Tr. Vol. 9, pgs. 1670-1676. As Scott left the inside of the Selma Road Mini Mart, he conversed with acquaintances Yolanda Lyles and Andre Piersoll, who were seated in a car. Piersoll was leaning in the passenger side for the conversation. Scott heard gunshots and ran to his car . He pulled out of the Mini Mart Parking area before Lyles and Piersoll could back their car out. Scott didn't see who was doing the shooting.

Andre Piersoll: Mini Mart Shooting Victim. Tr. Vol. 9, pgs. 1677-1710. Piersoll was with Yolanda Lyles at the Selma Road Mini Mart. While he was inside, he conversed with Jason Dean about "coming home." (Tr. Vol. 9, pg. 1679). When Piersoll sat down on the passenger side of Yolanda's car, Dean leaned into the open passenger window and was talking about some Valium pills. Dean had a car at the Mini Mart Parking lot and a juvenile was with him. Dean and the juvenile drove off. While Piersoll and Yolanda were still seated in the car in the Mini Mart parking lot, Piersoll had a conversation with Neil Scott. About 10 minutes later, Piersoll saw Dean in the shadows behind the air pump. A few minutes later, Piersoll heard Yolanda say "Oh, shit." Piersoll looked up and saw Dean shooting at them. Neil Scott jumped at Dean. Piersoll heard the "click, click, click" of Dean pulling the trigger of his gun at Scott, but the gun did not fire. Reiterated Tr. Vol. 9, pgs. 1701-1708. Yolanda drove off for Mercy Hospital. They were being followed by a gray car with tinted windows. The headlights of the car following them were off. Piersoll identified photos of the injuries to his face and arm. (**State's Exhibits 231, 232, 233**) Piersoll identified photos of bullet holes in Yolanda's car (**State's Exhibit 224**). Piersoll identified his coat and showed the bullet holes. (**State's Exhibit 237A**). Piersoll identified the photo array from which he picked out Jason Dean's photo as the person who shot him. (**State's Exhibit 6A**). After the Mini Mart shooting, Piersoll was locked up in the Ohio Department of Corrections. While there, Piersoll was in a pod with Jason Dean. Dean told Piersoll that he would pay a "five stack", meaning $5000.00, if Piersoll and Yolanda would not testify against him. Tr. Vol. 9, pgs. 1699-1701.

Mistrial Motion Overruled: The prosecutor asked Piersoll if he was familiar with Mark Dean, the brother of Jason Dean. In response, Piersoll said: "I thought him and his brother look just alike. I thought he was Jason Dean. I had them mixed up. Mark Dean told me 'No, I ain't Jason Dean.' He said, 'That's my brother. He just came home.' Tr. Vol. 9, pg. 1691. The defense moved for a mistrial on grounds that the jury would infer from the "coming home" reference that Jason Dean had been to prison. The Court entertained argument and overruled the motion. Out of the hearing of the jury, Piersoll was admonished not to make reference to Dean's prison stint. Tr. Vol. 9, pgs. 1691-1699.

On cross examination, Piersoll explained that he ran into Mark Dean at a bar and mistook Mark for Jason Dean. Piersoll said he knew the person at the Mini Mart was Jason, and not Mark Dean. Tr. Vol. 9, pgs. 1708-1710.

Alicia Mays: Friend of Josh Wade. Tr. Vol. 9, pgs. 1710-1716. Alicia would spend time with Josh Wade at her home on Liberty Street. In April of 2005, a man she later knew to be Jason Dean started spending time with Josh Wade. Dean and Wade would ride around together in a car. Once Josh started to hang around with Dean, Josh stopped hanging around with Alicia.

Dr. Guy Newland: Emergency Room Doctor at Mercy Hospital. Tr. Vol. 9, pgs. 1718-1735. At 2:07 AM on April 10, 2005, Piersoll presented himself with injuries to the face and left arm. Piersoll said the injuries were from bullets coming through a windshield. Dr. Newland identified medical record he created of Piersoll's injuries and treatment. (**State's Exhibits 238A and 238B**). Dr. Newland identified photos of Piersoll and his injuries. (**State's Exhibits 230, 231, 232, 233**).

Laroilyn Burd: Resident of 604 Dibert Ave. Tr. Vol. 9, pgs. 1736-1753. Burd, who lived at 604 Dibert Ave., was in the living room of the home with her friend Madison. Gunshots flew through the living room window. This occurred on April 12, 2005. Burn and Madison fell to the floor. Burd called 911, and the recording of that call was played for the jury. (**State's Exhibit 239**). Burd went to her front porch and saw that the car of Devon, who lived across the street at 609 Dibert Ave. had been shot up as well. Devon's car was parked in front of Burd's house at 604 Dibert Ave. Devon was standing by his car looking at the bullet holes. Devon's girlfriend and two other people were standing on the front porch of 609 Dibert Ave. A car made a second pass and shots were fired. Burd, who heard the gunshots, fell to the porch floor along with her friend Madison. The second time, shots were again fired at Devon's car and at 609 Dibert Ave. Burd identified a picture of the outside (**State's Exhibit 145**) and inside of 604 Dibert Ave. (**State's Exhibit 148, 154, 155**). The bullets struck the old brick mantle inside 604 Dibert Ave. and could not be recovered from the brick rubble.

Dana Lewis: Springfield Police Officer. Tr. Vol. 9, pgs. 1764-1773. Responded to the Dibert Ave. shooting scene, which occurred on April 12, 2005, along with his partner Travis Baader. Lewis saw bullet strikes at 609 Dibert and on Devon's car across the street. Lewis identified a photo of bullet strikes that were clustered around the gas tank of the car. (**State's Exhibit 258**). Lewis identified more photos of the car showing bullet strikes. (**State's Exhibits 259, 260, 261, 262**). Lewis identified a photo of a bullet he recovered from Devon's car (**State's Exhibit 263**) as well as the actual bullet from Devon's car. (**State's Exhibit 267** – tangible object).

Travis Baader: Springfield Police Officer. Tr. Vol. 9, pgs. 1774-1783. The night of the shooting, April 12, 2005, Baader saw that a number of bullet holes were clustered around the gas pipe door. After questioning from the prosecution and the defense, Baader said that the night of the shooting, he was of the opinion that the shooter attempted to blow the car up by clustering shots at the gas pipe door.

Shani Applin: Dibert Ave. Shooting Victim. Tr. Vol. 9, pgs. 1783-1793. On the night of the shooting, April 12, 2005, Shani and her one year old daughter Jaida, were visiting at Devon William's house at 609 Dibert Ave. Devon is the boyfriend of Shani's best friend Shanta Chilton. Present at the house was Shani, Shanta, Devon, their friend Tamika, and three children. There was at Devon's house a video security system. Video from a camera mounted on the front porch could be viewed on the television in the house. Just before midnight, they hear gunshots outside. Devon switched the television to the video camera on the porch. The porch looked clear. Using a diagram, (**State's Exhibit 129**) Shani identified locations in the house and the porch of 609 Dibert Ave. Everyone went out on the front porch to see what was going on. Shanta and Devon went across the street to look at his car that had been shot up. A car was coming up the street. Shanta went to the front porch of 609 Dibert Ave. As Shani, Shanta and two infant children were on the front porch, the car stopped in front of the house and shots were fired. Shanta dove to the porch floor and Shani and the children dove inside to the living room floor. The gunshots hit the house at torso level.

Shanta Chilton: Dibert Ave. Shooting Victim. Tr. Vol. 9, pgs. 1793-1820. On the night of the shooting, April 12, 2005, Shanta was living at 609 Dibert Ave. with her boyfriend Devon Williams and Shanta's two children. Shanta's two children were asleep in a downstairs bedroom. Devon goes by the street name "Draztik." Visiting at the home was Shanta's girlfriend Shani, along with Shani's infant daughter. Also visiting was Shanta's brother, Hassan. Using a diagram, (**State's Exhibit 129**) Shanta identified locations in the residence. The home security system video camera covered the front porch and the street in front of the house. When all were gathered in the living room, gunshots were heard outside. Devon and Shanta went outside and saw that Devon's car, which was parked across the street, was shot up. Shanta saw bullet holes that made it look like the shooter was trying to blow up the gas tank. Shanta saw a car coming down the street. She went back onto the front porch. The car stopped in front of the house. Shanta saw a white boy in the drivers seat. Next, she saw flames from gunfire and heard the shots coming out of the car. Shanta dropped to the floor of the porch. The car pulled off, and the others came to check on Shanta. On cross examination , Shanta identified the article from the Springfield News-Sun newspaper about the Titus Arnold murder.(**State's Exhibit 218**).

Jeffrey Meyer: Springfield Police Officer. Tr. Vol. 9, pgs. 1821-1824. Meyer was working the desk at the police station on May 3, 2005, when Hassan Chilton came in and handed over a multi-colored jacket. Meyer collected it as evidence and identified it in Court. (**State's Exhibit 268** – the evidence bag, **State's Exhibit 268A** – the jacket).

Mike Beedy: Springfield Police Officer. Tr. Vol. 9, pgs. 1825-1835. Recalled Tr. Vol. 10, pgs. 1959-1978. Beedy took photographs of Devon Williams car, an Oldsmobile Delta 88, a 1980's model. Beedy identified photographs of the car as follows: Left rear quarter panel showing bullet holes (**State's Exhibit 269**); license plate of the car (**State's Exhibit 270**); left side of the car (**State's Exhibit 271**); VIN number from left windshield (**State's Exhibit 272**); back of the car (**State's Exhibit 273**); bullet holes in the car marked with evidence placards (**State's Exhibits 274, 275, 276, 277, 278, 279, 280**); dowel rod inserted in bullet strike placard 7 showing the bullet came from a slight downward angle (**State's Exhibits 281, 282, 283**); dowel rod inserted in bullet strike placard 8 showing the bullet came from a slight downward angle (**State's Exhibits 284, 285, 286**); dowel rod inserted in bullet strike placard 9 showing the

bullet came from a slight downward angle (**State Exhibits 287**); close up of bullet strike placard 10 (**State's Exhibit 288**). These bullet strikes were in a tight, close pattern. Photos of dowel rod inserted in bullet strike placard 11, the rearmost bullet strike, showing the bullet came from a slight downward angle (**State's Exhibits 289, 290**).

Beedy was recalled regarding items seized pursuant to search warrants. Tr. Vol. 10, pgs. 1959-1978. Search warrants for the homes of Jason Dean (415 E. Liberty) and Joshua Wade (502 E. Liberty) were executed on April 21, 2005. The car title for a 1991 Buick Riviera from the Dean's jeans pocket shows Yvonne Slone as title holder and Angel Bowshier as previous owner. Tr. Vol. 10, pgs. 1964-1965. Although six live .380 caliber rounds were recovered from a pants pocket laying on a bedroom floor in the Dean house, there was no .380 caliber gun recovered from the Dean house. However, a .380 caliber gun was recovered from the home of Joshua Wade. Tr. Vol. 10, pgs. 1969-1970. Police did not recover any .25 caliber handgun at any location. Tr. Vol. 10, pg. 1976. Relative to the search warrant of the Dean and Wade homes, Beedy identified the following items.

Photos & Videos

State's Exhibit Number	Exhibit Description
307	Front of Dean house, 415 E. Liberty. Tr. Vol. 10, pgs. 1960-1961.
308	Inside of Dean house in dining room. Tr. Vol. 10, 1961
309	Handgun inside a cabinet in dining room of Dean house. Tr. Vol. 10, pg. 1962.
310	Car title in pocket of jeans draped over a bicycle in dining room of Dean house. Tr. Vol. 10, pg. 1963.
311	Handgun inside cabinet with evidence placard in Dean house. Tr. Vol. 10, pg. 1963.
312	Car title in pocket of jeans draped over a bicycle in dining room with evidence placard in Dean house. Tr. Vol. 10, pg. 1963.

313	Car title in pocket of jeans draped over a bicycle in dining room with evidence placard in Dean house. Tr. Vol. 10, pg. 1963.
314	Dining room of Dean house showing a baseball cap. Tr. Vol. 10, pg. 1965.

Photos & Videos

State's Exhibit Number	Exhibit Description
315	Dining room of Dean house showing a baseball cap with evidence placard. Tr. Vol. 10, pg. 1965.
316	Dining room of Dean house showing a jacket hanging on a coat tree. Tr. Vol. 10, pg. 1966.
317	Dining room of Dean house showing a jacket hanging on a coat tree with evidence placard. Tr. Vol. 10, pg. 1966.
318	Upstairs bedroom in Dean house. Tr. Vol. 10, pg. 1968.
319	Upstairs bedroom in Dean house. Tr. Vol. 10, pg. 1967.
320	Top shelf of bedroom closet showing a bucket in Dean house. Tr. Vol. 10, pg. 1968.
321	Upstairs bedroom in Dean house showing pants laying on the floor. Tr. Vol. 10, pg. 1967.
322	Top shelf of bedroom closet showing a bucket with evidence placard in Dean house. Tr. Vol. 10, pgs. 1968-1969.

323	Front of Wade house, 502 E. Liberty. Tr. Vol. 10, pg. 1972.
324	Front of Wade house, 502 E. Liberty. Tr. Vol. 10, pg. 1972.
325	Upstairs bedroom in Wade house. Tr. Vol. 10, pg. 1972.

Photos & Videos

State's Exhibit Number	Exhibit Description
326	Gun in cabinet next to bed in upstairs bedroom in Wade house. Tr. Vol. 10, pg. 1972-1973.
327	Gun in cabinet next to bed in upstairs bedroom in Wade house. Tr. Vol. 10, pg. 1973.
328	Gun in cabinet next to bed in upstairs bedroom in Wade house with evidence placard. Tr. Vol. 10, pg. 1973.

Tangible Objects

State's Exhibit Number	Exhibit Description
130	Evidence bag for handgun recovered from Dean house. Tr. Vol. 10, pg. 1962
130A	Handgun recovered from Dean house. Tr. Vol. 10, pg. 1962. Seven lands and grooves with a left hand twist. Tr. Vol. 10, pgs. 1992-1993. Hi-Point brand handgun. Tr. Vol. 8, pgs. 1472-1474. Tr. Vol. 10, pgs. 1962, 1973-1974. Hi-Point S&W .40 caliber semiautomatic pistol. Tr. Vol. 10, pg. 1981 9 lb trigger pull, operable thumb safety, excellent operating condition. Tr. Vol. 10, pgs. 1982-1984. Model JCP, serial number X708047. Tr. Vol. 10, g. 2004.

131	Magazine from handgun recovered from Dean house. Tr. Vol. 10, pg. 1962.
329	Evidence bag for handgun recovered from Wade house. Tr. Vol. 10, pg. 1973-1974.

Tangible Objects

State's Exhibit Number	**Exhibit Description**
329A	Handgun recovered from upstairs bedroom at the Wade house. Tr. Vol. 10, pg. 1973-1974 .380 caliber semiautomatic. Tr. Vol. 10, pgs. 1984-1986.
329B	Clip from handgun recovered from upstairs bedroom at the Wade house. Tr. Vol. 10, pg. 1973-1974.
330	Evidence bag for jeans and car title from Dean house. Tr. Vol. 10, pg. 1964.
330B	Jeans that were draped over the bicycle in Dean House. Tr. Vol. 10, pg. 1964.
330C	Car title from jeans pocket in Dean house. Tr. Vol. 10, pg. 1964.
331	Evidence bag for the baseball cap from Dean's house. Tr. Vol. 10, pg. 1966.
331A	Baseball cap from Dean's house. Tr. Vol. 10, pg. 1966.
332	Evidence bag for jacket from coat tree from Dean's house. Tr. Vol. 10, pg. 1967.

332A	The jacket from the coat tree in the Dean house. Tr. Vol. 10, pg. 1967.

Tangible Objects

State's Exhibit Number	Exhibit Description
332B-E	Contents of the pockets of the jacket from the coat tree in the Dean house. Tr. Vol. 10, pg. 1977-1978.
333	Evidence bag for pants from the bedroom floor of the Dean house. Tr. Vol. 10, pg. 1968.
333A	Pants from the bedroom floor of the Dean house. Tr. Vol. 10, pg. 1968.
334	Evidence bag for bullets from pants pocket from Dean house. Tr. Vol. 10, pg. 1969.
334A	Six live .380 caliber bullets from pants pocket from Dean house. Tr. Vol. 10, pg. 1969.
335	Evidence bag for the bucket from the bedroom closet shelf in the Dean house. Tr. Vol. 10, pg. 1971.
335A-H	Various items contained in the bucket from the bedroom closet shelf in the Dean house. Tr. Vol. 10, pg. 1970-1971.
336	Evidence bag for two bullet boxes contained in the bucket in the Dean house. Tr. Vol. 10, pg. 1971.

336A	25 caliber American Eagle brand bullet box, with bullets, from the bucket in the Dean house. Tr. Vol. 10, pg. 1971.
336B	40 caliber Blazer Brass brand bullet box, empty of bullets, from the bucket in the Dean house. Tr. Vol. 10, pg. 1971.

Tangible Objects

State's Exhibit Number	Exhibit Description
337	Evidence bag for bullet recovered from floor of Buick Riviera. Tr. Vol. 10, pg. 1975.
337A-B	Live bullet recovered from the floor of the Buick Riviera. Tr. Vol. 10, pg. 1975.

Joshua Farmer: Criminal Associate of Bowshier Clan. Tr. Vol. 10, pgs. 1853-1865. During the time frame of March-April 2005, Farmer's friend Jeff Bowshier was ripped off for 42 pounds of marijuana. Later, Farmer was present during a meeting between Jeff Bowshier, Jeff's brother Danny Bowshier, Jeff's cousin TC Bowshier, and Adonte Cherry, whose street name is "Tuna." Tuna told the Bowshiers that the persons who ripped Jeff off were Draztik, William Calhoun, whose street name is "Oz", and a guy whose street name is Beeves. Later, Farmer was in a car with Jeff Bowshier, Danny Bowshier, and TC Bowshier. They drove by Dibert Ave. looking for Draztik's car, but didn't see it. Later, it was learned that Draztik was not involved in the rip off of Jeff Bowshier. The ones responsible for the rip off of Jeff was Oz (William Calhoun), Tuna (Adonte Cherry), guys whose street names were Beeves and Zoomer, and a guy named Brent Upshaw. Jeff Bowshier's sister, Angel Bowshier, has a child with Jason Dean's brother, Mark Dean.

Forrest E. Nott II: Owner Of A Car Customizing Shop. Tr. Vol. 10, pgs. 1866-1872. Devon Williams brought his car to Nott's car customizing shop for repairs of bullet holes. Nott identified pictures of the bullet holes. (**State's Exhibits 269, 271**)While dismantling the custom stereo speakers, Nott found bullet fragments lodged against a magnet in the speaker. Nott turned the bullets over to the police department.

Neil Davis: Springfield Police Officer. Tr. Vol. 10, pgs. 1873-1876. Davis was dispatched to Nott's shop and recovered from Nott two bullet fragments. Davis identified the bullet fragments. (**State's Exhibit 291**).

Hassan Chilton: Dibert Ave. Shooting Victim. Tr. Vol. 10, pgs. 1876-1901. On the night of the shooting, April 12, 2005, Hassan was visiting at the home of Devon Williams and his sister Shanta Chilton at 609 Dibert Ave. Also present were Shanta's two children and Shanta's friend, Shani Applin, and Shani's infant child Jaida. The home had a video security system that

could display video images of the outside front of the home, but there was no means of permanently recording those video images. Hassan and the others heard five or six gunshots outside and went to investigate. Devon went to his car and saw that it was shot up around the gas tank. As Hassan was on the front porch with Shani and Shani's infant child Jaida, a car came up the street, and more gunshots were fired at the front porch area. When the shots were going off, Devon was on the other side of the street from 609 Dibert Ave. Using a diagram, (**State's Exhibit 129**) Hassan pointed out various locations, and their positions when the second set of gunshots went off. When the second set of gunshots went off, about four or five in number, Shanta dropped to the floor of the porch. Hassan identified and then put on the coat her was wearing that night. (**State's Exhibit 268**). While wearing the coat, Hassan demonstrated how he grabbed Shani's baby Jaida and rushed inside the house. Bullets struck the door frame area inches from where Hassan would have been with the baby, and inches from where Shanta's head would have been at as Shanta would have laid on the porch floor. Hassan identified photos of bullet strikes on the porch and inside the house. (**State's Exhibits 178, 179, 183, 188, 190, 192**). Hassan pointed out where there was a bullet hole in his coat. (**State's Exhibit 268**). Hassan didn't see who was in the car, but the car looked to be a silver or gray Riviera.

Robin Roggenbeck: BCI Fingerprint Examiner. Tr. Vol. 10, pgs. 1901-1911. Roggenbeck received an evidence envelope, a Hi Point .40 caliber gun, and the magazine for the gun on May 3, 2005. (**State's Exhibits 130, 130A, 131**). The items had already been tested for prints using a super glue method before they were received by Roggenbeck. Roggenbeck was asked to check the internal slide mechanism for prints. After using a superglue process, a fluorescent dye stain process, and a contrasting powder process, Roggenbeck did not detect an area of sufficient ridge detail to make an identification. (The handgun and magazine were recovered from a small table in the kitchen of Dean's house. Tr. Vol. 10, pgs. 1938, 1950-1952).

David Allen: Springfield Police Officer: Tr. Vol. 10, pgs. 1912-1917. Allen recovered from the from the parking lot of the Selma Road Mini Market shooting scene on April 10, 2005, two .25 caliber shell casings. Allen identified the property receipt for this evidence (**State's Exhibit 292**) and the two shell casings. (**State's Exhibit 293**).

Doug Estep: Springfield Police Officer. Tr. Vol. 10, pgs. 1919-1943. Recalled Tr. Vol. 11, pgs. 2191-2256. On the night of the Titus Arnold homicide, detective Estep recovered a live .25 caliber round (**State's Exhibits 67, 68** – photos) from the sidewalk near the alley next to the Epperson apartment and the homeless shelter parking lot. During the investigation, detective Estep met with Kari Epperson, who agreed to help police identify the car she saw at the Titus Arnold shooting scene. Estep prepared photos of various cars to show Epperson, with one series of photos being that of a Buick Riviera parked at the rear of 415 E. Liberty Street. (**State's Exhibits 294, 295, 296, 297, 298, 299, 300 301, 302, 303, 304, 305**); (**State's Exhibit 306** – evidence tag for the series of photos). The photos of the Buick Riviera are **State's Exhibits 294, 295, and 296**. Based upon conversations with witness Krystal Kaboos that took place on April 20, 2005, search warrants were obtained for the Dean house at 415 East Liberty, and the Wade house at 502 East Liberty. During the early AM hours of April 21, 2005, the Springfield SWAT team made a no-knock entry to the Dean house. Estep, who was the first through the door, encountered Dean in the kitchen and took him to the floor. While on the floor, Dean kept looking at a spot next to Estep. Estep looked at the same spot and saw a handgun on a small table next to

the wall. Estep identified the gun (**State's Exhibit 130**)and the magazine (**State's Exhibit 131**) that was recovered from the small table. Dean was arrested and taken to police headquarters. Tr. Vol. 10, pgs. 1919-1943. Recalled Tr. Vol. 11, pgs. 2191-2256. Estep showed Nite Owl tavern barmaid Rhonda Boys a photo array and she picked out Jason Dean's photo (State's Exhibits 3A and 3B) without hesitation as the person who was in the bar the night of the Titus Arnold homicide, April 13, 2005. Tr. Vol. 11, pgs. 2192-2196. Estep showed eyewitness Terri Epperson a photo array and she picked out Josh Wade's photo (State's Exhibit 2A and 2B) without hesitation as the person who shot Titus Arnold. Tr. Vol. 11, pgs. 2196-2198.

Seizure Of More Than 100 Letters From Dean To Jason Mans And Rhonda Sions

Based upon investigative information obtained from Robert Farmer, Estep obtained and executed a search warrant at Lebanon Correctional on the cell of inmate Jason Mans. Seized in that search were eight letters written by Jason Dean to Jason Manns. (**State's Exhibits 370** – evidence envelope- **371, 372, 373, 374, 375, 376, 377, 378**) The letters were sent to BCI for handwriting analysis. Tr. Vol. 11, pgs 2198- 2207. Estep questioned Rhonda Sions, believed to be Jason Dean's girlfriend. As a result of that questioning, Sions voluntarily turned over 47 letters written to her by Jason Dean. (**State's Exhibits 379 through 425**). One of the documents did not have an envelope, was not addressed to Sions, and looked to have handwriting different from the rest. (**State's Exhibit 425**) Estep learned through subsequent investigation that Sions had additional letters she had not turned over. Estep obtained and executed a search warrant at Sions's home and seized an additional 70 letters. 10 items -letters and photocopies of letters- from those 70 letters was sent to BCI for handwriting analysis. (**State's Exhibits 426 through 440**; **State's Exhibits 437** is an evidence envelopes) (**State's Exhibits 441, 442, 443, 444, 445, 446**- Dean handwriting exemplars) Estep identified letters seized from the search of Sions home that were not submitted to BCI (**State's Exhibits 447 through 507**) Tr. Vol. 11, pgs. 2207-2236.

William Harrington: Springfield Police Officer. Tr. Vol. 10, pgs. 1947-1953. Harrington was the second SWAT team member through the door at the Dean house. Immediately upon entry, Harrington saw Dean in the kitchen area. Despite five or six commands to get to the floor, Dean was non-compliant. Dean was grinning and looking at a handgun that was laying on a small table. Harrington could see the handgun. Harrington identified the handgun a (**State's Exhibit 130**) and the magazine from the handgun. (**State's Exhibit 131**). Harrington searched Dean's car and saw a live bullet under the passenger seat. Harrington called for the CSI personnel to process the car.

Louis Turner: Springfield Police Officer. Tr. Vol. 10, pgs. 1954-1959. Turner made entry, on April 21, 2005, into the Wade house at 502 E. Liberty. Turner encountered Josh Wade in an upstairs bedroom. In a drawer in the coffee table in that room, Turner saw a handgun. Turner identified the gun (**State's Exhibit 329A**-tangible object) and the magazine (**State's Exhibit 329B**-tangible object).

Timothy Shepherd and Timothy Duerr: Shepherd is a Forensic Criminalist with the Springfield Police. Tr. Vol. 10, pgs. 1979-1944, recalled Tr. Vol. 10, pgs. 2012-2035. Duerr is a Forensic Criminalist with the Miami Valley Crime Lab. Tr. Vol. 10, pgs. 1995-2012. Both were called relative to results of ballistics testing.

Ballistics Test Results

State's Exhibit Number	Description Of Item	Test Results
16 and 17	Two casings recovered from the Titus Arnold homicide scene that took place on April 13, 2005. Tr. Vol. 10, pgs. 1988-1989; S&W brand, .40 caliber. Tr. Vol. 8, pgs. 1504-1506.	The two casings (State's Exhibits 16 and 17) were microscopically compared to casings test fired (State's Exhibits 339A and C) from the Hi-Point S&W .40 caliber semiautomatic pistol recovered from the kitchen of the Dean home. (State's Exhibit 130A). The two casings (State's Exhibits 16 and 17) were fired from the pistol recovered from the kitchen of the Dean home. Tr. Vol. 10, pgs. 1989-1990.
18	Live .25 caliber unfired bullet from the street nearby to the parking lot at the Titus Arnold homicide scene that took place on April 13, 2005. Tr. Vol. 8, pg. 1511.	Unfired Federal brand bullet. Tr. Vol. 10, pg. 2007. Lack of markings show it was not fired by a gun, nor was it a misfire. The brand of the bullet (Federal) is the same brand of .25 caliber bullet recovered (State's Exhibit 293) from the Selma Rd. Mini Mart shooting scene. Tr. Vol. 10, pgs. 2005-2007, 2110. The striations on the primer area are random. Can't say if it was or was not ejected from a weapon. Tr. Vol. 10, pgs. 2015-2016. (Tested by both Shepherd and Duerr).
130A	Hi-Point S&W .40 caliber semiautomatic pistol. Tr. Vol. 10, pg. 1981. Hi-Point brand handgun. Tr. Vol. 8, pgs. 1472-1474. Tr. Vol. 10, pgs. 1962, 1973-1974. Model JCP, serial number X708047. Tr. Vol. 10, pgs. 1908, 2004. The handgun and magazine were recovered	The gun is manufactured with seven lands and grooves with a left hand twist. Tr. Vol. 10, pgs. 1992-1993. The gun has a 9 lb trigger pull, an operable thumb safety, and is in excellent operating condition. Tr. Vol. 10, pgs. 1982-1984. The sear pin was replaced after being inadvertently lost during an earlier

	from a small table in the kitchen of Dean's house. Tr. Vol. 10, pgs. 1938, 1950-1952	proceeding in juvenile court. Tr. Vol. 10, pgs. 2020-2028. When the gun was test fired, it had the sear assembly that came with the gun. A gun without a sear assembly can't be fired. Tr. Vol. 10, pgs. 2026-2027.
131	Magazine from handgun recovered from Dean's house. Tr. Vol. 10, pgs. 1938, 1950-1952	
139	Bullet recovered from the inside of the driver's door of the pick up truck at the Titus Arnold homicide scene that took place on April 13, 2005. Tr. Vol. 10, pg. 1992; Tr. Vol. 8, pg. 1536-1537. (Photos are State's Exhibits 136, 137 and 138. Tr. Vol. 8, pgs. 1535-1536).	.40 caliber S&W bullet fired from a weapon having seven lands and grooves with a left hand twist. Since a majority of the bullet is missing, further identification that it was fired from a particular weapon is precluded. Tr. Vol. 10, pgs. 1992-1993.
217	Bullet recovered from front porch pillar at 609 Dibert Ave. Tr. Vol. 8, pg. 1568-1569.	.40 caliber S&W bullet, but too degraded for comparison. Tr. Vol. 10, pg. 1994.
236	Spent bullet recovered from the sleeve of Andre Piersoll's coat at Mercy Hospital, flowing the shooting at the Selma Road Mini Mart on April 10, 2005. Tr. Vol. 9, pgs. 1646-1656.	.25 caliber bullet, with class characteristics such that it was fired by a gun manufactured by Astra, Colt, FIE Titan, or Raven. Tr. Vol. 10, pgs. 2001-2003.
266	A bullet from recovered the hallway floor at Devon Williams house at 609 Dibert Ave. The shooting scene took place on April 12, 2005. Tr. Vol. 9, pgs. 1761-1763.	The bullet is a .40 caliber S&W, but too degraded to match to being fried from a particular gun. Tr. Vol. 10, pg. 2013.
267	A bullet recovered from Devon's car at the Dibert Ave. shooting scene that took place on April 12, 2005. Tr. Vol. 9, pgs. 1764-1773.	The bullet is .25 caliber, having been fired from a weapon having six lands and grooves with a left hand twist. Consistent with a gun manufactured by Phoenix, Raven, Master Cub, Raven MP-25 or Avis D-25. Tr. Vol. 10, pgs. 2013-2015.
257(sic)		.40 caliber bullet. Copper jacketed, but since the copper jacket was stripped off the lead, the striation marks are not present, so the bullet cannot be identified as being fired from any particular gun. Tr. Vol. 10, pg. 2003-2004.

293	Recovered from the from the parking lot of the Selma Road Mini Market shooting scene on April 10, 2005, two .25 caliber shell casings. Tr. Vol. 10, pgs. 1912-1917.	.25 caliber cartridge casings manufactured by Federal. The casings were fired from the same weapon. Tr. Vol. 10, pg. 2000-2001, 2017-2018. (Tested by both Shepherd and Duerr).
329, 329A through C	Evidence bag (329), a .380 caliber handgun (329A) and the magazine (329B) recovered from a coffee table drawer in an upstairs bedroom where Josh Wade was arrested. Tr. Vol. 10, pg. 1984-86; Tr. Vol. 10, pgs. 1954-1959. State's Exhibit 329C are round of .380 ammunition that did come with the weapon. Tr. Vol. 10, pg. 2018.	.380 caliber handgun, 9 lb trigger pull, operable thumb safety, excellent operating condition. Tr. Vol. 10, pgs. 1984-1986.
338, 338 A through H	Evidence bag (338) and eight bullets (338 A through H) remaining from ten bullets recovered from the Hi-Point S&W .40 caliber pistol recovered from a small table in the kitchen of Dean's house. Nine bullets were in the magazine and one bullet was in the chamber. Tr. Vol. 10, pg. 1981; Tr. Vol. 10, pgs. 1938, 1950-1952.	
339, 339A through D	Evidence bag (339), with two casings (339 A and C) and two bullets (339B and D) test fired from the Hi-Point S&W .40 caliber semiautomatic pistol, serial no. X708047, recovered from a small table in the kitchen of Dean's house. Tr. Vol. 10, pgs. 1938, 1950-1952, 1986, 2004.	The test fired casings matched the .40 caliber casings recovered from the Titus Arnold homicide scene. (State's Exhibits 16 and 17) The .40 caliber casings recovered from the Titus Arnold homicide scene were fired from the gun recovered from a small table in the kitchen of Dean's house. (State's Exhibit 130A). Tr. Vol. 10, pgs 2004-2005.

Devon Williams: Dibert Ave. Property Damage Victim. Tr. Vol. 10, pgs. 2038-2062. On the night of the shooting, April 12, 2005, Devon (nickname Draztik), his girlfriend Shanta Chilton, Shanta's brother Hassan Chilton, and Shanta's friend Shani Applin, along with Shani's infant daughter, Jaida, were watching television at 609 Dibert Ave. Devon heard gunshots from outside. The gunshots triggered his car alarm. Also, the gunshots triggered his outdoor security camera to activate, showing a video image on his television screen of the front porch area. Devon grabbed his gun, a Hi Point .45 caliber, and went outside to see that his car, which was parked across the street, was shot up. Devon identified photos of his house and his car, a 1984 Olds Delta 88. (**State's Exhibits 240, 259, 271, 274, 286, 287, 289**). As he stood next to his car, Devon set his gun down so that he could better see if there was damage to the wheel rims of the

car. At this time, a small Buick, silver or gold in color, drove up the street and stopped in front of his house. The headlights of the Buick were on. Devon, who was dressed in black and positioned on the street side of his own car, could see into the Buick, which had the driver's window down. Devon, upon seeing the defendant Jason Dean in the courtroom, was sure that Jason Dean was driving the Buick. As soon as the car stopped, the passenger in the Buick started shooting at the front porch of Devon's house. The passenger was younger than Dean. Devon heard seven gunshots. Dean and the passenger drove off. Tr. Vol. 10, pgs. 2045-2048.

Before the shooting, Devon learned from Josh Farmer that he, Devon Williams, had been accused of stealing Jeff Bowshier's dope. The persons making the accusations were William Calhoun (street name Oz) and Adonte Cherry. After he learned about the accusations, Devon talked it out with Jeff Bowshier and assured Bowshier that he, Devon Williams, did not steal Bowshier's dope. The conversation between Jeff Bowshier and Devon Williams took place about 1 week before the shooting on April 12, 2005. Tr. Vol. 10, pgs. 2049-2051.

Terry L. Smith: Cellmate of Jason Dean. Tr. Vol. 11, pgs. 2064-2091. Immediately before Smith's testimony, Dean's counsel reargued their motion in limine to exclude Smith's reference to Dean's statements of "fuck the victim and his family." The defense argued these statements were inadmissible "bad character" evidence, and the prosecution argued it was "intent" evidence pertinent to a purposeful killing. The Court overruled the motion in limine. Before his testimony, Smith was instructed by the prosecutor that Smith could say he was cellmates with Dean, but to not reveal the location where they were incarcerated, which was Lebanon Correctional Institution. Tr. Vol. 11, pgs. 2064-2073. Before Smith was cross examined, the parties had a discussion about how Smith's testimony became know to the State, and the nature of and timing disclosure to the defense. Tr. Vol. 11, pgs. 2079-2083.

For his testimony, Smith acknowledged that in regards to his prison sentences for rape and kidnapping, he does not have a parole hearing date until 2008. Smith acknowledged that no promises have been made, but that the Parole Board is notified as a matter of course when an inmate cooperates with the authorities. Relative to Dean's statement about a letter sent to Jason Mans, Smith testified as follows.

A: [Terry Smith] He [Jason Dean] said his letters – letters that he wrote to his partner was that it – anything in there wasn't incriminating besides the feelings he had for the victim's family, he didn't care for them. He didn't care what happened to them or anything like that." Tr. Vol. 11, pg. 2077

Relative to Dean's statement about the Titus Arnold homicide, Smith testified as follows.

A: [Terry Smith] He [Jason Dean] said on the night he was – him and his partner was out riding around looking for drugs or looking for somebody to rob or something, ran up on Mr. Arnold and attempted to rob him. Mr. Arnold ran the scene, fled the scene. He fired, tried to fire his weapon and misfired. And then his – I guess he grabbed his partner's gun or his partner shot him, shot Mr. Arnold. Tr. Vol. 11, pg. 2077.

Smith went on to testify that Dean knew the murder weapon was found at this house. Relative to Dean's statements about how blame would be allocated, Smith testified as follows.

A:[Terry Smith] How did he [Jason Dean] put it? Oh, I [Terry Smith] said if he didn't – if he's the one that shot Mr. Arnold, why couldn't he put it on his partner because he was facing the death penalty; and if his partner took the case, the only thing he could receive is 15 to life without possible parole.

Q: [Prosecutor Schumaker] That's all his partner could receive?

A: Yeah, that's all he'd receive.

Q: Okay. Did he indicate to you what the victim of the homicide did when he was first confronted with the – the attempt to rob him?

A: He ran.

Q: And did he make any statements to you concerning what, if any, money, they got from that robbery?

A: 6 dollars. Tr. Vol. 11, pgs. 2078-2079.

Crystal Kaboos: Girlfriend of Jason Dean. Tr. Vol. 11, pgs. 2092-2191. Two days before the Titus Arnold homicide on April 13, 2005, Kaboos moved in with Jason Dean in Dean's mother's house located at 415 E. Liberty. (**State's Exhibit 307** - photo of the outside of 415 E. Liberty.) The house belonged to Dean's mother, and Dean had his own bedroom off an upstairs hallway. (**State's Exhibit 318** - photo of Dean's bedroom) Dean's dad lived there as well by renting another upstairs bedroom from Dean's mother. Dean's mother stayed in a downstairs bedroom. Dean was friends with Josh Wade, and they were always together. Dean had a car, a gold colored Riviera. (**State's Exhibit 294** – photo of Dean's car). Dean normally parked the Riviera behind the house on E. Liberty. Tr. Vol. 11, pgs. 2092-2102.

Dean had a small silver .25 caliber handgun. This gun had wood grain on the side. Dean also had a big black .40 caliber handgun. (**State's Exhibit 130A**). Dean kept these guns in a closet, "but they mainly carried around with him." Tr. Vol. 11, pgs. 2098-2099.

Q:[Prosecutor Carter] Did the defendant have that four – that .40 black pistol in any particular location in the house?

A:[Crystal Kaboos] He put it in his closet sometimes. He kept it on his little table beside his bed, but most of the time Josh Wade had it with him. Tr. Vol. 11, pg. 2123.

Kaboos identified photo of Dean's kitchen. (**State's Exhibit 316**). Tr. Vol. 11, pg. 2124.

A couple of days after the Titus Arnold homicide, Dean got rid of the .25 caliber handgun. Kaboos was present when Dean traded the gun for some drugs with a guy named Bub. Tr. Vol. 11, pgs. 2125-2126.

Dibert Ave. Shooting

Kaboos took a ride, on April 12, 2005, with Dean and Wade in Dean's car. Dean and Wade told Kaboos they were going to look for a house, but they never said they what they intended to do. Dean and Wade said Dean's brother, Mark Dean, told them to go look for the house. Dean and Wade said they were also looking for Oz's house, but didn't say why. Kaboos knew during the car ride that both Dean and Wade were armed. Dean was carrying the .25 caliber gun and Wade was carrying the .40 caliber gun. Wade was driving. Dean was in the front passenger seat. Kaboos was in the rear seat.

A: [Crystal Kaboos] We were riding down Dibert and I was in the backseat of the car; and they shut the lights off on the car, and Jason [Dean] put his window down. Jason [Dean] was sitting in the passenger seat. Josh Wade was driving, and they both stuck their guns out the window and just fired off shots. Tr. Vol. 11, pg. 2105.

Kaboos ducked down and covered her ears. The shots were being fired from the passenger side. Both Dean and Wade were shooting. The car turned around, but Kaboos does not remember whether she heard more gunshots. Tr. Vol. 11, pgs. 2105-2107.

Titus Arnold Homicide

The next night, April 13, 2005, (Tr. Vol. 11, pgs. 2107-2108) Dean and Wade said they were going to the Nite Owl Tavern to "lure somebody out to rob them." Tr. Vol. 11, pg. 2108. Dean said Kaboos could not come along. Wade was dressed all in black. Dean wore a black jacket (**State's Exhibit 332**) with black jeans, (**State's Exhibit 333**) a blue hat with an "X" on it, and with Nike tennis shoes with red shoe laces. Tr. Vol. 11, pgs. 2108-2110.

The next morning, Kaboos was doing laundry. She had already washed her clothes and went to put her clothes in the dryer. In the dryer, she saw the clothes that Dean and Wade wore the night before, along with Dean's tennis shoes. Since Kaboos needed the dryer, she took the clothes and shoes out and set them on top of the dryer. "I took them out and put them on top of the drier." (sic) Tr. Vol. 11, pgs. 2111- 2113 (quotation Tr. Vol. 11, pg. 2112).

The next day, April 15, 2005, Kaboos and Dean were in Dean's bedroom. Wade called Dean out in the hallway. Kaboos heard Dean and Wade laughing. Dean brought the newspaper into the bedroom, threw it on the bed and told Kaboos to read the article about Titus Arnold. (**State's Exhibit 369,** Tr. Vol. 11, pg. 2124-2125). Dean and Wade said they were just going to rob the victim, but they shot him. Dean was bragging about his actions. Dean said they got six dollars in the robbery. A news show came on television about the Titus Arnold homicide. Dean told everybody to watch. Dean was laughing during the news story. Tr. Vol. 11, pgs. 2113-2118.

A: [Crystal Kaboos] He [Dean] said that they were driving down the street. And they'd seen Titus Arnold walking down the street, and they stopped the car. Jason [Dean] got out and

held the silver gun at him, and Titus didn't want to lay on the ground as they were telling him to. He tried to run, and Jason [Dean] tried to fire his gun; but it was on safety so then Josh [Wade] got out of the driver's seat and told him, I have – told him he had a bigger gun and shot Titus Arnold. Tr. Vol. 11, pg. 2115.

Mini Mart Shooting

Relative to the Selma Road Mini Mart shooting, April 10, 2005, Kaboos testified as follows.

A: [Crystal Kaboos] He [Dean] told me that he run up on a car and shot through the windshield.

Q: [Prosecutor Carter] Okay. Could you speak up? I'm having problems hearing you, and I think that the far jurors are also.

A: He told me that he ran up on the car and shot through the windshield.

Q: Did he tell you why he did it?

A: He told me that the guy supposedly stole money from his brother, but that's a lie. Tr. Vol. 11, pgs. 2117-2118.

Kaboos Referred To Polygraph Exams

Kaboos stayed with Dean for a couple more days. She left because Dean threatened her, since she knew what he had done, and Dean didn't want her to tell anybody. Kaboos told Dean that she was leaving because he had another girlfriend. Kaboos called a friend, Tim Watkins, from Dean's mother's house. Watkins picked her up and took her to Urbana. Kaboos told Watkins about what she knew. Watkins convinced Kaboos to go to the police. Tr. Vol. 11, pgs. 2118-2121.

When Kaboos talked to police, she at first said Dean shot Arnold. Kaboos knew that to be false, and gave that false information to police because she was scared. Tr. Vol. 11, pg. 2122-2123.

Before cross examination, the defense reviewed Grand Jury testimony by Kaboos, along with notes made by police during the polygraph exam. The defense contended to the Court, out of the hearing of the jury, that Kaboos made inconsistent statements about whether Dean's clothes were in the dryer, as opposed to being on top of the dryer. Tr. Vol. 11, pgs. 2126-2130.

During cross examination, Kaboos admitted she falsely told police she was not in the car during the Dibert Ave. shooting. Tr. Vol. 11, pg. 2134-2137. Kaboos again admitted that in her first statement to police (**Defendant's Exhibit C**) she falsely reported that Dean said he shot Titus Arnold. Tr. Vol. 11, pgs. 2141-2142. Reiterated on cross examination Tr. Vol. 11, pg.

2181. On cross examination, Kaboos agreed that Josh Wade told her he shot Titus Arnold. Tr. Vol. 11, pg. 2181.

Kaboos was being cross examined about differences between her courtroom testimony and her statements before the Grand Jury.

Q:[Defense Counsel Mayhall] Okay. Let's ask – the question was asked "We kind of skipped over this. Are you aware of any clothes that were washed?" And your answer was "Yes. The reason I know exactly what Jason was wearing was because his clothes and his shoes were on the drier – were on the drier when I went to put my laundry in the drier after I washed it." In the drier, not on the drier.

A:[Crystal Kaboos] Because I took them out.

Q: That's not what you said.

A: I put them on the drier when I put my clothes in the drier. That's not what I said. I didn't lie about it.

Q: And so with regard to the lies that you did tell, you told the police that Jason said he'd shot Titus Arnold. And that was a lie, right?

A: Yes.

Q: And you told the police that you weren't in the car on this Dibert incident if that's where you were. We really don't know where you were.

A: No. But I've taken three polygraph tests to prove that I was telling the truth. Tr. Vol. 11, pgs. 2148-2149.

The defense moved for a mistrial on grounds Kaboos said she took a polygraph test. The Court recessed and entertained argument by the parties out of the hearing of the jury. The Court then broke for lunch. The Court reconvened out of the hearing of the jury and entertained more argument from the parties. The Court overruled the motion for mistrial. Tr. Vol. 11, pgs. 2149-2179.

The Court reconvened the jury and gave the following instruction.

The Court: During the course of cross examination of the last witness, Crystal Kaboos, she made the following statement: "No, but I have taken three polygraph tests to prove I was telling the truth." That was an improper statement. Any reference to polygraph exams are inadmissible. Polygraph results are not admissible in a court of law. They cannot be relied upon. They're not scientifically proven to be accurate. And, accordingly, it's irrelevant and inadmissible testimony. I would note for your observation that although she said she took three polygraph exams to prove she was telling the truth, she never indicated one way or the other what the results were. You're not to speculate on what the results were. You're not to consider

this testimony at all, either now, during the course of the remainder of the trial, during your deliberations. It's highly improper. You're to disregard those statements. And you shouldn't draw inferences one way or the other from that statement; and with that instruction in mind, for the record, if there's anyone here that doesn't feel the can comply with that instruction, now's the time to let the Court know by a show of hands. (No response) All right. The Court, seeing that none of the jurors or the alternate jurors have raised their hand, the Court can presume that the jurors will follow that instruction of the Court. And at this time we will continue with the cross examination of Crystal Kaboos. Tr. Vol. 11, pgs. 2179-2181.

Edward Icenhour: Springfield Police Officer. Tr. Vol. 12, pgs. 2261-2270. Obtained handwriting exemplars from Jason Dean. (**State's Exhibits 442, 443, 444, 445, 446**).

Rebecca Rhea: BCI Questioned Documents Examiner. Tr. Vol. 12, pgs. 2270-2291. Rhea compared known handwriting samples from Dean (**State's Exhibits 442, 443, 444, 445, 446 – State's Exhibit 441** is an evidence envelope) against letters purporting to be from Dean to Jason Manns (State's Exhibits **370, 371, 372, 373, 374, 375, 376, 377, 378**) and concluded that the letters were written by Jason Dean. Rhea also compared the known handwriting samples from Dean against letters purporting to be from Dean to Rhonda Sions (**State's Exhibits 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 447, 448, 449, 450, 451, 452, 453**) and concluded that the letters were written by Jason Dean.

Ann Woodruff: Clark County Telephone Technician. Tr. Vol. 12, pgs. 2292-2306. Woodruff identified recordings of multiple telephone calls made Jason Dean on the recorded lines at the Clark County jail. (**State's Exhibits 508, 509**) Recorded warnings that the calls are monitored, audible to the caller and the recipient of the call, are announced during each call made from the jail. From the numerous telephone calls, two specific individual telephone calls were copied and reproduced on two compact discs cassette tapes. (**State's Exhibits 508A, 509A**). Then, excerpts of those two individual calls were copied and reproduced on corresponding cassette tapes. (**State's Exhibits 508B, 509B**). Woodruff also identified a compact disc containing multiple telephone calls (**State's Exhibit 510**) and a portion of an individual telephone call that was taken off **State's Exhibit 510** and separately recorded. (**State's Exhibit 510A**).

Jason Manns: Cellmate and Friend Of Jason Dean. Tr. Vol. 12, pgs. 2310-2334. Manns identified the letters seized from his cell. (**State's Exhibits 371, 372, 373, 374, 375, 376, 377, 378**). Manns was celled with Jason Dean. Manns has known Jason Dean all his life. Manns knows Jason Dean's brothers, Mark and David. While he was celled with Dean, Manns looked through Dean's discovery papers to get the address for Manns own step-brother, Joshua Farmer. Manns expressed reluctance to answer questions and was advised by the Court regarding being compelled to answer questions by way contempt proceedings. Tr. Vol. 12, pgs. 2315-2323. The Court sustained in part Dean's motion for redaction of his letters to Jason Manns. Tr. 12, pgs. 2487-2497. Additional redaction agreed by the parties. Tr. Vol. 13, pgs. 2532-2533.

Relative to statements made to him by Dean, Manns testified as follows:

Q: [Prosecutor Schumaker] Mr. Mans, (sic) I need to ask you, did the defendant make any statements to you concerning an incident that occurred at the Mini Mart? Some people know it as the Dairy Mart, out on Selma in connection with this case?

A:[Jason Manns] Yes.

Q: And why did he tell you that that incident occurred?

A: The individual – I don't know how to put this. The individual that he had shot that day had robbed his brother.

Q: Okay. Did he tell you what he did in that – in that incident?

A: He happened to go into the Dairy Mart, Mini Mart, that day; and the individual was in there by coincidence, followed him, and shot him.

Q: Okay. Did he make any statements to you concerning a drive-by shooting type of incident that occurred here in the city of Springfield?

A: Yes.

Q: Why did he tell you that that incident occurred?

A: He was paid to do it.

Q: For what reason?

A: Because the individual – the individual that had robbed a person of marijuana was suspected of living there or having association with that house.

Q: Okay. And did he tell you the reason that Titus Arnold died?

A: He told me – he told me two different things. One, that he was paid to do it. And another was – let me – he was paid to do it because the same individual that paid him to do the drive by was having problems with Titus Arnold. Tr. Vol. 12, pgs. 2323-2325.

On cross examination, the questioning went as follows.

Q: [Defense Counsel Mayhall] And when Jason Dean told you this was some kind of a contract, that's to make him look like a tough guy; and people don't mess with him in the penitentiary.

A: [Jason Manns] You'll have to ask him.

Q: Beg your pardon?

A: You'll have to ask him that.

Q: Did he say how much he was paid to do this murder?

A: Between 15 and 20,000 dollars.

Q: I'm sorry?

A: Between 15 and 20,000 dollars.

Q: And what did he do with the money?

A: I don't know.

Q: How much was he paid to do the drive by on Dibert?

A: Didn't say specifically.

Q: But a lot of money?

A: He said 15, 20,000 to do several different things.

Q: I'm sorry?

A: To do several things.

Q: And you didn't take that as his intent to look like a big guy in the penitentiary?

A: No. Tr. Vol. 12, pg. 2329.

Additional questioning on cross examination went as follows.

Q: [Defense Counsel Mayhall] I'm going to hand you what's been marked as **Defendant's Exhibit D**. I said hand it to you. You can take it.

A: [Jason Manns] (Complies with request)

Q: And that's an inner office communication from one police officer to another about the Arnold murder, right?

A: Yeah.

Q: And that was in Jason Dean's discovery packet?

A: That's the first time I ever seen it.

Q: And it's in there, it's a tip they received about Mr. Arnold's killing being a contract.

A: That's the first time I ever seen it.

Q: That's what it says, isn't it?

A: I believe if I know how to read right, yes, sir.

Q: Okay. So again, you had access to Jason Dean's discovery pack.

A: For approximately ten minutes.

Q: Well, you didn't say that before.

A: I'm saying it now. Tr. Vol. 12, pgs. 2332-2333.

Rhonda Sions: Girlfriend of Jason Dean. Tr. Vol. 12, pgs. 2335-2461. Sions was Dean's girlfriend after Crystal Kaboos. Josh Wade and Jason Dean were always together. Dean had a Buick Riviera. Wade usually drove the car. Sions was with Dean when he was arrested at his home. Tr. Vol. 12, pgs. 2335-2348. After Kaboos left, Dean said he was worried that Kaboos might turn himself and Wade into the police. Dean made that statement when he and Wade were talking about the newspaper story about the Titus Arnold homicide. Tr. Vol. 12, pgs. 2348-2349. Sions visited Dean in jail every chance she got. Dean would call her all the time from the County jail. Dean wrote letters to her, sometimes 3 letters a day. Sions and Dean would talk about Dean's cases, including the Titus Arnold homicide. Tr. Vol. 12, pgs. 2349-2351.

Relative the Titus Arnold homicide, Dean said he was there when it happened, but he was not the one who did it. Dean said it was a mistake, and by the time he could stop it, it had already happened. Dean said that he and Wade had come out of the Night Owl and they saw a person, but it was a case of mistaken identity. Wade hopped out, but by the time Dean said it was the wrong person, it was done and over with. Dean said they were looking for Oz that night. Tr. Vol. 12, pgs. 2351-2354. Dean told Sions that one of the Epperson girls was involved in his case. Sions was to contact the Epperson girl to find out what she knew. Dean wanted Sions to get in a fight with the Epperson girl. Tr. Vol. 12, pgs. 2355-2356.

Relative to the Mini Mart shooting, Dean said he was in the store talking to the owner when somebody outside started shooting. Relative to the Dibert Ave. drive-by, Dean never mentioned it. Tr. Vol. 12, pgs. 2354-2355.

Crystal Kaboos made a scene when Dean told her to leave. Kaboos confronted Dean and the new girlfriend, Rhonda Sions, as all were gathered in Dean's bedroom in the house on Liberty Street. Tr. Vol. 12, pgs. 2455-2458.

Recordings Of Dean Calling From Jail

Following and extended bench conference, (Tr. Vol. 12, pgs. 2357-2364, 2368), Sions identified Dean's voice on several recordings of Dean calling from jail. Dean expressed concern about police obtaining the 100 letters he wrote to Sions. Dean knew police had the letters because his attorney showed them to him. **(State's Exhibit 508B)** Tr. Vol. 12, pgs. 2364-2368. Dean said that police have an eyewitness against Wade, but the only thing police have on him is the gun. Dean said he knew that Wade told police that Dean tried to shoot the guy, and that Wade got out of the car and handed Dean the gun and said that Dean shot the guy. Dean said Wade was showing off and told a female everything, and the female knows everything because Wade told her. The police have eyewitnesses that saw Wade do it. Dean said if he takes it to trial, he'll be found guilty on something. If the prosecutors come up with a 15 to life, he'd take it. **(State's Exhibit 510A)** Tr. Vol. 12, pgs. 2369-2373. Dean said the prosecutors weren't going for a deal. Dean said the prosecutors were going for the death penalty "because we killed a moon cricket." Dean was concerned about the eyewitnesses. Dean was concerned that the murder weapon was in his house. **(State's Exhibit 509C)**.Tr. Vol. 12, pgs. 2401-2404.

Letters From Dean To Sions

Following an extended bench conference where redactions were made, (Tr. Vol. 12, pgs. 2378-2401), Sions identified letters Dean wrote to her. In one letter, Dean wrote that sometimes he gets angry and can't control himself, which is one reason why he's now in jail. The man was in his grave because he was in the wrong place at the wrong time. **(State's Ex. 436A)** Tr. Vol. 12, pgs. 2404-2408. Dean wrote that he got caught up in the fast life, "doing what comes natural to a beast like me...." **(State's Exhibit 426A)** Tr. Vol. 12, pgs. 2408-2409. Dean has to wait and see what kind of deal he can get. **(State's Exhibit 428A)** Tr. Vol. 12, pgs. 2410-2411. Dean was concerned about what Wade has said, or will say, to the police. Wade should tell police that 'I know nothing about no murder.' **(State's Exhibit 429A)** Tr. Vol. 12, pgs. 2411-2413. Dean wrote that Sions should not have any further contact with an unidentified male, because "I don't need another life on my conscience." **(State's Exhibit 430A)** Tr. Vol. 12, pgs. 2413-2415. Dean wrote that if he and Sions got together before, Sions would not have allowed Dean to run the streets at night, and Sions "wouldn't have been having all the crazy shit I was doing." **(State's Exhibit 431A)** Tr. Vol. 12, pgs. 2415-2416. Dean wrote that the police and prosecutors know most of the truth, and that "it doesn't look like they're going to offer much of anything." Dean needs his "discovery pack" so he can "find out exactly what they know and don't know." **(State's Exhibit 432A)** Tr. Vol. 12, pgs. 2416-2419. Dean wrote that "When I was down at book-in I was talking to a dude I know, Mike Crowley. And like I said, I'm fucking chained up. You see how had have me. (sic) Anyway, this dude walks up to me and say 'That dude you and your boy killed was my cousin.' I looked at him and said, 'I don't give a fuck.' So he takes a swing at me and catches me in the jaw." Dean asked Sions to warn Dean's brother Mark that their friends might be wearing a police wire. **(State's Exhibit 433A)** Tr. Vol. 12, pgs. 2419-2422. Dean wrote that he can't blame anybody but himself for the mess he's in. **(State's Exhibit 434A)** Tr. Vol. 12, pgs. 2422-2423. Dean wrote that he wishes that Wade would keep his mouth shut and that Wade mistakenly thinks he's helping himself out by talking. **(State's Exhibit 435A)** Tr. Vol. 12, pgs. 2423-2425. Dean wrote that Wade "is grown and he made his own decisions and he knew the consequences." **(State's Exhibit 458A)** Tr. Vol. 12, pgs. 2425-

2426. Dean asked Sions to find out if police found "any shell casings at the scene of the crime." Dean needs "both of them bitches' statements." Dean wants Sions to find out whether there is any fingerprint evidence. **(State's Exhibit 459A)** Tr. Vol. 12, pgs. 2426-2428. Dean wrote "I just lost control. I made a lot of mistakes and I'm just going to have to pay for them. And it's nobody's fault but my own." **(State's Exhibit 462A)** Tr. Vol. 12, pgs. 2428-2429. Dean writes that he wishes he could undo what happened, but "what's done is done." **(State's Exhibit 463A)** Tr. Vol. 12, pgs. 2429-2430. Dean wanted to know what Kaboos remembered about what he was wearing "that day." Dean was worried about the bullets police found in his jacket or pants. **(State's Exhibit 466A)** Tr. Vol. 12, pgs 2430-2432. Dean wrote that "Most of this shit is my fault." **(State's Exhibit 467A)** Tr. Vol. 12, pgs. 2432-2433. Referring to another male, Dean wrote "If I could just get my hands on that motherfucker. I would crush him. If I could get my hands on him, there would be another mother mourning the loss of her child." Dean wrote that he wanted his attorney to "speed things up" because "the less time they [the prosecution] got, the less time they have to build a stronger case against me." **(State's Exhibit 468A)** Tr. Vol. 12, pgs. 2433-2434. Dean wrote that "I want to get this shit over ASAP, so I can get my time started, however long that may be." **(State's Exhibit 470A)** Tr. Vol. 12, pgs. 2434- 2435. Sions explained that in Dean's reference to "moon cricket", he was referring to a black person. Dean wrote that Sions should stay out of trouble, because "Baby, I don't need no more blood on my hands or my conscience." Dean also wrote "By them [the prosecution] saying that we robbed a dude after we killed him, that's what made it aggravated murder; and that's the only one that applies to me is the robbery part." **(State's Exhibit 471A)** Tr. Vol. 12, pgs. 2435-2439. Dean wrote "But the fucking moon cricket working, I done had words with him. I don't know how many times." Dean also wrote that "Because at that point in time, if I wanted something, I took it. And damn the consequences. But that kind of thinking has led me to know where I am right now, locked in a concrete and steel cage.**(State's Exhibit 474A)** Tr. Vol. 12, pgs. 2439-2440. Dean wrote "I didn't choose to go to jail. I just made a lot of bad decision that led down the wrong path." **(State's Exhibit 475A)** Tr. Vol. 12, pgs. 2440-2441. Dean wrote "Of course, I'm going to have to do some time for some of this shit." **(State's Exhibit 476A)** Tr. Vol. 12, pgs. 2442-2443. Dean expressed concerned that letters Sions wrote to him might fall into the hands of "the Sergeant" , but he "don't give a fuck. You [Sions] never put anything incriminating in your letters What do these pigs think. Do they think my baby don't know the game. My girl is smarter than your average white girl." Dean went on to write "I don't say things. I do things. I'm not a man of words. I'm a man of action. I'm a man among men." **(State's Exhibit 477A)** Tr. Vol. 12, pgs. 2443-2446. Dean expressed concern about what Wade would say. Dean felt betrayed because he had helped Wade and his family. "If he [Wade] would just keep his fucking mouth shut, everything would be a lot better." Wade doesn't realize that by talking "He is just digging himself deeper hole." The prosecution has Wade scared "with this life without parole bullshit" such that Wade would say anything the prosecution wanted Wade to say. But, "They [the prosecution] have fucking eyewitnesses. It doesn't get any simpler than that." **(State's Exhibit 478A)** Tr. Vol. 12, pgs. 2446-2448. Dean wrote that "I'm ready to get this show on the road. The quicker I get sentenced and get to where I'm going." **(State's Exhibit 480A)** Tr. Vol. 12, pgs. 2448-2449. Dean wrote that "I sit here all the time and think about all the things I should have done and all the fucking decisions I made." **(State's Exhibit 482A)** Tr. Vol. 12, pgs. 2449-2450.

Kevin Bowshier: Friend Of Dean. Tr. Vol. 12, pgs. 2461-2482. Bowshier knows Jason Dean because Jason Dean's brother, Mark, has a child with Bowshier's sister, Angel Bowshier. Back in March or April of 2005, Kevin Bowshier heard that William Calhoun, street name OZ, had something to do with ripping off some drugs from his brother, Jeff Bowshier. Brother Jeff wanted somebody to go to Oz's house and get the weed back. Jason Dean was the one who was supposed to get the weed back to Jeff Bowshier. During the early AM hours around April 13, 2005, Kevin Bowshier was snorting cocaine and drinking with Mark Dean at Mark's house. Jason Dean appeared with Josh Wade. The time was around 1:00 AM, since the fights on television that came on at midnight were over. Jason Dean said he had "smoked somebody". Josh Wade pulled a bullet casing out of his pocket. Jason Dean said the dude ran and that Dean tackled him and one of them shot him. Bowshier doesn't know which one shot the dude. Jason Dean said he and Wade ran up on the dude for the purpose of robbery. Dean said the robbery proceeds were "like six bucks." When Jason Dean made these statements, he and Wade were acting "jumpy [and] antsy", like they were on crack. Jason Dean and Wade didn't do any of Mark and Kevin's drugs, and they left. At the time, Kevin thought Jason Dean was making up the story. But the next day, Kevin heard about the Titus Arnold homicide. Kevin Bowshier first approached the law enforcement authorities about a month before his courtroom testimony. Bowshier came forwards after speaking with Ralph Williams. Bowshier knew Williams to be associated with Visions For Youth, where Titus Arnold had been a youth counselor. Williams encouraged Kevin Bowshier to come forward and speak to law enforcement.

State's Exhibits Admitted: Tr. Vol. 12, 2497-2518; Tr. Vol. 13, pgs. 2545-2546. Some not offered, some excluded, most admitted.

Colloquy Regarding Jury Instructions: Tr. Vol. 12, pgs. 2519-2530; Tr. Vol. 13, pgs. 2546-2553.

State Rests: Tr. Vol. 13, pgs. 2533-2535. Defense motion for acquittal pursuant to Rule 29 overruled.

Defense Case In Chief

Douglas Estep: Springfield Police Detective. Tr. Vol. 13, pgs. 2435-2437. When the murder complaint was initially filed, Jason Dean was designated as the "principal offender." Later, the "principal offender" designation was not pursued. Upon search of the Dean residence and Wade residence, no large amount of cash was found. After a thorough investigation, "murder for hire" was not made a specification in the case.

Colloquy Regarding Intoxicated Defense Witness: Tr. Vol. 13, pgs. 2538-2543. Defense counsel advised the Court they had, the night previous, advised Mark Dean, that he would be called as a defense witness first thing in the morning. Defense counsel advised the Court that Mark Dean showed up at 8:45 AM in a significantly intoxicated state, and they advised him to leave the courthouse, which he did. Defense counsel requested a one day continuance to arrange for Mark's testimony. After colloquy with both sides, the Court overruled the request for continuance.

Defense Rests: Tr. Vol. 13, pgs. 2543-2545; Tr. Vol. 13, pgs. 2562. **Defense Exhibit C** (Notes regarding Krystal Kaboos) and **Defense Exhibit D** (Police Report About Contract Killing) admitted without objection.

Colloquy Regarding Dean's Request To Testify: Tr. Vol. 13, pgs. 2553-2562. Dean notified counsel he wished to testify. After a ten minute recess, Dean decided against testifying.

Preliminary Jury Instructions: Tr. Vol. 13, pgs. 2562-2563.

State's Closing Argument: Tr. Vol. 13, pgs. 2563-2601.

Defense Closing Argument: Tr. Vol. 13, pgs. 2604-2617.

State's Rebuttal Closing: Tr. Vol. 13, pgs. 2617-2624.

Jury Charge: Tr. Vol. 13, pgs. 2624-2692. Defense objections noted. Tr. Vol. 13, pgs. 2692-2697. Further instructions from the Court. Tr. Vol. 13, pgs. 2697-2699. State's objections noted. Tr. Vol. 13, pgs. 2699-2701. Further instructions from the Court. Tr. Vol. 13, pgs. 2701-2705. Defense notes satisfaction with the charge as given. Tr. Vol. 13, pg. 2704-2705. Jury dismissed, a clean copy of the instructions to be prepared. Tr. Vol. 13, pgs. 2705-2706.

Jury Question: Tr. Vol. 13, pgs. 2707- 2709 The question was "Did Crystal Kaboos say quote they were going out to rob and kill drug dealers" end quote." (sic) The agreed response was "The entire trial transcript of Crystal Kaboos is being prepared."

Jury Verdict And Polling: Tr. Vol. 13, pgs. 2709-2720. Guilty of attempted murder of Andre Piersoll and Yolanda Lyles plus gun specifications; guilty of weapons under disability. (Counts 1-4) Tr. Vol. 13, pgs. 2710-2712. Guilty of two counts of improper discharging of a firearm at or into a habitation, plus gun specifications. (Counts 5 and 6) Tr. Vol. 13, pgs. 2712-2713. Guilty of attempted murder of Shanta Chilton, Hassan Chilton, Shani Applin, and Jaida Applin, plus gun specifications; guilty of weapons under disability. (Counts 7-11) Tr. Vol. 13, pgs. 2713-2715. Guilty of aggravated murder of Titus Arnold, with prior calculation and design; guilty of course of conduct specification as applied to Andre Piersoll, Yolanda Lyles, Shanta Chilton, Hassan Chilton, Shani Applin and Jaida Applin; guilty of aggravated robbery specification (not as principal offender, but with prior calculation and design), plus gun specification. (Count 12) Tr. Vol. 13, pgs. 2716-2717. Guilty of aggravated murder of Titus Arnold, during an aggravated robbery; guilty of course of conduct specification as applied to Andre Piersoll, Yolanda Lyles, Shanta Chilton, Hassan Chilton, Shani Applin, and Jaida Applin; guilty of aggravated robbery specification (not as principal offender, but with prior calculation and design), plus gun specification. (Count 13). Tr. Vol. 13, pgs. 2717-2718. Guilty of aggravated robbery, plus gun specification. (Count 14). Tr. Vol. 13, pg. 2715. Guilty of two counts of weapons under disability. (Count 15 -Arnold homicide; Count 16-home arrest-). Tr. Vol. 13, pgs. 2715-2716. Jury polled. Tr. Vol. 13, pgs. 2718-2720.

Preliminary Jury Instructions Regarding Penalty Phase: Tr. Vol. 14, pgs. 2721-2723.

Mitigation Phase

Colloquy Regarding Dean's Waiver Of Pre Sentence Investigation And Mental Examination: Tr. Vol. 14, pgs. 2726-2727.

The Court: The first issue that was brought to the Court's attention is the defendant's right to have a Presentence Investigation and a mental examination conducted prior to the mitigation phase of this trial. Does the defense wish to speak to that issue?

Mr. Butz: [Defense Counsel] It's our advise to Mr. Dean that he waive both the mental exam and the Presentence Investigation.

The Court: All right. Does the State have anything to put on the record with respect to that issue?

Mr. Schumaker: [The Prosecutor] No, your honor. Just for the Court to address the defendant to determine whether he wishes those performed.

The Court: All right. Mr. Dean, you do have the right to have a Presentence Investigation done in this case; and it's my understanding that if a report was prepared based on the Presentence Investigation, that the jury would have access to that information. Do you understand that you do have the right to have that conducted in this case?

The Defendant: Yeah.

The Court: And did you want the Court to do that in this case?

The Defendant: No.

The Court: And the same goes for a mental exam. You have the right to a mental examination. It's understood by the Court that it's the advice of your attorneys that you waive that right. Are you agreeable to that as well?

The Defendant: Yes. Tr. Vol. 14, pgs. 2726-2727.

Colloquy Regarding Merger Of Counts 12 And 13: Tr. Vol. 14, pgs. 2727-2728. The State notified the Court it considers Count 12 (aggravated murder: prior calculation and design) to be subject to merger. The State notified the Court it intended to proceed during the sentencing phase with Count 13 (aggravated murder: felony murder-robbery, prior calculation and design).

Colloquy Regarding Admission Of Exhibits For The Mitigation Phase: Tr. Vol. 14, pgs. 2728-2732. Autopsy photographs excluded.

Colloquy Regarding Defendant's Mitigation Phase Testimony Or Unsworn Statement: Tr. Vol. 14, pgs. 2732-2733. Defense counsel noted that although Dean had refused

to speak with them, they advised Dean of his right to testify or make an unsworn statement. Counsel notified the Court they advised Dean to decline to either testify or make an unsworn statement. Counsel notified the Court that at first, Dean intended to make an unsworn statement, but he changed his mind. Counsel notified the Court that if Dean intended to make an unsworn statement "...[I]t would be strongly against our advice...."

Defense Motion To Continue To Secure The Testimony Of Dean's Mother: Tr. Vol. 14, pgs. 2733-2735. Defense counsel notified the Court that Dean's mother, Barbara Beverly, was ill that day. They advised the Court it was unlikely that Beverly would be well in the near future. Counsel asked for a continuance. Counsel notified the Court they could proceed with Dean's brother's live-in Sarah Barrett, who had three children with Dean's brother David, and had been with him for 16 years. Counsel notified the Court that Barrett could provide the same information as would Beverly, and counsel and Barrett were ready to immediately proceed. The Court overruled the motion to continue, but stated it would afford leeway to the defense regarding mitigation witnesses.

Individual Voir Dire Of Jurors Regarding Compliance With Court's Admonition Against Receiving Outside Information: Tr. Vol. 14, pgs. 2735-2745. All stated they complied with the Court's admonition.

Preliminary Jury Instructions: Tr. Vol. 14, pgs. 2745-2750.

State's Opening Statement: Tr. Vol. 14, pgs. 2750-2753.

Defense Opening Statement: Tr. Vol. 14, pgs. 2753-2754.

Ronald Vincent: Clark County Clerk Of Courts. Tr. Vol. 14, pgs. 2756-2761. Identified the indictments against co-defendant Joshua Wade. **(Defendant's Exhibits G and H)**.

Noel Kaech: Clark County Public Defender. Tr. Vol. 14, pgs. 2762-2769. Since Josh Wade was a juvenile at the time of the crimes, Wade could not receive the death penalty.

Sarah Barrett: 16 Year Live-In Of Dean's Brother David. Tr. Vol. 14, pgs. 2769-2774. Jason Dean's father, David Dean, went to prison for physically abusing Dean's mother, Barbara. Jason Dean saw his mother being physically abused by the father. The father also "quite often" physically abused Jason Dean. Barrett implored the jury not to kill Jason Dean, because doing so would also kill the mother, Barbara. Jason Dean was 31 years old. Except as to Dean's father, Dean's family supported Dean throughout his life.

Colloquy Regarding Further Mitigation Presentation: Tr. Vol. 14, pgs. 2776-2779. Out of the hearing of the jury, Dean asked for time to consult with counsel regarding whether he would make an unsworn statement. The Court adjourned for 40 minutes to afford Dean that opportunity. When the Court reconvened out of the hearing of the jury, the following colloquy took place.

Mr. Schumaker: [The Prosecutor] The first thing I'd like to place on the record, it's my understanding, Your Honor, that Dr. Jeffrey Smallden (sic) is not going to be called as a witness. I'd just like the record to reflect, apparently at least from what I've seen, that Dr. Smallden was allocated 12,500 dollars to fully explore mitigation in this case. Obviously, I don't know exactly why he's not being called, but I'm assuming that it's a matter of trial strategy that he has no mitigation to offer. So I wanted to put on the record that trial counsel have been vigorous in their efforts to develop that sort of testimony, and apparently it hasn't been fruitful.

The Court: Did the defense have anything to put on the record?

Mr. Butz: [Defense Counsel] No.

The Court: All right. Well, I think the entries would reflect that the Court ear-marked 7500 dollars for Dr. Smallden to inquire to investigate, I guess, certain mitigation with respect to the defendant. And then I received an affidavit from him along with a motion for an additional 7500 dollars because he indicated that he had been working zealously in that effort and that he needed more money. The Court gave him an additional 5000 dollars so the total of 12 and a half thousand dollars so it appears as though he has been working diligently toward that objective so –

Mr. Butz: And – but the only thing I would say for the record is we're not – not calling Mr. Smallden because he didn't do something we asked him to do, if that makes sense.

Colloquy Regarding Agreed Mitigation Phase Jury Instructions: Tr. Vol. 14, pg. 2779. Regarding the mitigation phase jury instructions, the Court said "I've made the changes the defense has requested."

Colloquy Regarding Dean's Intent To Make An Unsworn Statement: Tr. Vol. 14, pgs. 2779-2781. Out of the hearing of the jury, defense counsel notified the Court that, against their advice, Dean intended to make an unsworn statement to the jury. The Court decided that Dean's unsworn statement will be made from counsel table.

Dean's Unsworn Statement: Tr. Vol. 14, pgs. 2782-2783. I just want you all to know, you all deal with a lot of crimes. I'm not the best person in the world, and it's just - this whole thing is just a tragedy, man. This young man lost his life. It's a sad thing. I said some mean, hateful, bitter things in some letters that I wrote. I know you continue to dwell on that, but I said those things out of anger and bitterness because I had been locked up for a crime I didn't commit. I'm not a killer. I killed no one. I played no part in that man's murder whatsoever, and I just wanted you to know that; and I want that's man's family to know that. Mr. Arnold was an angel as far as I know. Blessed in the community. Did the right thing. Maybe if I would have met him as a teenager growing up and had a program like he participated in, you know, it would have helped me, might have saved me. Like I said, I'm not the best person, but I'm not a killer. That's all I got to say.

State's Closing Argument: Tr. Vol. 14, pgs. 2784-2791.

Defense Closing Argument: Tr. Vol. 14, pgs. 2791-2797.

State's Rebuttal Closing: Tr. Vol. 14, pgs. 2797-2806.

Mitigation Phase Jury Instructions: Tr. Vol. 14, pgs. 2806-2822.

Verdict And Polling: Tr. Vol. 14, pgs. 2822-2826.