

ORIGINAL

IN THE OHIO SUPREME COURT

STATE OF OHIO,

Plaintiff-Appellee,

-vs-

Case Nos. 2004-0041  
2007-0475

Trial Court Case No. 02 CR 275

PHILLIP ELMORE,

Defendant-Appellant.

**DEATH PENALTY CASE**  
*[On appeal from the Licking County  
Common Pleas Court]*

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**Plaintiff – Appellee’s Memorandum In Opposition to Reopening  
And  
In Opposition to Consolidation**

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Appearances:

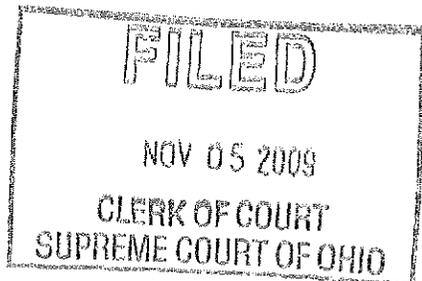
**Kenneth W. Oswalt, #0037208**  
**Prosecuting Attorney**  
*Counsel of Record*  
20 S. Second Street  
Fourth Floor  
Newark, Ohio 43055  
(740) 670-5255  
(740) 670-5241 [Fax]

*Counsel for Appellee*

**Kathleen McGarry #0038707**  
**Attorney at Law**  
*Counsel of Record*  
McGarry Law Office  
P.O. Box 310  
Glorieta, NM 875355699  
(505) 757-3989  
(888) 470-6313 [Fax]

**William S Lazarow # 0014625**  
**Attorney at Law**  
400 S. 5<sup>th</sup> Street, Suite 301  
Columbus, Ohio 43215  
(614) 228-9058  
(614) 221-8601 [Fax]

*Counsel for Appellant*



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**Memorandum In Opposition to Reopening  
And In Opposition to Consolidation**

Now comes the State of Ohio, plaintiff-appellee (hereinafter, simply “appellee” or “the State”) and hereby moves this Court to deny the Application for Reopening. For the reasons stated below, the Appellant has failed to set forth a valid basis for reopening his appeal – either the original direct appeal, or the further appeal that post-dated this Court’s initial order of remand.

*Issues Beyond the Scope of Prior Remand*

While the State has no objection to most of Elmore’s statements regarding the “Procedural History” of the case (see application for reopening, p. 2), the State does not agree with the assertion that after the first time this matter was before this Court that “the direct appeal was not over”. It is undeniable that the current application for reopening seeks to raise several issues that *could have been raised* in an application for reopening of this Court’s earlier judgment in *State v. Elmore (2006) 111 Ohio St.3d 515. (Elmore I)* Instead, Elmore set idly by and allowed this Court’s order of remand to be carried out by the trial court, whereupon another appeal ensued resulting in this Court’s opinion in *State v. Elmore (2009) 122 Ohio St.3d 472, (Elmore II)*, and only then sought to reopen both appeals.

For instance, Elmore’s First, Second and Third Propositions of Law could have been raised in an application for reopening after this Court’s decision in *Elmore I*. Indeed, the argument then would have been based upon the exact same record, and the exact same case law, that is relevant to these same issues today. Simply put, these issues could have been litigated long before now.

Arguments, which an appellant could have raised in previous appeals but did not, are not properly raised once a matter returns to the appellate court after remand. See, *State ex rel.*

National Elec. Contrs. Assn., Ohio Conference v. Ohio Bur. of Empl. Serv. (2000), 88 Ohio St.3d 577, 579, citing, State v. Gillard (1997), 78 Ohio St.3d 548, 549. This Court made it clear that “issues beyond the scope of a previous remand are beyond the scope of review following a return of the case from remand.” State ex rel. National Elec. Contrs. Assn., at 579.

The remand ordered by this Court in Elmore I was for the limited purpose of making the sentencing on the **non-capital** charges compliant with State v. Foster (2006), 109 Ohio St.3d 1. Thus the only matters that were properly included in an appeal from the trial court’s resentencing on the non-capital offenses were matters addressing the sentencing on those offenses and nothing more. Prior appellate counsel in Elmore II appeared to understand that limitation and thus limited their proposition of law therein accordingly.

As Elmore’s attempt to raise issues that could have been raised within 90 days of Elmore I are not now properly before the Court in that they are not timely raised, and in that they exceed the scope of the prior remand, this Court should deny the application for reopening as to the First, Second and Third Propositions of Law.

#### Successive Appeals Not Basis for Reopening

In addition, the second appeal to this Court that resulted in the decision in Elmore II was not Elmore’s “first appeal as of right”. Accordingly, there is no basis for reopening any portion of this appeal due to any possible allegations of ineffective assistance of appellate counsel during this appeal. A criminal defendant is entitled to the effective assistance of counsel on appeal only as to their “first appeal as of right”. See, Gillard, at 549-50, citing, State v. Buell (1994), 70 Ohio St.3d 1211. In Buell the Court stated:

Buell's 1986 appeal to this court was his second appeal. "[T]he right to appointed counsel extends to the *first* appeal as of right, *and no further*." (Emphasis added [by court].) *Pennsylvania v. Finley* (1987), 481 U.S. 551, 555, 107 S.Ct. 1990, 1993, 95 L.Ed.2d 539, 545. See, also, *Evitts v. Lucey* (1985), 469 U.S. 387, 394, 105 S.Ct. 830, 834-835, 83 L.Ed.2d 821, 828. Having no constitutional right to counsel on a second appeal, Buell had no constitutional right to the effective assistance of counsel. See *Wainwright v. Torna* (1982), 455 U.S. 586, 587-588, 102 S.Ct. 1300, 1301, 71 L.Ed.2d 475, 477-478; *Evitts*, supra, 469 U.S. at 397, 105 S.Ct. at 836, 83 L.Ed.2d at 830, fn. 7.

*Id.* at 1212.

Thus Elmore's attempt to raise issues concerning his appellate counsel in *Elmore II* not raising the possible applicability of *Oregon v. Ice* (2009), \_\_\_ U.S. \_\_\_; 129 S.Ct. 711 are not now properly before the Court in that an application for reopening must be related to a first appeal of right and *Elmore II* was not such an appeal. Thus, this Court should deny the application for reopening as to the Fourth Proposition of Law as well.

#### Law of the Case Doctrine

Elmore's First, and Second Propositions of Law also are not properly the subject of a reopened appeal for an additional reason. These issues were raised by Elmore in a Petition for Post Conviction Relief which was filed with the trial court on August 26, 2004. This was denied by the trial court resulting in an appeal to the Fifth District Court of Appeals. As noted in the Court of Appeals' opinion, the issues raised in Elmore's First, and Second Propositions of Law were raised in those proceedings. See, *State v. Elmore* (5<sup>th</sup> Dist.), 2005 WL 2981797, 2005-Ohio-5940, (*Elmore III*.)

For instance, as he has in the First Proposition of Law as stated in the current application for reopening, Elmore raised the issue of the propriety of the use of a stun belt on him during his trial in that PRC proceeding. *Id.* at ¶¶ 88-98. Likewise, as he has in the Second Proposition of

Law as stated in the current application for reopening, he attacked the racial make-up of the jury pool in those PRC proceedings. *Id.* at ¶¶ 53-75. This Court thereafter denied jurisdiction on appeal thereafter. *State v. Elmore* (2006), 111 Ohio St.3d 1492.

When issues are raised in an appeal to this Court and this Court denies jurisdiction, legal issues decided by the lower appellate court become the law of the case. See, *Sheaffer v. Westfield Ins. Co.* (2006), 110 Ohio St.3d 265, ¶ 12, citing, *Transamerica Ins. Co. v. Nolan* (1995), 72 Ohio St.3d 320, 323, (“Further appeal to this court was denied . . . , and therefore the law-of-the-case doctrine dictated final judgment . . .”). A party may not circumvent this by “creative pleading”. *Transamerica Ins.*, at 323. Accordingly, reopening any appeal to litigate matters that have been already decided in related litigation would be a violation of the law of the case doctrine.

#### *Ineffective Assistance of Appellate Counsel Not Demonstrated*

Even if one were to address the propositions of law on their merits, one must conclude that former appellate counsel was not ineffective for not raising these issues in either *Elmore I* or *Elmore II* as they lack substantive merit.

**Use of Restraints.** For instance, as to the issue of whether there was error related to using non-visible restraints on the defendant, former appellate counsel could have reasonably determined that this was a losing issue on appeal due to a total inability to show prejudice based upon the information contained in the trial record. See, generally, *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, (appellant has duty to provide a record which exemplifies the error he assigns.) Indeed, the trial record itself aptly supported the use of restraints as the penalty phase of the trial proceedings was replete with evidence showing that

Elmore has a lengthy prior record, and was a constant disciplinary problem when serving prior prison sentences. (See, as some examples, Tr. pp. 1239, 1241-44, collectively Exhibit "A" hereto.)<sup>1</sup>

Moreover this Court, in State v. Franklin (2002), 97 Ohio St.3d 1, 19, specifically refused to hold that a hearing on the use of restraints was "an absolute rule" instead leaving it to the discretion of the trial court. The appellant can claim no prejudice. Even if the trial court had held a hearing, the result would have been the same as the use of the device was fully justified. In fact, trial counsel conceded the appellant's disciplinary problems as a basis for trying to get the trial court to order him transferred to another holding facility pending trial. (Motions Hearing, January 14, 2003, Tr. pp. 6-9, collectively Exhibit "C" hereto.)

Moreover, noticeably absent from the application for reopening is any mention that trial counsel failed to lodge an objection to not holding an evidentiary hearing. Accordingly, former appellate counsel could have reasonably concluded that this issue would have been deemed forfeited. See generally, State v. Payne (2007), 114 Ohio St.3d 502, (failure to raise an objection to alleged error constitutes a forfeiture of the issue.)

**Claimed Racial Bias of Jury Pool.** Similar problems exist with Elmore's attack on the failure of former appellate counsel to raise any issue with respect to trial counsel's failure to more fully explore the potential "racial bias" of the jury pool. Former appellate counsel may have realized that any *possible* failure on the part of trial counsel in not more fully explore issues regarding race were not likely to be successful on appeal due to either: (1) such "failure" being

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<sup>1</sup> In addition, Elmore made threats to kill other inmates and staff at the Licking County Justice Center while awaiting trial in the instant case and was convicted of criminal offenses for this. (See, Respondent's Exhibit Nos. 3, 4, 5, filed in conjunction with State's Motion for Summary Judgment on Petition for Post-conviction Relief, collectively Exhibit "B" hereto.)

deemed “trial tactics” not subject to a successful after-the-fact attack; or (2) prejudice not being sufficiently shown by the trial record.

As to the former, this Court has repeatedly held that the failure of defense counsel in a capital case to voir dire on the issue of race is not ineffective assistance. For instance, this Court has held that the failure to question all prospective jurors on racial bias is not improper, further noting that this is best left to the capital defendant’s attorney. *State v. Ahmed* (2004), 103 Ohio St.3d 27, 51, citing, *Turner v. Murray* (1986), 476 U.S. 28, 37, f.n. 10. Furthermore, this Court in *State v. Smith* (2000), 89 Ohio St.3d 323, held that failing to question any jurors on race was not ineffective. Sometimes it is more informative to avoid direct questions on sensitive topics such as race and instead attempt “to discern any hint of racial prejudice” from their demeanor and other responses. *Id.* at 327-28.

This tactical consideration is likely the basis for not asking any further race-related questions to the jury pool. Former appellate counsel must have been convinced that they could not show that it was not a reasonable tactical decision on the part of trial counsel to avoid additional questioning on this sensitive topic.

Additionally, the trial record is clearly deficient in showing any actual prejudice to Elmore. Indeed, the application for reopening fails to point to any place in the trial record that would remotely demonstrate prejudice. *Cf.*, *State v. Hale* (2008), 119 Ohio St.3d 118, ¶ 219, (failure to inquire into possible racial bias of jury pool showed neither deficient performance *nor* prejudice.)

**Arguing Non-Statutory Aggravating Factors.** In a similar vein, Elmore’s claim that the prosecutor committed misconduct by *allegedly* converting the facts and circumstances into

non-statutory aggravating facts was properly left out of any prior appeal, again, for several reasons.

First, there was no objection to the argument and thus former appellate counsel could have reasonably concluded that any issue would have been forfeited. See, *Payne, supra*.

Second, aside from this, appellate counsel could have reasonably concluded that such an issue would not have been successful in obtaining a reversal of the death sentence as any possible misconduct by the prosecutor's statements did not "permeate" the trial. Cf. *State v. Twyford (2002), 94 Ohio St.3d 340, 357*.

Third, the prosecutor's statements currently under attack are not error at all. The sentences wherein the prosecutor mentions "aggravating circumstance" read in tandem: "Then he stole the tools. He stole the purse, he stole the car when he ran away, so I submit to you, ladies and gentlemen, that those aggravating circumstances have in fact been proven beyond a reasonable doubt." This is a clear and undeniable reference to the fact that Elmore faced an aggravating circumstance specification for committing the homicide while committing both aggravated burglary, and aggravated robbery – each being predicated upon the theft of one or more of these very items! Thus stealing these things was very much so aggravating circumstances.

**Oregon v. Ice.** Finally, Elmore's efforts to reopen his appeal based upon the United State's Supreme Court's decision in *Oregon v. Ice* fails on the merits. In the first place, *Oregon v. Ice* – even if it were ever to result in this Court reevaluating the decision in *State v. Foster* – Elmore could claim no benefit of it. His post-*Foster*, pre-*Ice* resentencing on his non-capital offenses was the direct result of his own request in *Elmore I* that he be resentenced. *111 Ohio St.3d ¶¶ 130-40*, Supplemental proposition of law XVII. Thus, if *Elmore I*'s remand order was,

in retrospect, error, it was clearly “invited error”. The doctrine of invited error prohibits a litigant from taking advantage of an error which he himself invited or induced. *State v. Campbell* (2000), 90 Ohio St.3d 320, 324. Simply put, no resentencing would have occurred to even raise a claim that *Ice* caused the resentencing to be in error had Elmore not asked to be resentenced in the first place.

Moreover, since Elmore received the same sentence on his non-capital offenses both before *Foster*, and after the *Foster*-mandated remand of *Elmore I*, Elmore has no hope of showing prejudice. Indeed the entire thrust of Elmore’s Fourth Proposition of Law is that he is entitled to be sentenced with the trial court being bound by the required statutory findings related to consecutive sentencing that *Foster* excised. He was – prior to *Foster* being decided and prior to *Elmore I*. The outcome both times was the same sentence.

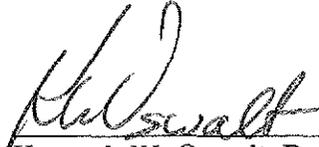
Finally, there is no reason to believe that Elmore suffered prejudice by his appellate counsel in *Elmore II* not requesting supplemental briefing on the *Ice* issue in light of this Court’s refusal to grant the State’s motion for supplemental briefing on this very same issue, *Elmore II*, at f.n. 2, and former appellate counsel’s citation to *Ice* in a list of supplemental authorities filed by him in advance of the oral argument before this Court. (List of Additional Authorities, filed May 5, 2009.)

## CONCLUSION

For all of the above stated reasons, the appellant has failed to show a properly basis for reopening either of his appeals, let alone both of them. As a result a consolidation of these appeals is moot.

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that a true and accurate copy of the forgoing was sent this 4<sup>th</sup> day of November 2009 by regular U.S. Mail to both of the appellant's counsel at the addresses noted on the cover page hereto.



Kenneth W. Oswald, Reg. 0037208  
Prosecuting Attorney

## EXHIBITS

## EXHIBITS

1 family in which Phillip grew up in?

2 A. That term would certainly apply, but it's  
3 far too watered down, in my opinion, to describe this  
4 family unit, which goes beyond what most of us think  
5 of when we think of a dysfunctional family.

6 Q. Now, prior to Miss Annarino's death, did  
7 Mr. Elmore present himself with a history, through all  
8 your reading and interviews with him and people you've  
9 talked to, have a history of aggressive behavior --

10 A. I'm sorry, was the question --

11 Q. -- prior to her death?

12 A. Prior to this offense, aggressive behavior?

13 Q. Yes.

14 A. Yes. There's a history of aggressive  
15 behavior. There's documented history of some fights  
16 when he was incarcerated. I'm certainly aware that  
17 there was an allegation of domestic violence against  
18 him by this former wife, and there was Miss Annarino,  
19 the victim in this case, I believe had applied for a  
20 civil protection order. She had at least alleged that  
21 she felt threatened by him prior to this offense, so  
22 yes.

23 Q. And the nature of your work, does that take  
24 you into prisons around the State of Ohio?

25 A. Very frequently, yes, it does.



1 terms of his abilities while he was in prison?

2 A. Well, most of these records document the  
3 years that he's spent in the Ohio prison system.  
4 They're full of bad behavior. They're -- he's been a  
5 difficult inmate most of the time. He's -- there are  
6 documented instances of sexually inappropriate  
7 behavior. There are instances documented in those  
8 records where he's refused orders of people in  
9 positions of authority. There are documented  
10 instances of interpersonal conflict with other of the  
11 inmates. One of the interesting aspects to me, as I  
12 read through these records, is the change that seemed  
13 to occur in the early '90s.

14 There's a series of records from the late  
15 '80s when he was incarcerated that viewed against the  
16 backdrop of some of the later records come as  
17 something of a surprise. Repeatedly he's described as  
18 having an excellent attitude, excellent worker.  
19 Mr. Elmore is an exemplary worker. He's the prototype  
20 of a good worker. He's skilled. He's hard working.  
21 He's conscientious. But then in the early '90s, he's  
22 viewed as very difficult, often oppositional in  
23 response to corrections officers, and engaging in some  
24 of the kinds of behavior that I mentioned a few  
25 minutes ago.

1           One of the things that I asked Mr. Elmore at  
2 one point when I was interviewing him, because so many  
3 times he violated his parole, he would do a couple of  
4 years in prison, and even though he was difficult, I  
5 mean, he -- most of the time my reading of these  
6 records is that he was viewed as a nuisance inmate.  
7 He was a pain in the neck, and by that I really -- I'm  
8 not trying to minimize some of the things he did in  
9 prison. I don't think his adjustment was very good.  
10 But he would get paroled. I mean, he was viewed as a  
11 parole risk, someone who could be released into the  
12 community, and he would behave in the most self-  
13 defeating ways imaginable.

14           He wouldn't report to his parole officer,  
15 for example, so he would get his parole violated and  
16 get sent back to prison, and that would happen over  
17 and over and over again. And I said to him at one  
18 point, help me understand this, because anyone  
19 reviewing this file could be forgiven for coming away  
20 from it thinking that you like prison, that somehow  
21 prison was an environment that you were more  
22 comfortable in than the community. And he insisted  
23 that that wasn't the case, that it was -- that it was  
24 a failure of self-discipline and that he just, you  
25 know, would get busy doing something and forget to

1 report to his parole officer. I think that's a very  
2 implausible description.

3 My inference from my review of these records  
4 is that Mr. Elmore is someone who repeatedly found  
5 himself just unable to cope out in the community and  
6 would behave, as I said, in a self-defeating way that  
7 would assure him to be sent back into an environment  
8 that was more structured and in some ways he felt more  
9 comfortable.

10 Q. You described a history of behavior problems  
11 and not being able to adjust once he's been released  
12 from prison, and you stated years. It appears as  
13 though your testimony was that he was incarcerated for  
14 quite a bit of his adult life, either in and out or in  
15 prison since the '80s, I believe you indicated?

16 A. Yeah. I think his first sentence to prison  
17 was handed down when he was around 20 years of age in  
18 the early '80s, but from that period until his release  
19 in 2001, and I'm not sure of the exact number, but he  
20 spent many of those years in prison. He was in and  
21 out, in and out and in and out many times.

22 Q. And some of those, I believe, indicate that  
23 he actually committed other crimes; not that he just  
24 didn't show up for his parole officer's meeting, but I  
25 believe he committed some other crimes in Columbus at

1 some point in time, or maybe in another county; is  
2 that correct?

3 A. Yes, it is.

4 Q. Regarding Mr. Elmore, you indicated you met  
5 with him several times. How did he come across to  
6 you?

7 A. He always presented in my interactions with  
8 him as soft-spoken, polite, respectful, cooperative.  
9 He never refused a request from me. He did everything  
10 that I asked him to do willingly. As I said, he was  
11 unflinchingly polite and respectful toward me.

12 Q. And in your past experience with or  
13 currently, have you ever had an experience where  
14 you're hired by a defense attorney in a capital murder  
15 case and you've had other -- you don't have to go into  
16 any great detail -- but any other type of behavior  
17 when working with someone who's facing the death  
18 penalty as the person working with them and the  
19 defense team?

20 A. I certainly evaluated some uncooperative,  
21 disrespectful, capital defendants.

22 Q. Regarding Mr. Elmore's childhood, were you  
23 able to speak with anybody regarding his childhood,  
24 and, if so, who? If not, why not?

25 A. As I said before, I spoke with Mr. Elmore's

IN THE COURT OF COMMON PLEAS OF LICKING COUNTY, OHIO

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-vs-

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Phillip L. Elmore,

Defendant-Petitioner.

**AFFIDAVIT OF  
ANTHONY PHILLIPS**

**State of Ohio:  
County of Licking, ss:**

1. Affiant is currently employed as a deputy with the Licking County Sheriff's Office and has been so employed since 1985. I am currently assigned to the jail division and have been so assigned for most of this time.

2. Through my employment I have been certified to operate the armband stun device used by the Licking County Sheriff's Office as a restraint. Because there are a limited number of deputies certified to use this device either myself or Dep. Marcus Ramsey, or both, were at the defendant's trial at all times.

3. On each day I was present at the trial, this restraint was placed upon the defendant. However, this was done before the defendant left the jail, and it was not removed until he returned to the jail. In addition this device was concealed from the view of all potential and actual jurors at all times by it being placed under the defendant's long-sleeve garments. To the extent this caused any type of "bulge" to the sleeve, it looked no different than a cast would have.

4. At no time did I actually have an occasion to activate the device. However, based upon the defendant's disruptive behavior in jail – which is documented in jail records and which included being convicted for offenses involving threatening to kill deputies – it is my opinion that this device was a necessary security device. My supervisors concurred in this opinion.



5. Because this device can be activated by remote control the defendant was able to appear in front of the jury without the need for armed deputies to be in his immediate presence, and without the need for handcuffs or shackles.

6. During the entire time I was accompanying the defendant at his trial he at no time showed any signs that this device prevented him from concentrating on the trial proceedings, nor from assisting his counsel. Neither he nor his counsel reported any concerns regarding this device being on the defendant's arm regarding it distracting him from being attentive to the trial.

Further affiant sayeth naught.

Dep. Anthony A. Phillips  
Dep. Anthony Phillips

Sworn to and subscribed in my presence this 11<sup>th</sup> day of October, 2004

Barbara R. Gordon  
Notary

My commission expires 11-15-2008



BARBARA R. GORDON  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES NOV. 15, 2008 2008

IN THE COURT OF COMMON PLEAS OF LICKING COUNTY, OHIO

State of Ohio,

Plaintiff-Respondent

-vs-

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Further affiant sayeth naught.

Dep. Marcus Ramsey <sup>HS</sup>  
Dep. Marcus Ramsey

Sworn to and subscribed in my presence this 11<sup>th</sup> day of October, 2004

Barbara R. Gordon  
Notary

My commission expires 11/15/2008



BARBARA R. GORDON  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES NOV. 15, 2008-2008

Moved to D-alk  
AC status  
because of  
problems, in SN  
12/11/02  
Sandra

LICKING COUNTY SHERIFF'S DEPARTMENT  
STAFF COMMUNICATION

TO: LT. Clapgood, SGT's, & Joel Carter  
SUBJECT: Inmates Elmore D4-2 & Hayes D3-4  
OFFICER'S NAME: Dep. Miller #82

DATE: 12-11-02  
TIME: 0645 hrs

RECOMMENDATION ATTACHED  NO RECOMMENDATION  INFORMATION ONLY

On 12-11-02 around 0635 hrs I observed Inmate Elmore jumping in place & looking towards where Inmate Hayes <sup>was sitting</sup> saying "anytime your ready its on." It appeared to me that Elmore was trying to instigate a fight with inmate Hayes. Yesterday I overheard Hayes speaking to Elmore in a loud voice saying "You won't beat on me like you did a women." On 1st shift yesterday Dep. Ford has noted in his log that he locked Elmore down for arguing with Hayes. I spoke with Inmate Elmore before shift change yesterday and he advised that Hayes state to him that he "didn't like niggers." Elmore also stated that Hayes is taking advantage of many of the spec. Needs inmates. I feel there is great tension between these two inmates & one or both need to be removed from the module before a inmate or staff member becomes severely injured.

OFFICER'S SIGNATURE Dep. Miller #82  
FLOOR ASSIGNMENT \_\_\_\_\_

SHIFT SUPERVISOR'S RECOMMENDATION forward staff to jail on Andy and separate them until the problem can be looked into. SHIFT \_\_\_\_\_

SUPERVISOR'S SIGNATURE: Sgt. John J. 5-13 DATE: 12-11-02

Elmore, Phillip L.

44688

IF-01

LICKING COUNTY SHERIFF'S DEPARTMENT  
STAFF COMMUNICATION

TO: Sgt Owens

DATE: 2.10.3

SUBJECT: TIME: INMATE PHILLIP EZMORE

TIME: ABOUT 1615

OFFICER'S NAME: RAZLER 76

RECOMMENDATION ATTACHED  NO RECOMMENDATION  INFORMATION ONLY

ON THE ABOVE DATE AND TIME AT ABOUT 1615 INMATE  
EZMORE WAS EXTREMELY IRATE. HE WAS LOCKED DOWN  
EARLIER IN THE DAY AND WAS NOT NOTIFIED. EZMORE  
STATED THAT "THIS WAS NOT GOING TO HAPPEN AGAIN AND  
THAT THE GLOVES WERE OFF."

EZMORE HAS ISSUES WITH FEMALE AUTHORITY FIGURES AND  
IS IN THE LAST STAGES OF HIS MURDER TRIAL. AND HAS  
LITTLE TO LOSE.

SINCE HIS TRIAL IS THURSDAY AND SGT OWENS IS  
WORKING ON A 'DIRECT SHIP' TO CRC I RECOMMEND  
USING <sup>EXTREME</sup> CAUTION AND BE CAREFUL HOW YOU TREAT HIM;  
HE WILL ONLY BE HERE FOR A COUPLE MORE DAYS.

OFFICER'S SIGNATURE Phil Razer 76

FLOOR ASSIGNMENT D. BLOCK SHIFT 1600-2400

SHIFT SUPERVISOR'S RECOMMENDATION \_\_\_\_\_

SUPERVISOR'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

44688

LICKING COUNTY SHERIFF'S DEPARTMENT  
STAFF COMMUNICATION

TO: Sgt Owens  
SUBJECT: Phillip Elmore / inmates  
OFFICER'S NAME: Dep Russell #104

DATE: 12/01/02  
TIME: 1969

RECOMMENDATION ATTACHED  NO RECOMMENDATION  INFORMATION ONLY

Please be advised that there are a lot of issues going on in this module between the inmates. I've had to mainly halt the module advise myself the fact cause of days that they have a problem with Phillip Elmore most of the inmates are too intimidated by him or afraid to put anything in writing. According to the inmates he has "threatened" several of them & doesn't care because "he has nothing to lose." He is also filing a grievance against myself because I allowed inmate Donett help with pouring milk this evening for dinner. (They have been getting at Mr. Elmore doesn't have the courage to say ->

OFFICER'S SIGNATURE: Dep Russell #104  
FLOOR ASSIGNMENT: Special Needs  
SHIFT SUPERVISOR'S RECOMMENDATION: END

Continue to monitor situation and look close down in D-block area if violators occur.  
SUPERVISOR'S SIGNATURE: [Signature]  
DATE: 12/3/02

anything to me if there is a problem,  
instead, he demands kites & grievances.

He ~~is~~ has acted on the suspicious side all  
evening, as if he is up to something.  
I do not feel comfortable with him in  
this module if he is going to disrespect  
the other inmates & possibly the deputies.

I personally feel that if he is not moved  
out of this module, there will be a fight  
& somebody will be hurt, either an inmate or  
a deputy.

44688

LICKING COUNTY SHERIFF'S DEPARTMENT  
STAFF COMMUNICATION

TO: Sp Needs, CLASSIFICATION, SGTs, JOEL DATE: 11-24-02

SUBJECT: TIME: DONEFF ; ELMORE, Phillip TIME: 2240

OFFICER'S NAME: T. NDLAND

RECOMMENDATION ATTACHED  NO RECOMMENDATION  INFORMATION ONLY

On ABOVE DATE AT APPROX. 2200, Inmate Doneff  
TOLD ME THAT DURING MED. PASS Inmate ELMORE  
THREATENED TO KILL HIM AFTER Doneff CALLED his  
name out. FOR meds.

Doneff said Elmore said "I'll Kill you Boy.  
I'll drag you in my cell or your cell and beat  
you unimaginatively. I mean that Boy. I Swear  
to God on my daughters life."

Advised Doneff to stay away from Elmore.  
Moved Doneff out of D-Block area to different cell.

OFFICER'S SIGNATURE T. Noland 44

FLOOR ASSIGNMENT Sp. Needs

SHIFT 4-12 pm

SHIFT SUPERVISOR'S RECOMMENDATION \_\_\_\_\_

SUPERVISOR'S SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

DISCIPLINARY BOARD HEARING DECISION

Inmate Name: PHILLIP ELMORE

Hearing Date: 12-13-02

Charges	Plea (Guilty, Not Guilty)	Finding (Guilty, Not Guilty)
<u>SERIOUS # 18</u>	<u>REFUSED</u>	<u>GUILTY</u>
<u>MAJOR # 3</u>	<u>REFUSED</u>	<u>GUILTY</u>
<u>MAJOR # 12</u>	<u>REFUSED</u>	<u>GUILTY</u>

Statement of Evidence Relied Upon: 16. \* DISRUPTING FOOD SERVICES BY  
TROWING HIS FOOD TRAY (FOOD & ALL) ONTO FLOOR.  
\* THREATS AGAINST STAFF, MR. ELMORE THREATENED TO  
KILL DEP. GARRETH & LT. CLARROD.  
\* HARASSING STAFF, MR. ELMORE FURTHERED HIS  
THREATS BY STATING HE WOULD KILL THE FIRST  
DEPUTY THAT ENTERED INTO HIS CELL.

Sanction (s) Imposed: SERIOUS # 18 MAJOR # 3 & 12  
GUILTY FINDING BASED ON OFFICERS STATEMENT & MR. ELMORE'S  
REFUSAL TO COOPERATE THROUGHOUT THIS HEARING  
 Amount of Time Sentenced to D-Block: 100 DAYS

1. With Privileges? Without Privileges?
2. Date out of D-Block: FEB 09, 2003 Time out of D-Block: 09:50 A.M.
3. Custody Status Review to be conducted in: 72 hours 7 days 30 days
4. Copy of Decision to Inmate? Yes  No
5. Appeal Form to Inmate? Yes  No

CERTIFICATION

I certify that a copy of my decision was given to the accused inmate, together with an appeal form if the inmate was found guilty of any charge (s).

Date: 12-13-02 Time: 09:50  
 Signature of Hearing Officer: [Signature]  
 APPROVED [Signature] **REVIEWED**  
 DISAPPROVED

ACKNOWLEDGMENT

I have received a copy of the decision of the Disciplinary Board in my case. I understand if I have been found guilty, I may appeal to the Facility Administrator or designee by completing the attached appeal form and sending it to the Facility Administrator or designee within these (3) days. I understand if I enter a guilty plea to any charge (s), I cannot appeal the decision of the Disciplinary Board. I understand that if I am released before disciplinary time is completed, the remaining time will be imposed upon re-incarceration.

Date: 12-13-02 Time: 09:50  
 Signature of Inmate: REFUSED

DISCIPLINARY BOARD HEARING DECISION

Inmate Name: PHILIP ELMORE

Hearing Date: 8-18-02

Charges	Plea (Guilty/Not Guilty)	Finding (Guilty/Not Guilty)
<u>THREATS WITHOR WITHOUT FORCE</u>	<u>NOT GUILTY</u>	<u>GUILTY</u>
<u>ORALLY HARASSING INMATES</u>	<u>NOT GUILTY</u>	<u>REVIEWED</u>

APPROVED [Signature]  
 DISAPPROVED 8/21/02

Statement of Evidence Relied Upon: WITH THE STATEMENTS PROVIDED  
IN THIS VIOLATION I FEEL THERE IS REASON  
TO BELIEVE THREATS WERE MADE. THE FINDING  
IS GUILTY.

MR ELMORE WAS PLACED ON ADMINISTRATIVE  
CUSTODY ON 8/16/02 FOR THIS VIOLATION.

Sanction (s) Imposed: 15 DAYS - SHAVED  
TO BE SERVED UPON ANY ALLEGED VIOLATION OF JAIL POLICY

1. Amount of Time Sentenced to D-Block: \_\_\_\_\_
2. With Privileges? \_\_\_\_\_ Without Privileges? \_\_\_\_\_
3. Date out of D-Block: \_\_\_\_\_ Time out of D-Block: \_\_\_\_\_
4. Custody Status Review to be conducted in: \_\_\_\_\_ 72 hours \_\_\_\_\_ 7 days \_\_\_\_\_ 30 days
5. Copy of Decision to Inmate? Yes \_\_\_ No \_\_\_ Appeal Form to Inmate? Yes \_\_\_ No \_\_\_

CERTIFICATION

I certify that a copy of my decision was given to the accused inmate, together with an appeal form if the inmate was found guilty of any charge (s).

8-18-02      208      [Signature]  
 Date                      Time                      Signature of Hearing Officer

ACKNOWLEDGMENT

I have received a copy of the decision of the Disciplinary Board in my case. I understand if I have been found guilty, I may appeal to the Facility Administrator or designee by completing the attached appeal form and sending it to the Facility Administrator or designee within three (3) days. I understand if I enter a guilty plea to any charge (s), I cannot appeal the decision of the Disciplinary Board. I understand that if I am released before disciplinary time is completed, the remaining time will be imposed upon re-incarceration.

\_\_\_\_\_  
 Date                      Time                      Signature of Inmate

### RULE VIOLATION REPORT

Inmate Involved: Elmore, Phillip Booking #: 44688

Date: 8-16-02 Time: 1323

Degree of Violation: Serious 18 Major, 3 Minor     

Rule Violation: Serious, 18, Major 3

Witnesses: Sec. Attached

Date of Violation: 8-14-02 / 8-15-02 Time of Violation:     

Location of Violation: P.C. Module

Statement of Charges: Serious 18- Threats with or without weapons or use of force.

Major 3- Being disrespectful or verbally harassing other inmates.

**REVIEWED**  
**APPROVED** *[Signature]*  
**DISAPPROVED** 8/21/02

Degree of Personal Injury:     

Degree of Property Damage:     

Immediate Action Taken: Relocated to D-BK on A.C. status as per Lt. Clarke

Disposition of any Physical Evidence:     

Charging Officer's Signature: [Signature]

#### NOTICE TO INMATE

YOU ARE ALLEGED TO HAVE COMMITTED THE FOLLOWING VIOLATION(S), TO INCLUDE THE TIME, DATE, PLACE AND FACTS ON WHICH THE CHARGE IS BASED, THE ACCUSER AND THE SPECIFIC RULE(S) BROKEN: On 8-14-02 & 8-14-02

in the P.C. Module, as per statements Mr. Elmore threatened the lives of two inmates

THE RECOMMENDED PENALTY FOR THIS VIOLATION IS: Creating officers disorientation

Phillip Elmore

Inmate's Signature

Sgt. John Long

Shift Supervisor Signature

REVIEWED  
RULE VIOLATION REPORT

BC-11

Inmate Involved: ELMORE, Phil  
Date: 12-11-02 Time: 1113 Booking #: 44688

Degree of Violation: Serious 18 Major 12 3 Minor \_\_\_\_\_  
Rule Violation: Threats / Disrupting Food Services / Harassing Staff

Witnesses: \_\_\_\_\_  
Date of Violation: 12-11-02

Location of Violation: D BLK AT B5-02 Time of Violation: Approx 1108

Statement of Charges: While serving lunch to inmate Elmore he was upset and threw his meal out the slot in his door. Inmate Elmore threatened to kill me and to kill the lieutenant. He also said he would kill the first deputy that came into his cell.

Degree of Personal Injury: N/A

Amount of Property Damage: N/A

Immediate Action Taken: written up / placed into DC for officer safety

Disposition of any Physical Evidence: N/A

Charging Officer's Signature: Dep. C.L. Griffith 81

NOTICE TO INMATE

YOU ARE ALLEGED TO HAVE COMMITTED THE FOLLOWING VIOLATION(S), TO INCLUDE THE TIME, DATE, PLACE AND FACTS ON WHICH THE CHARGE IS BASED, THE ACCUSER AND THE SPECIFIC RULE(S) BROKEN: ON 12-11-02 AT 1108 HRS you did threaten to kill STAFF / Disrupt Food Services / Harass Staff

THE RECOMMENDED PENALTY FOR THIS VIOLATION IS: 60 DAYS

Inmate's Signature: REFUSED 12-11-02 13:14 HRS. Shift Supervisor Signature: Sgt. N.P. [Signature] 5-12

\* ELMORE REFUSED TO EXIT HIS CELL  
4 OR CAME TO SGT'S OFFICE FOR SERVICE  
OF RULES VIOLATION.

CUSTODY STATUS REVIEW

Inmate: Elmore, Phillip Date: 8/16/02

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Administrative Custody | <input checked="" type="checkbox"/> Original Review |
| <input type="checkbox"/> Disciplinary Custody              | <input type="checkbox"/> 72 Hour Review             |
| <input type="checkbox"/> Medical Custody                   | <input type="checkbox"/> 7 Day Review               |
| <input type="checkbox"/> Protective Custody                | <input type="checkbox"/> 30 Day Review              |

A review was conducted to determine the custody status of the above inmate. This inmate is to be PLACED IN/REMANDED TO/RELEASED FROM (circle one) by reason of:

Inmate Request: I request placement in Administrative Segregation for my own protection.

Inmate: \_\_\_\_\_

Inmate presents a chronic inability to adjust in general population.

Inmate presents a valid need for protection as determined by the Facility Administrator or designee.

Completing Disciplinary Custody time but ordered to remain in Administrative Custody.

Inmate has a communicable disease.

Is pending investigation or filing of <sup>Possible</sup> criminal charges. AND IN HOUSE DISCIPLINE

The Facility Administrator or designee has determined that such segregation is necessary and in the best interests of the inmate, staff, or the safe, secure operation of the facility.

Other: \_\_\_\_\_

INMATE HAS BEEN THREATENING INMATES  
IN PC AND BRAGGING ABOUT HOW HE DID  
HIS CRIME.

Review of the status of inmates in administrative segregation and protective custody will be every seven (7) for the first two (2) months and at least every thirty (30) days thereafter.

All other reviews in which the inmate is remanded to the same custody status will be conducted every thirty (30) days unless otherwise noted. The review decision may be appealed to the Facility Administrator.

This review was conducted by: [Signature] 8/16/02

Original: Classification \_\_\_\_\_  
Copy: Inmate \_\_\_\_\_ Date: \_\_\_\_\_

McIntosh, Carey  
Paul

LICKING COUNTY SHERIFF'S DEPARTMENT  
VOLUNTARY STATEMENT

Date: 8-16-02	Time: 12:30 Pm	CR #:
Location: P.C		

I, LARRY MCARTOR, being 42 years of age do hereby give this statement of my own free will, without promise or threat. \_\_\_\_\_ has been identified as an officer with the Licking County Sheriff's Department.

Home Address: 3846 Homer Rd.		
Phone: [REDACTED]	SSN: [REDACTED]	DOB: 9-19-59
Employer: _____		Phone: _____

MR. SIMORE HAS IN THE PAST BEEN THREATENING ME I HAD REPORTED IT AND OFF. MOSS TOLD ME TO STAY AWAY FROM HIM, IF IT CONTINUED, HE WOULD LOCKED US DOWN WITHOUT COMMISSARY OR VISITS. I GET VISITS AND HE DOESN'T, SO I WOULD OF BEEN THE ONLY ONE PUNISHED. HE KEPTED THREATENING ME AND SAYING HE WANTED TO KILL ME.

SINCE NOTHING WAS DONE WHEN I COMPLAINED BEFORE, I DIDN'T THINK YOU WOULD BELIEVE JUST ME.

YES HE WAS THREATENING TO KILL MR PAUL. I'M NOT SURE WHAT BROUGHT IT ON, BUT HE WAS ACTING LIKE HE WAS RUNNING THE CELL BLOCK, HE WOULD GO OFF IF ANYBODY MADE ANY NOISE BEFORE 11:00 AM SO IT DOESN'T TAKE MUCH TO SET HIM OFF.

The facts contained in the 1 pages of this statement are true and correct.

[Signature]  
Signature

8-16-02 12:45 pm  
Date/Time

[Signature]  
Witness Signature

8-16-02 1300  
Date/Time

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date/Time

LICKING COUNTY SHERIFF'S DEPARTMENT  
VOLUNTARY STATEMENT

Date: 8-16-02	Time: 12:45	CR #:
Location:		

I, Rodney Paul, being 40 years of age do hereby give this statement of my own free will, without promise or threat. \_\_\_\_\_ has been identified as an officer with the Licking County Sheriff's Department.

Home Address:		
Phone: [REDACTED]	SSN: [REDACTED]	DOB: 3-7-62
Employer: None	Phone:	

on the 14th of this month E. Lanore was giving me orders. So I said to him he was not my dad he threatened to beat me up. I said do what you have to do. he came over to me and said if I would not listen to him he was going to break my neck. I looked toward the deputies down stairs he said I would be dead before they got up here

The facts contained in the \_\_\_\_\_ pages of this statement are true and correct.

Rodney Paul  
Signature

8-16-02 12:45  
Date/Time

Det. [Signature]  
Witness Signature

8-16-02 1300  
Date/Time

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date/Time

LICKING COUNTY SHERIFF'S DEPARTMENT  
VOLUNTARY STATEMENT

Date: 8/16/02	Time: 12:40 PM	CR #:
Location: PC B3		

I, Terry Magers, being 26 years of age do hereby give this statement of my own free will, without promise or threat. \_\_\_\_\_ has been identified as an officer with the Licking County Sheriff's Department.

Home Address: 10 W. Long St. Cos. OH 43215	
Phone: [REDACTED] 4	SSN: [REDACTED] DOB: 12-11-75
Employer: N/A	Phone:

On both 8/14 and 8/15 inmate Elmer got in a verbal altercation w/ a different inmate. He threatened inmate Paul saying he would end it before any officers got up here, and also threatened to shoot him.

The facts contained in the 1 pages of this statement are true and correct.

Terry Magers  
Signature

8/16/02 12:42 PM  
Date/Time

[Signature]  
Witness Signature

8-16-02 1:00  
Date/Time

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date/Time

LICKING COUNTY SHERIFF'S DEPARTMENT  
VOLUNTARY STATEMENT

Date: 8-16-02	Time:	CR #:
Location: 025		

I, Gary Pull, being \_\_\_\_\_ years of age do hereby give this statement of my own free will, without promise or threat. \_\_\_\_\_ has been identified as an officer with the Licking County Sheriff's Department.

Home Address: 9258 Watkins Rd SW		
Phone: [REDACTED]	SSN: [REDACTED]	DOB: 3/31/1960
Employer:		Phone:

The case that was in 3 threaten two boys one in PC 3-2 other in PC 3-7 there was other stuff

The facts contained in the \_\_\_\_\_ pages of this statement are true and correct.

[Signature]  
Signature

8-16-02  
Date/Time

[Signature]  
Witness Signature

8-16-02 1300  
Date/Time

Witness Signature

Date/Time

AGENCY NAME <b>Licking County S. C.</b>		INCIDENT NUMBER <b>25397-02</b>																																																				
CALL NUMBER <b>1404</b>		GEOCODE <b>Legend</b>																																																				
TOA <b>1404</b>	<input type="checkbox"/> INCIDENT (NON-CRIMINAL) <input checked="" type="checkbox"/> OFFENSE <input type="checkbox"/> SUPPLEMENT																																																					
TOC <b>1404</b>	OHIO UNIFORM INCIDENT REPORT																																																					
REPORT DATE (TIME) MONTH: <b>12</b> DAY: <b>11</b> YEAR: <b>02</b> TIME: <b>1404</b>		INCIDENT OCCURRED FROM MONTH: <b>12</b> DAY: <b>11</b> YEAR: <b>02</b> TIME: <b>1108</b>																																																				
INCIDENT LOCATION (Street, Apt., City, State, Zip) <b>155 E. MAIN ST. NEWARK OHIO 43055</b>		INCIDENT OCCURRED TO MONTH: <b>12</b> DAY: <b>11</b> YEAR: <b>02</b> TIME: <b>1112</b>																																																				
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VICTIM/WITNESS SUPPLEMENT

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INCIDENT NUMBER **25397-02**

VICTIM **STATE OF OHIO** OFFENSE **Aggravated Menacing** INCIDENT DATE/TIME **12/11/02 1404**

VICTIM	NO. <b>2</b>	TOTAL VICTIMS <b>2</b>	NAME (Last, First, Middle) <b>CLAPROOD, PATRICK</b>	
	ADDRESS (Street, Apt., City, State, Zip) <b>155 E. MAIN ST. NEWARK OHIO 43055</b>			PHONE <b>349-1664</b>
	EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip) <b>LC SO 155 E. MAIN ST. NEWARK OHIO 43055</b>			PHONE <b>349-6445</b>
	AGE/ D.O.B.	SEX <b>M</b>	RACE <input checked="" type="checkbox"/> W <input type="checkbox"/> B <input type="checkbox"/> A <input type="checkbox"/> O <input type="checkbox"/> U	HGT
	OCCUPATION <b>DEPUTY SHERIFF</b>			SSN
	RESIDENT STATUS <input checked="" type="checkbox"/> RESIDENT <input type="checkbox"/> VISITOR			<input type="checkbox"/> MILITARY <input type="checkbox"/> STUDENT <input type="checkbox"/> OTHER
	VICTIM TYPE <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> BUSINESS			<input type="checkbox"/> POLICE OFFICER (ON THE LINE OF DUTY) <input type="checkbox"/> SOCIALLY PUBLIC <input type="checkbox"/> OTHER
	VICTIM INJURED? <input checked="" type="checkbox"/> Y <input type="checkbox"/> N			IF INJURED, DESCRIBE INJURIES:
	AGG. ASLT/ HOMICIDE CIRC.		VICT./OFF RELATIONSHIP <b>AP</b>	VICTIM LINKED TO OFFENDER NO(S) <b>1</b>
	My signature verifies that the information on this report is accurate and true			DATE <b>12.03.02</b>

VICTIM	NO.	TOTAL VICTIMS	NAME (Last, First, Middle)	
	ADDRESS (Street, Apt., City, State, Zip)			PHONE
	EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)			
	AGE/ D.O.B.	SEX	RACE <input type="checkbox"/> W <input type="checkbox"/> B <input type="checkbox"/> A <input type="checkbox"/> O <input type="checkbox"/> U	HGT
	OCCUPATION			SSN
	RESIDENT STATUS <input type="checkbox"/> RESIDENT <input type="checkbox"/> VISITOR			<input type="checkbox"/> MILITARY <input type="checkbox"/> STUDENT <input type="checkbox"/> OTHER
	VICTIM TYPE <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> BUSINESS			<input type="checkbox"/> POLICE OFFICER (ON THE LINE OF DUTY) <input type="checkbox"/> SOCIALLY PUBLIC <input type="checkbox"/> OTHER
	VICTIM INJURED? <input type="checkbox"/> Y <input type="checkbox"/> N			IF INJURED, DESCRIBE INJURIES:
	AGG. ASLT/ HOMICIDE CIRC.		VICT./OFF RELATIONSHIP	VICTIM LINKED TO OFFENDER NO(S)
	My signature verifies that the information on this report is accurate and true			DATE

WITNESS	NO.	NAME (Last, First, Middle)	AGE/ D.O.B.	SSN
	ADDRESS (Street, Apt., City, State, Zip)			PHONE
	EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)			PHONE
	STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N TYPE <input type="checkbox"/> WRITTEN <input type="checkbox"/> ORAL <input type="checkbox"/> TAPED <input type="checkbox"/> OTHER			
WITNESS	NO.	NAME (Last, First, Middle)	AGE/ D.O.B.	SSN
	ADDRESS (Street, Apt., City, State, Zip)			PHONE
	EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)			PHONE
	STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N TYPE <input type="checkbox"/> WRITTEN <input type="checkbox"/> ORAL <input type="checkbox"/> TAPED <input type="checkbox"/> OTHER			
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	ADDRESS (Street, Apt., City, State, Zip)			PHONE
	EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)			PHONE
	STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N TYPE <input type="checkbox"/> WRITTEN <input type="checkbox"/> ORAL <input type="checkbox"/> TAPED <input type="checkbox"/> OTHER			
WITNESS	NO.	NAME (Last, First, Middle)	AGE/ D.O.B.	SSN
	ADDRESS (Street, Apt., City, State, Zip)			PHONE
	EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)			PHONE
	STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N TYPE <input type="checkbox"/> WRITTEN <input type="checkbox"/> ORAL <input type="checkbox"/> TAPED <input type="checkbox"/> OTHER			
REPORTING OFFICER <b>Dep. C. J. Guffitt #31</b>				BADGE NO. <b>31</b>
APPROVING OFFICER				DATE <b>12-11-02</b>

SUSPECT / ARREST SUPPLEMENT		ARRESTING AGENCY <b>LC 50</b>	INCIDENT NUMBER <b>25397-02</b>																												
VICTIM <b>STATE OF OHIO</b>		OFFENSE <b>AGGRAVATED MENACING</b>	INCIDENT DATE/TIME (MM/DD/YYYY/TTTT) <b>12/11/02/1404</b>																												
NO. <b>1</b>	<input checked="" type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE	<input checked="" type="checkbox"/> SUSPECT <input checked="" type="checkbox"/> ARRESTEE	<input type="checkbox"/> SUSPECT / ARRESTEE <input type="checkbox"/> TRU-WAY <input type="checkbox"/> MISSING <input type="checkbox"/> OTHER																												
NAME (Last, First, Middle) <b>ELMORE, Phillip, L</b>		SSN [REDACTED]																													
ALIAS <b>N/A</b>		GANG AFFILIATION <b>N/A</b>																													
ADDRESS (Street, Apt., City, State, Zip) <b>32 W. PISTAL NEWARK OHIO 43055</b>		PHONE <b>N/A</b>																													
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip) <b>NONE</b>		PHONE <b>N/A</b>																													
PLACE OF BIRTH <b>OHIO</b>		DL/STATE	OCCUPATION/SCHOOL <b>N/A</b>																												
AGE D.O.B. <b>7/15/63</b>	<b>39</b>	SEX <b>M</b>	RACE <b>Blk</b>																												
HEIGHT <b>509</b>	WEIGHT <b>180</b>	HAIR <b>Blk</b>	EYES <b>Bro</b>																												
MARRITAL STATUS <b>Single</b>																															
ADDITIONAL DESCRIPTIVES																															
SCARS, MARKS, TATTOOS																															
SUSPECTED OF USING <input type="checkbox"/> ALCOHOL <input type="checkbox"/> DRUGS																															
POTENTIAL INJURIES																															
RESIDENT STATUS <input checked="" type="checkbox"/> RESIDENT <input type="checkbox"/> TOURIST <input type="checkbox"/> MILITARY <input type="checkbox"/> STUDENT <input type="checkbox"/> OTHER (specify)																															
ARRESTEE WAS ARMED WITH																															
<table border="0"> <tr> <td>99 NONE</td> <td>103 OTHER FIREARM - AUTOMATIC FIREARM</td> <td>16 IMITATION FIREARM</td> <td>50 POISON</td> </tr> <tr> <td>11 FIREARM</td> <td>14 SHOTGUN</td> <td>17 SIMULATED FIREARM</td> <td>60 EXPLOSIVES</td> </tr> <tr> <td>12 HANDGUN</td> <td>15 OTHER FIREARM</td> <td>18 BB / PELLET GUN</td> <td>85 FIREARMS/SHARPE DEVICE</td> </tr> <tr> <td>12A AUTOMATIC HANDGUN</td> <td>15A SEMI-AUTOMATIC SHOOTING RIFLE</td> <td>29 KNIFE/CUTTING INSTRUMENT</td> <td>70 DRUGS IN PACKAGING PILLS</td> </tr> <tr> <td>13 RIFLE</td> <td>15B SEMI-AUTOMATIC ASSAULT FIREARM</td> <td>30 UNID OBJECT</td> <td>82 OTHER WEAPON</td> </tr> <tr> <td>13A FULLY AUTOMATIC RIFLE</td> <td>15C MACHINE GUN</td> <td>35 MOTOR VEHICLE</td> <td>U UNKNOWN</td> </tr> <tr> <td></td> <td></td> <td>37 PERSONAL WEAPON</td> <td></td> </tr> </table>				99 NONE	103 OTHER FIREARM - AUTOMATIC FIREARM	16 IMITATION FIREARM	50 POISON	11 FIREARM	14 SHOTGUN	17 SIMULATED FIREARM	60 EXPLOSIVES	12 HANDGUN	15 OTHER FIREARM	18 BB / PELLET GUN	85 FIREARMS/SHARPE DEVICE	12A AUTOMATIC HANDGUN	15A SEMI-AUTOMATIC SHOOTING RIFLE	29 KNIFE/CUTTING INSTRUMENT	70 DRUGS IN PACKAGING PILLS	13 RIFLE	15B SEMI-AUTOMATIC ASSAULT FIREARM	30 UNID OBJECT	82 OTHER WEAPON	13A FULLY AUTOMATIC RIFLE	15C MACHINE GUN	35 MOTOR VEHICLE	U UNKNOWN			37 PERSONAL WEAPON	
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2																															
ARREST / OFFENSE INFORMATION																															
ARREST / OFFENSE DESCRIPTION <b>Aggravated Menacing</b>		ARREST / OFFENSE CODE <b>2903.21</b>	PLA & DEGREE <b>M 1</b>																												
ARREST DATE <b>12-11-02</b>		ARREST LOCATION <b>155 E. MAIN ST. NEWARK OHIO 43055</b>	ARREST TIME <b>1404</b>																												
INCIDENT TRACKING NUMBER <b>25397-02</b>		ARREST DISPOSITION <b>INCARCERATED ON OTHER CHARGES</b>	RAIL <b>5000 C/S</b>																												
MIRANDA WITNESSED BY																															
MIRANDA TIME READ																															
FINGERPRINTED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																															
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<input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> IN-PROGRESS <input type="checkbox"/> WARRANT <input type="checkbox"/> ORDER OF PROTECTION <input type="checkbox"/> OTHER																															
JUV. PARENT / ODN NOTIFIED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																															
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NOTIFIED BY																															
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PREVIOUS RUNNERS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																															
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DATE OF EMANCIPATION																															
NOC #																															
DATE/TIME ENTERED																															
LAST SEEN WEARING																															
REPORTING OFFICER/ARRESTING OFFICER																															
<b>Dep. C. L. Griffith</b>																															
BADGE # <b>8</b>																															
DATE <b>12-11-02</b>																															
APPROVING OFFICER																															
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NARRATIVE SUPPLEMENT

INCIDENT NUMBER 25397-02

VICTIM STATE OF OHIO OFFENSE AGGRAVATED MENACING INCIDENT DATE/TIME (MM/DD/YYYY/TTTT) 12/11/02 PM

On Wednesday 12-11-02 I WAS WORKING THE 8a-4p SHIFT IN D-BLK AT THE LICKING COUNTY JUSTICE CENTER 155 E. MAIN ST. NEWARK OHIO 43055. I WAS SERVING LUNCH WHEN DEPUTIES RAMSEY + BLEVINS BROUGHT INMATE ELMORE, PHILLIP DOWN FROM THE SPECIAL NEEDS TO THE D-BLK MODULE PER LT. CLAPROOD. INMATE ELMORE WAS UPSET ABOUT BEING PLACED INTO ADMINISTRATIVE CUSTODY AND BEGAN BANGING ON HIS DOOR WHILE I FEED THE D-BLK INMATES. I WAS SHORT A MEAL FOR ELMORE SO THE 2 TRUSTIES WENT TO GET IT. AS I STOOD BESIDE HIS CELL DOOR HE BEGAN COMPLAINING AND YELLING ABOUT BEING BROUGHT DOWN. I TOLD HIM TO KNOCK IT OFF AND HE BEGAN HARASSING ME, SAYING I WASN'T SO TOUGH AND THAT I COULD SUCK HIS DICK. HE THEN STATED THAT HE WOULD KILL ME IF HE GETS THE CHANCE. HE THEN SAID HE WOULD KILL THE NEXT DEPUTY THAT CAME INTO HIS CELL. WHEN THE TRUSTIES ARRIVED WITH HIS MEAL HE THREW HIS PLATE OF FOOD ONTO THE FLOOR AT MY FEET. AS WE LEFT THE MODULE HE CONTINUED SCREAMING THREATS AND OBSCENITIES UNTIL I WAS AT THE EXIT. AT THIS TIME HE STARTED TO THREATEN LT. CLAPROOD, SAYING THAT HE WOULD KILL HIM. TRUSTY GEORGE BRAGG WITNESSED ELMORE MAKING THE THREATS AGAINST MYSELF AND THE LIEUTENANT AND HAS WRITTEN A VOLUNTARY STATEMENT. INMATE ELMORE IS NOW SERVING IN-HOUSE DISCIPLINARY SANCTIONS ALONG WITH THESE CHARGES BEING FILED.

REASON CLEARED	A <input type="checkbox"/> DEATH OF OFFENDER	D <input type="checkbox"/> VICTIM REFUSED TO COOP	G <input type="checkbox"/> ARREST - JUVENILE	J <input checked="" type="checkbox"/> CLOSED	DATE CLEARED
	B <input type="checkbox"/> PROSECUTION OUTSTANDING	E <input type="checkbox"/> JUVENILE AND CUSTODY	H <input type="checkbox"/> WARRANT ISSUED	K <input type="checkbox"/> UNFOUNDED	12-11-02
	C <input type="checkbox"/> EXTRACTION CENTER	F <input type="checkbox"/> ARREST - ADULT	I <input type="checkbox"/> INVEST. PENDING	U <input type="checkbox"/> UNKNOWN	
REPORTING OFFICER	Dep. C. L. Hight		BADGE NO.	81	DATE
APPROVING OFFICER			BADGE NO.		DATE
					12-11-02

LICKING COUNTY SHERIFF'S DEPARTMENT  
VOLUNTARY STATEMENT

534

Date: 12-11-02 Time: 1745 HRS CR: 25397-02  
Location: Licking Co. Justice Center

I, George Briggs, being 36 years of age do hereby give this statement of my own free will, without promise or threat. Dep C 3  
GRIFFITH 81 has been identified as an officer with the Licking County Sheriff's Department.

Home Address: 383 Rock Hill Church St  
Phone: [REDACTED] SSN: [REDACTED] DOB: 1-05-66  
Employer: Kanterbach Pa Phone: 462-0237

I arrived on the date of 12-11-02 and taking  
business into a block cell inmate in cell  
2 and took his time and then at 11:00  
at Deputy Griffith and told him I  
would kill him later and told him to  
make his date and then the inmate  
went on to say to Griffith tell me  
if that he would kill his later as two

The facts contained in the 1 pages of this statement are true and correct.

George Briggs Signature Date/Time 12-11-02  
Dep C 3 Griffith 81 Witness Signature Date/Time 12-11-02/1745  
\_\_\_\_\_  
Witness Signature Date/Time

STATE OF OHIO  
 CITY OF HENRY  
 CITY OF LEXINGTON  
 SA  
City

NAME J  
STREET 8  
CITY, STATE, LICENSE ISS

SSN 216  
RACE W  
SEX M

LICENSE NO  
Lic. Class

ON 12/11  
 Pass  
VEHICLE:  YES  
COLOR 8  
UPON A FULL  
 BETWEEN  
IN THE  
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PARENT

NOTE:  
CH 9009



Code \_\_\_\_\_ Judge \_\_\_\_\_  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 SSN \_\_\_\_\_ Tele. \_\_\_\_\_  
 Age \_\_\_\_\_ DOB \_\_\_\_\_  
 Employer \_\_\_\_\_ Yrs./Mo. \_\_\_\_\_  
 Address \_\_\_\_\_  
 Single  Married  Divorced  Separated  
 No. of Children \_\_\_\_\_ Years of Education \_\_\_\_\_  
 Attorney \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone \_\_\_\_\_

Def. requests can't to \_\_\_\_\_  
 for the reason \_\_\_\_\_  
 Date \_\_\_\_\_ Judge \_\_\_\_\_  
 Def. requests can't to \_\_\_\_\_  
 for the reason \_\_\_\_\_  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY - BOND OF DEFENDANT**  
 Def. to sign recognizance with following conditions: \_\_\_\_\_  
 \_\_\_\_\_  
 Def. to post bond of \$ \_\_\_\_\_ in the following manner:  
 Cash/Surety  Property  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY - BOND OF DEFENDANT**  
 Def. to sign recognizance with following conditions: \_\_\_\_\_  
 \_\_\_\_\_  
 Def. to post bond of \$ \_\_\_\_\_ in the following manner:  
 Cash/Surety  Property  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY - FAILURE OF DEFENDANT TO APPEAR**  
 This case having been called in open court and the defendant not being present to answer this complaint, the Clerk is instructed to:  
 Issue Notice to Appear  Forfeit Bond  
 Issue Warrant on Summons  
 Issue Bench Warrant with bond in amount of \$ \_\_\_\_\_ cash/surety  
 Prosecuting Attorney to file complaint for defendant's failure to appear on a recognizance bond,  
 Date \_\_\_\_\_ Judge \_\_\_\_\_  
 CLERK \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 By \_\_\_\_\_

Defendant enters plea of  Not Guilty  Guilty  No Contest  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY - CHANGE OF PLEA**  
 The defendant having entered a written request for permission of the court to change his/her plea to  Guilty  No Contest, the same is accepted as evidenced by the attached written change of plea form and a finding of guilty is entered.  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY - FINDING OF COURT OR JURY**  
 Case tried to court/jury on \_\_\_\_\_  
 and a finding of  Not Guilty  Guilty is entered  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY - DELAY OF IMPOSITION OF SENTENCE**  
 The defendant having been found guilty of the offense charged in the complaint, or entered a plea of guilty to the same, sentencing is delayed until \_\_\_\_\_  
 \_\_\_\_\_ for a presentence investigation and report to be received from the Probation Department.  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY - SENTENCE OF COURT**  
 The defendant having been found guilty of the offense charged in the complaint, or entered a plea of guilty to the same, the following sentence is entered:  
 FINE: 1000 FINE SUSPENDED: \_\_\_\_\_  
 COURT COSTS: 70  NO PROBATION FEE ASSESSED  
 JAIL: \_\_\_\_\_ days/months in the county jail  
 JAIL SUSPENDED: \_\_\_\_\_ days/months  
 PROBATION TIME: \_\_\_\_\_ year/s  
 PROBATION TERMS: \_\_\_\_\_ as directed by Probation Officer  
 OTHER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

After hearing, the court finds the defendant  has  has not the ability to pay fines and court costs.  
 Judgment is hereby rendered this court for the amount of the fine and costs imposed, and upon failure of the defendant to pay same, he may be given a reasonable time in which to make payment. But, if the same is not paid within the time given, the defendant is to be incarcerated in the city/county jail until the fine is paid, receiving credit of \$30 per day for each day incarcerated toward the balance remaining on the fine. The Clerk shall then proceed to collect the cost according to appropriate civil procedure.  
 Date 1/27/02 Judge \_\_\_\_\_

This case having been called in open court and the defendant answer this complaint, the Clerk is instructed to:  
 Issue Notice to Appear  Forfeit Bond  
 Issue Warrant on Summons  
 Issue Bench Warrant with bond in amount of \$ \_\_\_\_\_  
 Prosecuting Attorney to file complaint for defendant recognizance bond,  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JUDGMENT ENTRY OF DISMISSAL**  
 Complaining Witness failed to appear to prosecute - to costs.  
 Motion of the Prosecuting Attorney to dismiss is su justice.  
 Reason \_\_\_\_\_  
 \_\_\_\_\_  
 Other \_\_\_\_\_  
 \_\_\_\_\_  
 Case dismissed since felony charge has been cons Grand Jury.  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY**  
 OTHER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY**  
 OTHER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

**JOURNAL ENTRY**  
 OTHER: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Date \_\_\_\_\_ Judge \_\_\_\_\_

1 defendant appearing in civilian clothing, but I think  
2 before the Court would approve an authorization of  
3 public funds, there has to be a need shown. I don't  
4 know that -- that the defendant is without means of  
5 appearing in civilian clothing himself, so we will  
6 have to visit that at a later time.

7 MR. SANDERSON: Understood, Your Honor.

8 That being said, Your Honor, I'm going to  
9 limit a lot of my argument today and reserve the  
10 opportunity to address most of the things laid out by  
11 the State in opposition in writing in our written  
12 reply. There are a couple of the areas that I would  
13 like to speak to, and specifically one of those areas  
14 would be the request to transfer pretrial custody to  
15 an alternative holding facility. Primarily, Your  
16 Honor, we would stand on what is presented in the  
17 motion. The State of Ohio has filed its response, and  
18 included in its response is an extensive memoranda  
19 from Lieutenant Claprod of the Licking County  
20 Sheriff's Department. Frankly, Your Honor, I was a  
21 little surprised when I received the memorandum  
22 yesterday afternoon. Having spoken with members of  
23 the jail staff, specifically Sergeant Tyo, who is the  
24 supervising sergeant for the jail facility during the  
25 jail shift, Sergeant Tyo's exact words to me is that



1 he would happily drive Mr. Elmore himself to an  
2 alternative facility because of difficulties that have  
3 been ongoing in the justice center. As an example,  
4 Your Honor, today Mr. Elmore was held locked down in a  
5 holding cell for a period of time because one of the  
6 State's witnesses, who is also incarcerated, was being  
7 transported to a hearing at the same time as  
8 Mr. Elmore. Your Honor, for better or worse, several  
9 of the State's witnesses are going to find themselves  
10 in the county jail, be they law enforcement officers,  
11 be they deputy sheriffs, be they other inmates. The  
12 likelihood of Mr. Elmore having contact with those  
13 individuals and that contact getting out of hand is  
14 rather high.

15 As the Court is aware, there has already  
16 been at least one incident, and I would take some  
17 exception with the characterization by Lieutenant  
18 Clapood concerning that incident, Mr. Elmore was  
19 charged with disorderly conduct. He entered a no  
20 contest plea to those charges. Lieutenant Clapood,  
21 for some reason, characterizes them as menacing  
22 charges, which the Court reduced to disorderly  
23 conduct: I'm sure Your Honor is well aware that there  
24 isn't a court in this county, perhaps not in the  
25 state, that would sua sponte at arraignment reduce a

1 charge that's been properly filed and has before it.  
2 That's simply not what happened. But that incident  
3 was an incident between Mr. Elmore and two deputy  
4 sheriffs, these type of problems. And Lieutenant  
5 Claprod says that there's only 30 some of 107  
6 employees that knew the alleged victim in this case.  
7 Well, that's one-third of the people responsible for  
8 the care and supervision of Mr. Elmore while he is in  
9 the Licking County Justice Center. You couple that  
10 with the number of witnesses that will potentially and  
11 are, in fact, currently incarcerated at the Licking  
12 County Justice Center, there's simply no way to keep  
13 track of who those people are. The State's witness  
14 list is extremely extensive, and there's no way to  
15 ensure that Mr. Elmore will not have ongoing and  
16 potentially dangerous contact with those individuals.

17           The easy solution in this matter is to  
18 transport Mr. Elmore to an alternative facility.  
19 Mr. Elmore and counsel for the defense recognize that  
20 that would put logistical burdens on us as well as the  
21 county. In light of the situation, in light of what I  
22 have to describe as unique circumstances surrounding  
23 this case because of who the alleged victim is, we  
24 feel that those logistical difficulties cannot  
25 outweigh the need for this type of solution.

1 I surely appreciate Lieutenant Claprood's  
2 suggestion that I tell Mr. Elmore to behave himself.  
3 I have, Your Honor, and, frankly, this type of  
4 situation is not something that Phil knows the  
5 potential danger and ramification of any acting out  
6 could carry. It's not a question of whether or not he  
7 doesn't understand what the potential difficulties  
8 are, it's a question of what the situation is and can  
9 those situations be remedied. We don't believe that  
10 they can.

11 This county has, up until very recently,  
12 housed numerous inmates pretrial in other facilities.  
13 This is not something new in Licking County. At that  
14 time, it was done because we had space problems at the  
15 county jail. Well, this is a different situation,  
16 granted, but it is a situation that is probably more  
17 important than the lack of a bunk bed.

18 For those reasons, Your Honor, we maintain  
19 that the request that Mr. Elmore be transferred to an  
20 alternative holding facility be granted. The  
21 mechanisms are in place. The jail is very experienced  
22 with the transportation of inmates from one location  
23 to another. It was a common and regular practice in  
24 this county until very recently. We would ask the  
25 Court to grant our request for the reasons laid out in