

IN THE SUPREME COURT OF OHIO

ORIGINAL

State of Ohio , : Supreme Court Case No. 09-1977
: :
Plaintiff-Appellee, : On Appeal from
: The Lawrence County Court of
v. : Appeals, Fourth Appellate District
: :
Megan Goff, : Court of Appeals
: Case No. 2007 CA 17
: :
Defendant-Appellant. :

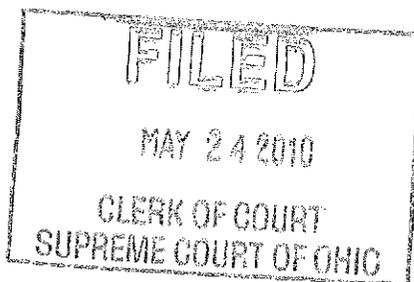
APPENDICES TO THE
BRIEF ON THE MERITS
OF DEFENDANT-APPELLANT MEGAN GOFF

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IN THE SUPREME COURT OF OHIO

09-1977

STATE OF OHIO,	:	Case No. _____
Plaintiff-Appellee,	:	On Appeal from the Lawrence
	:	County Court of Appeals,
	:	Fourth Appellate District
v.	:	
	:	Court of Appeals
MEGAN GOFF,	:	Case No. 2007 CA 17
Defendant-Appellant.	:	

NOTICE OF APPEAL OF DEFENDANT-APPELLANT MEGAN GOFF

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FILED
 OCT 29 2009
 CLERK OF COURT
 SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT MEGAN GOFF

Appellant Megan Goff hereby gives Notice of Appeal to the Supreme Court of Ohio from the judgment of the Lawrence County Court of Appeals, Fourth Appellate District, entered in the Court of Appeals Case No. 2007 CA 17 on September 14, 2009.

This case raises substantial constitutional questions, involves a felony, and is one of public or great general interest.

Respectfully submitted,

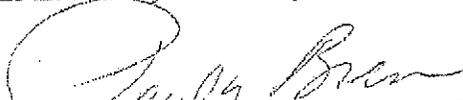


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal was sent by U.S. mail to counsel for Appellee, Robert C. Anderson, Lawrence County Prosecutor's Office, One Veterans Square, First Floor, Ironton, Ohio 45638, on this the 29th day of October, 2009.


Paula Brown

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

2008 SEP 14 PM 2:37

State of Ohio,

Plaintiff-Appellee,

v.

Megan Goff,

Defendant-Appellant.

MIKE FATTERSON
CLERK OF COURTS
LAWRENCE COUNTY

Case No. 07CA17

DECISION AND
JUDGMENT ENTRY

APPEARANCES:

Paula Brown, William Bluth, Kristopher Haines, and Richard R. Parsons,
KRAVITZ, BROWN & DORTCH, LLC, Columbus, Ohio, for appellant.

J.B. Collier, Jr., Lawrence County Prosecutor, and Robert C. Anderson,
Lawrence County Assistant Prosecutor, Ironton, Ohio, for appellee.

Kline, P.J.:

{¶1} Megan Goff appeals her aggravated murder (with gun specification) conviction after a bench trial in the Lawrence County Common Pleas Court. On appeal, Goff contends that the trial court violated her right against self-incrimination by ordering her to submit to a psychiatric examination. Because Goff initially retained her own psychiatrist to undergo an evaluation to prove her mental condition (battered woman syndrome) as part of her defense before the court granted the State's request for its psychiatric examination to rebut Goff's claim, we disagree and find that Goff's use of her own psychiatric testimony at trial waived her privilege against self-incrimination. Goff next contends that the trial court improperly ruled that evidence regarding the battered woman

syndrome was relevant only to the imminent harm element of self-defense. We disagree. Goff next contends that the trial court erred when it failed to control the prosecutor, who led the state witnesses, and repeatedly crossed the line of adversarial representation. Because Goff failed to object at trial, and because Goff cannot demonstrate that any of the leading questions or other conduct of the prosecutor, either in isolation or combined, affected the outcome of the trial, we disagree. Goff next contends that the trial court erred in many of its evidentiary rulings. Because we find that the trial court did not abuse its broad discretion regarding the evidentiary rulings, we disagree. Goff next contends that the trial court erred when it allowed the State's expert witness to testify regarding her motive and state of mind. Because Goff's expert witness testified to her motive and state of mind, we disagree. In addition, we find that the trial court did not abuse its discretion because Goff's state of mind was a critical issue as it related to Goff's self-defense claim involving the battered woman syndrome. Goff next contends that the trial court's finding that she did not act in self-defense is against the manifest weight of the evidence. Because substantial evidence supports the trial court's finding, we disagree. Goff next contends that the evidence regarding "prior calculation and design" is insufficient to support a conviction for aggravated murder. Because, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements (including prior calculation and design) of the crime of aggravated murder proven beyond a reasonable doubt, we disagree. Goff next contends that she was denied the effective assistance of trial counsel because of

numerous errors and omissions. Because Goff cannot show how any of the alleged deficiencies prejudiced her, we disagree. Finally, Goff contends that the trial court erred when it failed to record all of the proceedings. Because Goff has failed to show that: (1) she either requested that the trial court record the proceedings at issue or objected to the trial court's failure to comply with the recording requirements; (2) she made an effort on appeal to comply with App.R. 9 and to reconstruct what occurred or to establish its importance; or (3) material prejudice resulted from the trial court's failure to record the proceedings at issue, we disagree.

{¶2} Accordingly, we overrule all nine of Goff's assignments of error and affirm the judgment of the trial court.

I.

{¶3} In 1995, fifteen-year old Goff and her family moved into the house next door to the forty-year old victim. Over the next two years, Goff and the victim developed a romantic relationship that ultimately culminated in their marriage in late 1998. During their marriage, they had two children.

{¶4} On March 18, 2006, Goff shot the victim fifteen times in the head and chest area, resulting in his death. After the shooting, Goff dialed 911 to report the shooting, explaining to the 911 dispatcher that she "just killed" her husband because "[h]e said he was gonna kill my babies." Goff further explained that despite having shot the victim, she feared he would still get up and kill her. Goff remained on the phone until former Lawrence County Sheriff's Deputy Robert Van Keuren arrived.

{¶5} When Van Keuren arrived, Goff remained hysterical and kept repeating that the victim was going to kill her. Shortly thereafter, Lawrence County Sheriff's Detective Aaron Bollinger spoke with Goff. Goff explained to him that she shot her husband because he threatened to kill her and the children in two days, i.e., on Monday, March 20, 2006.

{¶6} A Lawrence County Grand Jury subsequently indicted Goff for aggravated murder, in violation of R.C. 2903.01(A), with a firearm specification. Goff pled not guilty and asserted the affirmative defense of self-defense. In support of the self-defense theory, Goff contended that, during the course of her marriage, she was a "battered woman" as the result of enduring psychological abuse by the victim; and that, on the night of the shooting, she believed her actions were justified because the victim threatened to kill her and her children two days later. Goff retained a psychiatrist and underwent an evaluation to support her defense.

{¶7} The State then made several motions. First, it moved for an order requiring that Goff submit to a psychiatric examination conducted by an expert retained by the State. Goff opposed the motion, arguing that compelling her to submit to a State psychiatric examination would violate her right against self-incrimination. The court granted the State's motion. Next, the State moved for an order determining that "as a result of the death of the victim any attorney-client privilege that existed between the victim and his divorce attorneys no longer exists." With Goff's counsel agreeing, the court granted the motion.

{¶8} Finally, the State moved for an order requiring Goff to submit or proffer

some evidence supporting her self-defense theory before allowing the presentation of expert testimony regarding the battered woman's syndrome. Goff initially opposed this motion, arguing that such an order would, in essence, dictate Goff's trial strategy, i.e., the order would dictate the order of her witnesses, and specifically, would require that Goff testify before her psychiatrist. However, in the end, Goff's counsel stated that he had no problem putting Goff on the stand before her psychiatrist. The court then determined that it would admit evidence concerning battered woman syndrome at trial to prove that Goff reasonably believed she was in imminent danger at the time of the offense so long as she first: (1) offered evidence that she was not at fault in creating the situation; and (2) that she did not violate any duty to retreat or to avoid the danger.

{¶9} At trial, Goff did not dispute that she killed her estranged husband, but instead sought to prove that she killed him because he had threatened to kill her and the children. The state, however, presented abundant testimony that largely discredited Goff's claims.¹

{¶10} The trial judge subsequently found Goff guilty of aggravated murder and guilty of the firearm specification. The court found that she had not proven self-defense by a preponderance of the evidence. The court observed that she had claimed to be immensely fearful that her husband was going to kill her, yet went to his house on the evening of March 18. The court also noted that two prosecution witnesses testified regarding the March 17, 6:00 p.m. phone call and stated that at no time did the victim threaten Goff, as she claimed in her

¹ The evidence presented at trial is included in the appendix.

testimony.

{¶11} The court sentenced Goff to three years on the firearm specification and to a life sentence on the aggravated murder conviction, with the possibility of parole after thirty years.

{¶12} At the sentencing hearing, the court specifically stated that it did not believe some of Goff's claims regarding her husband's abusive behavior, especially her claim that he dangled mangled kittens in front of her child's face. The court thought that she was not truthful.

{¶13} Goff appeals the trial court's judgment and asserts the following nine assignments of error. "I. The trial court violated appellant's right against compulsory self-incrimination when it ordered her to submit to a compelled psychiatric examination in violation of the fifth and fourteenth amendments to the United States Constitution, Art. I, Section 10, of the Ohio Constitution, and Section 2901.06 and Section 2945.371 of the Ohio Revised Code." "II. The trial court erred when it used the wrong standard and compelled appellant to submit to an independent psychiatric evaluation, and analogized this case to a civil proceeding." "III. The trial court erred when it failed to control the prosecutor, who led the state witnesses, and repeatedly crossed the line of adversarial representation." "IV. The trial court erred in many of its evidentiary rulings during trial, any one of which merits reversal. Looked upon cumulatively, the errors require reversal of the appellant's conviction under even a plain error standard of review." "V. The trial court erred by admitting those portions of Dr. Resnick's testimony that dealt with motive and state of mind over the objection of appellant

in violation of Ohio Rule of Evidence 702(A) and *State v. Wilcox* (1982), 70 Ohio St.2d 182." "VI. The trial judge's finding that appellant did not act in self-defense was against the manifest weight of the evidence." "VII. The evidence is insufficient to sustain a finding of guilt and as a result the federal constitution and the Ohio constitution require the conviction to be reversed with prejudice to further prosecution." "VIII. Appellant was deprived of the effective assistance of counsel due to numerous errors and omissions which prejudiced appellant's trial." "IX. The court erred when it failed to record all of the proceedings in the case."

II.

A.

{¶14} In her first assignment of error, Goff contends that the trial court violated her right against self-incrimination by ordering her to submit to a psychiatric examination.

{¶15} Goff's contention raises a legal question that we review de novo. See, e.g., *State v. Messer*, Ross App. No. 08CA3050, 2009-Ohio-312, ¶5.

{¶16} The Self-Incrimination Clause of the Fifth Amendment of the United States Constitution provides that no "person * * * shall be compelled in any criminal case to be a witness against himself." The Fifth Amendment privilege against self-incrimination applies to the States through the Fourteenth Amendment of the United States Constitution. See, e.g., *Pennsylvania v. Muniz* (1990), 496 U.S. 582, 588-589; *Malloy v. Hogan* (1964), 378 U.S. 1. The privilege "protects an accused only from being compelled to testify against

himself, or otherwise provide the State with evidence of a testimonial or communicative nature." *Schmerber v. California* (1966), 384 U.S. 757, 761. "It is the 'extortion of information from the accused,' * * * the attempt to force him 'to disclose the contents of his own mind,' * * * that implicates the Self-Incrimination Clause." (internal cites omitted.) *Doe v. United States* (1988), 487 U.S. 201, 211; see, also, *Muniz*, supra, at 594-595.

{¶17} Here, the compelled examination forced Goff to disclose the contents of her mind to a state-retained psychiatrist. Thus, the compelled psychiatric examination implicates the self-incrimination clause. The question then becomes whether the compelled examination violated Goff's privilege against self-incrimination.

{¶18} A compelled psychiatric examination may violate the privilege against self-incrimination. See *Estelle v. Smith* (1981), 451 U.S. 454. In *Estelle*, the court held that a capital murder defendant's right against compelled self-incrimination prohibits the state from subjecting the defendant to a psychiatric examination regarding future dangerousness without first informing the defendant that he has the right to remain silent and that anything he says can be used against him at a sentencing proceeding.

{¶19} In *Estelle*, the defendant was convicted of capital murder. At the sentencing phase, the prosecution introduced psychiatric testimony that it had obtained after the trial judge, sua sponte, ordered the defendant to submit to a psychiatric examination, even though the defendant had not placed his mental state at issue or had questioned his competency to stand trial. The court

determined that the admission of the psychiatric testimony violated the defendant's Fifth Amendment privilege against self-incrimination. The court explained: "A criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding." *Id.* at 468.

{¶20} Goff asserts that the holding in *Estelle* mandates that we overturn the trial court's decision ordering her to submit to a psychiatric examination and reverse the trial court's judgment of conviction. However, we find *Estelle* readily distinguishable.

{¶21} Here, unlike the defendant in *Estelle*, Goff initiated a psychiatric evaluation to attempt to prove that she suffered from the battered woman syndrome in an effort to prove her theory of self-defense. Moreover, unlike *Estelle*, the trial court did not sua sponte order Goff to submit to an evaluation. Instead, the trial court ordered her to submit to a psychiatric evaluation so that the state could retain its own expert to examine her claim that she suffered from the battered woman syndrome.

{¶22} Additionally, *Estelle* suggests that a court may order a defendant to submit to a psychiatric evaluation when the defendant seeks to introduce expert psychiatric testimony. *Id.* at 466, fn. 10. Consequently, Goff's assertion that *Estelle* requires us to reverse the trial court's judgment of conviction is without merit.

{¶23} Other cases decided after *Estelle* also appear to disfavor Goff's position. In *Buchanan v. Kentucky* (1987), 483 U.S. 402, the defendant was convicted of murder. At trial, he asserted "extreme emotional disturbance" as a defense. On cross-examination, the prosecutor requested a social worker to read from a psychologist's report that the prosecutor and defense counsel had jointly recommended. The defendant objected to this line of questioning, arguing that the psychologist's evaluation did not relate to his emotional disturbance but only to his competency to stand trial. He further asserted that admitting such evidence would violate his Fifth and Sixth Amendment rights because his counsel was not present for the evaluation and he had not been advised that the results could be used against him at trial. The trial court allowed the testimony.

{¶24} The *Buchanan* court considered "whether the admission of findings from a psychiatric examination of [the defendant] proffered solely to rebut other psychological evidence presented by [the defendant] violated his Fifth and Sixth Amendment rights where his counsel had requested the examination and where [the defendant] attempted to establish at trial a mental-status defense." *Buchanan* at 404. The court distinguished *Estelle*, observing that in *Estelle*, "the trial judge had ordered, sua sponte, the psychiatric examination and [the defendant] neither had asserted an insanity defense nor had offered psychiatric evidence at trial." *Id.* at 422. The court then noted it had "acknowledged that, in other situations, the State might have an interest in introducing psychiatric evidence to rebut petitioner's defense: 'When a defendant asserts the insanity defense and introduces supporting psychiatric testimony, his silence may deprive

the State of the only effective means it has of controverting his proof on an issue that he interjected into the case. Accordingly, several Courts of Appeals have held that, under such circumstances, a defendant can be required to submit to a sanity examination conducted by the prosecution's psychiatrist.' [*Estelle*] at 465." *Id.* at 422.

{¶25} The court further observed that when a criminal defendant does not initiate a psychiatric evaluation or does not attempt to introduce any psychiatric evidence, then he "may not be compelled to respond to a psychiatrist if his statements can be used against him * * *." *Id.* at 468, quoting *Estelle*. The court then explained that "[t]his statement logically leads to another proposition: if a defendant requests such an evaluation or presents psychiatric evidence, then, *at the very least*, the prosecution may rebut this presentation with evidence from the reports of the examination that the defendant requested. The defendant would have no Fifth Amendment privilege against the introduction of this psychiatric testimony by the prosecution." *Id.* at 422-423 (emphasis added). See, also, *Powell v. Texas* (1989), 492 U.S. 680, 683-684.²

² In *Powell*, the court seemingly approved of the Fifth Circuit's analysis in *Battie v. Estelle* (C.A. 5, 1981), 655 F.2d 692, regarding a defendant's Fifth Amendment right against self-incrimination. The *Powell* court explained:

"In [*Battie*], the Court of Appeals suggested that if a defendant introduces psychiatric testimony to establish a mental-status defense, the government may be justified in also using such testimony to rebut the defense notwithstanding the defendant's assertion that the psychiatric examination was conducted in violation of his right against self-incrimination."

Powell at 683-684.

The *Powell* court found that language in *Estelle* and *Buchanan* supports "the Fifth Circuit's discussion of waiver." *Powell* at 684.

{¶26} Under the foregoing authorities, when a defendant asserts an insanity defense or raises his competency to stand trial, the court may order him to submit to a compelled psychiatric examination. We believe that a fair corollary to these cases is that when a defendant places his mental state at issue in a criminal trial and introduces his own expert to testify as to his mental state, then fairness dictates that the State have an opportunity to rebut that testimony through the use of its own expert.

{¶27} Here, Goff put her mental state at issue by raising the battered woman syndrome as part of her defense. She retained a psychiatrist to evaluate her for the syndrome and to present testimony regarding the syndrome at her trial. Under these circumstances, Goff's use of psychiatric testimony waived her privilege against self-incrimination. The state would have had "overwhelming difficulty" rebutting her expert's conclusion that she suffered from the battered woman syndrome without a chance for its own expert to evaluate Goff for the syndrome. Therefore, we find that the compelled psychiatric examination did not violate Goff's privilege against self-incrimination.

{¶28} Our decision is consistent with *State v. Manning* (1991), 74 Ohio App.3d 19, 24, which held "When a defendant introduces psychiatric evidence and places her state of mind [battered woman syndrome] directly at issue, as here, she can be compelled to submit to an independent examination by a state psychiatrist."

{¶29} Goff nevertheless asserts that *Manning* (1) is no longer valid because R.C. 2945.371(J) superseded it, (2) failed to analyze the Ohio statutes that

address compelled psychiatric evaluations, (3) is not binding in our district, and (4) is factually distinguishable from the instant case.

{¶30} We can readily dispose of Goff's assertion that *Manning* is not binding in our district. While her assertion is correct, we may nonetheless find it persuasive authority.

{¶31} Next, we find her contention that R.C. 2945.371(J) superseded *Manning* unavailing. R.C. 2945.371(J) states, "No statement that a defendant makes in an evaluation * * * shall be used against the defendant on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated the defendant or prepared a report pursuant to a referral under this section."

{¶32} The concern of this provision is that a defendant's statements made during a compelled examination not be used during a criminal proceeding "on the issue of guilt." However, this provision does not speak to the issue involved in *Manning*--whether a court may compel a psychiatric examination in a case involving the battered woman syndrome. Consequently, we do not agree with Goff's argument that R.C. 2945.371(J) superseded *Manning*.

{¶33} Goff further asserts that *Manning* was wrongly decided. She claims that the *Manning* court failed to examine the statute governing the admissibility of the battered woman syndrome or to recognize that no Ohio statute specifically authorizes a court to compel a psychiatric examination in a case involving the battered woman syndrome.

{¶34} Although R.C. 2945.371(A) does not specifically authorize a mental evaluation in a case in which the defendant raises the battered woman syndrome in support of a theory of self-defense, the statute appears to contemplate that a court may order an evaluation to determine a defendant's mental condition at the time of the offense charged and specifically authorizes the examiner to consider whether, in an offense involving the use of force against another, the defendant suffered from the battered woman syndrome. See R.C. 2945:371(E) and (F). Thus, a defendant who raises the battered woman syndrome puts her mental state at issue and is subject to a compelled psychiatric examination.

{¶35} Moreover, Goff's argument presupposes that a court's only authority to order a compelled psychiatric examination rests with statutory law. However, a court may have inherent authority to order a compelled psychiatric examination in an appropriate case. See *United States v. Davis* (C.A.6, 1996), 93 F.3d 1286, 1295 (stating that even though neither criminal rules nor statutes authorized trial court to order examination of defendant concerning mental state, "the statutes and rules do not displace extant inherent authority to order a reasonable, noncustodial examination of a defendant under appropriate circumstances"). As *Estelle*, *Buchanan*, and *Powell* state, a court may order a criminal defendant to submit to a compelled psychiatric evaluation in certain situations. None of those cases limit a court's authority to do so only if a statute authorized it. See, also, Fed.R. Crim.P. 12.2 Advisory Committee Notes ("The amendment to Rule 12.2(c)(1) is not intended to affect any statutory or inherent authority a court may have to order other mental examinations.").

{¶36} Goff additionally asserts that *Manning* is factually distinguishable based upon the following circumstances: (1) Manning shot her victim in his head while he was sleeping; and (2) the defense initially consented to the psychiatric evaluation. Goff claims that because her victim was fully conscious and allegedly threatened to kill her and the children immediately before she shot him, then her claim of self-defense is more compelling than the claim of self-defense in *Manning*.

{¶37} We find Goff's attempt to distinguish *Manning* on this basis unpersuasive. Nothing in the *Manning* court's decision indicates that it based its decision upon the circumstances of the crime. Moreover, nothing in the *Manning* court's decision suggests that it relied upon the defendant's initial consent to the evaluation when reaching its decision. Therefore, we find Goff's attempts to distinguish *Manning* unavailing.

{¶38} Goff additionally relies upon several federal court cases to support her argument that the trial court lacked authority to order her to submit to a compelled psychiatric examination. See, e.g., *Davis*, supra, at 1288. However, each of those cases relied upon the pre-2002 amendment version of Fed.R. Crim.P. 12.2 when deciding that a court could not compel a criminal defendant to submit to a psychiatric evaluation in a case other than one involving an insanity defense or one in which the defendant raises his competency to stand trial. The 2002 amendment broadened the rule to specifically authorize compelled psychiatric evaluations when the defendant "intends to introduce expert evidence relating to * * * any other mental condition of the defendant bearing on * * * the

issue of guilt." See Fed.R. Crim.P. 12.2(b) and (c)(1)(B). The 2002 advisory notes specifically state that the rule was amended, in part, to clarify "that a court may order a mental examination for a defendant who has indicated an intention to raise a defense of mental condition bearing on the issue of guilt." See *United States v. Taylor* (E.D.Tenn. Feb. 15, 2008), No. 1:04-CR-160. At the time the cases Goff cites were decided, the rule did not contain this same provision. Instead, the rule provided that "[i]n an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to an examination pursuant to 18 U.S.C. 4241 or 4242."

{¶39} Therefore, we reject Goff's argument that the trial court's order that she submit to a compelled psychiatric examination violated her right against self-incrimination.

B.

{¶40} Goff next contends that the trial court erroneously granted the state's motion to allow the prosecutor to attend Goff's follow-up interview with the state's psychiatrist.

{¶41} Goff fails to explain precisely how the prosecutor's presence at the follow-up interview affected her substantial rights or prejudiced the outcome of her trial. We will not speculate as to how the prosecutor's presence at the follow-up interview affected her substantial rights or prejudiced the outcome of Goff's trial. Thus, any error that resulted from his presence constitutes harmless error. See Crim.R. 52(A).

C.

{¶42} Goff next contends that the trial court erred by denying her motion to preclude Dr. Resnick's testimony because (1) the court never should have ordered her to undergo the compelled examination; (2) the trial court failed to understand the law that applied and improperly compared the situation involving Dr. Resnick's examination to a civil proceeding; and (3) he was unable to form an opinion to a reasonable degree of certainty as to whether Goff suffered from the battered woman-syndrome.

{¶43} For the reasons we discussed above, we reject her argument that the court never should have ordered her to submit to the evaluation.

{¶44} Goff's contention that the trial court employed the wrong analysis when ordering her to submit to a compelled examination is also meritless. It is well-established that we may not reverse a correct judgment simply because the trial court relied upon the wrong analysis. See, e.g., *Joyce v. General Motors Corp.* (1990), 49 Ohio St.3d 93, 96 (stating that "a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof".) As we previously stated, the court reached the correct decision regarding the compelled psychiatric examination. Thus, any error in its analysis is harmless error that did not affect the ultimate outcome.

{¶45} Goff's argument that the court should not have permitted Dr. Resnick's testimony because he was unable to form an opinion within a reasonable degree of scientific certainty as to whether Goff suffered from the battered woman syndrome also is unavailing.

{¶46} The admission or exclusion of relevant evidence rests within the sound discretion of the trial court. *State v. Haines*, 112 Ohio St.3d 393, 2006-Ohio-6711, ¶50. Thus, absent an abuse of discretion, we will not disturb a trial court's decision regarding the admissibility of evidence. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157.

{¶47} Evid.R. 702 governs the admissibility of expert testimony. Testimony regarding the battered-woman syndrome "meets the requirements of Evid.R. 702 in regard to scientific validity and the requirement of specialized knowledge," but must nevertheless "be admitted in conformance with the Ohio Rules of Evidence." *Haines* at ¶42, citing R.C. 2901.06(A) and *State v. Koss* (1990), 49 Ohio St.3d 213.

{¶48} Generally, battered woman syndrome testimony is relevant when used to "explain a[n individual's] actions, such as prolonged endurance of physical abuse accompanied by attempts at hiding or minimizing the abuse, delays in reporting the abuse, or recanting allegations of abuse," because "[s]uch seemingly inconsistent actions are relevant to a witness's credibility." *Id.* at ¶44, quoting *People v. Christel* (1995), 449 Mich. 578, 580. However, "while such testimony can be relevant for explaining a[n individual's] behavior, it cannot be considered relevant if there is no evidence that the [individual] suffers from battered-woman syndrome." *Id.* at ¶46. Thus, the party seeking to introduce such evidence "must lay an appropriate foundation substantiating that the

conduct and behavior of the witness is consistent with the generally recognized symptoms of the battered-woman syndrome, and that the witness has behaved in such a manner that the jury would be aided by expert testimony which provides a possible explanation for the behavior.” *Id.* at ¶47, quoting *State v. Stringer* (1995), 271 Mont. 367, 378.

{¶49} In order to “dispel concerns about unfair prejudice,” a court should not allow an expert to (1) opine that the individual was a battered woman; (2) testify that the alleged batterer indeed was a batterer or is guilty of a crime; or (3) comment on the alleged battered woman’s veracity. *Id.* at ¶56. Instead, the expert may testify regarding the general characteristics of an individual suffering from the battered-woman syndrome. *Id.* The absence of expert opinion regarding whether the individual suffers from the syndrome aids the jury in understanding the characteristics of a battered woman without interfering with its role in determining the credibility of witnesses. *Id.* (stating that “general testimony regarding battered-woman syndrome may aid a jury in evaluating evidence and that if the expert expresses no opinion as to whether the victim suffers from battered-woman syndrome or does not opine on which of her conflicting statements is more credible, such testimony does not interfere with or impinge upon the jury’s role in determining the credibility of witnesses”).

{¶50} Here, the trial court did not abuse its discretion by permitting Dr. Resnick’s testimony despite his inability to reach a conclusion whether Goff suffered from the battered woman syndrome. The 1980 Staff Notes to Evid.R. 702 state: “Although Ohio cases discuss expert testimony in terms of opinion

and it is normal for the expert to express his opinion, in response to facts he has observed or which he assumes to be true, the absence of an opinion does no violence to Ohio practice." See, also, *Galayda v. Lake Hosp. Systems, Inc.* (1994), 71 Ohio St.3d 421, 430 ("An analysis of an expert's testimony in terms of whether it expresses a degree of certainty in excess of fifty percent may not in every case be conclusive of the admissibility of the expert's opinion.").

{¶151} Thus, for the above stated reasons, we reject Goff's argument that the court should have prohibited Dr. Resnick from testifying due to his absence of an opinion within a reasonable degree of medical certainty regarding whether Goff suffered from the battered woman syndrome.

D.

{¶152} Goff further contends that the trial court improperly allowed Dr. Resnick to comment on Goff's credibility.

{¶153} Because the fact-finder retains ultimate responsibility to weigh the credibility of a witness, expert testimony regarding a witness's credibility generally is prohibited. See *State v. Boston* (1989), 46 Ohio St.3d 108, syllabus (stating that an expert may not render an opinion regarding the truthfulness of a child's statements); *State v. Moreland* (1990), 50 Ohio St.3d 58, 62.

{¶154} Here, the trial court did not improperly allow Dr. Resnick to comment on Goff's credibility. At no point during his testimony did Dr. Resnick give any opinion regarding whether Goff was truthful. Instead, he merely related to the court that he was unable to ascertain her truthfulness, which rendered him unable to reach an opinion within a reasonable degree of medical certainty

whether Goff suffered from the battered woman syndrome. Dr. Resnick noted in his testimony that the court would retain the ultimate responsibility to determine Goff's truthfulness. Therefore, we find no merit to Goff's argument.

E.

{¶155} Goff next contends that the trial court wrongly permitted Dr. Resnick to testify regarding the substance of the statements Goff made during the interview, rather than simply relating his observations regarding the battered woman syndrome. She essentially contends that Dr. Resnick improperly testified on the issue of guilt.

{¶156} R.C. 2945.371(J) "permits a defendant's statements during a court-ordered mental evaluation to be used against him on the issue of the defendant's mental condition (e.g., insanity), but prohibits their use to prove the defendant's factual guilt." *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶49, citing *State v. Cooney* (1989), 46 Ohio St.3d 20, 31-32.

{¶157} In *Hancock*, the Ohio Supreme Court considered whether a prosecution expert's testimony regarding the factual statements a criminal defendant made during a mental examination violated the above provision. In that case, the state presented the rebuttal testimony of Dr. Lehrer, who conducted a court-ordered mental examination pursuant to R.C. 2945.371. During direct examination, the prosecutor asked Dr. Lehrer: "Did [the defendant] tell you specifically how he caused the death of [the victim], what he did?" Lehrer testified: "He told me that he tied him up and strangled him." *Id.* at ¶48.

{¶58} The defendant argued that Dr. Lehrer's testimony violated R.C. 2945.371(J). He asserted that his admission to Dr. Lehrer that he had tied up the victim and strangled him must have been "used against [him] on the issue of guilt" in violation of R.C. 2945.371(J) because it was irrelevant to the insanity defense. *Id.* at ¶49.

{¶59} The Ohio Supreme Court rejected the defendant's argument, finding that his admission to Dr. Lehrer was relevant to the insanity defense. Shortly before the testimony at issue, Lehrer had testified that Hancock was not suffering from a serious mental disease or defect when he killed Wagner. In reaching that conclusion, Lehrer had considered 'statements made to me or others that indicate his capacity to know the gravity of his situation and the potential wrongfulness of the acts in question.' Hancock's admission to Lehrer was relevant to 'his capacity to know the wrongfulness of' killing Wagner: the admission indicated that, when he strangled Wagner, he knew what he was doing." *Id.* at ¶50.

{¶60} The *Hancock* court additionally determined that Dr. Lehrer's testimony did not prejudice the defendant. The court observed that the doctor repeated the defendant's admission that "he tied [the victim] up and strangled him. But other evidence overwhelmingly proved that Hancock did just that, and the defense expressly conceded the point at trial." *Id.* at ¶55. The *Hancock* court thus rejected the defendant's argument that the doctor improperly testified on the issue of guilt.

{¶61} Here, a similar analysis applies. Goff took the stand and testified as to the overwhelming majority of the factual statements contained in Dr. Resnick's report. Moreover, like the defendant in *Hancock*, Goff has never denied shooting and killing the victim. Therefore, we find no merit to Goff's argument that the trial court improperly allowed Dr. Resnick to testify regarding factual statements that she made during the evaluation.

F.

{¶62} Finally, Goff contends that the trial court erred by permitting the lead prosecutor to recuse himself from the case, by permitting the prosecutor to add his name to the State's witness list, and by rendering its verdict "one day after admitting it was unfamiliar with the law, taking no time to deliberate or perform legal research after the [S]tate presented its closing."

{¶63} As to Goff's first two arguments, she has not stated how either of the alleged errors had any impact on the outcome of the trial. Moreover, she has not cited any authority to support her position that the court's rulings were improper. Therefore, we summarily reject them.

{¶64} Further, Goff's assertion that we must reverse her conviction because the trial court rendered its verdict without proper deliberation or understanding of the law is without merit. Even if the trial court failed to understand the law and to properly deliberate the issues, we are authorized to uphold its judgment if it reached the correct result, albeit for allegedly erroneous reasons. As we will explain throughout our discussion of Goff's assignments of error, the trial court reached the correct result. Therefore, any alleged failure on its part to

understand the law or to properly deliberate did not affect the outcome of the case.

{¶65} Accordingly, based upon the foregoing reasons, we overrule Goff's first assignment of error.

III.

{¶66} In her second assignment of error, Goff raises three separate arguments.

A.

{¶67} Goff first contends that the trial court improperly ruled that she had a duty to retreat. Specifically, she asserts that the court did not rely upon *State v. Thomas* (1997), 77 Ohio St.3d 323, but instead relied upon the appellate decision in *State v. Thomas* (July 26, 1995), Athens App. No. 94CA1608.

{¶68} Whether the trial court properly applied the law is an issue that we review de novo. See, e.g., *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶18.

{¶69} A person has no duty to retreat when assaulted in his own home. *Thomas* at syllabus. "This exception to the duty to retreat derives from the doctrine that one's home is one's castle and one has a right to protect it and those within it from intrusion or attack. The rationale is that a person in her own home has already retreated 'to the wall,' as there is no place to which she can further flee in safety.." (internal cites omitted.) *Id.* at 327. "Thus, a person who, through no fault of her own, is assaulted in her home may stand her ground,

meet force with force, and if necessary, kill her assailant, without any duty to retreat." *Id.*

{¶70} Here, the trial court did not erroneously determine that Goff had a duty to retreat. First, because Goff was not at her own home, but instead, went to the former residence she shared with her estranged husband, the *Thomas* rule does not apply. By its plain terms, the *Thomas* rule applies when the defendant invokes self-defense while present in the defendant's own home. Goff and the victim had separated and had been living separate and apart for approximately two months on the date of the shooting. There is no evidence that Goff had an equal right to be present at the residence on the night of the shooting. Therefore, the trial court properly applied the law and ruled that Goff had a duty to retreat.

B.

{¶71} Goff further contends that the trial court improperly ruled that evidence regarding the battered woman syndrome was relevant only to the imminent harm element of self-defense. She asserts that the Ohio Jury Instructions permit the fact-finder to consider evidence regarding the battered woman syndrome when determining "whether the defendant was at fault and whether the defendant had reasonable grounds to believe and an honest belief that the defendant was in (imminent/immediate) danger of death or great bodily harm and that the only reasonable means of escape from such danger was by use of deadly force."

{¶72} In Ohio, the affirmative defense of self-defense has three elements: (1) the defendant was not at fault in creating the violent situation, (2) the defendant had a bona fide belief that she was in imminent danger of death or great bodily

harm and that her only means of escape was the use of force, and (3) that the defendant did not violate any duty to retreat or avoid the danger. *Thomas* at 326, citing *State v. Williford* (1990), 49 Ohio St.3d 247, 249, and *State v. Robbins* (1979), 58 Ohio St.2d 74, paragraph two of the syllabus.

{¶73} The battered woman syndrome is not "a new defense or justification." *Haines* at ¶30, quoting *Koss* at 217. Instead, evidence regarding battered woman syndrome is permitted "to prove one element of self-defense." *Id.* R.C. 2901.06(B) permits "expert testimony that the person suffered from [the battered woman] syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question." Similarly, the Ohio Supreme Court has held that expert testimony explaining the characteristics of the battered woman syndrome is admissible to "assist the trier of fact to determine whether the defendant acted out of an honest belief that she is in imminent danger of death or great bodily harm and that the use of such force was her only means of escape." *Koss* at paragraph three of the syllabus. "Accordingly, evidence of the battered woman syndrome serves to support the defendant's argument under the second element of self-defense and does not establish a new defense or justification independent of the defense of self-defense." *Thomas* at 330; see, also, *State v. Weston* (July 16, 1999), Washington App. No. 97CA31; *State v. Mariana* (Dec. 30, 1999), Butler App. No. CA98-09-202 (stating that "*Koss* and R.C. 2901.06(B) allow the admission of

battered woman syndrome testimony to assist the trier of fact in determining the second element of the affirmative defense of self-defense").

{¶74} Here, the trial court did not misapply the above-stated law. The court correctly ruled, in accordance with *Haines* and *Koss*, that evidence regarding the battered woman syndrome was relevant to proving the second element of self-defense—whether the defendant had a bona fide belief that she was in imminent danger of death or great bodily harm and that her only means of escape was by the use of force.

{¶75} Goff nevertheless claims that the Ohio Jury Instructions correctly state the law and that the trial court did not apply this law. The Ohio Jury Instructions suggest the following instruction in a case involving a battered woman: "The expert evidence about the (abuse) (battering) of the defendant by the (deceased) (injured person) does not in itself establish self-defense. You may consider that evidence in deciding whether the defendant was at fault and whether the defendant had reasonable grounds to believe and an honest belief that the defendant was in (imminent) (immediate) danger of death or great bodily harm and that the only reasonable means of escape from such danger was by the use of deadly force. In that event, the defendant had no duty to (retreat) (escape) (withdraw), even though the defendant was mistaken as to the existence of that danger." Ohio Jury Instructions, Section 411.31(7).

{¶76} The Ohio Jury Instructions are pattern instructions and are not binding legal authority. See *State v. Ward*, 168 Ohio App.3d 701, 2006-Ohio-4847; *State v. Maine*, Washington App. No. 04CA46, 2005-Ohio-3742; see, also, *State v.*

Gardner, 118 Ohio St.3d 420, 2008-Ohio-2787, ¶197 (Lanzinger, J., dissenting). Instead, we look to the Ohio Supreme Court's discussion of battered woman syndrome testimony to determine the law. Because the Ohio Jury Instructions are not binding legal authority, Goff's assertion that the above instruction correctly states the law is unavailing. Therefore, we disagree with her argument that the trial court misapplied the law and reached an incorrect decision.

C.

{¶77} Goff additionally contends that the trial court improperly analogized certain legal issues presented in the case to a civil proceeding. For example, she complains that the court wrongly analogized the following two issues to a civil proceeding: (1) the court's power to compel her to submit to a psychiatric evaluation; and (2) the prosecutor's request to be present for Goff's follow-up interview with Dr. Resnick.

{¶78} As we stated earlier, even if the court applied the wrong analysis, we may nonetheless uphold its judgment if it reached the correct decision. See, e.g., *State ex rel. McGrath v. Ohio Adult Parole Auth.*, 100 Ohio St.3d 72, 2003-Ohio-5062, ¶18 ("Reviewing courts are not authorized to reverse a correct judgment on the basis that some or all of the lower court's reasons are erroneous").

{¶79} Here, even if the court applied the wrong analysis to its power to compel Goff to submit to a psychiatric evaluation, as we explained in our discussion of Goff's first assignment of error, the court reached the correct result. Furthermore, even if the court applied the wrong analysis to the prosecutor's

motion to be present at the follow-up interview, as we already explained, Goff cannot establish any prejudice that resulted from the court's decision. Thus, we disagree with Goff's argument that the court's analogies to a civil proceeding deprived her of a fair trial.

{¶80} Accordingly, we overrule Goff's second assignment of error.

IV.

{¶81} In her third assignment of error, Goff essentially contends that the prosecutor engaged in misconduct. She asserts that the prosecutor "repeatedly led its witnesses, injected its own testimony, commented on matters unsupported by the evidence, and stated its belief regarding the guilt or innocence of the accused."

{¶82} Initially, we observe that Goff objected to only one of the alleged instances of misconduct. Thus, she has forfeited all but plain error. See *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, ¶137, citing *State v. D'Ambrosio* (1993), 67 Ohio St.3d 185, 190.

{¶83} Under Crim.R. 52(B), we may notice plain errors or defects affecting substantial rights, even though the defendant failed to bring them to the trial court's attention. "[T]he rule places three limitations on a reviewing court's decision to correct an error despite the absence of a timely objection at trial." *State v. Barnes* (2002), 94 Ohio St.3d 21, 27. First, an error must exist. *Id.*, citing *State v. Hill* (2001), 92 Ohio St.3d 191, 200, citing *United States v. Olano* (1993), 507 U.S. 725, 732. Second, the error must be plain, obvious, or clear.

Id. (citations omitted). Third, the error must affect "substantial rights," which the court has interpreted to mean that "the trial court's error must have affected the outcome * * *." Id., citing *Hill* at 205; *Moreland*, supra, at 62; *State v. Long* (1978), 53 Ohio St.2d 91, paragraph two of the syllabus.

{¶84} "The burden of demonstrating plain error is on the party asserting it. A reversal is warranted if the party can prove that the outcome 'would have been different absent the error.'" *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶17 (citation omitted); see, also, *State v. Countryman*, Washington App. No. 08CA12, 2008-Ohio-6700, ¶13. A reviewing court should use its discretion under Crim.R. 52(B) to notice plain error "with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice." *Long* at paragraph three of the syllabus.

{¶85} Here, Goff has failed to demonstrate plain error. Goff first complains of several leading questions that the prosecutor posed. "A leading question is 'one that suggests to the witness the answer desired by the examiner.'" *State v. Diar*, --- Ohio St.3d ---, 2008-Ohio-6266, ¶149, quoting 1 McCormick, Evidence (5th Ed.1999) 19, Section 6. Under Evid.R. 611(C), "[l]eading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony." Id. However, the trial court has discretion to allow leading questions on direct examination. Id., citing *D'Ambrosio* at 190. Moreover, Evid.R. 611(C) expressly allows leading questions on cross-examination.

{¶86} Here, because Goff cannot demonstrate that any of the leading questions to which she failed to object, either in isolation or combined, affected the outcome of the trial, we readily dispose of those alleged errors. We have reviewed the entire transcript and cannot agree with Goff that the prosecutor "relied so heavily on leading its witnesses that it tainted the very essence of the trial." Instead, the transcript shows that overall, Goff received a fair trial and that despite the prosecutor's use of leading questions, the court reached the correct decision. Furthermore, the prosecutor asked several of the leading questions of which Goff complains while cross-examining witnesses—a practice Evid.R. 611(C) expressly allows.

{¶87} The only leading question to which Goff objected concerned the prosecutor's cross-examination of Deputy Collins regarding the number of guns found in the residence. As stated above, Evid.R. 611(C) permits leading questions on cross-examination.

{¶88} Goff further complains that the prosecutor committed misconduct during closing arguments.

{¶89} "The test for prosecutorial misconduct during closing argument is whether the remarks were improper and, if so, whether they prejudicially affected the accused's substantial rights. To determine prejudice, the record must be reviewed in its entirety." *State v. Frazier*, 115 Ohio St.3d 139, 2007-Ohio-5048, ¶170 (citations omitted). The touchstone of the analysis "is the fairness of the trial, not the culpability of the prosecutor." *Smith v. Phillips* (1982), 455 U.S. 209, 219. We must affirm the conviction if, based on the whole record, the

prosecution's improper comments were harmless beyond any reasonable doubt. See *State v. Zimmerman* (1985), 18 Ohio St.3d 43, 45.

{¶90} Furthermore, "in reviewing a bench trial, an appellate court presumes that a trial court considered nothing but relevant and competent evidence in reaching its verdict. The presumption may be overcome only by an affirmative showing to the contrary by the appellant." *State v. Wiles* (1991), 59 Ohio St.3d 71, 86.

{¶91} Here, Goff did not object to any of the alleged instances of misconduct during closing arguments. Therefore, she has forfeited all but plain error. Because Goff has not shown that the prosecutor's alleged misconduct affected the outcome of the trial, we may not recognize the alleged error. There is no indication that the alleged misconduct improperly appealed to the trial judge's passions or encouraged the judge to disregard the law. Instead, the trial judge, as the trier of fact, looked to the relevant evidence in the record and determined that Goff failed to establish that she shot the victim in self-defense. Overwhelming evidence supports its decision, as we explain in our discussion of Goff's sixth assignment of error, and thus, we find no danger that any alleged prosecutorial misconduct influenced the trial judge's decision. Therefore, Goff has failed to show plain error.

{¶92} Accordingly, we overrule Goff's third assignment of error.

V.

{¶93} In her fourth assignment of error, Goff contends that the trial court issued eight erroneous evidentiary rulings.

{¶94} "The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, ¶172, citing *State v. Sage* (1987), 31 Ohio St.3d 173, paragraph two of the syllabus. Thus, absent an abuse of discretion, we will not disturb a trial court's evidentiary ruling. As we previously explained, an abuse of discretion implies that the trial court acted in an unreasonable, arbitrary, or unconscionable manner.

{¶95} First, we note that of the eight alleged instances of evidentiary error, Goff fails to cite any legal authority to support five of them. Therefore, we would be within our discretion to summarily dismiss her arguments regarding those five alleged errors. See App. R. 16(A)(7); App. R. 12(A)(2); see, also, *State v. Rinehart*, Ross App. No. 07CA2983, 2008-Ohio-5770, ¶37, citing *State v. McGee*, Washington App. No. 05CA60, 2007-Ohio-426, ¶21 ("It is not an appellate court's duty to discover and rationalize the basis for appellant's claim * *."); *Knapp v. Knapp*, Lawrence App. No. 05CA2, 2005-Ohio-7105, ¶45 ("We are not obligated to search for authority to support an appellant's argument as to an alleged error."); see, also, *State v. Collins*, Cuyahoga App. No. 89668, 2008-Ohio-2363, ¶88 (stating that "the appellant carries the burden of establishing his claims on appeal through the use of legal authority and facts contained in the record"). Nonetheless, we briefly address them.

A.

{¶96} Goff first asserts that the trial court should have permitted defense counsel to question witnesses whether she seemed genuinely afraid of the

victim. She contends that such questioning would have helped establish her self-defense claim.

{¶97} The first instance she complains of concerned hearsay testimony and thus, the court properly refused to allow the testimony. Goff's counsel questioned Detective Bollinger: "Isn't it true * * * that with respect to all the people that we've mentioned so far, they all indicated to you at the time that you talked to them that [Goff] was in fear of her husband * * *?" To answer this question, the detective would have had to rely on what others had told him, rather than his own personal observations. The court properly disallowed the question on hearsay grounds.

{¶98} The second instance occurred when defense counsel asked a prosecution witness whether Goff's concern for the well-being of her children appeared to be genuine. The prosecutor objected, and the court sustained the objection. The third instance was a similar question. Although the trial court did not provide a reason for sustaining the prosecutor's objections to these two questions, we find no abuse of the court's discretion. Moreover, several of Goff's defense witnesses testified as to her fear following the domestic violence incident. Thus, even though she was unable to cross-examine prosecution witnesses about her fear of the victim, the court permitted her to present such testimony during the defense case. Therefore, we find that the trial court did not abuse its discretion.

B.

{¶99} Next, Goff contends that the court improperly allowed the State to introduce evidence regarding the victim's character during its case-in-chief. She asserts that the State may not introduce such evidence during its case-in-chief, but may only introduce it in rebuttal after the defense places the victim's character in issue.

{¶100} Evid.R. 404 governs the admission of evidence concerning a victim's character or reputation for a particular character trait. Under Evid.R. 404(A)(2), the prosecution may not introduce evidence regarding the victim's character during its case-in-chief, but may introduce such evidence in rebuttal.

{¶101} Here, the prosecution presented evidence concerning the victim's character during its case-in-chief, in contravention of Evid.R. 404(A)(2). Nonetheless, because the error occurred during a bench trial, we find that the error is harmless beyond a reasonable doubt. At the time Goff interposed the objection, the court noted that her counsel might be correct that the victim's character evidence was improper during the state's case-in-chief, yet allowed the evidence. Because Goff's defense rested upon the victim's status as a batterer, the victim's character would become an issue during her defense. Knowing this, the court, sitting as the fact-finder, could have chosen to streamline the trial by allowing the state to present character evidence during its case-in-chief.

{¶102} Moreover, other prosecution witnesses testified to the victim's character, without objection. For example, Schilling testified that he did not believe the victim dominated Goff. Other witnesses testified that the victim appeared to be a normal father and husband and that they never saw the victim

angry. Instead, prosecution witnesses testified that he was mild-mannered. Goff does not claim error in any of these instances. See *State v. Schmidt* (1979), 65 Ohio App.2d 239, 242-243 (finding that character evidence of the victim was properly admitted during state's case-in-chief when defense counsel did not object). Consequently, the trial court did not abuse its discretion by overruling her objection. Even if the court abused its discretion, because other witnesses testified regarding the victim's character without objection, its error was harmless.

C.

{¶103} Goff next contends that the trial court erred by admitting inadmissible hearsay. Evid.R. 801(C) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay is generally inadmissible unless the evidence falls within one of the recognized exceptions. Evid.R. 802.

{¶104}. The first instance of which Goff complains occurred during Schilling's direct testimony. He stated, in reference to overhearing a phone conversation between the victim and Goff: "Well, he explained that [Goff] wanted to meet with him, and that she had asked him to take this Saturday off, which he was scheduled to work, and he told her he had to work. He indicated this was very disappointing to her, very disappointing. He also indicated that she had been running up and down the road looking for him at the moment they were talking, or had been running up and down the road. At the very moment they were talking, she indicated she was sitting in his driveway."

{¶105} Goff also asserts that the following testimony constituted inadmissible hearsay: “* * * Yes, sir. I offered him a gun. I told him, I said, ‘Bill, I got a couple guns there at the house. If you need a gun up here for protection, you can get a gun.’ I said, ‘I’ll give you one of my guns for protection,’ and he wouldn’t take it. He wouldn’t take it because he said, ‘Jimmy said I can’t take it because of the Restraining Order,’ or whatever it was they had against him. He said, ‘I’m not allowed to be in possession of a firearm.’”

{¶106} Goff did not object to any of the above testimony. Therefore, she has forfeited all but plain error. Goff has not shown how the testimony affected the outcome of the trial. Thus, we decline to recognize it as plain error. Therefore, we find that the trial court did not abuse its discretion.

D.

{¶107} Goff further asserts that the trial court erred by prohibiting defense counsel from asking Dr. Resnick a hypothetical question. As background, Dr. Resnick first agreed with defense counsel that a certain video, by itself, did not substantiate a domestic violence situation. Second, Dr. Resnick theoretically agreed that the video plus the testimony of someone in the room who observed events outside the range of the camera may be enough to substantiate a domestic violence situation. Counsel then asked, “And when you take all that into consideration, along with the video, that may substantiate beyond a reasonable doubt that a domestic violence incident did occur in that room, correct?” At that point, the prosecutor objected and defense counsel re-phrased the question as, “It may substantiate to your satisfaction that a domestic violence

did occur?" The prosecutor again objected, asserting that the question was "too hypothetical." The court sustained the objection.

{¶108} Goff has failed to show how the trial court abused its discretion by refusing to allow defense counsel to pose the hypothetical. The court reasonably could have determined that the question required the assumption of too many facts not in evidence. Therefore, we find that the trial court did not abuse its discretion.

E.

{¶109} Goff next contends that the trial court erred by ruling that she had to testify before her expert could testify regarding the battered woman syndrome. She asserts that defense counsel, after consulting with the client, must retain the decision regarding when to present testimony and thus, that the trial court's decision deprived Goff of her right to decide when to testify at trial. She cites *Brooks v. Tennessee* (1972), 406 U.S. 605 to support this argument.

{¶110} In *Brooks*, a state statute required a criminal defendant who chose to take the stand to do so before the defendant could present any other defense witnesses. During Brooks' criminal trial, defense counsel moved the court to allow Brooks to testify after the other defense witnesses testified. The trial court denied this motion, finding that it could not deviate from the statute. The defense ultimately called two witnesses and Brooks did not testify.

{¶111} On appeal to the United States Supreme Court, Brooks asserted that the statutory requirement that a defendant testify first violates the United States Constitution. The Court agreed, concluding that the statute infringed upon a

defendant's right against self-incrimination. The court stated that the statute was "an impermissible restriction on the defendant's right against self-incrimination, 'to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty * * * for such silence.'" *Id.* at 609, citing *Malloy v. Hogan*, 378 U.S. 1, 8 (1964).

{¶112} The court also found that the statute violated a defendant's right to due process. The court explained, "Whether the defendant is to testify is an important tactical decision as well as a matter of constitutional right. By requiring the accused and his lawyer to make that choice without an opportunity to evaluate the actual worth of their evidence, the statute restricts the defense--particularly counsel--in the planning of its case. Furthermore, the penalty for not testifying first is to keep the defendant off the stand entirely, even though as a matter of professional judgment his lawyer might want to call him later in the trial." *Brooks* at 612-613.

{¶113} Because in *Brooks*, the defendant did not take the stand, we question whether it applies to the facts here, where Goff did take the stand. However, even if the trial court's decision was improper under *Brooks*, Goff has not shown how the decision prejudiced her case. She does not claim that her testimony would have been any different had her expert testified before she did. Furthermore, our review of the record shows that while Goff's counsel initially objected to this procedure, her counsel later agreed to it. Therefore, we find that the trial court did not abuse its discretion.

F.

{¶114} Goff next contends that the trial court erred by failing to record all "critical stage proceedings." She further asserts that there is no evidence that she was present at these hearings or that she waived her right to be present at the hearings.

{¶115} We address Goff's argument regarding the court's failure to record certain proceedings in our discussion of Goff's ninth assignment of error.

{¶116} With respect to Goff's claim that she was not present at certain proceedings, she does not specify the proceedings from which she was absent or cite any authority to show that her absence from these proceedings was of constitutional significance such that we must reverse her conviction. Additionally, she summarily raises this argument. For these reasons, we forthwith dismiss this argument.

G.

{¶117} Goff further contends that the trial court erred by admitting hearsay testimony over objection. She claims that the following testimony constituted inadmissible hearsay: "He explained that [Goff] wanted to meet with him and was looking for him." When defense counsel objected, the prosecutor argued that the testimony was not hearsay because it was not being offered for the truth of the matter asserted, but instead, to show the victim's state of mind.

{¶118} "To constitute hearsay, two elements are needed. First, there must be an out-of-court statement. Second, the statement must be offered to prove the truth of the matter asserted. If either element is not present, the statement is not 'hearsay.' In *State v. Thomas* (1980), 61 Ohio St.2d 223, 232, this court

held that testimony which explains the actions of a witness to whom a statement was directed, such as to explain the witness' activities, is not hearsay. Likewise, it is non-hearsay if an out-of-court statement is offered to prove a statement was made and not for its truth, to show a state of mind, or to explain an act in question." (Internal cites omitted.) *State v. Maurer* (1984), 15 Ohio St.3d 239, 262.

{¶119} Here, the trial court reasonably could have determined that the testimony was not offered for the truth of the matter asserted, but instead, to show the victim's state of mind and to explain the reason why he went to Schilling's home. Thus, the court did not abuse its discretion by allowing the testimony.

H.

{¶120} Finally, Goff contends that the trial court erred by permitting the State to ask Dr. Miller, on cross-examination, and Dr. Resnick, on direct examination, questions requiring a legal conclusion. She asserts that the following question to Dr. Miller was improper, "And you testified in your opinion is that she had reason to believe and reasonably believed that she and her children were in imminent danger of death or serious bodily injury. Do you understand where the Battered Woman Syndrome fits into the law in Ohio in a murder case?" Goff also contends that the following question to Dr. Resnick was improper, "Even if a person is found by a psychiatrist, and Doctor Miller found that, you didn't, but he did, to be a battered woman, is it something that can occur that the battered

woman can elect to kill the husband outside of the Battered Woman Syndrome as a cause factor [sic]?"

{¶121} We find that both questions did not call for a legal conclusion. Instead, the prosecutor asked Dr. Miller whether he understood how the battered woman syndrome applied in Ohio. And, the prosecutor asked Dr. Resnick for his professional opinion whether a woman who suffers from the battered woman syndrome could nonetheless kill her husband for a reason other than being a battered woman. Therefore, we find that the trial court did not abuse its discretion.

{¶122} Accordingly, we overrule Goff's fourth assignment of error.

VI.

{¶123} In her fifth assignment of error, Goff contends that the trial court erred by permitting Dr. Resnick to testify regarding her motive and state of mind.

{¶124} We again note that the trial court has broad discretion regarding the admission of evidence.

{¶125} "In Ohio, to prove self-defense it must be established that the person asserting this defense had " * * * a bona fide belief that he [she] was in imminent danger of death or great bodily harm and that his [her] only means of escape from such danger was in the use of such force." (Emphasis added.) (Bracketed material sic.) *Koss* recognized that since Ohio has a subjective test to determine whether a defendant properly acted in self-defense, the defendant's state of mind is a crucial issue." (internal cites omitted.) *Haines* at ¶30; see, also, *Mariana*

(stating that a defendant's mens rea is at issue to the extent it relates to the second element of self-defense).

{¶126} Here, before Dr. Resnick testified, the defense witness, Dr. Miller testified. The defense extensively questioned Dr. Miller regarding the substance of Dr. Resnick's report, including the statements he made concerning Goff's possible motives for shooting the victim. Thus, the defense directly placed these statements, to which Dr. Resnick later testified, directly at issue.

{¶127} Moreover, as *Haines* explicitly states, the defendant's state of mind is a crucial issue in a self-defense case based upon the battered woman syndrome. Thus, the state could properly question Dr. Resnick regarding Goff's state of mind to help rebut Goff's claim of self-defense. Furthermore, Goff placed her state of mind at issue by questioning her own expert regarding her state of mind. Therefore, the trial court did not abuse its discretion by allowing this testimony.

{¶128} Accordingly, we overrule Goff's fifth assignment of error.

VII.

{¶129} Goff contends in her sixth assignment of error that the trial court's finding that she did not act in self-defense is against the manifest weight of the evidence.

{¶130} When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully examine the entire record, weigh the evidence, and consider the credibility of witnesses. *State v. Issa* (2001), 93 Ohio St.3d 49, 67. The reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. See

State v. DeHass (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Once the reviewing court finishes its examination, the court may reverse the judgment of conviction only if it appears that the fact-finder, in resolving conflicts in evidence, "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶131} If the prosecution presented substantial evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. See *State v. Eley* (1978), 56 Ohio St.2d 169, syllabus. A reviewing court should find a conviction against the manifest weight of the evidence only in the "exceptional case in which the evidence weighs heavily against conviction." *Thompkins* at 387, quoting *Martin* at 175; see, also, *State v. Lindsey* (2000), 87 Ohio St.3d 479, 483.

{¶132} Furthermore, we must give deference to the trier of fact's credibility determinations. "It is the trier of fact's role to determine what evidence is the most credible and convincing. The fact finder is charged with the duty of choosing between two competing versions of events, both of which are plausible and have some factual support. Our role is simply to insure the decision is based upon reason and fact. We do not second guess a decision that has some basis in these two factors, even if we might see matters differently.' We leave the issues of weight and credibility of the evidence to the fact finder, as long as there

is a rational basis in the record for their decision. We defer to the fact finder on these issues because the fact finder "is best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of proffered testimony." (internal cites omitted.) *State v. Babu*, Athens 07CA36, 2008-Ohio-5298, ¶31.

{¶133} Here, substantial evidence supports the trial court's decision that Goff failed to prove that she shot the victim in self-defense.

{¶134} Self-defense is an affirmative defense that the defendant must prove by a preponderance of the evidence. R.C. 2901.05(A); *State v. Palmer* (1997), 80 Ohio St.3d 543, 563; *State v. Martin* (1986), 21 Ohio St.3d 91, syllabus, aff'd *Martin v. Ohio* (1987), 480 U.S. 228. To prove self-defense, the evidence must show that: (1) the accused was not at fault in creating the situation that gave rise to the situation; (2) the accused had a bona fide belief that she was in imminent danger of harm and that her only means of escape from such danger was by the use of force; and (3) the defendant must not have violated any duty to retreat or to avoid the danger. *State v. Williford* (1990), 49 Ohio St.3d 247, 249; *State v. Robbins* (1979), 58 Ohio St.2d 74, paragraph two of the syllabus. Self-defense "is placed on the grounds of the bona fides of defendant's belief, and reasonableness therefor, and whether, under the circumstances, he exercised a careful and proper use of his own faculties." *State v. Sheets* (1926), 115 Ohio St. 308, 310. Because of the third element, in most cases, "a person may not kill in self-defense if he has available a reasonable means of retreat from the

confrontation." *Williford* at 250, citing *State v. Jackson* (1986), 22 Ohio St.3d 281; *Robbins* at 79-81; *Marts v. State* (1875), 26 Ohio St. 162, 167-168.

{¶135} Here, the trial court's finding that Goff failed to prove, by a preponderance of the evidence, that she acted in self-defense is not against the manifest weight of the evidence. Although Goff devotes much of her argument recounting the allegedly horrific conditions she endured throughout her marriage to establish that she was in imminent fear of bodily harm to herself or her children, she neglects to argue whether she was at fault in creating the situation or whether she violated a duty to retreat. Substantial evidence supports the trial court's finding that Goff was at fault in creating the situation. She chose to go to the victim's home on the night of the shooting, knowing that the victim was not expecting her. The trial court was free to disbelieve her testimony that she needed to go to the victim's home so that she could protect the children from being killed. The trial court justifiably could have discredited all of her testimony that the victim had been threatening to kill her and the children. Without such evidence, Goff had no justifiable reason to confront the victim on the night of the shooting. She had no reason to be at his home. Thus, she was at fault in creating the situation. She could have chosen not to go to his house with two loaded weapons.

{¶136} Furthermore, substantial evidence supports the trial court's finding that Goff violated a duty to retreat or to avoid the danger. As we previously recognized, Goff had a duty to retreat because she was not attacked in her own home. Instead, she went to her estranged husband's home. Goff claimed that

once inside the home, she thought the victim was going to kill her. However, law enforcement officers previously had removed all guns from his home and no weapons were found inside his home after the shooting. Moreover, Goff did not claim to see a gun on the victim before she shot him.

{¶137} All in all, the evidence does not substantiate Goff's claim of a helpless woman caught in a situation with no escape. The trial court found much of Goff's testimony, especially the victim's alleged animal mutilation, incredible.

Additionally, the state discredited Goff's story by noting inconsistencies in her various accounts of the reason she shot the victim and by discrediting her testimony. In finding that Goff did not act in self-defense, the trial court apparently discredited much of her testimony. The exact reason for Goff's shooting may never be known, but the credible evidence does not reasonably support a finding that she shot the victim in self-defense.

{¶138} Accordingly, we overrule Goff's sixth assignment of error.

VIII.

{¶139} Goff contends in her seventh assignment of error that the record does not contain sufficient evidence to support her conviction. Specifically, she claims that the state failed to prove, beyond a reasonable doubt, that "Goff employed a specific scheme to implement a calculated decision to kill her husband." Goff asserts that simply because she was armed on the night of the shooting does not mean that she acted with prior calculation and design.

{¶140} The function of an appellate court when reviewing a case to determine whether the record contains sufficient evidence to support a criminal conviction

"is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt."

State v. Smith, Pickaway App. No. 06CA7, 2007-Ohio-502, ¶33, citing *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, superseded by constitutional amendment on other grounds; see, also, *Jackson, v. Virginia* (1979), 443 U.S. 307, 319.

{¶141} The sufficiency-of-the-evidence test "raises a question of law and does not allow us to weigh the evidence." *Smith* at ¶34, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Instead, the sufficiency-of-the-evidence test "gives full play to the responsibility of the trier of fact to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Id.*, citing *Jackson* at 319. This court will "reserve the issues of the weight given to the evidence and the credibility of witnesses for the trier of fact." *Id.*, citing *State v. Thomas* (1982), 70 Ohio St.2d 79, 79-80; *DeHass* at paragraph one of the syllabus.

{¶142} R.C. 2903.01 defines the offense of aggravated murder: "No person shall purposely, and with prior calculation and design, cause the death of another[.]"

{¶143} "There is no bright-line test to determine whether prior calculation and design are present. Rather, each case must be decided on a case-by-case

basis." *State v. Braden*, 98 Ohio St.3d 354, 2003-Ohio-1325, ¶61. "Where evidence adduced at trial reveals the presence of sufficient time and opportunity for the planning of an act of homicide to constitute prior calculation, and the circumstances surrounding the homicide show a scheme designed to implement the calculated decision to kill, a finding by the trier of fact of prior calculation and design is justified." *State v. Cotton* (1978), 56 Ohio St.2d 8, paragraph three of the syllabus.

{¶144} While "[n]either the degree of care nor the length of time the offender takes to ponder the crime beforehand are critical factors in themselves," momentary deliberation is insufficient. *State v. D'Ambrosio* (1993), 67 Ohio St.3d 185, 196[,] quoting the 1973 Legislative Service Commission Comment to R.C. 2903.01. Prior calculation and design "embod[ies] the classic concept of the planned, cold-blooded killing while discarding the notion that only an instant's prior deliberation is necessary." *State v. Taylor* (1997), 78 Ohio St.3d 15, 19, 1997-Ohio-243, certiorari denied, 522 U.S. 851. Rather than instantaneous deliberation, prior calculation and design requires a scheme designed to implement the calculated design to kill. *Cotton* at 11. "Prior calculation and design requires 'some kind of studied analysis with its object being the means by which to kill.'" *State v. Ellenwood* (Sept. 16, 1999), Franklin App. No. 98AP-978, quoting *State v. Jenkins* (1976), 48 Ohio App.2d 99, 102.

{¶145} The state can prove "prior calculation and design" from the circumstances surrounding a murder in several ways: (1) evidence of a preconceived plan leading up to the murder, (2) evidence of the perpetrator's

relationship with the victim, including evidence of any strains in that relationship, or (3) evidence that the murder was executed in such a manner that circumstantially proved the defendant had a preconceived plan to kill. See, e.g., *Taylor*, supra, at 19; *State v. Cassano*, 96 Ohio St.3d 94, 2002-Ohio-3751, certiorari denied (2003), 537 U.S. 1235; *State v. Goodwin* (1999), 84 Ohio St.3d 331; *State v. Campbell* (2000), 90 Ohio St.3d 320. "[P]rior calculation and design can be found even when the killer quickly conceived and executed the plan to kill within a few minutes." *State v. Coley* (2001), 93 Ohio St.3d 253, 264, citing *State v. Palmer* (1997), 80 Ohio St.3d 543, 567-568, and *Taylor* at 20-23.

{¶146} Here, the State presented sufficient evidence to prove that Goff acted with prior calculation and design. The day before the shooting, Goff went to her mother's home to obtain a second weapon. At least several hours before the shooting, Goff had planned to go, unannounced, to the victim's house. Although she claims that she planned to go there so that he would not kill her or the children, the trial court rightly could have discredited this testimony, especially given her conflicting reasons for going to the victim's house. She claimed that she went there so that he would just kill her and not the children, so that she could talk him out of killing her and the children, and so that she could scare him. However, she ended up doing none of these things, but instead fatally shot him fifteen times and did not miss a single shot. Moreover, she and the victim had a strained relationship. This evidence is more than sufficient to prove prior calculation and design. Circumstantially, the evidence tends to show that Goff gave more than momentary deliberation to shooting the victim.

{¶147} Therefore, we find that, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime of aggravated murder proven beyond a reasonable doubt.

{¶148} Accordingly, we overrule Goff's seventh assignment of error.

IX.

{¶149} Goff contends in her eighth assignment of error that she did not receive effective assistance of counsel. She claims that counsel rendered ineffective assistance of counsel in five respects: (1) counsel failed to request Crim.R. 16(B)(1)(g) material; (2) counsel failed to file a Crim.R. 29 motion at the close of the case; (3) counsel failed to object to hearsay testimony; (4) trial counsel joined in the state's motion finding that as a result of Goff's husband's death, the attorney-client privilege was waived and her husband's domestic attorney could testify; and (5) counsel failed to object to the prosecutor's improper closing argument.

{¶150} "An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense." *Wiggins v. Smith* (2003), 539 U.S. 510, 511, citing *Strickland v. Washington* (1984), 466 U.S. 668, 687; see, also, *State v. Bradley* (1989), 42 Ohio St.3d 136. "If one prong of the *Strickland* test disposes of a claim of ineffective assistance of counsel, we need not address both aspects." *State v. Dickess*, 174 Ohio App.3d 658, 678, 2008-Ohio-39, ¶63, *State v. Martin*, Scioto App. No. 06CA3110, 2007-Ohio-4258.

{¶151} : "To establish deficient performance, a petitioner must demonstrate that counsel's representation 'fell below an objective standard of reasonableness.'"

Wiggins at 521, quoting *Strickland* at 688. The United States Supreme Court has refrained from "articulat[ing] specific guidelines for appropriate attorney conduct and instead ha[s] emphasized that "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." *Id.*, quoting *Strickland* at 688. Thus, debatable trial tactics and strategies do not constitute ineffective assistance of counsel. See, e.g., *State v. Clayton* (1980), 62 Ohio St.2d 45, 49, certiorari denied (1980), 449 U.S. 879.

{¶152} Moreover, when addressing an ineffective assistance of counsel claim, the reviewing court should not consider what, in hindsight, may have been a more appropriate course of action. See *State v. Phillips* (1995), 74 Ohio St.3d 72, 85, (a reviewing court must assess the reasonableness of the defense counsel's decisions at the time they are made). Rather, the reviewing court "must be highly deferential." *Strickland* at 689. As the *Strickland* court stated, a reviewing court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689.

{¶153} In evaluating whether claimed deficient performance prejudiced the defense, the relevant inquiry is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686. Thus, "[t]he defendant must show that

there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694; see, also, *Bradley* at paragraph three of the syllabus ("To show that a defendant has been prejudiced by counsel's deficient performance, the defendant must prove that there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different").

{¶154} Here, Goff does not specifically assert how any of the alleged deficiencies prejudiced her. Rather, she simply lists the five claimed instances of ineffective assistance of counsel, without any substantive argument. She cites no authority in support of the five instances of ineffective assistance of counsel. Under these circumstances, we decline to address the claims in detail. Instead, we find that even if any of the five instances constituted deficient performance, counsel's allegedly deficient performance did not prejudice Goff's defense. The record shows that Goff received a fair trial and that the result was reliable. Nothing in the record indicates that the outcome of the trial would have been any different but for counsel's alleged errors.

{¶155} Accordingly, we overrule Goff's eighth assignment of error.

X.

{¶156} Finally, Goff contends in her ninth assignment of error that the trial court erred by failing to record all the proceedings in the case.

{¶157} Under Crim.R. 22, "[i]n serious offense cases all proceedings shall be recorded." However, a trial court's failure to adhere to the Crim.R. 22 recording

requirements does not require an automatic reversal of a criminal defendant's conviction. See, e.g., *State v. Palmer* (1997), 80 Ohio St.3d 543, 554. A reviewing court will not reverse a defendant's conviction even though a trial court failed to adhere to Crim.R. 22 unless the defendant demonstrates on appeal that: (1) he or she either requested that the trial court record the proceeding at issue or objected to the trial court's failure to comply with the recording requirements; (2) he or she made an effort on appeal "to comply with App.R. 9 and to reconstruct what occurred or to establish its importance"; and (3) "material prejudice resulted from" the trial court's failure to record the proceedings at issue. *Palmer* at 554. The Ohio Supreme Court has "repeatedly refused to reverse convictions or sentences on the basis of unrecorded conferences when a defendant has not taken these steps." *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, ¶160, citing *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, ¶¶182-184; *State v. Nields* (2001), 93 Ohio St.3d 6; 27; *Goodwin*, supra, at 340.

{¶158} Here, Goff has not demonstrated that: (1) she either requested that the trial court record the proceedings at issue or objected to the trial court's failure to comply with the recording requirements; (2) she made an effort on appeal "to comply with App.R. 9 and to reconstruct what occurred or to establish its importance"; or (3) "material prejudice resulted from" the trial court's failure to record the proceedings at issue. Consequently, because she failed to establish any of the foregoing three factors, we will not reverse her conviction due to the trial court's failure to record certain proceedings.

{¶159} Accordingly, we overrule Goff's ninth assignment of error: ...

XI.

{¶160} In conclusion, we overrule all nine of Goff's assignments of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and Appellant pay the costs herein taxed. 2:37

The Court finds there were reasonable grounds for this appeal. LIKE PATTERSON

It is ordered that a special mandate issue out of this Court directing the Lawrence County Common Pleas Court to carry this judgment into execution. CLERK OF COURTS LAWRENCE COUNTY

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

Harsha, J.: Concurs in Judgment and Opinion as to remainder of Opinion.
Concurs in Judgment Only as to Assignment of Error I, Part C.
Abele, J.: Concurs in Judgment and Opinion.

For the Court

BY: Roger L. Kline
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

APPENDIX

On April 30, 2007, a twelve-day bench trial began. Lawrence County Sheriff's Detective Aaron Bollinger testified that he responded to the Goff residence on the date of the fatal shooting. He spoke with Goff on two separate occasions: (1) before he viewed the inside of the residence where Goff had shot the victim; and (2) following his inspection of the residence. Detective Bollinger stated that upon his initial interaction with Goff, Goff appeared upset and "was making some sounds," but he never saw her shed any tears. Goff told the detective that she shot the victim because she did not want the victim "to hurt the kids."

Detective Bollinger asked Goff to explain to him what had led to the shooting. Goff stated that the victim called her the day before the shooting and told her that he had discovered where she and the children had been hiding during the two months that the parties had been separated. She claimed that since the parties' separation, she has been "running all over the place trying to get away from him." Goff told the detective that she had obtained a protection order, but the victim still kept calling her. She stated that the victim told her that he had found her and that he was going to kill her and the children on the following Monday.

Goff told the detective that she last talked to the victim the night before the shooting. She stated that he called her two times and tried to persuade her to "drop the charges and come back cause then he said he wouldn't kill us." She

told him that she would not do that. She claimed that he had been telling her "for years" that he was going to kill the children.

Goff stated that during the second phone call, at approximately 9:30 p.m., the victim stated that he wanted to meet with her and the children. She attempted to persuade him to meet with her alone, and not the children. He told Goff that he could not "do that," but instead he needed to meet "all three at the same time." Goff pleaded with him to not "hurt [the children], just hurt me." She claimed the victim "said no." Goff then explained to Detective Bollinger that the victim told her he knew where she was and "he said he was going to kill me on Monday. That he was going to find me, that he was off work, and he said he was going to kill me, it didn't matter where I went because he was going [to] spend all day and he was going to kill me. * * * * He said nobody would do anything because he had called and they hadn't done anything and he had all those guns in the house and they hadn't done anything and he had hurt the baby and they hadn't done anything and he had hurt me and they hadn't done anything and he said he had found me at the shelters and they hadn't done anything. He said you know I'm going to do it. * * * * He said he wouldn't pay child support again because there wouldn't be any children to pay it to. I said why would you say that about your babies? He said he didn't care about them. He said he just wanted his house. He said why didn't, why didn't I just not have kids? He said why didn't we just leave it like it was? I said Bill, they're here. I said don't you love your kids? He said I just need to see you all three together. I said no. Just meet me, just take me. He said no, I know where you're at and I'm going to kill

you. Oh my God. I kept telling him the last call when I called him back please, please meet just me. He kept saying I can't, I can't, I can't. I got to meet all three of you together. I can't meet just you. I said anywhere, Bill. I'll even come to the house. I said I know that's stupid and you'll probably kill me but I'll even come to the house. Please just don't hurt the kids. He kept saying I can't, I can't. Oh my God."

Goff told the detective that she decided to go to the victim's residence the evening of the shooting so that he would just kill her and so the children would be safe. She thought that law enforcement officers would arrest him for killing her before he could locate the children and kill them. Goff informed Detective Bollinger that she left the children at her grandparents' house and then drove her grandparents' car to her father's house, which is next door to the victim's residence. She stated that she parked the car under her father's carport and took two loaded weapons with her to the victim's residence. She claimed that the victim had told her throughout the marriage that she should always carry two guns "because one might jam." Goff thought that she would arrive at the victim's residence before he returned home from work, but when she arrived, he already was home. She stated that she was scared and thought: "I'll just park at dad's house and I'll walk over because then maybe I'll have time to knock on the door before he gets a gun and shoots me. Then I thought no, I can't just walk over there because he'll shoot me in the middle of the grass."

She walked to the victim's house and knocked on the front door. Goff stated that the victim opened the door and stated: "[H]ell, I can't believe you

have the guts to come to the house. I didn't think you'd really do it. He said get in here. So I walk in and he shut the door and he stood in front of the door and he said you know I'm going to kill you. He said you know I'm going to kill you and I know you're [sic] kids are at your grandparents["] house right now and then I'm going to go kill them and there's nothing you can do about it. So, I thought, oh my God, he's really going to do it. I pulled out the gun * * * * and I like held it down at my side and I said just let me leave. I said if you're really that serious about killing us just let me leave and he said you know I'm not going to let you out of here. He laughed and he said you won't shoot me, you won't kill me, you don't have the guts. I lifted up the gun and I shot it and I tried to pull the trigger again and it wouldn't pull. It was just like he said. It was just like he said, he told me that's what would happen. I pulled as hard as I could and it wouldn't shoot." Goff stated that the gun discharged the first time, but she was not sure what she hit. She pulled the other gun out of her left pocket and pulled the trigger. She kept shooting until "it wouldn't shoot anymore." She stated that she then did not know what to do, so she picked up the other gun and pulled it back "and something came out of it." She kept shooting the gun until it stopped working. She saw the victim laying on the floor. She was not sure if he was moving and she was scared. She used the phone to dial 911 "because I was afraid he was going to get up and shoot me and I knew I didn't have anymore bullets." She did not see the victim with a gun, but he had a leather case on the side of his pants. After she called 911, she placed the guns on the piano bench. Although she did not see him moving, she was still frightened that he could harm her. Goff

explained that the victim had told her "that if anything ever happened he'd play dead and he'd get me and he'd kill me."

Detective Bollinger then ended the conversation and went to view the crime scene. After viewing the crime scene, he returned to ask Goff additional questions. Goff told the detective that when she first shot the victim, he was standing with his back to the door and had his hand on the door knob. She is not sure where the first shot hit him, but she thought "it must have hit up kind of high-ish because he didn't go down, he kind of went, his arms went up. I think. And he turned and he stepped so that he was then facing the double window there. He turned over into that corner. Because the gun wouldn't fire again." Goff stated that she had been standing close to the kitchen door and piano when shooting the victim. She stated that she was trying to walk towards the door. When she started shooting with the second gun, the one that worked, the victim had his back to the window and his arm towards the door. She thinks he fell to the ground after the first or second shot. After he fell to the ground, she remained standing in the same place and emptied the first gun. She then used the second gun and emptied it. She told the detective that the victim had told him that if anyone ever shot him, he'd play dead and then, when the shooter attempted to step over him, he would grab the shooter's ankles and kill him or her. She thought that the victim was simply playing dead. She told the detective that her intention that evening had been "to get [the victim] to either calm down and not hurt my babies or just hurt me so that you, the police, would know he was serious and my babies would be safe." Goff explained that the victim stated "he was

going to kill me first and he did laugh at me and say that I knew that he wasn't going to let me go and that I knew he was going to kill those babies. And that's when I pulled the gun out and held it down. And he laughed at me and told me I didn't have the guts to shoot him. He said you know you won't shoot me, you know you won't kill me, you don't have the guts. So I lifted the gun up and he was laughing in my face. Telling me he was going to kill the kids. And that's when I pulled the first time and then it wouldn't pull again."

Earl P. Schilling, who lives two miles from the Goff residence, testified that he knew the victim and his family well and had a good relationship with the victim. Schilling testified that he never knew the victim to be quick to anger and that he was shocked when he heard that the victim had been arrested for domestic violence. He stated that the victim never raised his voice and he never saw him angry at anyone. Schilling did not believe that the victim dominated Goff, but instead thought that Goff "was boss."

Schilling testified that on March 17, 2006, the victim called him and asked if he could stay at his house for a while. The victim explained to Schilling that Goff wanted to meet with him, but he did not want to for fear of violating the protection order. Schilling obliged and allowed the victim to park his vehicle in the garage so that it would be out of sight from Goff, should she happen to be in the area looking for him. Schilling stated that the victim remained at his home until 10:30 p.m., and that during that time, Goff called twice. Schilling testified that the victim did not answer the phone the first time Goff called, but decided to speak with her the second time. Although Schilling did not hear the victim make

any threats to Goff, he did not hear the entire conversation. Schilling stated that when Goff called the second time, the victim excused himself from the room and continued the conversation out of Schilling's presence.

After the victim finished the phone conversation, he returned to the room with Schilling. The victim told Schilling that Goff wanted to meet with him. He stated that Goff requested the victim to take the following day off from work so that they could meet. The victim told Goff that he had to work and he indicated to Schilling that she was "very" disappointed he would not meet with her. The victim also told Schilling that Goff had been driving up and down the road looking for him that evening and that while they had been talking, she had been sitting in his driveway.

Schilling testified that the victim stayed at his house until approximately 10:30 p.m. At that time, Schilling drove the victim to his home to make sure Goff was not waiting for him and then drove him back to pick up his car to take home.

Don Fraley, a life-long friend to the victim, testified that the victim was not an argumentative person and that he never saw him acting mean toward another person. He stated that the victim was "an even keel kind of guy."

James Turner, a close family friend to the victim, testified that he thought Goff was the dominant figure in the marriage. Turner stated that after the alleged domestic violence incident, he visited the victim at his home. Turner knew that the victim no longer had any guns and offered to give the victim a gun for protection. Turner stated that the victim refused his gun offer and told Turner that the protection order prohibited him from possessing a gun.

Frederick Fisher--an attorney with Mark McCown, who represented the victim in the domestic violence and divorce proceedings--testified that the victim contacted him late in the afternoon on March 17, 2006, to inquire whether he could fulfill Goff's request to meet without violating the protective order. Fisher advised him not to meet with Goff until Fisher could contact her attorney.

Jessé Holcomb testified that he lives in the house next door to the victim and has known the victim since he was a young boy. Holcomb believed Goff and the victim to be a happy, normal couple. He stated that he did not notice any behavior to indicate Goff was frightened of the victim. He testified that he observed the victim playing with the children outside and that he played with them like any father would. Holcomb believed that the victim enjoyed the children. Holcomb testified that he had observed Goff leave the house without the victim on more than one occasion. Holcomb's wife, Mona, likewise testified that Goff did not seem afraid of the victim and that she came and went as she pleased.

The state then presented the testimony of a forensic expert who examined the guns. He test-fired the two guns Goff used in the shootings and did not detect any problems. Following his testimony, the state rested and Goff moved for a judgment of acquittal. She argued that the state failed to introduce any evidence regarding prior calculation and design. The state asserted that evidence that she took two loaded guns to the house she no longer lived in and fired fifteen rounds sufficiently showed prior calculation and design. The court overruled the motion.

In her defense, Goff did not dispute that she shot the victim, but claimed that she did so in self-defense. She claimed that because she suffered from the battered woman syndrome, she reasonably believed that she was in imminent danger at the time she shot the victim. She further presented testimony suggesting that the victim had been poisoning her with some substance that caused her to suffer from various unexplained medical conditions.

Goff's mother, Karen Gearheart, stated that shortly after she and her family moved to the house next door to the victim, Goff began experiencing unexplained medical problems that continued into Goff's marriage. Gearheart explained that one time, the victim had offered her a Mountain Dew, something that he had never done before. Later that day while driving home, she started feeling car sick. Upon arriving home, she became violently ill. Gearheart also claimed that the victim poisoned some of her animals with anti-freeze.

Gearheart stated that on January 18, 2006, Goff called her and was crying. Goff told Gearheart that the victim had threatened to kill her and the children. Goff further told Gearheart that the victim had kicked the youngest child (who had recently had abdominal surgery) in the stomach, causing the child to fly across the room. Goff informed Gearheart that the victim previously had stated that he would kill Goff, but stated that he had never before threatened to kill the children. Gearheart testified that she told Goff to call the police. Gearheart stated that at first, Goff resisted calling the police, but she eventually relented.

Gearheart then went to the house to help Goff. When she arrived, a sheriff's deputy had already arrived and Goff was upset. Gearheart stated that

the officers searched the home and discovered sixty-three guns. She stated that the officers initially placed the guns in Deputy Collins' police cruiser. However, a sergeant later directed the law enforcement officers not to confiscate the guns. Instead of returning them to the victim's house, Gearheart placed them in the trunk of her car and took them home.

Later that evening, Goff and the children checked into Safe Harbor, a domestic violence shelter. Gearheart stated that Goff wanted to go somewhere safe and was worried that the victim would find her if she stayed with relatives.

On cross-examination, Gearheart explained how Goff described the alleged domestic violence incident: "She told me that [the victim] had come downstairs. He had a doctor's appointment that morning and my mother was going to go over and watch the children. He had come downstairs, he was being harsh with the children. He had shoved Lauren away from him two or three times. She had told him, 'If you're going to talk to the kids like that, just go on back upstairs.' He wouldn't go back upstairs. Repeated efforts. She finally told him that if he was going to act like that, that she was going to get the camcorder out and he could see that he did act like that, because he denied it in the past. He then got up, yelled at Lauren, came after Megan, was shaking her, bouncing her head off the couch, the wall behind the couch, trying to take the camcorder away from her, telling her * * * The baby was behind [the victim], headed toward his mother. [The victim] looked back, saw the baby and back kicked the baby across the living room." Gearheart stated that Goff had represented to her

that she had been videotaping the victim, but Goff told Deputy Collins that she had been videotaping the children when the alleged violence erupted.

Ross County Sheriff's Deputy Wes Collins, formerly with the Lawrence County Sheriff's Office, testified that he responded to the January 18, 2006 alleged domestic violence incident at the Goff residence. He stated that upon his arrival, Goff seemed rather frantic. Deputy Collins thought Goff seemed frightened and concerned for her and her children's safety. Goff claimed that the victim assaulted her and one of her children and that he had threatened to kill her and the children. Goff told the deputy that the victim stated he had a bomb in the garage and would blow up the house.

Deputy Collins stated that upon searching the house, he located four firearms in the living room and kitchen. Deputy Collins related Goff's explanation of the alleged domestic incident as follows: "She described it as she was sitting on the couch with him and the children was [sic] playing and she was video taping, and that he was somewhat groggy, sleepy and the children was being kind of loud, and at that point she described it that he became irate and violent. There was a confrontation between her and him over the video tape. I believe it says in my narrative, she says she was grabbed in a manner that made her fear her safety is the way she described it to me, and that I believe the youngest child, who she stated she was in fear of the fact that he had surgery, was kicked in the stomach actually is what she stated to me." She stated that the victim "shook her violently and then also started making some threats."

Deputy Collins testified that after officers recovered the guns, he intended to "route them as evidence due to the fact that [the victim] had made threats to use a firearm, at least for safe keeping until the court case went to trial." Deputy Collins then spoke with Sergeant Goodall, the on-duty supervisor, who told him not to "route them," because they were marital assets. The deputy testified that the sergeant told him he could release the guns to Goff.

Deputy Collins stated that he discovered approximately twelve loaded firearms throughout the living area of the home that would have been easily accessible to the victim and that the entire search yielded sixty-three firearms. The deputy testified that Goff did not seem comfortable with the firearms and asked him to unload them.

Deputy Collins stated that due to Goff's demeanor and the number of firearms recovered, he arranged for Goff to meet with a domestic violence counselor, something he does not normally do.

Goff told the deputy that after the alleged domestic incident, she drove the victim to the hospital to receive treatment for fungal meningitis. Goff's mother agreed to pick up the victim at the hospital and to then help law enforcement officers arrest him. Deputy Collins later arrested the victim for the alleged domestic violence. He stated that the victim was cooperative following his arrest and that he seemed "taken aback by being arrested."

On cross-examination, it was revealed that just before the deputy arrived on the scene, Goff videotaped the contents of the house and narrated it. During the videotape, Goff apparently was calm and collected, in contrast to her

demeanor when the deputy arrived. The alleged incident had happened hours before the deputy's arrival, yet when he arrived she was frantic. Additionally, even though Goff claimed to be terrified of the victim, she nevertheless drove him to the hospital after the incident. She claimed that she wanted to get him out of the house so she could contact the police.

Sarah Cox, a domestic violence counselor at Safe Harbor, met with Goff following the January 18, 2006 incident. She testified that she believed Goff to be genuinely fearful of the victim.

Bernie Wrubel, the former director of client services and the in-house therapist at Safe Harbor, likewise testified that Goff appeared fearful of her husband throughout her stay at Safe Harbor.

Jennifer Posey, another employee at Safe Harbor, testified that when she first met with Goff on January 18, she thought Goff appeared "erratic." Posey stated that Goff remained at the shelter for eight days, and that during that time, Posey and other employees observed a male walking around the shelter grounds. She believed the male looked similar to the victim, but she was unable to state with any certainty that it was the victim.

Jeannie Gearheart (Jeannie), Goff's grandmother, testified that on January 18, 2006, she planned to babysit the children so that Goff could take the victim to a doctor's appointment. When Jeannie arrived at the house, Goff told her about the alleged domestic incident and showed her what she had taped on the camera. According to Jeannie, the videotape showed the victim shaking Goff

and hitting her head on the arm of the couch. Jeannie stated that she could also hear Lauren yelling, "Leave my Mommy alone."

Doctor William Boykin, Jr., a urologist, testified that Goff suffered from kidney stones. He stated that a substance in antifreeze can cause the type of kidney stones Goff had, but also admitted that she had the most common type of kidney stones, and that the cause could be from any number of factors.

Rachael Nance, Goff's cousin and best friend, testified that in the six months before the January 2006 alleged domestic violence incident, Goff seemed distant. Goff had never told her about any other domestic violence incidents. In November of 2005, Goff told her that the victim told Goff that if she ever left him, he would kill her, the children, and himself.

Goff testified and painted a disturbing picture of her relationship with the victim. She claimed that he controlled her actions, that he refused to let her leave the house without him, that he would not allow the children to play outside, and that he tortured, killed, and abused animals in front of her and the little girl, beginning when the child was two and one-half years old. She claimed that he tortured the animals in front of the little girl either to punish her or so that she would obey him. Goff stated that the victim mutilated cats, pulled kittens out of a pregnant cat's belly and smashed their heads, shot a bird, and ripped the top of turtle shells in two pieces. Although the victim allegedly tortured or killed the animals, Goff still kept bringing stray and orphaned animals home.

Goff testified that at night, the victim would point a gun at her and warn her not to wake him or else he could not be "responsible for his actions." She stated

that he left the gun on the bedside table and kept his hand on it throughout the night. Goff stated that throughout their marriage, the victim would shake her and scream in her face, but he never actually hit her. Goff admitted that despite her claimed fear that the victim would use a gun on her, she gave him a gun for a Christmas gift approximately two years before the alleged domestic incident.

Goff alleged that the victim had been hunting her down after the alleged domestic violence incident. She claimed that the day after she had a new phone number installed, the victim somehow found her new phone number and called her the next day. Goff explained that her little girl must have dialed the victim's number and that the victim then retrieved her new phone number from his caller identification.

Goff testified that she called the victim on March 4, 2006, and, with the victim's knowledge, tape recorded part of the ninety-minute phone conversation. During the recorded part of the conversation, the victim did not threaten her. However, Goff claimed that after she stopped recording the call, he became threatening. At one point during the taped conversation, Goff asked the victim if he was going to kill her. The victim responded, "You have absolutely nothing to fear. That's absurd. I would rather get in a box and live under a bridge than lay a hand on any of you."

Goff next spoke with the victim on March 17, 2006. She claimed that the victim called her first, but the victim's cell phone records show that a calling card number Goff previously had used called the victim first. Goff vehemently denied making this call. Goff stated that the victim called her around 6:00 p.m., on

March 17, while he was at work. She claimed that during this conversation, he again told her that he was going to kill her and the children on that following Monday. Later that evening, she went to her mother's home to retrieve a gun.

Goff explained that on the day of the shooting, March 18, she went to the Olive Garden with family to celebrate her mother's birthday. She stated that she did not tell any of her family members how distraught she was over her phone calls with the victim or that she planned to go to his house with two loaded weapons. Instead, she told them that she was going to meet some friends.

At trial, she claimed that when she arrived at the victim's house, he grabbed her arm and pulled her in the house. However, on the night of the shooting, she did not tell Detective Bollinger that the victim pulled her in the house. Rather, she stated that she walked in the door.

Goff offered differing explanations as to why she went to the victim's house on March 18. She once explained that she went there so that he would just kill her and not the children. However, on cross-examination, the prosecutor asked her that if that had been her intention, then why did she take two loaded guns to the victim's house. Goff stated that she thought she would bring the guns in case she needed to scare him.

Goff had also explained that she went to the house because she thought that she could talk the victim out of killing her and the children. She further stated that she might just shoot the gun in the air if things became violent. She stated: "If it got down to that point that I felt there was no other way out, I thought that if I shot the gun up in the air that it would startle him." However, Goff

admitted that none of the fifteen shots that she fired ended up in the air. Instead, all fifteen shots were fired into the victim's head and chest area. Goff stated that when she went to the victim's house, she did not think he would be harmed.

Goff next presented her expert witness, Dr. Bobby Miller, to testify regarding the battered woman syndrome. Dr. Miller testified that a battered woman need not necessarily suffer physical abuse, but the abuse also could be psychological. Dr. Miller stated that based upon his evaluation of Goff, he believed that she had been subjected to psychological torture for seven years of her marriage.

Defense counsel asked Dr. Miller if he had an opinion regarding Goff's state of mind at the time of the offense, and he stated: "At the time of the alleged offense, as a consequence of Mrs. Goff's being a victim of marital abuse, she had reason to believe and reasonably believed that she and her children were in imminent danger of death or serious physical injury."

Dr. Miller stated that to the extent inconsistencies existed in Goff's account of the shooting, her screaming during the 911 call explained them. He stated that based upon her reaction, he would not trust her recollection of the events before the shooting. Dr. Miller noted that the state's psychiatric expert found inconsistencies and agreed that he found the same ones, but stated that "those inconsistencies are inside that scream."

The state then presented its forensic psychiatrist, Dr. Phillip Resnick, in rebuttal. Before Dr. Resnick took the stand, Goff renewed her objection to his testimony, claiming that the compelled examination violated her right against self-

incrimination. The trial court overruled her objection, noting that it was "not fully advised as [to] what the law is." Nonetheless, the court relied on the previous trial judge's ruling. Goff further objected to Dr. Resnick's testimony because his report noted that he was unable to reach an opinion within a reasonable degree of medical certainty. She asserted that "in order to rebut something, you have to have an opinion about it." The state asserted that Dr. Resnick's inability to reach a conclusion is a different opinion than the defense expert's opinion. The court overruled Goff's objection.

Dr. Resnick, whose credentials are beyond dispute, testified that he questioned Goff about her spontaneous account of the shooting and then reviewed her statements to law enforcement officers to determine whether any inconsistencies existed. If he found inconsistencies, he then questioned Goff regarding them. Goff's counsel did not object to this line of questioning. Dr. Resnick then explained that he found the following inconsistencies: "[T]here is some dispute between her versions of events and other versions of events. For example, she told me that Mr. Goff had threatened to kill her and the children on multiple occasions. Mr. Goff, when interviewed by the police on January 18, denied that he had threatened her. Ms. Goff reported to me that on March 17, Mr. Goff explicitly threatened to kill her during a 6:00 P.M. phone call. I asked, I said, 'Are you sure that might've been the earlier call?' She said that she was certain that he had explicitly threatened to kill her and the children at the 6:00 P.M. phone call. There were witnesses to that 6:00 P.M. phone call who reported that Mr. Goff did not make any threats. Additional inconsistencies had

to do with statements she gave the police on March 18 compared to the events she told me on August 18. The first, there were two of these inconsistencies. The first was that she said that in the statement to the police she did not indicate that her intention was to miss and only scare her husband by not shooting to hit him. In the account she gave to me, she said that the first two shots she fired her goal was to scare him and not to hit his body. In reality, all fifteen shots she fired based on autopsy did strike her husband. Final inconsistency had to do with the statement she gave to the police on March 18. In that time she said that she fired when her husband turned around toward the window after the first shot. In the account she gave me, she said that after the first shot her husband was walking toward her as an explanation for why she continued to shoot."

Dr. Resnick stated that he found some factors that led him to conclude that Goff "was intensely fearful of her husband, but there were four items which caused [him] to question the degree of the intensity of her fear. The first of these was that when Mr. Goff was alleged to make new threats on March 17, one day before the homicide, that he planned to kill her and the children on the following Monday, which would be March 20. That rather than involve the police or notify the police of these new threats in violation of the Protection Order, she instead decided that she would alone go to her husband's home to try and talk him out of it. That does not seem consistent with being terrified of him. Secondly, rather than involve her family and get their advice or protection, she instead consciously lied to her grandmother, left the children with them and then secretly went to her husband's home alone. Thirdly, she said she initially planned to approach the

home unarmed, even though she told me that two weeks earlier she had spied on her husband from her father's house and had seen him carry two rifles into the home. Finally, Ms. Goff said that when she was on the porch, knocking on the door about to enter on March 18, that she heard a creaking sound which she assumed was her husband getting a gun out of a gun safe. Rather than flee, she continued and proceeded with the confrontation." Dr. Resnick further noted that she did not mention to the law enforcement officers that (1) she had heard a noise like the safe tumbling; (2) she had seen the victim two weeks earlier with a long rifle; or (3) the victim grabbed her by the arm on the night of the shooting. Dr. Resnick also reviewed the videotape Goff made of the January 18, 2006 alleged domestic violence incident. Dr. Resnick did not find that the videotape substantiated her claim of domestic violence.

Dr. Resnick explained why he could not reach an opinion within a reasonable degree of medical certainty: "One was it would depend upon whether Ms. Goff was believed about whether she was actually terrified of her husband, and I did not feel that I was in the best position to make that judgment. His Honor will have the benefit of hearing other testimony that I will not have. So I did not feel I could reach an opinion. So what I did was simply try and lay out in as clearly as I could different ways to look at the case to allow the ultimate trier of fact to make the proper decision. I tried to synthesize the various what she had told me, what the record showed and give some potential explanations, but to which of those is true, I could not conclude with reasonable medical certainty."

The prosecutor then sought to question Dr. Resnick regarding the possible reasons Goff shot the victim. Goff's counsel objected. The prosecutor asserted that Goff's own expert reviewed and testified about Dr. Resnick's possible theories regarding why Goff shot her husband. The court overruled the objection.

Dr. Resnick then explained the possible reasons Goff shot her husband: "Ms. Goff may have acted in anger because the moment she fired she said her husband was laughing at her and telling her that she lacked the guts to shoot him. Specifically, she said in her statement to the police that her husband said, 'You know you won't shoot me. You won't shoot me. You don't have the guts. So I lifted the gun up and he was laughing in my face, telling me he was going to kill the kids and that's when I pulled the first time and then it wouldn't pull again.' She said that every [sic] since she was a little girl, she was told she didn't have the guts and she also had brought in from her earlier molester when she was a child also laughed at her when she was in pain. So, I think one possibility is that rather than being actually imminent fear at the time, she was just so angry and so challenged and so ridiculed that she chose to fire because he was laughing at her and challenging her as opposed to being in fear. I do have, Number 6 is, another possibility is that she was actually in fear of being immediately harmed. The second possibility is that she described, if her account is taken at face value, her husband, she may have shot her husband in anger because he had engaged in controlling behavior and allegedly made previous threats toward her and the children. In other words, that it was anger as opposed to imminent fear. The

third possibility also involved anger because she found herself in a helpless position and this reminded her when she felt that she was in a helpless position while being molested at gun point as a child. The fourth possibility is a preemptive strike, that is that is separate, not being in imminent fear, but just deciding that even though she believed that her husband was going to come after her two days later on Monday, she just decided that she would go ahead and kill her husband at that time, rather than being in imminent fear. Then the final one is the possibility that she in deed [sic] was in the belief that she was in immediate fear and that, as she described it, that her husband would take the gun if she didn't shoot him and that she would be killed."

Dr. Resnick explained that he could not form an opinion within a reasonable degree of medical certainty partly because he could not determine Goff's credibility. He stated that his entire report rested upon the credibility of Goff's statements. He noted that Goff initially explained that she went to the victim's house to let him kill her and that she took the two weapons simply to scare him, if needed. He testified that "the fact that she went to [the victim's] home, that she initiated some of the exchanges of phone calls and the tone of the conversation on the March 4 taped portion of the call does not suggest that she is terrified of him. She speaks in a fairly assertive way and the fact that she goes to his home, as I already said, doesn't seem to suggest that she is a terrified as she reports."

Dr. Resnick stated that he believes it to be "quite unusual" for a battered woman who frees herself from the relationship to then return two months later, as

Goff did, if the woman is "genuinely fearful." He opined that leaving the batterer and then returning is "atypical behavior" of a battered woman.

On cross-examination, defense counsel questioned Dr. Resnick regarding the inconsistencies he found. Defense counsel attempted to have Dr. Resnick admit that Goff's behavior in going to the house on the day of the shooting was not unusual behavior if she truly was a battered woman. Dr. Resnick would do no such thing. He suggested that Goff's better course of action would have been to seek aid from law enforcement officers. Defense counsel asked him if he would have the same response if Goff, hypothetically, had been dissatisfied with the law enforcement officers' response to her case and believed that she could face the victim and try to talk to him. Dr. Resnick stated: "Well, if she were able to control [the victim], why would she have allowed him to make those threats over all those years? No, it does not make sense that she would believe she could control him * * *."

On re-direct, Dr. Resnick explained his inability to form an opinion as follows: "The critical issue is the believability of Ms. Goff herself. Secondly, there is just, we really have only her version of it, coupled with the potential contrary information that she said she was intensely fearful, yet put herself in harms [sic] way, just left me not feeling I could reach a firm conclusion either way." On re-cross examination, Dr. Resnick agreed that if everything Goff stated about her husband's behavior were true, then he would agree that she had been psychologically abused and would have had reason to be fearful. Dr. Resnick

then responded on re-direct that he did not believe that he had sufficient evidence to reach an opinion "either way."

The state next presented testimony from James Sunderland, one of the victim's co-workers. He stated that on March 17, around 4:00 p.m., he heard the victim talking on his cell phone. After the victim ended the call, he advised Sunderland that he had been speaking to Goff. The victim then used the phone at work to return the call to Goff. He explained that Goff's cell phone was running out of minutes. After the victim completed his second call to Goff, he and another co-worker, Roger Lovett, spoke with the victim about calling his attorney to discuss the protective order. Sunderland stated that he was concerned that the victim might be violating the order. After the victim called his attorney, he then requested Sunderland and another co-worker to sit in on a phone call at 6:00 p.m. that Goff requested him to make. The victim advised them that he wanted to have witnesses to the conversation. Sunderland stated that he and the other co-worker agreed to listen to the conversation. He stated at no point during the 6:00 p.m. phone call did he hear the victim threaten to kill Goff and her children. He explained that he heard the victim tell Goff that he loved her a couple of times and "[t]hen it went in to [sic] almost a broken record of him saying, 'I'm not going to meet with you,' 'I'm not going to meet with you,' 'I can not meet with you,' 'I won't meet with you,' 'I can't meet with you because of this Restraining Order,' 'I can't,' 'I won't,' and it was constant." Sunderland testified that the victim never stated that he would meet with her, whether alone or with the children. Sunderland stated that he and the other co-worker were concerned,

based upon the tenor of the victim's conversation with Goff, that Goff would show up at his house. They thus told the victim that he could stay at one of their homes or that he should call his friend who lives down the street, Schilling.

Roger Lovett testified similarly to Sunderland. He stated that on March 17, the victim stated that Goff had called him and "he was real[ly] excited. He was hoping that they might be able to work things out, and that she had ran out of phone minutes or something and he was going to have to call her back." Lovett stated that later that day, the victim asked him and Sunderland to listen to a phone call between him and Goff. He did not hear the victim threaten Goff in any manner during the phone call. Instead, during the conversation, the victim told Goff that "he cared about her, he loved her, he wanted to get back together, that he couldn't meet with her because that would break his Restraining Order. That was expressed over and over again." He and Sunderland reported these events to Detective Bollinger within a few days of the victim's death.

The defense then recalled Goff. Goff testified that she had previously stated that she could not recall phoning the victim first on March 17, as Sunderland and Lovett testified. She again repeated that she did not make that phone call. She explained that during the 6:00 p.m. phone call that Sunderland and Lovett overheard, the following conversation occurred on her end: "I had asked him, he was talking and said that he wanted me to drop the charges, which is what one of the guys said. So obviously, that was the 6:00 call. Along with that, he had said that he wanted to meet me at the Prosecutor's Office on Monday, and that he would meet with all three of us. I actually think the way the

conversation went exactly as he said, 'Drop the charges and go up to the Prosecutor's Office.' I said, 'You expect to meet you?' He said, 'Yes.' I said, 'I'm not going to do that.' I said, 'What am I supposed to do with the kids?' He said, 'Bring them.' I said, 'No.' He said for me to just bring them. He didn't say, 'Meet me with the kids' exactly that way. I was saying that on my end. I said, 'Just meet me,' 'Just take me.'" Goff then claimed that the victim responded: "'I can't,' 'I can't,' 'I won't,' 'You know I can't do that.' [Goff] was [stating], 'Please just meet me. Please don't take the kids. Just take me.' He kept saying, 'I can't,' 'I can't.' He kept saying it and I kept begging and begging and begging, 'Just take me.'"

When defense counsel asked Goff whether the victim made any threats during the 6:00 phone call, she stated: "I had never been able to remember for sure exactly what was said on which call. I know that per my side of the conversation with me asking him to 'Just meet me,' 'Don't take the kids, just take me,' that I took it as a threat, that I took it as he was threatening to kill us still because he had already mentioned it."

On cross-examination, the prosecutor questioned Goff about her prior testimony when she stated that when the victim called her at 6:00, "[h]e was pretty mad as soon as the phone rang." She thought she had stated that she was "not one hundred percent sure if it was the 6:00 call." The prosecutor also questioned her about her prior testimony when she stated that during that phone call, she stated that the victim told her that "[h]e was going to shoot us. He was going to kill us all Monday." She explained this testimony as: "Yes. When I was asking for him to not kill us, to not, and he kept saying 'I can't just meet just you.' I said, 'Just take me.'"

THE COURT OF COMMON PLEAS
LAWRENCE COUNTY, OHIO

REC'D
COMMON PLEAS COURT
06 CL 33
2007 JUN 15 11:21:13

STATE OF OHIO,

CLERK OF COURTS
LAWRENCE COUNTY, OHIO

PLAINTIFF,

VS.

JUDGMENT ENTRY
FINAL APPEALABLE ENTRY
CASE NO. 06-CR-33

MEGAN GOFF,

DEFENDANT.

This matter came on for hearing on the matter of sentencing on May 30, 2007, before this Court with all parties present. The Defendant was represented by counsel, Marty J. Stillpass. The State of Ohio was represented by Robert C. Anderson, Assistant Prosecuting Attorney.

The Defendant having previously waived her right to a jury trial and elected to be tried before the Honorable Judge Fred W. Crow, II, the trial commenced on April 30, 2007, and concluded on May 18, 2007. After hearing and considering the evidence presented, as well as the closing arguments of counsel for the parties, the Court found that the State had proved, beyond a reasonable doubt, each and every element of the offense of Ohio Revised Code Section 2903.01 (A), Aggravated Murder, a felony, as alleged in the indictment. The Court further found that Defendant was guilty beyond a reasonable doubt of the firearm specification as alleged in the indictment.

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The Court inquired if the Defendant had anything to say prior to the sentence being imposed against her. The Defendant had nothing to say. The Defendant did offer the statement of her pastor in which he requested that the Court show mercy to the Defendant.

The Court has considered the statements of counsel and the facts that were established at the trial. The Court having weighed the purposes and principles of sentencing in O.R.C. 2929.11, the seriousness factors in O.R.C. 2929.12, and following the guidance of O.R.C. 2929.13, does HEREBY SENTENCE THE DEFENDANT, MEGAN GOFF, to serve a mandatory term of incarceration of three (3) years in the appropriate state penal institution as the penalty for conviction of the firearm specification herein, which shall be served prior to the commencement of the sentence the Court imposes for the conviction of Aggravated Murder. In respect to the conviction of the Defendant on the charge of Ohio Revised Code Section 2903.01(A), Aggravated Murder, the Court sentences Defendant to a term of life imprisonment in the appropriate penal institution, with parole eligibility after serving thirty (30) full years.

Defendant is granted credit for time served, to-wit: 91 days (3/18/06 - 5/26/06 and 5/18/07 - 6/8/07), along with future custody days while the Defendant awaits transportation to the appropriate state penal institution.

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It is further Ordered that the Defendant pay all the costs of this prosecution for which execution is hereby awarded.

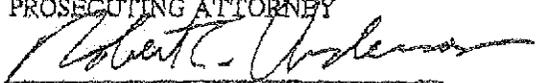
Bond discharged.

The Court advised the Defendant of her right to appeal and to do so without cost, to obtain counsel for an appeal and that counsel will be appointed without cost if she is unable to obtain counsel, and her right to documents required in that appeal without cost, and her right to have Notice of Appeal timely filed on his behalf.

As a result of these admonishments appellate counsel was not requested, and therefore, not appointed.


JUDGE FRED W. CROW, II

J. B. COLLIER, JR., #0025279
PROSECUTING ATTORNEY


ROBERT C. ANDERSON, #0020454
ASSISTANT PROSECUTING ATTORNEY


MARTY J. STILLPASS, #0029875
ATTORNEY FOR DEFENDANT

IN THE COURT OF COMMON PLEAS
LAWRENCE COUNTY, OHIO

06 MAY 19 AM 9:51

STATE OF OHIO,

CLERK OF COURTS
LAWRENCE COUNTY

PLAINTIFF,

JUDGMENT ENTRY

VS.

CASE NO. 06-CR-33

MEGAN GOFF,

DEFENDANT.

This cause came on for hearing upon the State's Motion for an Order compelling the Defendant to submit to an independent mental examination, and upon Defendant's Motion for a Reduction in Bond. Upon due consideration thereof, and for good cause shown, the State's Motion is hereby sustained. Defendant shall submit to a mental examination which shall be arranged forthwith.

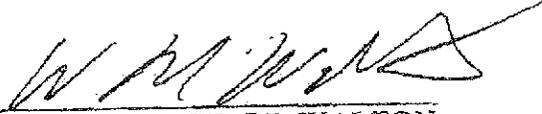
In view of the Court's ruling, and the fact that Defendant waived her right to a speedy trial, the trial of this matter as scheduled for June 6, 2006, is hereby continued. Counsel will be notified when a new date is scheduled.

As to bond, Defendant may post 10% of her current bond of \$2,500,000.00. This may be by cash or property or a combination of both. A condition of Defendant's bond is her home confinement at her father's residence, Joseph Jarrell, 1658 Co. Rd. 1A, Ironton, Ohio 45638. Defendant's home confinement shall be monitored through the Bureau of Community Corrections. The expense of the home monitoring shall be paid by Defendant.

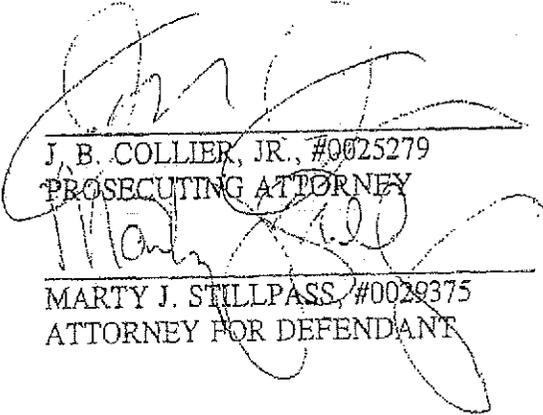
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Discovery having been provided by the State, the remaining Motions of
Defendant were withdrawn.

IT IS SO ORDERED.



JUDGE W. RICHARD WALTON



J. B. COLLIER, JR., #0025279
PROSECUTING ATTORNEY

MARTY J. STILLPASS, #0029375
ATTORNEY FOR DEFENDANT

1 IN THE Court OF COMMON PLEAS
2 LAWRENCE COUNTY, OHIO

3

4 STATE OF OHIO,)
5 PLAINTIFF)

6 VS)

CASE NO: 06-CR-33

7 MEGAN GOFF,)
8 DEFENDANT)

9 * * * * *

10 APPEARANCES:

11

12 J. B. COLLIER, JR. REPRESENTING, STATE OF
13 OHIO

14

15 MARTY J. STILLPASS REPRESENTING, DEFENDANT

16 * * * * *

17 This cause came on for hearing in the Court of
18 Common Pleas, Lawrence County, Ohio, on Thursday,
19 May 17, 2006, before the Honorable W. Richard Walton.

20

21

1 Court: This is 06-CR-33 State of Ohio vs. Megan Goff,
2 and again you are Ms. Goff is present along with Mr.
3 Stillpass and Mr. Delawder. To bring things up to
4 date fairly quickly. We are here today on a Motion
5 filed on behalf of the Prosecuting Attorney to
6 compel the Defendant to submit to psychiatric
7 examination. This afternoon Mr. Stillpass filed a
8 Memorandum Contra. Counsel wished to be heard.

9
10 COLLIER: This is a case where the State has overwhelming
11 evidence that the Defendant went to the home of her
12 estranged husband with two firearms, pistols, and
13 shot him multiple times causing his death. There's
14 essentially, on the surface no defense to that
15 indiscretions with defense counsel it was suggested
16 that the defense is going to be the battered woman
17 syndrome. There going to state of mind of the
18 Defendant in issue to assert a self defense claim.
19 Although without editorializing about the defense
20 when she does that the State certainly has the right
21 to have her submit to a psychiatric evaluation by a

1 state expert. There is a law on that and we sited
2 that law for the Court. If the Court has had an
3 opportunity to read it. It basically says you know,
4 it would be unfair to allow expert testimony to come
5 in on behalf of the defense and not...

6

7 Court: State vs. Mann.

8

9 COLLIER: State vs. Mann yes your Honor, that's a Court of
10 Appeals case 1991 case out of the 9th District. I
11 sited that (unintelligible) in the State of Ohio it
12 makes good sense when they are using the experts
13 that show state of mind. Certainly the State has a
14 right to rebut that by their expert witness. As
15 indicated I just was handed, not ten minutes ago, a
16 Memorandum Contra I've been able to briefly look at
17 it. I submit that the argument in this is specious
18 that it does not really say that the law is
19 inapplicable in this case if they do want to pursue
20 the battered woman syndrome. But I would reserve my
21 remarks to respond to defense counsel.

1 Court: Mr. Stillpass.

2

3 STILLPASS: Thank you your Honor if it please the Court
4 first of all Mr. Collier, Motion was file, I believe
5 until (unintelligible) and we didn't receive it
6 until Friday of last week. We have had the
7 opportunity since receiving the Motion to research
8 further the State's assumption that based upon the
9 offering of battered woman syndrom defense as a part
10 of the self defense argument that the State has a
11 right to an independent psychiatric or psychological
12 examination of the Defendant. Our research has
13 indicted that there is no such right. It does not
14 exist under statute that recognizes battered woman
15 syndrome defense. It is not recognized in the
16 Supreme Court case that essentially establish the
17 right to use the battered woman syndrome defense in
18 a criminal case. That is State vs. Cross, 1991 the
19 statute that I refer to is Ohio Revised Code .10906
20 I submit to you your Honor that the legislature had
21 ample opportunity to discuss whether or not an

1 independent or, if you want to call it independent
2 but a state mandated examination would be required
3 as to as something they would be entitled to. When
4 the Defendant claimed the battered woman syndrome
5 defense the Supreme Court of Ohio had the same
6 opportunity to state yes we recognize this defense,
7 so when it is claimed the State has a right to their
8 own examination. We are not, when we established
9 this defense putting the Defendant's state of mind
10 in dispute. It is merely a indicating to the jury
11 of what the battered woman syndrome defense is and
12 to why the defense is applicable in this case. It
13 is not a matter of not guilty by reason of insanity.
14 Not claiming that all. This is a self defense
15 argument. As we outlined in our Memorandum Contra
16 on, to require a Defendant claiming the battered
17 woman syndrome defense to submit a State initiated
18 psychiatric or psychological evaluation simply does
19 not meet the requirements of the law
20 (unintelligible). Ohio Supreme Court cases, we
21 cited United States Supreme Court cases. With the

1 regard to the Manning case that the State relies on.
2 That is a case that involves a specific set of
3 circumstances wherein the battered woman syndrome
4 defense was claimed and the Court required the
5 Defendant complied with the state's discovery
6 request to turn over the names of the expert
7 witnesses and their report the Defendant failed to
8 do so and the Court then upon Motion by the state
9 was preparing to exclude that evidence to prevent
10 those expert witnesses from testifying the Defendant
11 then offered to allow the State to conduct their own
12 examination to which the State agreed and to which
13 a Court order was prepared to that effect. The
14 Defendant later attempted to change her mind filed
15 motion to prohibit that examination and the Court
16 refused to allow that, that motion to be ordered.
17 So it was a specific circumstance in that case. One
18 that does not apply here. There is no citation. No
19 other law that the state has referred to that would
20 allow him to come in and request and compel the
21 Defendant in this circumstance to submit to a

1 psychological or psychiatric evaluation. We
2 believe that the motion should be denied.

3
4 Court: First of all in this case there is no such thing
5 as a battered woman syndrome defense, period. A
6 person may claim that it is self defense. Now I
7 disagree with Mr. Stillpass. You are very much on
8 self defense talking about the Defendant's state of
9 mind. If you don't talk about the Defendant's state
10 of mind there is no self defense. There is no
11 anything. Because it goes to the person's state of
12 mind, what they thought, or what a reasonable person
13 in their position under their circumstance, etc.
14 without getting in the entire self defense
15 definition. What they though or what they
16 perceived the situation to be. If there is physical
17 evidence and it can be tested by both sides, in a
18 criminal case, it can be tested by both sides. The
19 state or the defense can say give me some it and let
20 me test it. If the Defendant is going to bring in
21 experts to talk about the Defendant's state of mind,

1 etc., then the state should have the opportunity to
2 rebut that. Again this is not an insanity plea. I
3 understand that. And it is not an incompetency
4 plea. But if the Defendant was one to make that
5 claim or at the other side, or if the state what's
6 to have the Defendant examine, let's say for an
7 insanity plea the defense can also have them
8 examined. I'm going to deny the Motion. You have
9 your exceptions. If you want to bring, if you have
10 and expert and want to bring that expert in. If you
11 don't want to that's fine, then I would not order
12 the examination on behalf of the State. It has been
13 stated by counsel for the Defendant that they are
14 going to bring that in and the State would have a
15 chance to go ahead and conduct their own with the
16 Defendant which would come in for that purpose and
17 that purpose only.

18

19 COLLIER: So I understand. You are not going put an
20 expert...

21

1 Court: As of right now, Mr. Stillpass indicated they
2 are.

3

4 COLLIER: If they are then we have the opportunity to
5 have her examined?

6

7 Court: Right.

8

9 STILLPASS: Your Honor I really wish to note my vigorous
10 objection to this.

11

12 Court: Well I understand that.

13

14 STILLPASS: There's no...

15

16 Court: I understand Mr. Stillpass, I understand. I'm
17 not mad but I've made my ruling. You have your
18 exceptions. I don't know if this will be a Final
19 Appealable Order in which the Court of Appeals would
20 go ahead and entertain a Motion. I don't think it
21 is but if you want to try it that's fine too. No

1 problem with me. That being the case there are two
2 more Motions which Mr. Stillpass filed this
3 afternoon around one thirty nine I'll set those for
4 hearing next Wednesday at one o'clock. One is for
5 reduced bond and the other is for Motion to Compel
6 Discovery. I don't know, it has something to do
7 with 911 and Defendant's Motions for sanctions. I
8 have not had a chance to read those matters but they
9 will come on for hearing.

10

11 STILLPASS: Your Honor I would like to indicate for the
12 record, we were here last week on pre-trial. The
13 State had not yet complied with Discovery. One of
14 the things that you said to the State was don't wait
15 until Wednesday morning next week to give it to
16 them. We got it at ten o'clock today. We have
17 expando file work with Discovery that we have not
18 (unintelligible). It has taken State over fifty
19 days to comply with the Court's Order. I don't what
20 we are expected to do here eleven business days
21 before the trial is scheduled. I understand you are

1 Court: Well, I've already, Mr. Collier I've already
2 ruled on that.

3

4 COLLIER: I understand (unintelligible). I would quite
5 frankly to go on these other motions too.

6

7 Court: Well I haven't read them and we have other
8 motions set for today. It is kind of hard for me
9 to read them when...

10

11 COLLIER: I appreciate that your Honor.

12

13 Court: They have only been filed for twenty some
14 minutes. Mr. Stillpass brought me up copies after
15 they were filed so I don't how long I have actually
16 had them in my possession. I would like to see
17 counsel in chambers for just a few minutes after
18 this hearing.

19

20

21

1 setting these Motions for next week but the reality
2 is they have left us with no time to do anything.

3

4 Court: Well, I would say as a practical matter with the
5 examination we need to get a new trial date.

6

7 STILLPASS: I would...

8

9 Court: Finish.

10

11 STILLPASS: I would really ask your Honor that the
12 Court would on it's own conduct it's own research on
13 the issue of the independent State requested
14 examination because I find no authority for it
15 anywhere. I find no case in Ohio prior ...

16

17 Court: You've already made that argument. I understand
18 and I appreciate it.

19

20 COLLIER: We respectfully disagree with counsel.

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CERTIFICATION

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STATE OF OHIO)
COUNTY OF LAWRENCE)

I, Debra D. Clark, Official Court Reporter for the Court of Common Pleas, Lawrence County, Ohio, do hereby certify that the foregoing pages are a true and accurate account of the proceedings held in this case on the 17th day of May 2006, and were recorded on Sony Recorders.

It was transcribed, proof read and corrected by me, and is a true and accurate account of said hearing to the best of my knowledge and ability to prepare the same.



Debra D. Clark
Court Reporter

Dated this 19th day of September, 2007

1 IN THE Court OF COMMON PLEAS

2 LAWRENCE COUNTY, OHIO

3

4 STATE OF OHIO,)

5 PLAINTIFF)

6 VS)

CASE NO: 06-CR-33

7 MEGAN GOFF,)

8 DEFENDANT)

9 * * * * *

10 APPEARANCES:

11

12 J. B. COLLIER, JR.

REPRESENTING, STATE OF

13

OHIO

14

15 MARTY J. STILLPASS

REPRESENTING, DEFENDANT

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17

This cause came on for hearing in the Court of

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Common Pleas, Lawrence County, Ohio, on Wednesday,

19

October 18, 2006, before the Honorable W. Richard Walton.

20

21

1 COURT: We have this is 06-CR-33 State of Ohio vs.
2 Megan Goff, you are Ms. Goff?

3
4 ANSWER: Yes your Honor.

5
6 COURT: Let the record reflect that Ms. Goff was present
7 with her attorney Mr. Stillpass. State of Ohio is
8 represented by Mr. Collier. There are two Motions,
9 one of them is not set before the Court but it is a
10 Motion for transcribed grand jury proceeding in
11 anticipation of trial, that matter will go...

12
13 COLLIER: Your Honor we routinely transcribe the grand
14 jury testimony ...

15
16 COURT: Case is going to trial so I will inform...

17
18 STILLPASS: We just want to be sure your Honor.

19
20 COURT: Well I understand, but anyway that is a
21 procedural matter which doesn't really come up now,

1 I've already told counsel to be ready for trial in
2 January/February that is when this trial is going to
3 go. We have to get a time for. The Motion that we
4 are here on today is a Motion filed on behalf of the
5 State of Ohio is to allow them to permit the State
6 to be present during the examination of Ms. Goff, by
7 the psychiatrist, who ever your expert is.

8

9 COLLIER: Actually your Honor it is Dr. Resneck,
10 Phillip Resneck, is conducting the interview of the
11 Defendant Ms. Goff. She has completed the initial
12 part of the interview. He has a few more follow up
13 questions that he wants to do by telephone
14 conference and we are trying to schedule the time.
15 During the process of scheduling this, I became
16 aware for the State that the defense objects to my
17 presence during the interview. This is a position
18 that the state has contacted and he's agreed to do
19 the interview and offer testimony that is required
20 at the trial. Usually it just involves the doctor
21 and the person to be examined. Mr. Stillpass wanted

1 to be at the initial one and Dr. Resnick did not
2 complain. It is my understanding that Mr.
3 Stillpass, defense counsel was present during that
4 stage. I had talked with Dr. Resnick. He had some
5 follow up questions and we were going to do the
6 follow up, as I say, by telephone conference call
7 where he had some follow up questions for Ms. Goff
8 and defense counsel objects to my being present.
9 He's going to be present, I'm asking to be present.

10

11 COURT: Mr. Stillpass.

12

13 STILLPASS: Your Honor, we have, as Mr. Collier has
14 indicated we have had the initial interview which
15 consisted of over eight hours of Mr. Resnick with my
16 client, at his office in Cleveland, I was present
17 and as I indicated to you and Mr. Collier when this
18 issue was first brought up my presence is necessary
19 to protect my client in the event that we get into
20 questions that I may advise her not to answer. Now,
21 we didn't get to that point she's been very open and

1 has talked about everything that Dr. Resnick has
2 wanted her to talk about. He wants some follow up
3 questions. I think partially as result of some
4 materials that he requested that we forwarded to him
5 but I know of no procedure whereby the State would
6 be permitted presented during and interview or an
7 evaluation or whatever the court wishes to call
8 this. Certainly my presence is necessary to protect
9 my clients rights. But the State is no permitted to
10 be there. Should not be permitted to be there we
11 vigorously object to the State's presence. We would
12 hope that the Court would order that the balance of
13 the interview or evaluation or whatever we want to
14 call it. Whatever the Court wishes to call it would
15 proceed in the same manner that the first eight
16 hours proceeded.

17

18 COURT: Well, in this case first of all it's not an
19 evaluation. That's what the expert does after he's
20 conducted his examination. So this would be the
21 examination. Again psychiatrist/psychologist,

1 psychologist patients are under 4732.19, whether is
2 a psychologist anyway it refers back to the same
3 rules as 2317.02 B with is a physician patient
4 privacy. Basically when you start reading that
5 stuff it is communications by a patient in relation
6 to the physician or psychologist/psychiatrist, etc.
7 M. D., D. O. his advice. In this situation the
8 interview evaluation is not being done for
9 treatment. Whether it is your expert or the State's
10 expert it's not being done for treatment it's being
11 done in preparation for testimony in Court. An
12 analogy would be to a civil suit. Then again the
13 reason, I'm assuming this has all been done is Mr.
14 Stillpass has made known to the Court and to, I
15 believe to the Prosecution. He intends to use the
16 battered woman syndrome. This is an affirmative
17 matter. This would be very similar to a person
18 being in an automobile wreck and going in for a IEP.
19 You know people can appear, defense counsel or
20 Plaintiff's can appear at the IEP. Can't ask
21 questions out of them. Can't ask questions. You

1 can be there and listen if you want to and take
2 notes about how long the person inquired. You can
3 do all of that sort of stuff. It's not a
4 deposition. So I am going to grant the Motion to
5 allow the State to be present. The same with the
6 would be true, on your expert. You can be there
7 when your expert examines her.

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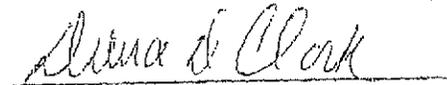
CERTIFICATION

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STATE OF OHIO)
COUNTY OF LAWRENCE)

I, Debra D. Clark, Official Court Reporter for the Court of Common Pleas, Lawrence County, Ohio, do hereby certify that the foregoing pages are a true and accurate account of the proceedings held in this case on the 18th day of October 2006, and were recorded on Sony Recorders.

It was transcribed, proof read and corrected by me, and is a true and accurate account of said hearing to the best of my knowledge and ability to prepare the same.



Debra D. Clark

Court Reporter

Dated this 20th day of September, 2007

Recorded phone conversation 03-04-06

Megan- First off I want you to understand that I am recording this. Do you understand me? So you hear me?

Bill- Barely

Megan- But you understand me?

Bill- Yeah.

Megan- Okay, so what are you doing here because I'm like completely freaked out.

Bill- What am I doing?

Megan- Yeah, like I had somebody call me yesterday saying you know I'm in West Virginia. (Pause) How do you even know I'm in West Virginia ?

Bill- (Unintelligible or pause)

Megan- How?

Bill- Found out on the internet.

Megan- I haven't even gotten anything here yet. How in the world would you know?

Bill- (Unintelligible)

Megan- Oh, so that's how you know, that's great. So are you like after us? Are you still going to like kill me or something?

Bill- No, I'm not gonna. (Unintelligible) Not gonna hurt you. I'm not(Unintelligible)

Megan- You never said you were going to kill me and the kids & yourself.

Bill- Not in context. (Unintelligible)

Megan- But did you say it?

Bill- When you were, when you said you were going to kill yourself

Megan- No, no, no, no. The Monday before this happened, You brought it up. Did you not say that?

Bill- (Unintelligible)

Megan- Okay but you did say, you did say you were going to kill me, both kids, and then yourself, did you not? Am I lying, am I wrong, am I crazy, was I hearing things?

Bill- (Unintelligible)

Megan- So you're just going to pretend it didn't happen

Bill- You kept saying you're going to kill yourself

Megan- I did not say ... Bill that I..., now that's taken out of context. I did not say I was going to sit there and kill myself.

Bill- You kept saying, kept saying, when it gets so bad that I can't go on any more I'll take care of it.(Unintelligible)

Megan- So your going to admit that over the phone but your not going to admit that you said your were going to shoot me, both kids, and yourself?

Bill- (Unintelligible or pause)

Megan- That's crazy. So what're we doin' here, what are we gonna do?

Bill- (Unintelligible)

Megan- We're gettin' a divorce. I want you to not have visitation, unsupervised, with my children. I want you to be able to keep your house.

Bill- (Pause)

Megan- That's what I want. Keep your house and let me and the kids go and quit...just quit even trying to find us, just quit.

Bill- (Unintelligible)...my kids (Unintelligible)

Megan- So you wanna see 'em?

Bill- (Unintelligible)

Megan- You wanna have 'em for over night stays?

Bill- I wanna have what ever I'm entitled to have

Megan- So the conversation we had out in the parking lot, the day this all happened, before I took you to the hospital that you said you did not want to see the kids, you were lying then?

Bill- (Unintelligible)

Megan- You didn't say that.

Bill- (Unintelligible)

Megan- I asked you about that, I asked if you wanted to be involved in their schooling, and I asked if you wanted to be notified if there was a medical emergency. Did I not?

Bill- (Unintelligible)I don't recall

Megan- So you were so drugged up you don't even remember? You did say that Bill, you said you didn't even want to see your own children.

Bill- (Unintelligible or pause)

Megan- That's nice. Do you remember me talking about the fact that you kicked Alex and you could've really hurt him? Do you remember that part of the conversation? And you said yeah I probably could.

Bill- No, we never had that conversation.

Megan- We never had that conversation. Bill we were sitting out in the van in front of the doctor's office. There's no way you were so high you can't remember any of that.

Bill- (Unintelligible or pause)

Megan- So I didn't say anything about you kicking the baby?

Bill- (Unintelligible or pause)

Megan- That's great, Honey, just great.

Bill- (Unintelligible or pause)

Megan- How long's it been? I mean today's what March 2nd, 3rd?

Bill- (Unintelligible) 4th

Megan- 4th? So what, we went from.... 1998 we got married, now it's 2006 and all this is down the tube, do you understand how frustrating this is?

Bill- It's very frustrating to me (Unintelligible) I'm fightin' an up hill battle...

Megan- How are you fighting an up hill battle?

Bill- (Unintelligible) ... divorce. You're gonna have, gonna have (Unintelligible) ... divorce you know. There's not a whole lot of stuff left in the house. (Unintelligible) ...guns are gone, coin collections are gone ...

Megan- What coin collections?

Bill- Huh?

Megan- What coin collections?

Bill- The coin collections out in the little safe out in the garage that Dad had

Megan- There was no coin collection in there, there was a bag of fifty cent pieces and a bag of pennies.

Bill- That's what, that's what, (Unintelligible) there was fifty cent pieces, quarters, dimes, and silver

Megan- No silver, no sir. There is no silver. How many times have you looked at it? You had told me there was silver, but there's not.

Bill- (Unintelligible)

Megan- Not in there. Wasn't in there. Why did you even have that many guns loaded in the house?

Bill- You knew I kept guns (Unintelligible)

Megan- Over forty guns loaded in the house? No, sir.

Bill- (Unintelligible)

Megan- No, sir, they were not in the safe.

Bill- There were about 6 that were out (pause)

Megan- No. There were much more than 6 that were out, that there were loaded. You had about 3 upstairs on top of that (pause)

Bill- On top of the thing, there was your little twenty two that you always used

Megan- I always used? When was the last time I held a gun Bill?

Bill- I know every time I'd go on midnight I'd find it laying on the floor underneath the bed

Megan- Oh. That's not true. Anyway, back to it, 3 up there, you were pacing in front of the dang plates downstairs and there was a loaded gun there, on top. There was a loaded gun in the basement at the bottom of the steps. There was a loaded gun up on the entertainment center, or 2, I think there were actually 2 up there they found.

Bill- (Unintelligible)

Megan- There was one in your truck. There were loaded guns out in the garage. There were loaded

guns out in the building. Those weren't in the safe Bill.

Bill- (Unintelligible) ... guns out in the building, there was in the garage, (Unintelligible) in the building.

Megan- No, no, no. The building were you keep the... police unloaded them, Bill. They're going to testify to that. Back there were you kept the lawn mower. There were assault rifles loaded. Back in there.

Bill- There was, there was, some junk guns back there, they were not loaded ...

Megan- They were loaded. The police ...

Bill- The police are going to testify to things that were not even (Unintelligible)

Megan- There were even hand guns out there that were loaded, Bill, out in that building. The police couldn't even figure out how to open one of the barrels, on one of them, one of them spiny barrel things

Bill- My buddy, my buddy (unintelligible) reality(Unintelligible) and uh ...

Megan- The re ... I was right there when they did it, Bill. Pap-paw was right there when they did it. Mom was right there when they did it.

Bill- (Unintelligible)

Megan- So what do you want out of this divorce?

Bill- (Pause) Well, obviously, I would rather not divorce. You know I don't think that's an option.

Megan- After what you did to me and these kids you think that we shouldn't have a divorce? Do you know that your baby was in the hospital because you kicked him so hard?

Bill- I did not kick him. (Unintelligible)

Megan- Then why is he screaming on that tape? Why did you admit to kicking him when we were outside the doctor's office?

Bill- I didn't admit to kicking that baby

Megan- Yes, you did, Bill. I don't care how high you were on drugs, there is no way you forgot that.

Bill- (Unintelligible)

Megan- That's attorney talk right there. You're talking from your attorney.

Bill- (Unintelligible) I have had no contact with my attorney (Unintelligible)

Megan- Oh, that right there's not true. I just talked to the prosecutor yesterday and he said you told your attorney certain, certain, certain things that he wasn't allowed to tell me. (pause) But one of which the attorney was going for the fact that you never kicked the baby. I've got it on tape, Honey, have you seen the tape?

Bill- No, I haven't seen the tape. (Unintelligible)

Megan- I have on tape where you kicked that child. I have hospital records where that baby had to be strapped down for a CAT scan because of you. And you think we shouldn't get a divorce?

Bill- Well, it's funny that you were so concerned about the baby that this happened on the 18th, it was the 21st before you took him to the hospital.

Megan- I was in a domestic violence shelter running from you.

Bill- (Unintelligible)

Megan- Because you didn't say you were going to shoot us all?

Bill- (Unintelligible)

Megan- You've never said that? Bill Goff. I can't even not, I ... I just can't believe you're even saying, and you want us to get back together and you can't even be truthful.

Bill- I'm not ... I'm not going to say anything (Unintelligible) room (Unintelligible) when I'm not even sure who's listening (Unintelligible)

Megan- Nobody is in this room, and that is ridiculous.

Bill- I heard somebody earlier, and somebody's in the background right now

Megan- You can hear somebody in the background right now? The only person you can hear in the background right now is our children are asleep. (Pause) And as far as do you remember the conversation in van at the same time we were having the conversation about you kicking the baby and not wanting to see the kids, that you said I would turn Lauren against you? Do you remember that part of the conversation?

Bill- No we never had that conversation. There was no conversation in that van from the time we left to the time we got there. There was very little ...

Megan- No, no, no. From the time we walked out ... Bill Goff. From the time we walked out of Dr. Gaynor's office, we sat in the parking lot for about 20 min, then we drove over to the hospital, that's the part I'm talking about. (Pause)

Bill- (Unintelligible) ... you've, you've got an opinion, and I've got an opinion. (Unintelligible)

Megan- I can't believe you're not even admitting that. That's crazy. So you think I should just come back home and everything's going to be fine.

Bill- You left me in the parking lot at Gaynor's, you were going to run home and check on the kids. I walked over to the hospital. (Unintelligible)

Megan- Oh, that is such a lie. I dropped you off over there by the back entrance by the uh, food court and I'm sure I can subpoena video tape to prove it. (Pause) You asked me what am I supposed to do. I said I don't know, call one of your friends, you said that's crazy, aren't you going to pick me up? I said no, if you've got the guts call my mom. Who'd you call Bill?

Bill- You said, when we left, that when you're done call mom, she'll come and get you. I said why would I call your mother? Why would I not call you? And you said well call some ... call and somebody will come and get you. And that was the end of the conversation.

Megan- You were seriously drugged. You think you walked from Dr. Gaynor's office to the hospital?

Bill- I know I did.

Megan- You don't even remember me dropping you off over where the valet parking was? (Pause) I watched you walk into the hospital doors, Bill. Back by the cafeteria where the valet parking is. (Longer pause) You don't remember that?

Bill- I don't know, I don't know what to think.

Megan- You ... because I'm sure they have video surveillance right there. (Pause) So you don't remember it or is now suddenly your memory being refreshed?

Bill- No, I don't, I don't ... I'm not going to say that it is and I'm not going to say that it isn't

Megan- So now you want to see your children? You want to have both your kids overnight?

Bill- I want to have my (Unintelligible) with my children. Yes. They are my children

Megan- So why haven't you asked for it before now?

Bill- Well, I've been pretty well tied up with the paperwork you've laid on me, to where I couldn't have contact with anybody. I can't do anything until this thing's settled.

Megan- You could still ask for visitation rights with your children which you haven't done.

Bill- (Unintelligible)

Megan- So I should just give them to you unsupervised after you threatened to kill us all? Whether you meant it or not, Bill, you said it! Am I supposed to like, just trust our kids with you? Do you not remember me saying my children will never be left alone in a room with you again? Do you remember that part? That was said before we left the house.

Bill- Oh, I remember, I remember you saying that.

Megan- Okay. So I'm supposed to just turn the kids over to you after you've said your going to shoot us. (Pause) I'm supposed to just let you take them home and just blow them away?

Bill- I don't what ... I don't know what the situation was. I don't know what the situation is.

Megan- So you were mentally insane at the moment, is that what you saying?

Bill- No, no. Obviously not. But the only thing I can tell you with one hundred percent certainty is that you have nothing to fear from me, nor do the children. (Unintelligible) hurting any of you, would be the last thing on the face of this earth that I would do.

Megan- Then why did you say it back in December, and why did you say it the first of January, and why did you say it the Monday before this happened, and why did you say it the night before this happened. Do you not remember me saying, 'Bill, I need to know are you serious? Do you really mean this?' Do you not remember that conversation? (Pause) That

was before. That was like a week before this happened.

Bill- Were, were you serious when you when you were talking about killing yourself? When, when the pain gets too bad I'll take care of it myself?

Megan- That is not even in the right context. At aaalll. We were not talking about something I was going to do right now Bill. We were talking about if I had terminal illnesses. We were talking about if I had cancer. You were talking about right now.

Bill- No I was not talking about right now. I was ...

Megan- Oh, so you were just going to shoot the kids if I had a terminal illness.

Bill- No, what I, the comment that I made (Unintelligible) or whatever you want to say, was for shock value. (Unintelligible)

Megan- So you just did it for shock value. You don't really mean it?

Bill- Of course not, that's absurd.

Megan- Then why did you even say it for shock value? You just ... I mean, Bill, saying you're going to kill yourself is one thing, I mean you've said that to me yourself several times. You've said if we ever get a divorce the only thing I have to do is put a bullet in my head or something ... I don't remember exactly what you said, but it was something like that. There's something a little different in saying that and saying you were going to look your children in the face and shoot them. Not even in close to a similar thing Bill. You were threatening their lives. Did I ever ever say I was going to hurt you or our kids? Ever?

Bill- (Pause) No, you never, you never said it. But you sure said that you were going to do yourself. And that was said on several occasions.

Megan- If what?

Bill- (Unintelligible)

Megan- If what? I was going to do that if what?

Bill- You said when the time... I think you put it was when the time comes. (Unintelligible) I don't know.

Megan- With a terminal illness.

Bill- I don't think the words terminal illness was used.

Megan- That was what these conversations were always about, Bill. And You were the one that said me and the kids. Not me. I never ever threatened to hurt any of you guys. You're the one that threatened to hurt us. And you're going to sit there and say you didn't say that???

Bill- (Longer pause) I'm not, I'm not admitting anything over the phone.

Megan- So what, you want me to come meet you somewhere so you can shoot me?

Bill- Huh?

Megan- You want me to come meet you somewhere so you can shoot me?

Bill- No, I'm not going to hurt you. I don't, I don't have no intention of hurting you.

Megan- Then why did you grab a hold of me that day, Bill? I had bruises down my legs, I had knots on the back of my head. You did that accidentally??

Bill- I never, I never touched anything that day except the video camera.

Megan- It's on video tape that you had my arms, Bill. You can see it.

Bill- I had a hold of the video camera and that's the only thing ...

Megan- No, sir.

Bill- (Unintelligible) that I made was, that I said let go of the video camera or we're going to break it. And then I let go of the camera and walked away

Megan- No, actually that was me that said that and that's on tape also.

Bill- No, I don't think so

Megan- Honey, I have the tape. I can sit here and play it for you right now. Why don't you have a copy of that?

Bill- I'm sure my attorney does

Megan- You need to watch the tape before you sit here saying you didn't kick the baby. cause it's on the tape you kicked the baby. You need to watch the tape before you say you didn't

have a hold of me, because you can see your hand around my arm. What was Lauren doing while all that happened? Do you remember?

Bill- She was ... she was doing what Lauren does every time something like that comes up. She was hiding behind the chair over there, because of her nature

Megan- No. She had a hold of your arm (Unintelligible) mother. You don't remember that?

Bill- No. I don't.

Megan- That's on the tape too Sweetie Pie.

Bill- You've got a lot of thing running around in your mind that are not correct

Megan- Let me move this phone. Hang on a second, (beep) ooh, sorry. Hang on a second. Find this tape. Try not to hang up on ya. Hang on. I'm sure I've got it here somewhere. (Rustling) I can't believe you haven't asked your attorney to see this tape. What in hell did I do with it. I'm lookin', fast as I can look.(Rustling) I swear, Bill, if I was being so mean to you I wouldn't have given you rights to the house, I would've fought it. I'm not trying to be mean to you. I'm trying to keep my children safe. Dang it (unintelligible) It's on the friggin' tape, it's on the friggin' tape. That child is saying, let go of my mother. Stop hurting my mommy. I can't even believe your saying that didn't happen because I do have that on tape. The prosecutor and me just watched it again yesterday. Did I loose you or you still there?

Bill- No, I'm still here. What ... where are you? Are you back on the phone or not?

Megan- Partially. Can't find the friggin tape. All right. I'm back on the phone now. All right, I quit lookin'. If you want to see it you go talk to your attorney. But I'm telling you what it is on that tape, Lauren wasn't hiding behind chair, she had a hold of your arm.

Bill- Okay, let me ask you this. Why did you call.(unintelligible)

Megan- I want to know if your going to kill us.

Bill- No (unintelligible)

Megan- I want to know if I'm able to go to church on Sundays. I want to know if I'm able to drive around with our kids without being terrified. That's what I want to know.

Bill- You can do anything you want to do (unintelligible)... no fret no worry no nothing

(unintelligible)

Megan- So you have no guns at your house right now?

Bill- Absolutely not.

Megan- (Unintelligible) are no guns in your vehicle

Bill- Absolutely not.

Megan- So I have nothing to worry about, you're not going to come shoot me?

Bill- I am not going to shoot you, I am not going to hurt the kids. Hurting, ya know ... (Unintelligible) as this may seem (Unintelligible) conversation. What all I've been through (Unintelligible), going to jail, your attitude, (Unintelligible) disrespect, the way you talk to me (Unintelligible), through all of it - I still love you. I will say this (Unintelligible)

Megan- I love you to death, Bill. Every day me and Lauren talk about you. That child is making a video tape for you because she misses you so bad.

Bill- I miss her. I miss her so bad it hurts. I, I, I want ... I want to do things with her. I bought her a fishing pole when I was in the fishing shop. I miss her to death. And, you know, what I'm saying is I do not harbor any ill will towards you as far as wanting to hurt you (Unintelligible)

Megan- So the only reason you said you were going to shoot us all was shock value. You ... You've made me this terrified for this long because you wanted to shock me? That was the only reason you did, because you wanted to shock me, it's not because you meant it.

Bill- I did not mean anything (Unintelligible)

Megan- You didn't mean you were going to do it? I don't understand why you would've even said it then, Bill. Do you know that's like a crime to say you're going to kill someone

Bill- Don't you understand that when somebody that you dearly love says that they're going to kill themselves that you do things to try and bring them back out of it.

Megan- So saying you were going to kill my kids was going to bring me out of it?

Bill- You have to understand that, you have to understand this, (Unintelligible) the state of mind that you appeared to be in (Unintelligible)

Megan- I wasn't making a statement like that like it was going to happen, and you know it. I was making a statement like that because of health issues going on at the time.

Bill- Well, look the only thing I can tell you is if the reason you were calling is to find out ...

Megan- If you're going to kill me.

Bill- No. You are absolutely not in any danger from me. I would not hurt you for any amount of money. I would not hurt those kids for any amount of money. I would live in a bridge - under a bridge in a cardboard box before I would hurt you or those children. Now for whatever that's worth ...

Megan- I just don't understand why you said it then, Bill. I just don't understand, why - how am I supposed to understand if you're telling the truth now if you're telling me you weren't telling the truth before. I don't understand why I'm supposed to believe you.

Bill- Well, ya know, there's a ... there's a lot of things can be said, and you know there's a lot of questions to be asked, no question about that ...

Megan- Well, ask. This is going to be the only chance to ask because anything after this is going to an attorney. This right here isn't. I'm not saying a word about any of this. I just needed to know for my safety and for the safety of our kids if you were going to kill us.

Bill- No. Without a shadow of a doubt. You can go anywhere you want to go, do anything you want to do.

Megan- So why did you look up on the internet to find out where I was

Bill- I wasn't looking to find out where you, where were at, I was just (Unintelligible) It was obvious by the petition that (Unintelligible) But my question (pause) And I hope your adult enough to think about what I'm about to say (Unintelligible) realized (Unintelligible) your addicted (Unintelligible)

Megan- No I'm not addicted to prescription pain killers. If I was addicted to prescription pain killers I'd be taking them every day.

Bill- ? (Unintelligible)

Megan- From what?

Bill- (Unintelligible)

Megan- I'm not.

Bill- Well, I'm wonderin'. Personality's (Unintelligible) ... oxycodon.

Megan- When did I do that? Only when I was having surgery, Honey.

Bill- (Unintelligible)

Megan- I haven't had oxycodon since my last surgery

Bill- I just, I just know their charging a lot of it to my ... to my medical (Unintelligible)

Megan- You have something on your medical records that says I had oxycodon

Bill- (Unintelligible)

Megan- Well I haven't had any so I don't know where you've gotten that at. I'm on hydrocone right now. Dr. Brownfield's the only one that's writing it for me. Dr. Brownfield knows what I'm on, and that's all, that's all I'm taking.

Bill- What about ... What about the tramadol

Megan- The tramadol is not narcotic, it's a non- narcotic thing, and it's for my irritable bowel syndrome.

Bill- (Unintelligible)

Megan- No. It's for my irritable bowel, that's what he told me.

Bill- (Unintelligible)

Megan- Does it have narcotics in it?

Bill- Not narcotic.

Megan- Thank you. I'm taking that for my stomach, and I'm taking the hydrocone for the fibromyalgia

Bill- (Unintelligible)

Megan- So you think I'm addicted to pain killers?

Bill- How, how are (Unintelligible)

Megan- How am I? I'm, I'm a mess. I'm a terrified mess.

Bill- (Unintelligible)

Megan- No. I'm having seizures every day. They think that I've got an adrenal gland problem. It looks like I'm going to have to have more surgery. No, I'm not ok. (Crying) And I don't feel like I can go to a hospital and have surgery because I'm so scared of the fact of what you said about these kids. If you did it for shock value congratulations, you shocked me. I'm scared out of my mind. I'm not sleeping at night. I sit around and cry all the time.

Bill- (Unintelligible)

Megan- I'm terrified, Bill. I'm terrified of you hurting my children. Because you said you were going to. If you did it for shock value I don't understand why you would even do that for shock value. (Long pause) Why would you even bring our children in to something like that. I don't understand.

Bill- I can only say it one time (Unintelligible) There's nothing (Unintelligible)

Megan- Then tell me why you said it.

Bill- (Unintelligible) Told you (Unintelligible)

Megan- You've told me. Because of shock value. That's a hell of a reason to say you're going to put a gun to your kid's head. (Long pause) Hell of a reason.

Bill- (Unintelligible)

Megan- No, you never said you were going to put a gun to their head, you just said you were going to kill them. You didn't exactly explain how. (Long pause) I just don't know - if I go in and have these surgeries their wantin' me to have, you're not gonna look me up at a hospital and come up there and take my kids away

Bill- (Unintelligible) ... I'm not ... I'm not going to ... the only association that I will have (long pause) (Unintelligible) ... I do want (Unintelligible) with children. But I'm not (Unintelligible)

Megan- You understand that Alex is so scared of men right now - any man that he cries when they come in the room. (Crying) He's terrified because you hurt him. Do you know what that made me ...

Tape ran out.

911 TAPE (COMPLETE)

(#c shows approximate tape counter)

Conversation Recorded on March 18, 2006 at 1900 hours on Channel 23:

(4c) Phone dialing. (5c) Panting, screaming. Phone ringing.

Male: (6c) Lawrence County 911.

Female: Screaming. Oh my God. Screaming. Oh my God. Screaming. Oh my God. oh my God, oh my God. Screaming.

Dispatch: ... office. (10c)

Female: Oh my God, oh my God, oh my God. Screaming.

Dispatch: (11c) Hello? Hello? Hello? Hello?

Female: (13c) Help, help, help. Help me. Help me. Help me. Oh please. help me. Oh my God. Screaming.

Dispatch: Hello? Hello? Hello?

Female: Please help me. Oh, please help me. Oh my God. Screaming.

Dispatch: (15c) Hello? Hello?

Female: Panting. (17c)

Dispatch: Hello? Hello?

Female: Please help me. Hello? Help me.

Dispatch: Hello? Hello? Who is this?

Goff: (18c) Help me. This is Megan Goff.

Dispatch: Megan what's the problem?

Goff: Screaming. (Unintelligible.)

Dispatch: Sarg get up here. What's the problem?

Goff: (19c) (Inaudible) husband (Inaudible) husband...I just killed him...Oh my God.

Dispatch: Megan? Megan?

Goff: (20 c) Screaming.

Dispatch: Come here & answer these phones. Megan? Megan? Megan!

Goff: Panting yes?

Dispatch: Megan?

Goff: Panting yes?

Dispatch: Megan? Megan?

Goff: Yes, yes. yes.

Dispatch: (22c) Listen, listen. Calm down.

Goff: Screaming.

Dispatch: Megan, what is the problem?

Goff: He said he was gonna kill my babies.

Dispatch: (23c) Who?

Goff: He's gonna kill my babies. My husband. Oh my God. oh my God. oh my God.

Dispatch: Megan, Megan, you need to ...

Goff: Unintelligible ... I'm trying.

Dispatch: Megan, listen to me. Listen to me, where are you?

Goff: (25c) I'm in my house. Inside my house. Screaming.

Dispatch: Okay, Megan. Megan, calm down. I cannot help you unless you listen to me. (26c)
Megan? Megan? Megan?

Goff: I'm trying, I'm trying, I'm trying. (27c)

Dispatch: Megan, you're not listening to me. I can't help you. (28c)

Goff: Oh. Jesus.

Dispatch: Where are you?

Goff: I'm in my living room. our liv ... 1628 County Road 1-A.

Dispatch: Okay. Now what is happening? Tell me what is happening.

Goff: (31c) He's dead. He's dead. Oh my God. Screaming.

Dispatch: Megan?

Goff: Screaming. Oh my God. Oh my God.

Dispatch: Megan?

Goff: What?

Dispatch: Tell me what is happening.

Goff: He, ... he called me. and he told me he was going to kill the kids, & he told me he was just gonna kill them.

Dispatch: (32c) Okay, where are the kids at Megan?

Goff: They're at my mom ... my grandmother's. Screaming.

Dispatch: (33c) Megan, I can't understand you.

Goff: They're at my grandmother's, at my grandmother's.

Dispatch: Okay. Where is that Megan.

Goff: It's. uh. it's in Kentucky. They're in Kentucky. (34c)

Dispatch: Okay. Where and who is he?

Goff: He's my husband. Screaming. (35c)

Dispatch: Okay, Megan. Megan, you're not Megan?

Goff: Screaming.

Dispatch: Megan?

Goff: Oh. God.

Dispatch: Megan, listen to me. (37) I can't help you ...

Goff: Sobbing.

Dispatch: Now I need for you to calm down.

Goff: Panting.

Dispatch: Megan, listen to me.

Goff: He's laying on the floo I'm trying.

Dispatch: Megan, where is he? Where's your husband at? (39)

Goff: By the front door.

Dispatch: What front door?

Goff: My house. 1628 County Road I-A Ironton, Ohio. (40)

Dispatch: Okay, you're, that's where you're at? That's where he is at? And your kids are in Kentucky?

Goff: Yes, yes, yes.

Dispatch: Okay.

Goff: Sobbing.

Dispatch: Stay on the phone with me.

Goff: He I ... Screaming. (43)

Dispatch: Megan?

Goff: Screaming.

Dispatch: Megan?

Goff: Oh my God.

Dispatch: Screamin' is not gonna help. Megan. (45c) I can't help you when you're screamin' because then you're not talking to me and you're not telling me what's happening.

Goff: I'm trying.

Dispatch: Megan, quit screaming.

Goff: Sobbing. Unintelligible.

Dispatch: Okay, he is at the ... Megan is he at your front door. At 1628

Goff: Yes.

Dispatch: County Road 1-A. (48c)

Goff: He's just at the door. He's inside on the floor.

Dispatch: Okay, does he have any weapons on him? (49c)

Goff: No.

Dispatch: Is he still there?

Goff: Yeah. He's dead. I killed him. Oh, God.

Dispatch: Okay, what did you do? (50c)

Goff: I shot him.

Dispatch: Okay, Megan, stay on the phone with me.

Goff: I don't have anything else loaded. I left the guns over there (unintelligible) ...

Dispatch: Okay, stay on the phone with me. I've got a shooting. A shooting.

Goff: Oh my God. (52)

Dispatch: Right here. I need them to get there NOW.

Goff: My babies ...

Dispatch: Down in Hamilton Township.

Goff: Crying.

Dispatch: Megan, stay on the phone with me. I'm gonna get a squad. 16 ... 1628 County
Road 1-A. (Unintelligible.)

Goff: Oh my God. Screaming. Oh my God, oh my God. Screaming.

Dispatch: That way, that way, get there fast.

Goff: Screaming.

Dispatch: Megan? Megan? Megan? Megan? Megan?

Goff: Screaming. (56c) Yes, yes.

Dispatch: Stay on the phone with me.

Goff: I am, I am.

Dispatch: Stay on the phone with me. I've got a dep

Goff: I walked in the door and he got in front of the door, and he said you know I'm going to kill you, then kill your kids.

Dispatch: Okay, Megan. I've got a deputy in route. (58c)

Goff: Oh my God, oh my God.

Dispatch: Megan?

Goff: Oh my God. He was going to kill my babies.

Dispatch: Megan?

Goff: Oh my God. Crying.

Dispatch: Megan?

Goff: My babies. Sobbing.

Dispatch: Okay, Sweetie.

Male: Hey, Ruthanne?

Dispatch: Yes?

Male: I've got an ambulance on the way already. (60c)

Dispatch: Thank you.

Goff: Oh my God.

Dispatch: Megan?

Goff: Oh Jesus.

Dispatch: Megan?

Goff: Oh Jesus. Yes?

Dispatch: Take a deep breath. Megan.

Goff: Oh. Jesus.

Dispatch: Megan, Megan ...

Goff: Help me.

Dispatch: (61c) I need you to take a deep breath. Okay. Okay. Take a real deep breath. Just calm down. I've got, I've got an ambulance in route, and I've got a deputy in route ... (63c)

Goff: Unintelligible. I had 2 guns, I had 2, he always told me

Dispatch: Okay.

Goff: Oh. God.

Dispatch: Megan, how many times did you fire the gun?

Goff: (65c) I don't, I don't know. Until it quit. I don't know.

Dispatch: Okay. Is he laying outside

Goff: Oh, God. no. He's inside. I'm right in front of him. Oh. God.

Dispatch: Okay, Megan. Turn your back to him.

Goff: Oh my God.

Dispatch: Megan?

Goff: Screaming. Oh my God.

Dispatch: Megan? Megan? Listen to me.

Goff: Oh, God. what if he gets up and gets me.

Dispatch: Megan? Listen to me.

Goff: What if he kills me. (68c) I can't not look at him. I can't. No.

Dispatch: She's back there.

Goff: No. he'll kill me. No.

Dispatch: Okay, I need you to go to 1628 County Road

Goff: he'll kill me...Oh my God

Dispatch: 1-A ... with. uh, Goff we got a shooting down there.

Goff: Screaming.

Dispatch: Megan? Megan. quit screaming.

Goff: He's gonna kill me if he gets up. He's gonna kill me, and they can't get in the door.

Dispatch: Megan?

Goff: Oh my God, oh my God.

Dispatch: Megan? Megan? (72c) Do you know how many times you shot him?

Goff: No.

Dispatch: Is he laying inside the house?

Goff: Oh God. Yes. Oh God. Yes.

Dispatch: Okay. Uh is he moving, is he moaning?

Goff: No. No. No. no, no, no.

Dispatch: Okay, I've got an ambulance in route. Megan. stay on the phone with me. and I've got 2 deputies in route.

Goff: Oh. god. Oh my God. oh my God. oh my God.

Dispatch: Unintelligible.

Goff: He, he said. he told me he was going to k ...

Dispatch: Okay, Megan.

Goff: My babies.

Dispatch: Megan? Megan? Megan?

Goff: Sobbing. I love him.

Dispatch: I need you to stay o...Megan, honey, talk to me. Talk to me. listen to me.

Goff: Oh my God, oh my God. He was going to kill my babies.

Dispatch: She is out at Mullinsville..

Goff: My babies.

Dispatch: On that animal call.

Goff: He's gonna kill me if he gets up.

Dispatch: Right there.

Goff: He's gonna kill me.

Dispatch: (81c) Megan? I've got, I've got two deputies....

Goff: He's gonna kill me.

Dispatch: Megan, listen to me, Sweetie. Listen to me sweetie. listen to me (82c)

Goff: Oh my God. Tell them to hurry. He'll kill me if he gets up. He'll kill me. Oh my God...

Dispatch: Megan? Megan?

Goff: Sobbing.

Dispatch: Alright, now listen. Take a deep breath, Megan. Megan, lis., this is Ruthanne. remember? (84c) You've talked to me before down here when you was down here before? And I talked to you at court?

Goff: Oh my God.

Dispatch: Megan? Do you remember me?

Goff: Oh my God.

Dispatch: Megan?

Goff: He told me he was going to kill me.

Dispatch: Megan.

Goff: He was going to kill the babies. He said was going to kill me.

Dispatch: Go ahead.

Goff: then he was going to go and kill the babies.

Dispatch: Unintelligible.

Goff: He said he knew where they were. Oh my God. oh my God. Panting.

Dispatch: Yes. yes...Megan?

Goff: Screaming. Oh my God. oh my God, oh my God.

Dispatch: Megan?

Goff: Oh my God.

Dispatch: Megan?

Goff: Oh my God, oh my God, oh my God, oh my God. oh my God. oh my God. oh my God. oh my God.

Dispatch: Megan? (Unintelligible.)

Goff: I don't have any guns on me. I don't. they're all oh god. the guns are over there by him. Oh my God.

Dispatch: Yes. Megan. stay on the phone with me. (92c)

Goff: The guns are by him.

Dispatch: Megan?

Goff: Tell the police the guns are by him.

Dispatch: Megan?

Goff: They're goin' to open the door ... they're going to have to kick his feet. I can't get out the door.

Dispatch: Okay, Megan. (93c)

Goff: He told me he was gonna kill me. He's gonna kill me if he gets up.

Dispatch: Megan? Is the door unlocked?

Goff: I don't know. I don't know. (94c)

Dispatch: Megan, just stay, stay on the phone with me.

Goff: Oh my God, oh my God, oh my God.

Dispatch: Megan? Remember this is Ruthanne. Remember me?

Goff: Sobbing.

Dispatch: Megan?

Goff: A little bit.

Dispatch: No. He's inside. He's feet are right by the door.

Goff: Oh, God. oh, God.

Dispatch: Megan?

Goff: Oh, God. Sobbing.

Dispatch: Can you talk to me? Megan? Remember me? My name's Ruthanne.
Remember? I talked to you at court.

Goff: A little bit, a little bit, a little bit. (98c)

Dispatch: Megan?

Goff: Oh. Oh, Jesus. You're the one that's by the metal detector.

Dispatch: Megan?

Goff: Are you the one that's by the metal?

Dispatch: Yes. Yes, I am.

Goff: Oh, God. I shot him. Oh, God. (100c)

Dispatch: Okay, listen just calm....

Goff: He called me yesterday. He called me twice. and he told me he knew where
I lived and he said...

Dispatch: Megan...

Goff: was going to kill the babies.

Dispatch: I un... Okay.

Goff: He said he was gonna...

Dispatch: Megan?

Goff: (Unintelligible)

Dispatch: Megan, Sweetie. listen to me.

Goff: He said he was gonna shoot my babies. (102c)

Dispatch: I understand, Megan.

Goff: He was laughing about it. Oh my God.

Dispatch: Megan, take a breath. Megan take a deep deep breath. Just close your eyes. Megan.

Goff: I, I, I'm trying to tell you what happened. I'm trying

Dispatch: Megan, listen to Ruthanne. Listen to me, Megan. Listen to Ruthanne.

Goff: Sobbing. (Unintelligible) in the door. and he wouldn't let me Oh my God.

Dispatch: Close your eyes Megan. (106c)

Goff: I can't. He'll move, he'll kill me.

Dispatch: Okay.

Goff: He'll kill me.

Dispatch: Okay. Then just take a deep breath.

Goff: He'll kill me.

Dispatch: Megan, listen to me.

Goff: Oh, God.

Dispatch: Listen to me. You're not going to do yourself any good if he does come to

Goff: Oh, Jesus. Oh, Jesus. Sobbing.

Dispatch: Okay, you need to calm down. Okay.

Goff: Oh, Jesus. oh, Jesus.

Dispatch: Megan, just take you some deep breaths.

Goff: Hurry, Hurry. (109c)

Dispatch: I've got two deputies

Goff: What's taking so long?

Dispatch: Megan?

Goff: Hurry, Hurry.

Dispatch: Megan? Okay, listen to me, I'm going to stay on the phone with you

Goff: Oh my God.

Dispatch: I'm not going anywhere.

Goff: Sobbing.

Dispatch: Megan?

Goff: He'll kill me anyway. He'll kill me anyway.

Dispatch: Megan?

Goff: It doesn't matter that you're on the phone, Oh my God.

Dispatch: Megan? Do you see blood? (112c)

Goff: Yes. Panting. Not very much. Sobbing. Oh my God. Oh, I hit his head.
Ohhhh.

Dispatch: Megan ?

Goff: Oh, he's going to kill me. I can't get out the door.

Dispatch: Megan? Megan, you're not helping me.

Goff: Panting.

Dispatch: You're not helping me Megan.

Goff: What do ya want me to do?

Dispatch: Megan, you're not helping me. (116c)

Goff: What do ya want me to do?

Dispatch: I want you...Honey, I want you to listen to me. Quit screamin'.

Goff: Help. (Unintelligible) (117c)

Dispatch: Okay.

Goff: Help. Help me (Unintelligible)

Dispatch: I just need for you to stay calm.

Goff: Don't let him hurt me.

Dispatch: I'm Megan, I'm not going to let him near you. (118c)

Goff: Please, oh, please. Don't let him hurt me or my babies. You've got to let my babies be okay. Oh, he can't hurt my babies.

Dispatch: Megan?

Goff: Oh, God, my babies. Oh, God, I can't let him hurt my babies. (120c)

Dispatch: Megan. I know, I know. We're not going to let him hurt your babies.

Goff: Sobbing.

Dispatch: Megan? Copy I've got a deputy there.

Goff: Hurry. Hurry.

Dispatch: Megan, I've got a deputy there. Stay on the phone with me. (122c)

Goff: Hurry. Hurry. Hurry. Sobbing. Hurry.

Dispatch: Megan. I've got a deputy there now.

Goff: Okay, Okay. Okay. I don't have a gun. I'm far far away from one. I don't have anything on me. I promise. I swear to God. (Unintelligible.)

Dispatch: Okay, you don't have any guns or anything.

Goff: No. No. Tell him hurry come in the house so he won't kill me. Tell him to hurry.

Dispatch: O-ok. Just, just, just stay right Me... (126c)

Goff: I don't know if the door is locked. Tell him to kick it in if he has to. I don't want ..

Dispatch: Megan. sta...

Goff: He's gonna kill me.

Dispatch: Megan, listen. I need you to calm down for a minute.

Goff: Sobbing.

Dispatch: I need to get the deputy some information.

Goff: Okay, Okay. Okay. Panting.

Dispatch: Okay. I've got a deputy at the door. Can you hear him knocking?

Goff: No. (129c)

Dispatch: 19 are you knocking at the front door? Are you. is. is he at the front door. the back...

Male: I'm at the front door.

Dispatch: Stand by. Okay. is he at the front door.

Goff: I don't Tell him just to open it. (131c) I don't know Tell him open it. Oh. God. Tell him to hurry. Tell him to hurry.

Dispatch: Okay. 19 she said that she believes the door is unlocked to go ahead and open it.

Goff: Panting. Screaming.

Dispatch: Okay, MeganMegan? (133c)

Goff: Crying. Oh my God. oh my God. don't let him hurt me. Don't let him hurt me. Oh my God. oh my God.

Male: We got a 16

Dispatch: Copy I'll advise.

Goff: Oh my God, oh my God. Oh, please don't let him hurt me. Oh, don't let him hurt me. Oh God. oh God. oh God. Don't let him hurt me. Please don't. Don't let him hurt me. Oh, don't let him hurt me. Don't let him hurt me. Oh. Sobbing. Panting. (Unintelligible.) Oh my God. he'll kill us. He's gonna kill us. (Unintelligible) kill my babies. (141c) Oh my God. He said he would. He would. He was gonna kill my babies. Oh my babies, oh my babies. He was (Unintelligible.) Oh God, oh God, oh God. The gun it wouldn't fire, I couldn't make it oh, no. Jesus, oh. Jesus. oh. Jesus. oh. Jesus. oh, Jesus. Oh, he's gonna kill me. He's gonna kill me. He's gonna kill me. (146c)

Deputy: I'm Deputy Majher. I'm with ya.

Goff: He's gonna kill me. I can't walk by him. He'll kill me.

Deputy: I'm gonna make sure he doesn't hurt you. Come on.

Male: Come on. He's gonna take you out the back door.

Deputy: I'm gonna take you out the back door. Come on. This way. Come on. go this way. Come on.

Goff: Sobbing. Go this way.

Deputy: This way?

Goff: Yes. Oh, don't let him kill me. Don't let him kill me.

Deputy: I've got cha Megan.

Goff: Don't let him kill me. Oh, Jesus, oh, Jesus, oh, Jesus, oh, Jesus. Don't let him kill me. Don't let him kill me.

Deputy: You're okay. You're okay. You're okay. (152c)

Goff: Screaming, Oh my God.

Conversation recorded on March 18, 2006 at 1913 on Channel 1.

Certification

I, Allison Graham, do hereby certify that the foregoing pages are a true and accurate account of the transcript of the 911 tape recorded on March 18, 2006.

It was transcribed, proof-read and corrected by me and is a true and accurate account of said statement to the best of my knowledge and ability to prepare same.


Allison Graham

THE U.S. NATIONAL ARCHIVES & RECORDS ADMINISTRATION

www.archives.gov

May 18, 2010

The Bill of Rights: A Transcription

The Preamble to The Bill of Rights

Congress of the United States

begun and held at the City of New-York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; v/z.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Note: The following text is a transcription of the first ten amendments to the Constitution in their original form. These amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights."

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

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

Amendment VI

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

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

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

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendments 11-27

Note: The capitalization and punctuation in this version is from the enrolled original of the Joint Resolution of Congress proposing the Bill of Rights, which is on permanent display in the Rotunda of the National Archives Building, Washington, D.C.

Page URL: http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

Passed by Congress June 13, 1866. Ratified July 9, 1868.

Note: Article I, section 2, of the Constitution was modified by section 2 of the 14th amendment.

Section 1.

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

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

**Changed by section 1 of the 26th amendment.*

AMENDMENT XV

Passed by Congress February 26, 1869. Ratified February 3, 1870.

Section 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude--

THE OHIO CONSTITUTION

(with amendments to 2006)

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PREAMBLE

PREAMBLE

We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

ARTICLE I: BILL OF RIGHTS

INALIENABLE RIGHTS.

§1 All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

(1851)

RIGHT TO ALTER, REFORM, OR ABOLISH GOVERNMENT, AND REPEAL SPECIAL PRIVILEGES.

§2 All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

(1851)

RIGHT TO ASSEMBLE.

§3 The people have the right to assemble together, in a peaceable manner, to consult for the common good; to instruct their representatives; and to petition the General Assembly for the redress of grievances.

(1851)

BEARING ARMS; STANDING ARMIES; MILITARY POWER.

§4 The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

(1851)

TRIAL BY JURY.

§5 The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the

rendering of a verdict by the concurrence of not less than three-fourths of the jury.

(1851, am. 1912)

SLAVERY AND INVOLUNTARY SERVITUDE.

§6 There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

(1851)

RIGHTS OF CONSCIENCE; EDUCATION; THE NECESSITY OF RELIGION AND KNOWLEDGE.

§7 All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

(1851)

WRIT OF HABEAS CORPUS.

§8 The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

(1851)

BAIL.

§9 All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great and except for a person who is charged with a felony where the proof is evident or the presumption great and who where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and

ARTICLE I: BILL OF RIGHTS

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

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the State of Ohio.

(1851, am. 1997)

TRIAL FOR CRIMES; WITNESS.

§10 Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

(1851, am. 1912)

RIGHTS OF VICTIMS OF CRIME.

§10a Victims of criminal offenses shall be accorded fairness, dignity, and respect in the criminal justice process, and, as the General Assembly shall define and provide by law, shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process. This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this constitution, and does not create any cause of action for compensation or damages against the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(1994)

FREEDOM OF SPEECH; OF THE PRESS; OF LIBELS.

§11 Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

(1851)

TRANSPORTATION, ETC. FOR CRIME.

§12 No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

(1851)

QUARTERING TROOPS.

§13 No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

(1851)

SEARCH WARRANTS AND GENERAL WARRANTS.

§14 The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describ-

2945.371 Evaluations and reports of the defendant's mental condition.

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

(B) If the court orders more than one evaluation under division (A) of this section, the prosecutor and the defendant may recommend to the court an examiner whom each prefers to perform one of the evaluations. If a defendant enters a plea of not guilty by reason of insanity and if the court does not designate an examiner recommended by the defendant, the court shall inform the defendant that the defendant may have independent expert evaluation and that, if the defendant is unable to obtain independent expert evaluation, it will be obtained for the defendant at public expense if the defendant is indigent.

(C) If the court orders an evaluation under division (A) of this section, the defendant shall be available at the times and places established by the examiners who are to conduct the evaluation. The court may order a defendant who has been released on bail or recognizance to submit to an evaluation under this section. If a defendant who has been released on bail or recognizance refuses to submit to a complete evaluation, the court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by the department of mental health or the department of developmental disabilities where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days.

(D) A defendant who has not been released on bail or recognizance may be evaluated at the defendant's place of detention. Upon the request of the examiner, the court may order the sheriff to transport the defendant to a program or facility operated by the department of mental health or the department of developmental disabilities, where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days, and to return the defendant to the place of detention after the evaluation. A municipal court may make an order under this division only upon the request of a certified forensic center examiner.

(E) If a court orders the evaluation to determine a defendant's mental condition at the time of the offense charged, the court shall inform the examiner of the offense with which the defendant is charged.

(F) In conducting an evaluation of a defendant's mental condition at the time of the offense charged, the examiner shall consider all relevant evidence. If the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered woman syndrome.

(G) The examiner shall file a written report with the court within thirty days after entry of a court order for evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the following:

(1) The examiner's findings;

(2) The facts in reasonable detail on which the findings are based;

(3) If the evaluation was ordered to determine the defendant's competence to stand trial, all of the following findings or recommendations that are applicable:

(a) Whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense;

(b) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, whether the defendant presently is mentally ill or mentally retarded and, if the examiner's opinion is that the defendant presently is mentally retarded, whether the defendant appears to be a mentally retarded person subject to institutionalization by court order;

(c) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner's opinion as to the likelihood of the defendant becoming capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense within one year if the defendant is provided with a course of treatment;

(d) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or mentally retarded, the examiner's recommendation as to the least restrictive treatment alternative, consistent with the defendant's treatment needs for restoration to competency and with the safety of the community.

(4) If the evaluation was ordered to determine the defendant's mental condition at the time of the offense charged, the examiner's findings as to whether the defendant, at the time of the offense charged, did not know, as a result of a severe mental disease or defect, the wrongfulness of the defendant's acts charged.

(H) If the examiner's report filed under division (G) of this section indicates that in the examiner's opinion the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that in the examiner's opinion the defendant appears to be a mentally retarded person subject to institutionalization by court order, the court shall order the defendant to undergo a separate mental retardation evaluation conducted by a psychologist designated by the director of developmental disabilities. Divisions (C) to (F) of this section apply in relation to a separate mental retardation evaluation conducted under this division. The psychologist appointed under this division to conduct the separate mental retardation evaluation shall file a written report with the court within thirty days after the entry of the court order requiring the separate mental retardation evaluation, and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the information described in divisions (G)(1) to (4) of this section. If the court orders a separate mental retardation evaluation of a defendant under this division, the court shall not conduct a hearing under divisions (B) to (H) of section 2945.37 of the Revised Code regarding that defendant until a report of the separate mental retardation evaluation conducted under this division has been filed. Upon the filing of that report, the court shall conduct the hearing within the period of time specified in division (C) of section 2945.37 of the Revised Code.

(I) An examiner appointed under divisions (A) and (B) of this section or under division (H) of this section to evaluate a defendant to determine the defendant's competence to stand trial also may be appointed to evaluate a defendant who has entered a plea of not guilty by reason of insanity, but an examiner of that nature shall prepare separate reports on the issue of competence to stand trial and the defense of not guilty by reason of insanity.

(J) No statement that a defendant makes in an evaluation or hearing under divisions (A) to (H) of this section relating to the defendant's competence to stand trial or to the defendant's mental condition at the time of the offense charged shall be used against the defendant on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated the defendant or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the prosecutor or defense counsel from calling other witnesses or presenting other evidence on competency or insanity issues.

(K) Persons appointed as examiners under divisions (A) and (B) of this section or under division (H) of this section shall be paid a reasonable amount for their services and expenses, as certified by the court. The certified amount shall be paid by the county in the case of county courts and courts of common pleas and by the legislative authority, as defined in section 1901.03 of the Revised Code, in the case of municipal courts.

Amended by 128th General Assembly ch. 7, SB 79, § 1, eff. 10/6/2009.

Effective Date: 02-20-2002

2901.06 Battered woman syndrome evidence.

(A) The general assembly hereby declares that it recognizes both of the following, in relation to the "battered woman syndrome:"

(1) That the syndrome currently is a matter of commonly accepted scientific knowledge;

(2) That the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

(B) If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self-defense, the person may introduce expert testimony of the "battered woman syndrome" and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question. The introduction of any expert testimony under this division shall be in accordance with the Ohio Rules of Evidence.

Effective Date: 11-05-1990

FILED
COMMON PLEAS COURT

2006 JUL -6 PM 1:45

IN THE COURT OF COMMON PLEAS
LAWRENCE COUNTY, OHIO

STATE OF OHIO,

PLAINTIFF,

VS.

MEGAN GOFF,

DEFENDANT.

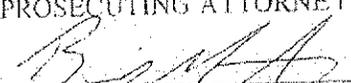
JUDGMENT ENTRY
CASE NO. 06-CR-33

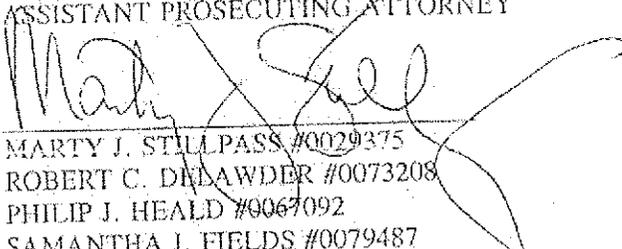
LEE MORRIS
CLERK OF COURTS
LAWRENCE COUNTY

It is hereby Ordered that the Defendant, Megan Goff, submit to a psychiatric examination to be conducted by Phillip J. Resnick, M.D. on July 28, 2006 at 1:00 PM. This examination will take place at Dr. Resnick's office located at the University Hospital of Cleveland, 11100 Euclid Avenue, at the Hanna Building Pavilion, Room 1191, Cleveland, Ohio.


JUDGE W. RICHARD WALTON

J. B. COLLIER, JR. #0025279
PROSECUTING ATTORNEY


BRIGHAM M. ANDERSON #0078174
ASSISTANT PROSECUTING ATTORNEY


MARTY J. STILLPASS #0029375
ROBERT C. DELAWDER #0073208
PHILIP J. HEALD #0067092
SAMANTHA J. FIELDS #0079487