

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio

CASE NO: 10-1193

v.
JESSE DUNAWAY

ON APPEAL FROM THE BUTLER COUNTY
COURT OF APPEALS, TWELFTH APPELLATE
DISTRICT CASE NOS. CA-2009-05-141 &
CA-2009-06-164

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MOTION TO AMEND

Robin N Piper III 0023205
Butler County prosecutor
315 High St 11th Floor
Hamilton, OH 45011
(513) 887-3474
(513) 785-5206 - fax
Counsel for the state of Ohio

JESSE DUNAWAY 606446
3791 St Rt 63
PO Box 56
Lebanon, OH 45036

PRO-SE

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In the Supreme Court of OHIO

State of OHIO

v

Jesse Dunaway

CASE NO = 10-1193

ON Appeal from the Butler County
Court of Appeals twelfth Appellate
District CASE NOS : CA 2009-05-141 &
CA 2009-06-164

Motion to Amend
Memorandum & Brief in Support

Comes now the defendant acting in pro-se requesting that the Supreme Court of Ohio amend the following to the defendants case before the Supreme Court of Ohio CASE NO: 10-1193, The defendant would like to add to his arguments the claims of Ineffective Assistance of Trial Counsel, prosecutorial misconduct, Judicial prejudice, unconstitutionality in sentencing & prosecution, violation of the defendants due process, Conflict of Interest, Abuse of Discretion by the trial Judge, the Fifth & Fourteenth Amendments as well as the Sixth Amendment

The defendant would like to add these claims to the current issue before this court and have them rule on these claims to decide if the Nature of Arguments and violations of the defendants rights may award him a new trial

Respectfully Submitted on this day of July 23, 2010

Jesse Dunaway

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Certification of Service

This is to certify that a copy of the foregoing Motion to Amend was forwarded by regular U.S. Mail, postage prepaid to the office of Robin N. Piper, III Butler County prosecutor, 315 High St 11th Floor Hamilton, Ohio 45011, on this day of July 23, 2010

Jesse Dunaway
3791 St Rt 63
P.O. Box 56
Lebanon, OH 45036

Jesse Dunaway
JESSE DUNAWAY 606446
PRO-SE

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STATEMENT OF THE CASE

¶

Statement of Facts

This case arises from a culmination of events that took place in Butler county Ohio in March, 08 where the defendant had an altercation with ex-fiance Roselda Bean that resulted in a Multicare accident in Hamilton County outside Jurisdiction of Butler County and incident at Roselda Beans home in Trenton where she received multiple stab wounds that resulted in the defendant being arrested and charged

During the trial proceedings the Appellant sent a series of letters to the State Bar Association, State Disciplinary Counsel and to the trial court Judge, expressing his concern that he was not receiving effective counsel and utilized the judge for lack of inquiry of allegations and issues of prosecutorial misconduct, the appellant felt pressured or forced into entering a plea by trial counsel & the neglect of the judge to make inquiry into allegations, the defendant made repeated request for second mental health evaluation, medical reports & evidence to complete discovery to his trial counsel which were denied and resulted in the contacting of other authorities & the states removal of current offer to defendant to then force him into an illegal and unconstitutional open sentencing at the mercy of the court that he must utilize and turned into State Authorities & BAR Association because if the defendant insisted on following through with the discovery request or suppression issues of evidence after recent letters to the judge all plea offers would be revoked. which forced, provoked the defendant into actions in his case & plea that he did not want, Attached in Appendix will be the letters to the trial judge all before conviction & sentencing

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ARGUMENTS & ASSIGNMENT OF ERRORS
ON

INEFFECTIVE ASSISTANCE

I

FIRST ASSIGNMENT OF ERROR

In *Mickens v Taylor* certiorari was granted & Justice Scalia held that the courts failed to inquire into potential conflicts of interest violated the defendant's Sixth Amendment rights & adversely affected counsel's performance & outcome of the defendant's case

Legal assistance that is ineffective in preserving fairness and protection to a defendant is simply incompetent counsel

When a defendant is denied effective counsel he is unable to make independent decisions how to conduct a defense, moreover in counsel's ability with cases of conflicts of interest, especially where counsel's performance is so deficient & serious that it denied the defendant of effective counsel & that counsel was not functioning as "Counsel" guaranteed the defendant by the Sixth Amendment and the prejudice of counsel & the courts deprived the defendant of his right to a fair trial under the law

Counsel's function in representing a criminal defendant is to assist defendant & hence counsel owes his client a duty of loyalty and a duty to avoid conflicts of interest

Counsel has a duty to make reasonable investigations into a client's defense which in this case has not happen, furthermore in cases of constructive prejudice is also a constructive denial of assistance of counsel & creates more conflicts of interest and therefore affects a lawyer's performance for the defendant as in

Strickland v Washington 466 U.S. 668, 104 S.Ct. 2052

Mickens v Taylor 535 U.S. 162, 122 S.Ct. 1237

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II

Under ineffective assistance it denies a defendant their right to Equal protection under the law in every aspect and because of defendant claims of ineffective assistance to the courts there should have been a hearing to decide if the defendant's plea was voluntary and whether or not claims were constituted which would vacate the defendant's plea or at least the validity of it to determine whether or not it was voluntary considering alternative courses of action open to the defendant
North Carolina v Alford 400 U.S. 25

The voluntariness of a defendant's plea depends on whether or not Counsel's advice was within the range of competence demanded of Attorneys in Criminal Cases McMann v Richardson 397 U.S. 759 that states the quality of Counsel's performance in advising a defendant whether to plead stemmed from the general principle that all defendants facing felony charges are entitled to the effective assistance of Counsel and competent Counsel 397 U.S. at 771 and N. 14, 90 S.Ct. at 1449 and N. 14

With claims the defendant has made and the evidence provided the defendant feels Counsel's representation fell below an objective standard and reasonableness 466 U.S. at 687-688, 104 S.Ct. at 2065 also that because of ineffective counsel unprofessional errors, the results of the proceedings would have been different for the defendant

Furthermore because of claims of prejudice & conflicts of interest even ineffective assistance of Counsel, that the defendant feels that Counsel did not have his best interest at heart & even jeopardized the safety of the defendant and compromised his case with actions and incompetence; It raises the assumption that Counsel had ill feelings and was acting vindictively

III

The Strickland v Washington test for evaluating claims of ineffective Counsel applies to Guilty Plea Challenges based on ineffective assistance and prejudice

The defendant claimed that counsel quietly but forcefully pushed him into an unacceptable plea due to his actions that resulted in an illegal sentence. Attempts to withdraw pleas were ignored by counsel.

Where a defendant enters a plea upon counsel's advice, voluntariness of the plea depends on whether advice was competent.

U.S.C.A. Const. Amend. 6

North Carolina v Alford 400 U.S. 25

Boykin v Alabama, 395 U.S. 238

Machibroda v United States 368 U.S. 487

McMann v Richardson 397 U.S. 759

Toilette v Henderson 411 U.S. 258

Reece v Georgia 350 U.S. 85

Powell v Alabama 267 U.S. 45

Counsel was ineffective when it allowed the defendant to enter into a illegal deal of open sentencing, furthermore for not doing as the defendant requested as to his case, filing motions, suppression and other explained issues. Regardless if the defendant wrote letters and was able to read law books to aide defense which no doubt needed all the help it could get due to pure incompetence & ignorance of itself and trial courts.

Second Assignment of Error

Arguments and Assignments of Error to Illegal & Unconstitutional Sentencing & 5, 6, 8, 14 Amendments

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The defendant feels that the evidence will prove his claims to this Court that the ineffective assistance of Counsel, negligent error and poor advice of Counsel along with issues of prejudice, vindictiveness, conflicts of interest not only tainted the defendant's case but also violated his Fifth & Fourteenth Amendment Rights to due process as well as his Sixth Amendment Right to trial by jury, that these issues and others that will be raised in this argument seriously affected the defendant's case as well the outcome & sentencing.

Because of the letters to the Judge, letters to the Bar Association and the state disciplinary counsel regarding issues with the trial Judge prosecution & Trial Counsel gives the assumption of prejudice and vindictiveness which they makes the entire process & case tainted and creates a conflict of interest under Rule 1.7, 1.8 that under these circumstances and issues raised the Judge should have ordered an investigation & raise the possible issue of replacing the Judge, prosecution & Trial Counsel to ensure the defendant's Rights, and Rights to a fair trial without prejudice, CRIM R 33 A1 Irregularity in proceeding, CRIM R 33 A2 Misconduct of prosecution

The defendant also argued that defense counsel refused to give him a second opinion by a doctor to help with his case, this denied the defendant access to expert testimony under Evid R 702 when he refused to allow a second opinion

(2)

Defense counsel violated many professional Rules of Conduct as the defendant wrote about to the trial judge and made part of the record. Under Professional Rule of Conduct, trial counsel violated Rule 1.2^A. A lawyer shall abide by a client's decision concerning the objectives of representation as required by Rule 1.4.

Violations in 1.2^d engaged & assisted prosecution in illegal & fraudulent acts in regards to information defendant had & sentence negotiation and offers to the defendant.

Division 1^A confers upon the client the ultimate authority to determine the purpose to be served by legal representation.

Division 4 It is the lawyer's duty to abide by the client's decisions.

Rule 1.3 A lawyer shall not neglect a legal matter entrusted to him, a lawyer shall not fail to seek the lawful objectives of his client through reasonably available means permitted by law.

Violation of Rule 1.6 confidentiality of information when he shared information with prosecution & police regarding escape issues and

Rule 1.6^c Counsel jeopardized the safety of the defendant and also compromised his case & judicial proceedings.

The judge & prosecution knew of these issues and worked with defense counsel to conceal these fraudulent, malicious acts within the law which brings the arguments of violations in Bar admission & disciplinary matters, Rule 8.4 Misconduct A, B, C, D, E, F it certainly raises ethical violations.

(2)

(3)

In the defendant's own words in letters to the trial judge he stated he wanted to go to trial, that he wanted to see all evidence against him that defense counsel would scare him & his family into decisions other than they wanted, there is neglect in counsel & misconduct with the failure to provide evidence & transcripts as requested by the defendant and further more violated the due process of the defendant as he also spoke of this to the trial judge.

Because counsel never filed for transcripts as defendant requests or to obtain trial evidence was a quiet forceful hand pushing the defendant away from what was best for him & his case and allowed counsel to determine the outcome.

The record clearly shows the states removal of a 15 year sentence after the defendant wrote to the judge & contacted the state bar association and disciplinary counsel on issues he was having during his trial, the letters even spoke of the 15 year offer being accepted, with these constable problems & issues that were being raised to the judge at some point proceedings should have been stopped and investigation done but because there wasn't and some claims were on trial judge it again creates the assumption that the judge helped conceal these malicious acts and creates the assumption of prejudice & vendictiveness in prosecution & sentencing, this gives the prosecution an unfair advantage over the defendant and proceedings.

The defendant writes the court for help because of problems in his case and with defense counsel and instead of help he received more malicious acts of prejudice prosecution.

(3)

(4)

The pure fact that a defendant would challenge defense counsel, prosecution & Trial Judge on errors during a criminal case to simply go to an outside association that may tarnish the names & careers of these people does nothing but creates conflicts and adversely affects the defendant's case and outcome, this also creates fundamental unfairness towards the defendant.

A violation of the Sixth Amendment is the same for a defendant who retains counsel or for one who has appointed counsel, and the Sixth Amendment would stand for little if the often uninformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection.

There is certainly a negligence on the trial judge's part to not inquire into potential conflicts and that there was a conflict that would create these issues towards a defendant, with the likelihood of prejudice and vindictiveness it shows incompetence of the judge to not inquire and assure that the defendant's due process is not violated, in some cases the court of appeals mandated that the trial court neglects a duty to inquire into potential conflicts of interest.

Campbell v Rice, 265 F.3d 878, 884, 885

Because the defendant challenged a trial judge, utilized here in letters, challenged defense counsel & prosecution only adds incentive for conflict, and without any inquiry by the judge or replacement of counsel or new trial it shows a judicial dereliction.

(4)

(5)

When trial counsel refused to file briefs and motions pertaining to issues of the Judge being related to a States witness, the very one the prosecutor spoke of at sentencing and also for not urging the Judge to remove herself for being a former victim of violence creates conflict of interest. GARCIA v BUNNELL, 33 F.3d 1193

United States v SAYAN 968 F.2d 55.64-65 C.A.1992

The relation to a States witness and victim of violence herself gives presumption of prejudice + vindictiveness at sentencing as well as other issues with Bar Association + disciplinary counsel and is why the defendant seeks a new trial and was given the many consecutive sentences he received.

The defendant was entitled to different representation for the right of counsel guaranteed by the Constitution complicates the services of an attorney devoted solely to interest of his client

VON MOLTKE v GILLIES, 332 U.S. 708 MORE OVER the defendant has the right to conflict free counsel. An attorney is bound to disclose anything that may conflict with his defense and interest especially when it is the freedom of his client, a defendant is to presume that counsel will have devotion to him and that no interest which may betray his judgement or endanger his fidelity

With these problems the Judge still did nothing to discharge her Constitutional duty of care towards the defendant and the very laws she presides over to defend and protect and the constitution imposes a duty to inquire on the State Courts even when no objections were made by paid counsel

Wood v. GEORGIA, 450 U.S. 261, 267, 272, 101 S.Ct 1097, 67 L.Ed 2d 220

(5)

(6)

It is a trial Judges duty to protect a defendants interest and to make a thorough inquiry and to take all steps necessary to insure the fullest protection of this constitutional right at every stage of the proceedings

The novel & naive assumption of the court that counsels divided loyalties are acceptable unless it can prove that they actually affected counsels performance is demeaning to the profession

Every state bar in this country has an ethical rule prohibiting a lawyer from representation that involves a conflict of interest unless the client has waived the conflict, loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyers responsibilities or interest even obligations, Under the Sullivan rule it mandates a reversal when the trial court failed to make an inquiry even though it knows that a particular conflict exists

CRONIC, 466 U.S. at 659-660, 104 S.Ct. 2039

In one such case of judicial dereliction the courts reversed and of course a judge who gets wind of such conflicts or problems during the course of a trial may have to inquire into both directions prospectively to assess the risk of conflict if the lawyer remains in place, the judge may have to inquire to see whether the conflict has affected the defendant adversely and if proceedings were tainted by the conflict

The remedy for the judges dereliction of duty should be an order vacating the conviction and affording a new trial

HOLLOWAY, 435 U.S. at 491, 98 S.Ct. 1173

(6)

(7)

The law on conflicted counsel has to face the fact that some of the Nations leading cases arise after trial in which counsel kept silent of conflicts & favoring interest over the clients, A venal lawyer is not apt to be reformed by a general rule that says his client will have an easier time reversing a conviction down the road if the lawyer calls attention to his own venality

This kind of breakdown in criminal justice creates a minimum the appearance that the proceedings will not reliably serve its function as a vehicle for determination of guilt or innocence and the resulting criminal punishment

When people are so cruelly slandered and accused of prejudice vendictiveness & ineffectiveness as well as conflicts of interest is likely to show detachment which is unfair adjudication, fair trials are important parts of our free society to let attorneys, judges to be judges of charges they prefer and such has happen in this case where all people in all positions were accused and slandered, it leaves it hard to say that no vendiction, hostility or ill feelings were felt that would leave the defendant very vulnerable in representation, prosecution and sentencing

The bill of rights stemmed directly from the spirit in which that great charter of liberty was offered for adoption on the floor of the House of Representatives by its framer James Madison, if they (first ten Amendments) are incorporated into the constitution independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights

(7)

(8)

They will be the impenetrable bulwark against every assumption of power in the legislative or Executive, they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights.

With the Judge have being a former victim of assault & Rape it makes for conflict and the assumption whether or not the Judge is able to set aside personal judgement & emotions of her own traumatic experience, The Judge stated at sentencing that the victim will never overcome her experience, The only way the Judge would know this is if her own emotions were influencing the sentence which shows prejudice, The Judge is not knowing how a victim may heal or overcome individual situations, each person is different and the affects of problems on them are different as well, it is up to the person and their ability to heal & overcome, obviously the Judge still has emotional issues over her past issues and it create prejudice and vindictiveness, Further more the states witness Glenda Oney is the wife of Dave Oney the nephew of the trial Judge Patricia Oney which also creates conflict, all feelings & vindictiveness and the defendant feels this also mandates a vacated sentence and this case set for new trial

R5925

Detail

2008 04 0664 STATE OF OHIO VS DUNAWAY, JESSE LEE

TRENTON POLICE DEPARTMENT
11 EAST STATE STREET
TRENTON, OH 45067

WILLIAMS, LAWRENCE
3075 JOHN GRAY RD
CINCINNATI, OH 45251

WIT

RUDOPH HULSEY, CONSTANCE
8541 ARBOR CREST
CINTI, OH 45236

WIT

FIELDS, MORGAN
3754 JESSUP RD
CINTI, OH 45247

WIT

ONEY, GLENDA
126 NORTH ADAMS ST
VERSAILLES, IN 47042

WIT

← *Relation to Trial Judge
wife of the Nephew of Judge*

BEAN, ROSELDA
609 MEADOWBROOK CT
TRENTON, OH 45067

WIT

ANTHONY, TINA
7975 BOBTAIL CT
WEST CHESTER, OH 45069

WIT

ZIANNO Officer, JOSEPH
TRENTON POLICE DEPARTMENT
11 EAST STATE STREET
TRENTON, OH 45067

WIT

VERIZON WIRELESS
180 WASHINGTON VALLEY RD
BEDMINSTER, NJ 07921

WIT

MONROE Detective, DUANE
BUTLER COUNTY SHERIFFS DEPT
705 HANOVER ST
HAMILTON, OH 45011

WIT

WHITLOCK Detective, ROB
BUTLER CO SHERIFFS OFFICE
705 HANOVER ST
HAMILTON, OH 45011

WIT

SISSION, GEORGE
BUTLER COUNTY SHERIFFS OFFICE
705 HANOVER ST
HAMILTON, OH 45011

WIT

DAVIDSON, MATT
BUTLER COUNTY SHERIFFS OFFICE
705 HANOVER ST
HAMILTON, OH 45011

WIT

(9)

In the confession of the defendant and in letters to the Judge the defendant speaks of large amounts of Drugs and Alcohol being consumed the day this crime was committed but the confession itself was under distress & coercion itself due to the situation & Trauma that was upon the defendant, Clearly from statements of witness and evidence the defendant was in the middle of a mental & Emotional breakdown, even text messages between the victim and defendant speaking of him getting mental help

Along with this and other diagnosed mental disorders it makes the confession of the defendant invalid and the Supreme Court ruled in Blackburn v State of Alabama any confession by someone who suffers mental illness and or paranoia is involuntary and is in violation of the Fourteenth Amendment right when it is admitted into evidence or to a Grand Jury that would constitute an illegal indictment.

In Chambers v State of Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716 coercion can be mental as well as physical and under the Fourteenth Amendment it forbids fundamental unfairness in the use of evidence and in such cases of coercion it puts the illegal methods blame on the police
Spano v People of State of New York, Supra 360, U.S. at 320-321, 79 S.Ct. at 1205, 1206, 31 L.Ed. 1265

And in cases of mental illness or delusions of paranoia it is of the strongest probability that the defendant was insane and incompetent at the time of his confession and not to mention the effects of the drugs and alcohol in the defendant's blood system. had in such a confession

FILES v State of Alabama, Supra at 196, 77 S.Ct. at 284, 11 L.Ed. 2d. 246

Because of conflicting evidence there should be a conflict of evidence in the Decker's findings & reports even confession and in any such circumstance a confession is admitted it deprives the defendant of Due process

Brown v State of Mississippi, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 68

Blackburn v State of Alabama, 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed. 2d 242

If defense counsel would have gotten video tapes from the Kentucky Jail he was in at the time the confession was given as defendant asked it would have shown an emotional & intoxicated defendant where the Ohio officer told the defendant the victim was dead which caused him to cry uncontrollably and that the officer coerced him to sign a Miranda waiver. But the defendant still requested counsel to be present, this Miranda waiver & confession was illegally obtained.

Ohio police officers do not have jurisdiction under Ohio law or Kentucky Commonwealth law to interrogate me in a Kentucky Jail without representation.

The defendant is protected under Kentucky law not Ohio and any confession or evidence obtained is illegal regardless of waivers.

Watts v State of Indiana, 338 U.S. 49, 54, 69 S.Ct. 1347, 1350, 93 L.Ed. 1801

Rogers v Richmond, 356 U.S. 534, 541, 81 S.Ct. 735, 740, 5 L.Ed. 2d 760

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The defendant also wishes to add his own claims and arguments to the illegal & unconstitutional sentencing issues besides the already discussed 2953.08⁽¹⁾ Max sentence was imposed, 2953.08⁽²⁾ sentence imposed of two or more offenses arising out of the same indictment and single incident, The defendant did not meet any of the specifications to receive a max sentence, There was no gun, drugs or sexual crime committed and no crime resulting from gang activity, sentence was imposed with prejudice & vindictiveness, This was a crime of passion under distress there are no previous murder charges on defendant's record and the courts ill attempt to compare out of state charges is like comparing apples to oranges, two different states under different law, one state is commonwealth law, the comparison of charges to justify claims and the courts vindictive judgement tries to compare misdemeanor charges in one state that are felonies in Ohio as if they are equal when in fact they are not, Misdemeanor charges of Ill comparison do not justify max sentence, it only shows ignorance of judgement to attempt such comparison to conceal vindictive intentions

The defendant's sentence is unconstitutional because he tried to withdraw his plea but trial counsel refused to file the briefs and under CRIM R 32.1 The defendant is entitled to withdraw his plea, also with the many problems there should have been a new trial under CRIM R 33 ^{A1} Irregularity in proceedings, CRIM R 33⁽²⁾ Misconduct of prosecution, and trial counsel should have filed APP R 25 motion to certify a conflict.

The sentence is also illegal & unconstitutional because after the defendant wrote the trial judge, contacted the state bar association and Supreme Court disciplinary counsel for problems in his case the state removed its 15 year offer and had the defendant go to open sentencing at the mercy of the courts which is illegal but now the defendant goes at the mercy of the very people he must complained about to state authorities and he must pray that there is no ill feelings, prejudice or vendictiveness, this is highly unlikely at this level and violates the defendant's right to a fair trial free from contact and vendictiveness.

At sentencing the judge stated that the defendant had PRC for up to 5 years, this is illegal sentence as well because the judge gave power & authority to a third party of the state to determine the length of the defendant's sentence with PRC, the judge should have given a set amount of time instead of allowing a peace officer to decide the length of sentence, a peace officer is not a magistrate to be able to have this authority.

Another argument the defendant has with this illegal and unconstitutional sentence is that pertaining to the PSI report the defendant was not sentenced in the proper amount of time after his entered plea and PSI investigation under Ohio Revised Code. Furthermore in regards to the PSI report there is a rule providing that presentence report shall not be submitted to the courts unless the defendant has plead guilty which the defendant did not do, the report must not be submitted before conviction.

Fed: Rules Crim. Proc. rule 32, 18 U.S.C.A

and in the defendant's case this was done and under these Rules Submission of the presentence Report to the courts before the defendant is convicted constitutes error more so when the evidence in the report is not investigated to be factual as in this case where the victim gives misleading information that is not accurate or part of any discovery, information about the defendant was not checked regarding past medical problems, work history or educational level or other testimony submitted which would make the presentence Report void and full of error.

Because of the evidence provided & submitted to this court the defendant feels that his sentence is illegal & unconstitutional and that he should be awarded a new trial along with the other issues of Ineffective assistance of trial Counsel, Prosecutor Misconduct, Judicial prejudice & vindictiveness in sentencing & prosecution, Violation of the defendant's fifth, Sixth & Fourteenth Amendments, Abuse of discretion by the courts, Conflict of Interest, Judicial dereliction and violation of the Eighth Amendment, The defendant feels that a new trial is mandatory and free of these tainted issues and violations not only to the defendant but to the Judicial process and what it stands for.

Submitted on this day of
July 23, 2010

Respectfully Submitted

Jesse Dunaway
 JESSE DUNAWAY 606446
 3791 ST Rt 63
 P.O. Box 56
 Lebanon, OH 45036
 Pro-SE

The psychiatric report was given to the Judge prior to the Appellate Competency hearing which did not allow him the right of confrontation of the findings, and under the due process clause. These proceedings whether criminal or civil is subject to equal protection clause of the Fourteenth Amendment

In such cases as this one with Magnified crimes & sentences, A defendant is entitled to full panoply of relevant protections which due process guarantees in state criminal proceeding

Defendant must be awarded all of these safe guards which are fundamental rights and essential to a fair trial including the right to cross examine witnesses against him *Grechman v Maroney*, 3 Cir, 355 F 2d 302, 312

In the defendant's report it was noted that he used large amounts of LSD in his past for a period of years and with today's medical knowledge of the severe mental state & mental disorders its easy to argue that the defendant suffers mental illness caused by the LSD usage

It is unfair & unfounded to say that the defendant could not possible suffer from any mental defect when there is medical history proving otherwise and why the defendant demanded a second opinion but was denied by trial Counsel in writing, The defendant's own personal doctor's report even said the opposite and thus creates conflict in evidence

Under Minnesota Statute (Chapter 369) persons found to be insane were to apply to persons having a Psychopathic personality, It defined the term Psychopathic personality

AS MEANING THE EXISTANCE IN A PERSON OF CERTAIN CHARACTERISTICS WHICH RENDERED HIM "IRRESPONSIBLE" FOR HIS CONDUCT

THE SALUTE WAS NOT CRIMINAL IN NATURE AND WAS NOT TRIGGERED BY CRIMINAL CONVICTION, A PERSON FOUND TO HAVE A PSYCHOPATHIC PERSONALITY WOULD BE COMMITTED, JUST AS A PERSON FOUND TO BE INSANE

SEE MASON'S MINN. STAT. C. 74 § 8992-176

BECAUSE OF REFUSAL BY COUNSEL TO GET A SECOND OPINION IT DEPRIVED HIM OF FAIR PROCEEDINGS & EVIDENCE, A SECOND OPINION COULD HAVE HELPED THE DEFENDANT IN MITIGATING CIRCUMSTANCES AND WOULD HAVE BEEN BENEFICIAL TO HIS CASE

TO FURTHERMORE ADD TO PREVIOUS ARGUMENTS OF THE PRESENTANCE REPORT THE REPORT IS INCORRECT AND INVALID EVEN MISLEADING, THERE ARE CONFLICTING STATEMENTS OF THE VICTIM FROM PRELIMINARY HEARING TO THE GRAND JURY HEARING TO THE PSI REPORT

MISLEADING EVIDENCE REGARDING INJURIES THE VICTIM RECEIVED THAT WERE MADE TO BE WORSE THAN THEY ACTUALLY WERE TO INFLUENCE PASSION FROM THE COURTS AND IT INFLUENCED THE SENTENCING OF THE DEFENDANT AND THE JUDGE ACCORDING TO THE STATEMENT OF THE JUDGE AT SENTENCING

THEN THERE WAS THE RECALL OF PAST CRIMES IN OPEN COURT FROM THE PSI REPORT WHICH IS INADMISSIBLE UNDER RULE 404B

SENTENCING WAS BASED OFF OF THE PSI REPORT AND NOT ACTUAL FACTS OTHERWISE THE JUDGE WOULD HAVE KNOWN OF DOCTORS REPORTS & MENTAL ISSUES, THE LACK OF INVESTIGATION CREATES ERROR AT SENTENCING & EQUAL PROTECTION UNDER THE LAW EVEN FUNDAMENTAL UNFAIRNESS FREE FROM VENGEFULNESS AT SENTENCING

Because of these Malicious incompetent acts from the court and the failure to sentence the defendant under Supr Rule 39^(b)4 in the amount of time prescribed by law this is an Illegal & Unconstitutional Sentence and A new trial awarded on the grounds of Irregularity, Misleading evidence, Misconduct, Conflicts of Interest, vindictiveness of the court & prosecution Abuse of discretion in sentencing

The defendant also received an Illegal & Unconstitutional Sentence due to faulty Indictment & prosecuter Misconduct, The prosecuter allowed The Grand Jury to consider false testimony from the victim and he purposely Mislead the Grand Jury & failed to explain the recklessness factor of Indictment

Prosecutorial Misconduct has many faces and some are cataloged in Berger v United States, 295 U.S. 78, 55 S.Ct 629, 79 L.Ed. 1314 (1935)

Prosecution is guilty of Misstating the facts on several occasions in court and Misleading the Courts & records of injuries the victim received in respect No proof was offered, Medical Records did not suggest or agree with the amount the prosecution claims & jurys stated at sentencing. In fact medical records are conflicting

This constant misleading of the evidence and the courts was maliciously done to inflame opinion of the defendant, In fact the prosecution was presenting prejudicial evidence that is not factual or proven on the record

This style is undignified and intemperate containing improper statements and facts, Evidence that was calculated to purposely Mislead the Grand Jury and the Courts to gain an unfair advantage over the defendant and to inflame opinion & charges to the defendant

This of course is not an Exhaustive list of kinds of improper tactics that overzealous & misguided prosecution have used in Judicial proceeding

Mooney v Holohan, 294 U.S. 103, 55 S.Ct 340, 79 L.ed. 791
 Brady v Maryland 373 U.S. 83, 87-88, 83 S.Ct 1194
 Caldwell v Mississippi 472 U.S. 320, 336, 105 S.Ct 2633

Not has prosecutorial Misconduct been limited to only Judicial proceeding, sometimes infected Grand Jury proceedings as well
 United States v Casueto, 497 F.2d 781, 786 (CA9 1974)
 United States v Roberts, 481 F.Supp, 1385, 1389, and N-10 (Edcal. 1980)
 United States v Lawson, 502 F.Supp. 158, 162 and NN. 6-7 (Md. 1980)

The prosecuting attorney is the representative not of ordinary party to a controversy, but of Sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest therefore in a criminal prosecution is not that it shall WIN a case but that Justice shall be done, but while he may strike hard blows he is not at liberty to strike foul ones, It is as much his duty to refrain from improper methods calculated to produce a conviction

Berger v United States, 295 U.S. at 88, 55 Sct at 633

These continued cost of Misconduct by prosecutors before the Grand Jury are particularly substantial because there the prosecutor operates without check of a Judge or trained legal adversary

and is virtually immune from public scrutiny, this abuse of special relationship with a Grand Jury poses enormous risk of the defendant as well where the potential for abuse is so great and consequential so serious, the ethical responsibilities of the prosecutor and the obligation of the Judiciary to protect against even the appearance of unfairness

United States v Serubo, 604 F.2d. 807, 817 (CA 3 1979)

Furthermore third party people & witnesses were present during Grand Jury testimony making evidence & statements invalid & tainted which makes the indictment also invalid

The final argument of illegal & unconstitutional sentencing is the victim's impact statement which is in violation of the defendant's Eighth Amendment Right but it is also perjured & misleading of actual facts of the case, it was unduly inflammatory and diverted the attention of the court away from the defendant when the victim pulled up her shirt to blame the defendant for a scar she received from surgery and not from the defendant

This left it almost impossible to provide a fair opportunity to rebut such a statement or showing to the courts, the victim's intentions were so inflammatory that it diverted the attention away from the defendant and his sentencing hearing and was a violation of Evid R 603 this left the defendant defenseless and was an unfair advantage to inflame the courts and no doubt influenced the sentence by a female judge especially when the victim stated the defendant terminated her pregnancy when in fact the victim aborted the pregnancy

this was so calculatedly & maliciously done to provoke the courts to no doubt inflame & lengthen the sentencing of the defendant

Furthermore the victim impact statement did not describe any change in the victims life or personal welfare or even familiar relationships as a result of the offense nor did it identify any request for psychological services initiated by the victim or the victims family as a result of the offense

A victim impact statement that describes personal characteristics of the victim and or the emotional impact of the family members and the victims opinion of the crime or possible future there of is irrelevant and the admission creates a constitutionally unacceptable risk in a arbitrary & capricious manner

Certainly the degree to which the victim is willing and able to express its grief is irrelevant to the decision of sentencing, by the actions and remarks of the victim it would be difficult if not impossible to provide fair opportunity to rebut any evidence without shifting focus of the sentencing hearing away from the defendant

If the state is permitted to introduce the victims statements it also must give the defendant a fair chance under the law to rebut this evidence as required in the due process clause

Finally An indictment is invalid when the prosecution fails to prove the recklessness factor to receive the indictment & charges This was not done in this case

Please time stamp
and Return

Conclusion

For the reasons outlined in the foregoing assignments of Error and Rights violations of Fifth, Sixth, Eighth & Fourteenth Amendments as well as Ineffective Assistance of Counsel and other Rised violations the Appellate was denied his constitutional Right to counsel and was given and illegal & Unconstitutional Sentence that his case and plea should be vacated and Remanded for A new trial

Please Add Stamp
& Return

(21)

Certification of Service

This is to certify that a copy of the foregoing arguments of ineffective assistance of counsel, illegal & unconstitutional sentencing and other rights violations that will be added to the arguments of case no: 10-1193 in the Ohio Supreme Court was forwarded by regular US Mail, postage prepaid to the office of Robin N Piper III Butler County Prosecutors Office at 315 High St 11th Floor Hamilton, Ohio 45011 on this day of July 23, 2010

JESSE DUNAWAY
3791 ST RT 63
P.O Box 56
Lebanon, OH 45036

Jesse Dunaway
Jesse Dunaway 606446
PRO - SE

PLEASE TIME STAMP
& RETURN

Appendix 1

Judge Patricia Oney

In September I filed a grievance with the bar association for negligence & ineffective assistance on my attorney. At that time I wrote to this court about my complaints & problems but was never given a response. At that time my family & myself were told that I needed to drop my grievance that if I didn't, all offers would be taken away and that I'd be given a public defender & never be given a chance to argue to this court anything involving my case & arguments. Honestly it scared us and the grievance was terminated. Since then there hasn't been any progress in this case on motions file to possibly benefit me on my case or even current offers. Simply there is no progress on anything at all. My question go unanswered & and put off until the day before court where I'm put into a panic & rush to make a decision on my life still not knowing answers and left vulnerable. I've been urged to accept offers that are not actual offers and once I agree there comes yet another offer and it seems that I am being prosecuted by my own attorney. He certainly allows the state to have an unfair advantage with information he negligently gave up. I cannot & will NOT fire him because it would totally give the state the upper hand even more But I want it noted that I feel he has not defended my case properly that he has mishandled it & information & my my prosecutor an unfair advantage over me & this case. I feel that because of that I'm being . . . Forced to accept the prosecutors terms or risk losing my life at trial & putting faith into people I'm already having problems with. Its an unfair advantage.

/s/ Jesse Dunaway

Judge Patricia Oney

A previous letter and current ones I have sent to this court its to acknowledge the fact of problems I am having in my case and with my attorney due to my ignorance to this state and its laws, even the process in which to do things since I am from another state, many request that I have regarding my case go unanswered. Request for transcripts, motions even suppression & most of all answers in general. I feel that my case would have much different results if things were done properly. I feel that my emotions are being worked on heavily due to the sorrow & remorse I feel about this case. And because of my ignorance to this states laws it seems as if pressured or scared into without knowing. I have many problems & conflicts in my case & evidence but it seems as if Im not able to argue them unless it's a trial that its either accept terms or go to trial. I have many arguments over many things but may not want a trial does this mean I have NO argument unless its at trial? There is a previous charge from my home state that Im fold is being used as leverage even though its over 10 years old & the so called victim is willing to testify here on my behalf to show things are not as they seem or as being told by the prosecutor. Knowing that charge was probated and below state minimum requirements. I feel that many things are being over looked in my defense even case just so there is a conviction. And mistakes made are not brought out into public eye or on the record regardless of trial or not. I have arguments over similar cases here in Butler county this year but is as if I cant get acknowledgement on it or its of no VALUE

(1) Walter Thomas = previously convicted of murder but receives 15 years on new attempt murder charge on girlfriend (2) Doug Courh = cuts a mans throat & stabbed him several times during a robbery he gets 2 years

OVER - - ->

(2) PAGE

(3) David Paul Watters = Beat his victim for 11 hours put her into a coma for 30 days which resulted in brain surgery and tubes to be placed in the victims head. He even poued chemicals on the victim that burned her and resulted in skin graphs. He received 8 ½ years.

(4) Jason Wilson = Stabbed a man in the chest during robbery he received 2-4 years. (5) Joseph Wagers = Homicide. Runs man over during a fight receives 18 months / All of these cases are here in Butler County this year 08 they all have similar details but all are under 10 years except Walter Thomas. These people are repeat offenders but yet Ive never so much as had a ticket in this state. I feel that I am being targeted even though other cases are of equal details and received much better offers. I feel that it is because of my ignorance to the laws of this state even my indictment shows charges that were no-billed & of a charge for an auto accident that happen in another county no this one. Even though a horrible thing has happen & someone was hurt that it eats me up inside daily I cant help but feel that Im being unfairly prosecuted & that Im being made example of even though other cases show that things could be less harsh. In some ways I feel a blind eye is being turned. Im forced to write letters to be heard & to get answers & hopefully have things done that could benefit me or my case due to my ignorance to this states laws. This case is no more sever then the other 5 Ive mentioned and all of those victims pleaded & faught for more time. I feel there is a push to convict me even though evidence & other case show things could be better then they are now. It seems more about politics & vendettas then any thing else. Certainly does by the prosecutors demeanor about me in letter to my attorney it almost seems personal. As if stubborn to only receive his way or no way at all

(2)

And that this case drags out due to my attorneys negligence & unwillingness to argue evidence & file motions on my behalf that it gets postponed and made out to be my families fault due to a family business when that isn't 100% accurate. It leave my victim to believe that Im out to possibly harm her more or cause more pain it leaves her more angry & vindictive & makes it more difficult to negotiate anything with her because current events keep her hostile towards myself & family even more. I feel that it helps give the state more or an advantage with an even more angry victim making it very difficult to ease things. It keeps offers high or non existent because it seems as if Im unremorseful & that simply isn't true and things are much different. There has not been a day that has gone bye that I do not feel sorrow, regret and remorse for my victim & this situation. I cry often & my emotions eat me up inside daily. Im devastated by this!! I do not want to keep tempers arise or for more pain to be inflicted on anyone but at the same time I also want to be treated & represented fairly & not targeted & made example of due to my ignorance to the laws of this state. I also have a family & children to think of who also are affected bythis. We all would like for this to be settled in the best way possible

Respectfully

/s/ Jesse Dunaway

12-27-08

PLEASE TIME STAMP
& RETURN

Appendix 2

Cindy Carpenter

CR08-04-0664

Could you please file these for me and send copies to myself & Judge Oney so
that they are on the record.

Thank you

Jesse Dunaway #134828

/s/ Jesse Dunaway

705 Hanover

1-28-09

Hamilton OH 45011

Honorable Patricia Oney

1-28-09

It is being presented to me that Im very much being pushed & forced into a trial regardless if I want one or not. All because I have requested for motions to be filed & Ive requested information & evidence. This seems extremely unfair, It is my right to protect myself & know the evidence & case against me & have the opportunity to discredit or argue evidence to decide if trial is what I truly want. It seems very unethical to not allow me this process & just force me to a trial without any offers or the revocation of them knowing that since Sept 08 I have repeatedly said I wanted these things done before Id decide on trial or an offer. I even expressed that in a letter to this court along with many other tings as well. Again I never heard a response & my attorney never filed those motions until now. But now says offers are off the table. If this is true then it is his fault & negligence because I stated for many months I needed to know evidence & information to ever make such a serious life changing decision

(1)

Considering certain circumstances and events in my case that my attorney recklessly put me in and that I would not allow myself to be left vulnerable even more then he has left me not to be. This also was mentioned in that letter to this court in Sept 08 before any talk of offers being accepted or rejected and even my past court date of Dec. 8, 08. This Court told me offers must be accepted by Feb 23 09 or trial is imminent. Well I expect to use that time to think in my case & decide is trial is the best option or if accepting an offer is best for myself and family. If offers have been taken away its been against my will & negligence on my attorney part for not filing my motions & seeking evidence & information as I requested. If the offer still stands then it further more proves that he is unwilling to defend my case properly, reflecting and negligence or simply using scare tactics to push me into accepting something foolishly with out knowing facts or being protected.

It further more seems as if the prosecution

(3)

1-28-09

Goes along with it as it benefits them and gives them more of an advantage.

My attorney doesn't tell me what motions we will file, he ask me as if this is my job and I know all the correct procedures & motions to defend a case. I very much feel Im being sold out & targeted even made example of, the worst part of all is that no one seems to questions if maybe this is all in my head, but yet allows it to continue knowing Im concerned & write letters seeking answers with no response even given. It very much feels & seems as if Im going to be made example of due to my complaints letter & ignorance to this state & its laws.

If no one responds to my letters, questions & pleas for help & Im ignored then whom do I turn to for help since apparently this court is not the answer & seems to be here only to prosecute, judge & convict me.

/s/ Jesse Dunaway

P.S Honestly Im afraid to accept an offer after all of this fearing it will be pulled away & more time given. Same at trial, not sure Id receive a fair & just one

(4)

Judge Patricia Oney

Also I advised my attorney over 9 months ago by letter & verbal communications that if I did decide on a trial I wanted several charges separated due to the fact they happen in another county & it seems very strange how this county is prosecuting me on charged committed in another county and these charges separately are of no real value in that county or this one but it helps this county push for stiffer charges here & time even though a conviction separately seems extremely unlikely with that charge at that level. Again I will decide in the next coming days on what is best for me & my family I do not want to be forced, pushed, ignored, or targeted anymore then I already have thus far

/s/ Jesse Dunaway

PLEASE TIME STAMP
and RETURN

Appendix 3

J/P/D

Cindy Carpenter

Would you please file this for me and send copies to myself & Judge Front &

Back side please

Thank you

/s/ Jesse Dunaway

1-31-09

Jesse Dunaway #134828

705 Hanover

Hamilton, OH 45011

CR08-04-0664

Honorable Judge Patricia ONey

Front & Back Side

In several letters to this court I have complained of many faults with my attorney & prosecutor. None of those complaints have been forced or questions in fact it now seems to of no value or argument since no one had done anything. I have wrote of problems with my indictment & charges I have that happen in another county in the city of Springdale, under Revised code 2945.08 Prosecution in wrong county & Crim R 12(c)2 lack of jurisdiction and defects in indictment. I feel this seriously needs to be looked into my arguments with my attorney Timothy E Schneider seem to always be ignored I have several others which I will explain in this letter App.R 25 Motion to Certify Conflict 309.05 Removal of prosecutor for neglect & misconduct due to problems with my case & information my attorney recklessly turned over to the prosecution. Then there is Crim R 12(c) Mandatory Pre-trial motions of these only one was filed before my complaints & conflicts with my attorney since my letters to this court & bar association only one more has been filed to add to any defense if I choose to go to trial. There is also another argument over mental evaluations. This doctor here said totally opposite of what several other doctors have said about me for over a period of 15 years, when I requested a second opinion my attorney told my family & I that it would cost us several thousand of our own dollars which is not true under Revised code 2947.06 and it allows me a second opinion since my attorney never turned over paperwork to the original doctor in time which may have rendered a much different evaluation if he didn't turn it over 18 days after you honor received the final report from doctor. I have been making these

arguments in letters to my attorney & this court since Sept 08 since my attorney refuses
to assist me or do as I request & no one seems to want to help

Reverse Side →

Im forced to try & defend myself not knowing case laws or what is relevant or not in my case. If this is not an unfair advantage then I don't know what is. I don't even know how to argue more defects in charges or indictment I know my attorney certainly isn't. This is more of where I am forcefully being pushed into things I don not want or wish I want to fight my evidence & charges file motions & then after the courts ruling then decide if trial is good for me & my family or not. I want the full process & not to be pushed & scared into things so I just give in & accept prosecutors terms, charges or my attorneys word when it is obvious Im having many problems with him & my defense.

/s/ Jesse Dunaway

Jan 31, 09

P.S. The prosecutor demand I agree to & plea to all charges in the indictment knowing some wer no billed & connected in other [illegible] out of jurisdictions & list of many other arguments if this isn't being targeted & made example of due to my ignorance to this state & laws there I don't know what is

I am not trying to anger this court with my filing of letters for this I am sorry & must apologize but I know not of any other way. Here are more codes also.

2941.57 Demurrer > not in jurisdiction

2941.62 Hearing on Motion of Demurrer

PLEASE TIME STAMP
AND RETURN

Appendix 4

T/P/D

CR08-04-0664

Cindy Carpenter

Will you please file this for me and send copies to myself, attorney and my judge

Thank you

/s/ Jesse Dunaway

Jesse Dunaway #134828

705 Hanover

Hamilton OH 45011

Timothy # Schneider

14 North Grand Ave

Ft Thomas KY 41075

(1)

Honorable Patricia Oney or Whom It May Concern!!

I have written several letters regarding problems with my attorney, prosecutor, charges & my defense. These letters were an effort to seek help or for someone of the courts to please step in & question or give me advice on knowledge of what to do or to whom I should speak to but all attempts has been ignored & unanswered not a single response to any question I have or accusation I put out. In my home state the court would have to respond due to the nature of the accusations & the seriousness of the claims, obviously things are not the same here. My prosecutor seems to be the one running the show as he dictates everything and the control of this case & charges. He has an unfair advantage over me & my case due to my attorneys negligence in giving up information to the prosecution the benefited them. It allows my prosecutor leverage & the stubbornness to bully my case & offers.

(1)

(2)

It was certainly negligent on both sides to go about the way they did with things and expose so much & leave things vulnerable and only protecting their legal careers. If my prosecutor is able to use criminal codes to hide behind to not disclose what information was given or known then there certainly must be some law or code to protect me as well since it was my information & evidence that was negligently given up. Certainly since that information crucially benefited the prosecution and state. Because of this my entire case and its process has been done & represented poorly no one seems to want to admit or acknowledge anything or any wrong doing. It very much is a conflict of interest on many levels and an unfair advantage, I'm furthermore amazed that no one seems to care to look into these problems & allegations or question anyone it leaves me to believe a blind eye is being turned without some kind of intervention

(2)

(3)

This court & state expects me to be remorseful towards my victim but yet at the same time is making me a victim by the actions of my attorney & prosecution & the withholding of information & using laws to hide behind. If its good for them then it also must be good for me as I am also protected!

/s/ Jesse Dunaway

1-29-09

P.S First & Foremost

My attorney was to or is to protect me or my case before any information was given up ethical or not & at the same time it is the same was with my prosecutor its ethical to disclose the information known or obtained since it is one & my knowledge that is being argued about & requested

PLEASE TIME STAMP & RETURN

Appendix 5

J/P/D

Cindy Carpenter

CR08-04-0664

Please file all of these pages Front & Back please and send to myself, my attorney

& Judge Oney

Thank you

Jesse Dunaway

705 Hanover

Hamilton OH 45011

Tin Schneider

14 North Grand Ave.

Ft Thomas KY 41015

Honorable Judge Patricia Oney

I am a man who admits my faults and owns up to them. And Ive always done so with this case, all delays & arguments have been over my safety & evidence its never been about getting back at my victim. The lord knows she has been through enough. This has been a battle over the prosecution and charges & my protection due to information turned over to Mr Lance Salyers and nothing more. Its ashame that these arguments take away from the victim & her pain but its something that is mandatory on my part to think of my safety. Ive always expressed my sorrow & remorse & regret for my victim and this case, Ive made it clear in letters and confession. This was NEVER about not owning up to anything or taking away from anyone. Please understand. Im scared worried, alone, ashamed & many other things due to this case. But I am also a man and father who makes great choices when not drunk or on drugs or having mental episodes

/s/ Jesse Dunaway

Honorable Judge Oney

I think that its extremely important to let the court know that Ive always told my attorney to prepare for a trial but also seek an offer that way if things went sour on any level we were not caught sanding alone & stupid. My attorney acts as if it cant be both that it must be one or the other which simply isn't true & unfair to force such a choice on my simply because it makes him have to work. If that choice came down from the prosecution again it fall under those guide lines and is not only unfair but a violation of my rights & judicial process.

Now after my indictment I received an offer of 15 years at first I did decline that offer but it was before my mental evaluation in July, August then my attorney came to me with an offer of a 15 year cap offer where I can argue to this court for less time for a situation where information was turned over to the prosecution & sheriffs office that noe only prevented an escape of 6 extremely dangerous men but also foiled the plot to harm an officer physically but to also remove him of his clothes & radio in the process. Once I agreed to that offer it comes to my attention that not only was it not an offer but the prosecution would not allow that offer. Then I was told of where the prosecution wanted to argue for more time if I was to argue for less I also agreed to that but again was never an actual offer. At that time I then filed a grievance on my attorney with the bar association for negligence and ineffective assistance of counsel for his handlig of my case and the information shared with the prosecution, he never protected me or put anything in writing to benefit me or my case. Ethically he is protect me & my case as his client before any information is disclosed to anyone. That may put me in harms way which it has. Not only in my case but also the threat of violence against me due to that information

(1) REVERSE SIDE →

I was extremely urged even scared into dropping my grievance up until that time my attorney always spoke of what a good chance I have at beating certain charges. But after the grievance he began to urge me to accept the states offer that the case against me was strong but just one week earlier it wasn't. At that time I wrote to this court of this matter & made it very clear that I wanted certain motions filed & review all evidence against me before I could accept any offer or decide on trial after the letter I also sent my attorney & the bar association a letter that stated as much. Days later the prosecution talks of revoking offers. I again told my attorney I needed to know evidence & have motions filed before any think could be decided. My attorney not only never filed these motions back in October but also waited until after our Dec 8 08 court date to ever file anything and it was only after my letter & complaints that he did.

I was told that the prosecution was pissed & the offer revoked if that is true its my attorneys negligence not mine I also told him that I needed to know how I was to be protected in prison from the men whom I told on and that I needed to know what information was given to those men or if my name was given. The prosecution denied to disclose that to me or my attorney which seems very unfair & unethical considering the situation & information even the men involved. Again my attorney told myself and family that there were no offers that the victim demands trial but then a week later sends an offer to the prosecution & talk of the states current offer which we were told there wasn't one. Then we are told that to receive anything for my cooperation it would have to be by the judg at sentencing after trial. In other words I have to go to trial to receive anything for my help. Then when I expressed my disapproval

Things then once again change I explained that I wanted detectives to tell this court of my cooperation & that I had several officers willing to testify on my behalf for my help but was told that it had to be in open court for the public to hear then told that this court wasnt going to allow me that opportunity, not only did my attorney put me & my case in harms way and not protect me or put anything in writing, but the prosecution refuses to acknowledge or help in this matter of what information was disclosed to help protect me but also Im denied every avenue of arguing my cooperation. My attorney then tells myself & family that I can plea to indictment & argue at sentencing for time but there is no cap. So after my arguments I could receive more that my prosecution offer that my reward for saving an officers life! Seems very unfair & unethical knowing that my attorney & prosecution negligently handled that situation & that my attorney never filed my motions in time & allowed my offer to be revoked & more so that my prosecutor removed it considering he played as much a part as my attorney and benefited by my information and that now that I raise awareness of negligence misconduct and such that not only are offers revoked but raised to furthermore scare and bully me. Which will now no doubt make sure that any sentence I receive will be higher then 15 years because of my letters, complaint & accusations

It is an unfair advantage. Unethical, negligence, ineffectiveness & misconduct.

And it puts me in harms way physically because of my cooperation.

/s/ Jesse Dunaway

P.S. Its ashame that so much is focused on the complaints & nothing has changed and so much more is taken away from the victim of this crime because of attorney & prosecution negligence and their efforts to reward me or allow me the argument of my cooperation that officers to testify on my behalf

Honorable Judge Oney

My arguments didn't have to be for less time, It could have been for something where I was granted a drug & alcohol program after so many years or mental help considering the history I have with both. That was the option my family requested but once told that was impossible then it became about argument for less time. I gave my attorney a jail report where it spoke of 6 knives being found in the investigation of the escape now if in the county jail 6 men with 6 knives were going to escape & harm an officer what do you think they will do to me since I'm the one who told on them and several of those men are doing life for murder. All I wanted was to be protected in jail & prison for my help which hasn't & will not happen and I wanted to argue my help without trial to possibly receive mental help after so many years that also hasn't & will not happen. I've basically now become a victim myself so who is at fault that if in prison I'm stabbed wounded or killed by these men? And who is at fault for not protecting me or disclosing what information was disclosed or if my name was used? If myself or anyone else handled things the way my attorney & prosecutor has we would be prosecuted but because they did it's legal and okay!!

Very Unethical

/s/ Jesse Dunaway

P.S. How could I ever expect that any arguments of anything to this court regarding time & sentencing would be fair after my letters & complaints no new offers from the prosecution till now after these letters then it's an offer to beg the court after complaining seems ironic, hypocritical & unfair

PLEASE ^{TIME ON}
and Return

Appendix 6

J

Cindy Carpenter

Will you please copy & file both sides of these letters for me and send to myself, attorney
& Judge Oney please

Thank you

Jesse Dunaway #134828

705 Hanover

Hamilton OH 45011

Tim Schneider

14 North Grand Ave

Ft Thomas KY 41015

Honorable Patricia Oney

I do not want to sound unsympathetic towards my victim and this crime. There is never a day that goes by that I do not think about this situation and feel the sorrow & remorse for everyone involved. I hate that things have come to the point of arguments & complaints which I feel takes away from the victim & this crime. Its ashame the crime even happen & certainly ashame things are to this point. I feel that it is important to inform this court that it is unfair that for over 6 months Ive requested information to be disclosed to me regarding medical records & information of my cooperation but nothing was provided or disclosed until now knowing Ive requested this in documented letters all this time and disclosed then that I needed that information before I could ever accept the 15 year offer or any other. That in all that time the prosecution knew of my request & never provided it until now. Also knowing that they also removed my 15 year offer before disclosing that information requested that now I try to accept its now gone. Also for over 6 months Ive never been allowed to argue cooperation to this court but now after recent letters and complaints Im now allowed but with no cap & at open sentencing. It very much seems as if Im being strong armed into this because I demanded the prosecutor to work & turn over information its unfair & against my judicial process & furthermore shows prejudice.

~~I do not wish for a trial & never truly wanted one I just wanted to be protected & given~~
help for my coopeation but the prosecution denied that & the disclosure of what portion of my cooperation was disclosed 6 the men I told on. Its very unfair that the 15 year offer

is revoked knowing I have documented letters of my request before Oct 08 to my lawyer,
this court & bar association but yet its till revoked

OVER

Even though the prosecutor never turned those things over until now. That now I must accept & open plea & possible receive more time for this when I was only asking to protect me, that now all appeal rights are gone & Im screwd even more. Even though I do not want trial I almost feel I need to just to keep my appeal knowing Ill get maxed out & found guilty. Its ashame to put the victim through that solely because my attorney & prosecutor dropped the ball & neglected to get my information for me on time as REQUESTED & documented. I feel that with recent letters & complaints any open plea is not good for me and would prove to be so considering the nature of things & relationships of the prosecutor & state, I feel that I will be made example of and that why the prosecutor now allows me to argue to this court after all my complaints & accusations, furthermore ashame that the victim gets torn between this argument & could be put to trial to relive that nightmare because information was not given up or disclosed on time & that after complaints offers revoked as to strong arm trial not only unfair to me but the victim as well, I do not wish for trial nor to put the victim through that again. It would be very wrong on my part. But please note that I feel it also is wrong to revoke my 15 year offer when all I asked was to protect me & tell me if my name was given in

discovery!

PS. I want this behind us all and
for the victim to heal the wounds

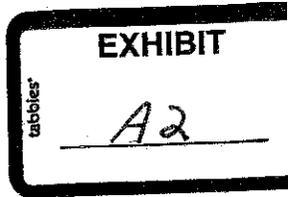
Im Sorry

/s/ Jesse Dunaway

of this case & hopefully overcome
everything! This is horrible for everyone

Please-time Stamp
and Return All Exhibits
of Appendix

APPENDIX 7



dunawayjesse022309oney.txt

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COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,
 Plaintiff, Case No. CR-08-04-0664
 CA-09-06-0164
 vs. HONORABLE PATRICIA ONEY
 JESSE DUNAWAY,
 Defendant.

CHANGE OF PLEA
TRANSCRIPT OF PROCEEDINGS
FEBRUARY 23, 2009

♀

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1 APPEARANCES:

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dunawayjesse022309oney.txt
On behalf of the plaintiff:

LANCE SALYERS
Assistant Prosecuting Attorney
315 High Street
GSC Building, 11th Floor
Hamilton, Ohio 45011

On behalf of the defendant:

TIMOTHY SCHNEIDER, Esq.
4 Gleason Drive
Southgate, Kentucky 41071

- - -

TRANSCRIPT OF PROCEEDINGS
MONDAY, February 23, 2009 AT 1:49 P.M.

MR. SALYERS: We are here in the case of
State of Ohio versus Jesse Lee Dunaway,
CR-08-04-0664. Your Honor, we were scheduled

♀

6 this afternoon for a motion to suppress. But I
7 have been handed a couple of -- or several
8 documents on the one -- or first is executed
9 waiver of the filed motion to suppress, and then
10 an executed jury waiver, and then three plea
11 forms that Mr. Dunaway has executed with the
12 assistance of his counsel in which Mr. Dunaway is
13 pleading no contest to all 12 charges of the
14 indictment without any agreement.

15 MR. SCHNEIDER: Your Honor, for the record,
16 Tim Schneider on behalf of Mr. Dunaway who is to
17 my left, and what was stated to the Court by
18 Mr. Salyers is accurate.

19 THE COURT: Mr. Dunaway is set for a jury
20 trial on the 3rd of March, and set for a motion
21 to suppress this afternoon. And I have in front
22 of me a waiver of a filed motion to suppress,
23 which is signed by the attorney for the defendant
24 and by the defendant. Sir, did you read this?

25 THE DEFENDANT: Yes, ma'am.

♀

4

1 THE COURT: Do you understand that there will
2 be no motion to suppress this afternoon?

3 THE DEFENDANT: I do.

4 THE COURT: And is this your signature here?

5 THE DEFENDANT: It is.

6 THE COURT: You have a right to a trial.
7 Even if you are guilty, you have a right to a
8 trial. You have a right to have the state prove
9 the case against you, and they have to do that by

10 proving each and every element of the offense
11 beyond a reasonable doubt. The burden is on
12 them. If they don't meet their burden, there's a
13 finding of not guilty on whatever charge that
14 they fail to meet their burden on. Do you
15 understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You have a right to have the
18 State bring their witnesses in and make them
19 testify from the witness stand, and you have the
20 right to have your attorney cross-examine those
21 witnesses after the prosecution has finished
22 asking questions, and cross-examination simply
23 means to ask questions. Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You have a right to have your own

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1 witnesses here. You have a right to have your
2 own witnesses subpoenaed to make sure that they
3 are here. If you give the names and addresses of
4 your witnesses to your attorney, this Court will
5 subpoena them for you. A subpoena is a court
6 order that tells somebody they have to be here,
7 and if they don't obey the subpoena, I will
8 immediately issue a material witness warrant and
9 send the police out to get them right away, and
10 we will hold them in jail until we get them over
11 here. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: You have a right to remain

14 silent. That means the prosecution cannot make
15 you take the stand and testify. The only person
16 to decide whether to take the stand to testify
17 you, yourself, based upon advice from your
18 attorney. Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: And you have a right to a trial
21 by a jury of twelve people, and they can't come
22 back with a guilty verdict unless all twelve vote
23 guilty. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: I have here a jury waiver, did

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6

1 you read that?

2 THE DEFENDANT: I did.

3 THE COURT: Did you discuss that with your
4 attorney?

5 THE DEFENDANT: I did.

6 THE COURT: And this is your signature, is
7 that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that means that
10 there will be no jury trial, the jury trial will
11 not go forward on March 3rd. Do you understand
12 that?

13 THE DEFENDANT: Yes.

14 THE COURT: Is this what you want to do?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Are you sure?

17 THE DEFENDANT: Yes.

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THE COURT: Positive?

THE DEFENDANT: Positive.

THE COURT: I have here several plea forms. It will take awhile to go through these. On Count One, attempted murder, it carries a possibility of anywhere from ten years, up to ten years, two to ten.

MR. SALYERS: Three.

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THE COURT: Three to ten, and that means the minimum sentence that the Court could give is three years, a possible maximum fine of up to \$20,000 and it is presumed that prison is necessary. Is that your understanding what you are pleading guilty to on attempted murder?

THE DEFENDANT: (Conferring with counsel.)

MR. SCHNEIDER: He just wanted to clarify that he is pleading no contest.

THE COURT: Okay. I'm sorry, no contest. Do you understand that on a no contest plea, if the prosecution reads facts that you are pleading no contest to, I will be making a finding of guilty, do you understand that?

THE DEFENDANT: Yes.

THE COURT: On Count Two, aggravated burglary, it carries a possibility of three to ten years, and a fine of up to \$20,000 and it is presumed that prison is necessary. Is this your understanding of what you are pleading no contest to?

22

THE DEFENDANT: Yes, ma'am.

23

THE COURT: On Count Three, aggravated

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burglary, carries a possibility of three to ten

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and a fine of up to \$20,000 and it is presumed

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prison is necessary. Is this your understanding

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of what you are pleading no contest to?

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THE DEFENDANT: It is.

4

THE COURT: Count Four, felonious assault

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carries a possibility of three to ten, and a fine

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of -- three to ten years and a fine of \$20,000

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and it is presumed that prison is necessary. Is

8

this your understanding of what you are pleading

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no contest to?

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THE DEFENDANT: Yes, ma'am.

11

MR. SALYERS: Your Honor, just to clarify the

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felonious assault is an F-2, it should be listed

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as a maximum of eight years, two to eight for the

14

felony of the second degree.

15

MR. SCHNEIDER: I thought the Court was

16

reading the burglary at that point.

17

MR. SALYERS: I think she was at Count Four,

18

felonious assault at that point.

19

THE COURT: Count Three, the aggravated

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burglary is two to ten, and a possibility of

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20,000. Is that your understanding of what you

22

are pleading no contest to, on Count Three?

23

THE DEFENDANT: Yes, ma'am.

24

THE COURT: And Count Four is felonious

25

assault, and it carries a possible sentence of up

♀

1 to eight years, and a possible fine of \$15,000,
2 and it is presumed that prison is necessary.
3 what is the minimum on that?

4 MR. SALYERS: Two to eight.

5 THE COURT: And on Count Five, is that your
6 understanding of what you are pleading guilty to
7 on Count Four?

8 THE DEFENDANT: Yes.

9 THE COURT: And on Count Five, it carries a
10 possibility of -- felonious assault, carries a
11 possible maximum sentence of anywhere from two to
12 eight years and a fine of \$15,000, and it is
13 presumed that prison is necessary. Is that your
14 understanding of what you are pleading no contest
15 to?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Count Six is a violation of a
18 protection order. It carries a possibility of up
19 to five years, and a fine of \$10,000. Is that
20 your understanding of what you are pleading no
21 contest to?

22 THE DEFENDANT: Yes, it is.

23 THE COURT: And Count Seven is menacing by
24 stalking, and it carries, an F-4, carries a
25 possibility of up to 18 months and a fine of

♀

1 \$5,000. Is that your understanding of what you
2 are pleading no contest to on that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And on Count Eight, it is a
5 domestic violence, it carries -- that's an F-4
6 and that carries a possibility of up to 18 months
7 and a fine of up to \$5,000, is that your
8 understanding of what you are pleading no contest
9 to?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And Count Nine is felonious
12 assault, carries a possibility of two to eight
13 years and a fine of \$15,000, and it is presumed
14 that prison is necessary. Is that your
15 understanding of what you are pleading no contest
16 to?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And Count Ten is a violation of a
19 protection order, and it carries a possibility of
20 up to five years and a fine of \$10,000. Is that
21 your understanding of what you are pleading no
22 contest to?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Count 11, domestic violence, is a
25 felony four, carries a possibility of up to

♀

1 18 months in prison, and a fine of up to \$5,000.
2 Is that your understanding of what you are
3 pleading no contest to?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And Count 12 is
6 telecommunications harassment. It is a

7 misdemeanor one, carries a possibility of
8 180 days and a fine of \$1,000. Is that your
9 understanding of what you are pleading no contest
10 to?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand that on a no
13 contest plea if the prosecutor reads facts which
14 make out the fact pattern of those -- of each
15 particular plea, that this Court is going to make
16 a finding of guilty, do you understand that?

17 THE DEFENDANT: I do.

18 THE COURT: And this Court could make these
19 sentences consecutive. Do you understand that?

20 THE DEFENDANT: Yes.

21 MR. SCHNEIDER: Judge, could I have one
22 moment? (Conferring with defendant) Just so the
23 Court is aware of what my client said to me, I
24 have indicated to him that, I think, some of the
25 offenses are allied offenses, and how that would

♀

12

1 work at sentencing, and that's what he was
2 inquiring about.

3 THE COURT: Possibility some are. However,
4 ~~some are not.~~

5 MR. SCHNEIDER: I acknowledge that, Your
6 Honor, and I indicated to my client that's
7 ultimately the Court's determination and I did
8 give him my opinion as to offenses that I thought
9 were allied offenses.

10 THE COURT: If I sent you to prison, the
Page 10

11 parole authority, five years post-release
12 control.

13 MR. SALYERS: Yes, Your Honor.

14 THE COURT: Is going to put you, no question
15 about it, on post-release control for a period of
16 five years under the supervision of a parole
17 authority reporting to a parole officer. And
18 that is very important to you because that
19 subjects you to the possibility of more prison
20 time than what is on the plea because if you
21 violate their rules and regulations, they can
22 send you back in increments of 30, 60, 90 days,
23 and they can send you back for a total amount of
24 time of one-half of whatever I sentence you to in
25 addition to the sentence that I gave if you

13

1 violate on the post-release control. Do you
2 understand that?

3 THE DEFENDANT: I do.

4 THE COURT: And that includes if you're not
5 reporting to your parole officer, and you are not
6 living where you are supposed to be or you pick
7 up a new charge, or if you are testing positive
8 ~~for drugs, for any of those reasons, they can~~
9 send you back to prison and give you more time.

10 Also, if you do not report to your parole
11 officer, they will -- they can turn around and
12 charge you with escape, which is a felony charge.
13 And if you are convicted of a new felony case in
14 the state of Ohio while you are on post-release

15 control, that judge, in addition to whatever
16 sentence that judge gives, can give an additional
17 sentence of one year consecutive for committing
18 an offense on post-release control. Do you
19 understand that?

20 THE DEFENDANT: I do.

21 THE COURT: Have you read these forms, what
22 all they say?

23 THE DEFENDANT: I did.

24 THE COURT: And do you understand that if --
25 I'm not going to go through judicial or community

♀

14

1 control because it is not my intention to do
2 that.

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that if you
5 enter this plea, and I make a finding of guilty,
6 that there will be no trial, do you understand
7 that?

8 THE DEFENDANT: I do.

9 THE COURT: Okay. Do you have any questions
10 about what you are doing that you would like to
11 ask me before we go forward?

12 ~~THE DEFENDANT: I do not.~~

13 THE COURT: Do you have any questions that
14 you need to ask your attorney or talk to your
15 attorney before we go forward?

16 THE DEFENDANT: No.

17 THE COURT: Have any threats or promises been
18 made to you to get you to plea to this?

19 THE DEFENDANT: No.

20 THE COURT: Are you entering this plea
21 voluntarily, knowingly and intelligently?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: I have here the one that has
24 Counts One through Five on it. Is this your
25 signature here?

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1 THE DEFENDANT: It is.

2 THE COURT: I have sheets that have
3 Counts Six through Ten on the back. Is this your
4 signature?

5 THE DEFENDANT: It is.

6 THE COURT: And I have this one which is
7 Counts 11 and 12, is this your signature on the
8 back?

9 THE DEFENDANT: It is.

10 THE COURT: Do you understand that by signing
11 that, you are entering a no contest plea on
12 those, those charges?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Is this what you want to do?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Are you sure?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Are you positive?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: What is your plea?

21 THE DEFENDANT: No contest.

22 MR. SALYERS: Your Honor, the State's
Page 13

23 evidence that would have been produced at trial
24 would have proven the following facts. These are
25 the facts that the State listed in its bill of

16

1 particulars filed on June 23rd, 2008, between
2 March 4th and March 15th of 2008, as an ongoing
3 course of criminal conduct, the defendant, Jesse
4 Lee Dunaway sent numerous text messages to the
5 victim, his ex-girlfriend/fiance, Roselda Bean,
6 with the purpose to abuse, harass or threaten
7 her.

8 On March 14th, 2008 at around 12:40 p.m., the
9 defendant began chasing the vehicle in her
10 vehicle down Route 4. This high-speed chase
11 began at a furniture store in the City of
12 Fairfield, and continued as an ongoing course of
13 criminal conduct to the junction of Route 4 and
14 I-275 in the City of Springdale and Hamilton
15 County near or under the I-275 overpass. The
16 defendant intentionally and/or knowingly caused
17 physical harm to the victim by ramming the truck
18 he was driving into the back of the victim's car
19 causing a multiple car crash from which the
20 defendant fled on foot.

21 On March 15th, 2008 at around 12:20 a.m., the
22 defendant broke into the victim's home located at
23 609 Meadowbrook Place located in the City of
24 Trenton, and once inside the defendant kicked in
25 the victim's locked bedroom door, and stabbed her

1 with a knife multiple times with the intent to
2 kill.

3 As a result of this attack, the victim
4 suffered serious physical harm requiring surgical
5 intervention. At the time of these incidents the
6 defendant's actions were in violation of an
7 active protection order issued in Butler County
8 Case DV-08-02-0206.

9 In addition, at the time of these
10 incidents, the defendant had previously been
11 convicted of an offense of domestic violence, in
12 the Kenton County Circuit Court in Case Number
13 00-CR-00216.

14 Finally, at the time of these incidents the
15 defendant and victim were "Household members" as
16 defined in Ohio Revised Code Section 2919.25(F).

17 THE COURT: Anything on the facts?

18 MR. SCHNEIDER: No, Your Honor the facts as
19 read, we believe, constitutes the elements of the
20 offenses that would be proven at trial.

21 THE COURT: With that, the Court on Count
22 One, attempted murder, is going to make a finding
23 of guilty.

24 ~~On Count Two, aggravated burglary, the Court~~
25 is going to make a finding of guilty. Before you

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1 put those away, I would like my bailiff to copy
2 those bill of particulars.

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MR. SALYERS: Yes.

THE COURT: On Count Three, aggravated burglary, the Court is going to make a finding of guilty. On Count Four, felonious assault, the Court is going to make a finding of guilty. On Count Five, felonious assault, the Court is going to make a finding of guilty.

On Count Six, violation of a protection order, the Court is going to make a finding of guilty. Count Seven, menacing by stalking, the Court is going to make a finding of guilty. Count Eight, domestic violence, the Court is going to make a finding of guilty. Count Nine, felonious assault, the Court is going to make a finding of guilty. And Count 11, domestic violence, the Court is going to make a finding of guilty. And Count 12, telecommunication harassment, the Court is going to make a finding of guilty. We'll set this over for --

MR. SCHNEIDER: Can I just grab my calendar?

THE COURT: Yes.

MR. SALYERS: Your Honor, I think Count Ten might have been missed as far as finding of

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guilt.

THE COURT: Violation of Count Ten, violation of protection order, the Court is going to make a finding of guilty.

THE COURT: Can we get the PSI done by March 23?

7 PRETRIAL SERVICES: Because we have set three
8 or four for that date, and with it being such a
9 serious case, the PSI writer may want to do more
10 investigation.
11 THE COURT: May 11th.
12 MR. SCHNEIDER: Your Honor, that's fine.
13 THE COURT: And I would ask that you submit
14 in writing on what you have for the allied
15 offenses.
16 MR. SCHNEIDER: Yes, Your Honor. Just for
17 record purposes, I have indicated to my client
18 that although he waives any PSI, it is the
19 Court's prerogative as to whether or not you want
20 it. But we would waive that PSI, Your Honor.
21 THE COURT: I would like to get it.
22 MR. SCHNEIDER: Judge, is that at 8:30?
23 THE COURT: Yes. You need to sign in or
24 otherwise you get bumped down the list.
25 MR. SCHNEIDER: Yes, Your Honor. Judge,

20

1 could I have one moment to speak to Mr. Salyers?
2 THE COURT: Yes.
3 MR. SCHNEIDER: Can we approach?
4 THE COURT: Yes.
5 (Off the record.)
6 THE COURT: Thank you.
7 MR. SCHNEIDER: Thank you, Judge, have a good
8 day.
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10 PROCEEDINGS CONCLUDED AT 2:14 p.m.

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2 STATE OF OHIO)

3) ss. REPORTER'S CERTIFICATE.

4 COUNTY OF BUTLER)

5 I, Linda M. Tuttle, RMR, do hereby certify
6 that I am a Registered Merit Reporter and Notary
7 Public within the state of Ohio.

8 I further certify that these proceedings

9 were taken in stenograph by me and by electronic
10 means at the time and place herein set forth and
11 was thereafter reduced to typewritten form, and
12 that the foregoing constitutes a true and
13 accurate transcript, all done to the best of my
14 skill and ability.

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I further certify that I am not related to any of the parties hereto, nor am I in any way interested in the result of the action hereof.

Dated at Hamilton, Ohio, this _____ day of _____ 2009.

Linda M. Tuttle, RMR
Official Court Reporter
Butler County Common Pleas
Hamilton, Ohio 45011

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COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO,
PLAINTIFF, CASE NO. CR-08-04-0664
CA-09-06-0164
VS. HONORABLE PATRICIA ONEY
JESSE DUNAWAY,
DEFENDANT.

DISPOSITION
TRANSCRIPT OF PROCEEDINGS
MAY 11, 2009

♀

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF:

3 LANCE SALYERS
4 ASSISTANT PROSECUTING ATTORNEY
5 315 HIGH STREET
6 GSC BUILDING, 11TH FLOOR
7 HAMILTON, OHIO 45011

8 ON BEHALF OF THE DEFENDANT:

9 TIMOTHY SCHNEIDER, ESQ.
10 4 GLEASON DRIVE
11 SOUTHGATE, KENTUCKY 41071
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1 TRANSCRIPT OF PROCEEDINGS
2 MONDAY, MAY 11, 2009 AT 3:44 A.M.

3 MR. SALYERS: YOUR HONOR, NEXT CASE IS STATE
4 OF OHIO VERSUS JESSE DUNAWAY, CR-08-04-0664.
5 THIS CASE IS SET FOR SENTENCING THIS AFTERNOON.
6 I WOULD NOTE FOR THE RECORD THAT THE VICTIM IS
7 HERE AND DOES -- I BELIEVE DOES INTEND TO MAKE A
8 STATEMENT, YES. AT THE APPROPRIATE TIME.

9 MR. SCHNEIDER: YOUR HONOR, FOR THE RECORD,
10 TIM SCHNEIDER, ON BEHALF OF THE DEFENDANT, JESSE
11 DUNAWAY. JUDGE, WE HAVE REVIEWED THE PRESENTENCE
12 REPORT, AND WE ARE PREPARED TO MOVE FORWARD ON
13 SENTENCING.

14 THE COURT: IS THERE ANYTHING THAT YOU WANT
15 TO BRING TO THE COURT'S ATTENTION PRIOR TO
16 SENTENCING?

17 MR. SCHNEIDER: OTHER THAN THE ISSUE WE
18 TALKED ABOUT IN CHAMBERS AND THAT PORTION OF THE
19 HEARING, WE ARE PREPARED TO MOVE FORWARD.

20 THE COURT: DOES YOUR VICTIM WANT TO MAKE A
21 STATEMENT?

22 MR. SALYERS: YES.

23 MR. SCHNEIDER: I MISUNDERSTOOD YOU. WE HAVE

~~24 SOME PEOPLE THAT WANT TO TALK. I DIDN'T KNOW IF~~

25 YOU WANT TO DEAL WITH THE ISSUE --

BUTLER COUNTY OFFICIAL COURT REPORTER
LINDA M. TUTTLE, RMR (513) 785-6532

1 THE COURT: WELL, I'M NOT GOING TO ANNOUNCE
2 WHAT MY SENTENCE IS, AND THEN LET EVERYBODY GET
3 UP AND TESTIFY. THERE IS NO USE OF DOING THAT.
4 WE NEED THOSE PEOPLE THAT ARE GOING TO TESTIFY
5 MAKE A STATEMENT.

6 MR. SCHNEIDER: I WOULD LIKE TO HAVE KATHY
7 DUNAWAY COME FORWARD AND MAKE A STATEMENT.

8 THE COURT: MA'AM, WOULD YOU PLEASE COME
9 FORWARD AND RAISE YOUR RIGHT HAND?

10 (WITNESS WAS SWORN)

11 THE COURT: WOULD YOU PLEASE STATE YOUR NAME?

12 THE DEFENDANT: MY NAME IS KATHY DUNAWAY.

13 I'M JESSIE'S MOTHER.

14 MR. SCHNEIDER: WOULD YOU LIKE TO SPEAK ON
15 BEHALF OF YOUR SON?

16 KATHY DUNAWAY: YES.

17 THE COURT: PLEASE DO SO.

18 KATHY DUNAWAY: FIRST, I WOULD LIKE TO SAY TO
19 ROSE AND HER FAMILY, WE HAVE BEEN DEEPLY
20 ~~DISTRAUGHT AND SADDENED BY THE CRIME COMMITTED~~

21 UPON YOU. IN NO WAY WOULD I INTEND TO DIMINISH
22 THE SEVERITY OF WHAT HAS HAPPENED TO YOU. WE
23 LOVE YOU, AND WE CONTINUE TO PRAY FOR YOU EVERY
24 DAY.

25 MAYBE IN SOME CAPACITY WHAT I AM ABOUT TO SAY

1 WOULD HELP YOU IN SOME WAY. I HAVE PONDERED FOR
2 MONTHS HOW TO EXPLAIN IN ONLY A FEW PARAGRAPHS
3 THE SCOPE OF LIVING WITH MENTAL ILLNESS, AND ITS
4 CHALLENGES.

5 THIS IS JESSE'S LIFE STRUGGLE. HE SUFFERS
6 FROM A VERY SEVERE ILLNESS. MANIFESTATIONS ARE
7 MANY. MOST PEOPLE WOULD NEVER BELIEVE THAT HE
8 HAD ANYTHING WRONG WITH HIM, BUT HE WAS JUST A
9 PERSONAL, FUN LOVING, INTELLIGENT INDIVIDUAL, AND
10 HE IS. HOWEVER, THERE'S ANOTHER SIDE OF HIM. IN
11 TIMES OF DURESS AND STRESS, MANIFESTATIONS OF
12 DEPRESSION, ANXIETY, IRRITABILITY AND PARANOIA
13 AND SLEEPLESSNESS HAPPENS.

14 MISDIAGNOSED MANY TIMES, IT WAS ADULthood
15 BEFORE HE HAD RECEIVED A DIAGNOSIS, WHICH HAS
16 BEEN FURNISHED TO THIS COURT. ON HIS OWN, HE HAS
17 FOUGHT EVERY DAY FOR A NORMAL LIFE. NOT
18 QUALIFYING FOR HELP AND WITH NO INSURANCE, SSI
19 AND SOCIAL SECURITY OFFERED HIM DOCTORS, BUT
20 WOULD NOT COVER THE MEDICATIONS THAT HE NEEDED.

21 HE HAD TO WORK IN CONSTRUCTION, BUT USUALLY WAS
22 LAID OFF OR LET GO BEFORE MEDICAL BENEFITS COULD
23 BEGIN.

24 OVER THE YEARS ALCOHOLISM AND DRUG ABUSE,
25 ESPECIALLY DURING TIMES OF DEPRESSION HAD BECOME

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1 A COPING MECHANISM FOR SELF-MEDICATION ISSUES FOR
2 HIM, WHICH WE COULD NOT CONDONE NOR WOULD WE.
3 GREAT RISKS WOULD RISE WITHIN OUR FAMILY.
4 TOUGH LOVE DOES NOT WORK ON SOMEONE WITH
5 PSYCHOLOGICAL ISSUES. THERE HAS BEEN A LOT OF
6 BAD BEHAVIOR IN HIS LIFE, BUT NEVER TO THIS
7 EXTREME.
8 JESSE IS BASICALLY A GOOD PERSON WITH A VERY
9 SERIOUS ILLNESS. SINCE HIS INCARCERATION, MANY
10 HORRENDOUS DETAILS OF ABUSE HAVE COME TO LIGHT.
11 A LOT OF THESE THINGS IN HIS BEHAVIOR OVER THE
12 YEARS NOW MAKE SENSE TO ME.
13 ONCE AGAIN, ROSE, I DO NOT WISH TO DISREGARD
14 ANYTHING THAT HAS HAPPENED TO YOU. I'M ONLY
15 ASKING THIS COURT TO LOOK BEYOND WHAT HAS
16 HAPPENED IN DAILY STRUGGLES OF SOMEONE COPING
17 ALONG WITH AN ILLNESS AND TRYING TO LIVE A NORMAL
18 LIFE IN A WORLD THAT MOST PEOPLE, INCLUDING
19 MYSELF, CAN NEVER FULLY COMPREHEND.
20 AND NOW HE HAS INJURED THE ONE PERSON HE HAS
21 ~~EVER TRULY LOVED, AND BY HIS OWN HAND, SOMEONE~~
22 THAT HE HAD ADORED AND BRAGGED ABOUT. HE TOOK
23 PLEASURE IN LOOKING OUT FOR HER AND HER BEST
24 INTEREST.
25 HE WAS ENGAGED TO ROSE AND ROSE WAS THE ONLY

1 WOMAN THAT HE HAS EVER SPOKEN TO ME ABOUT IN THIS
2 CAPACITY. I BELIEVE FOR THE FIRST TIME IN HIS
3 LIFE, HE WAS TRULY HAPPY, AND LOOKED FORWARD TO
4 THE FUTURE WITH ROSE AND HER FAMILY.

5 JESSE HAS TWO CHILDREN OF HIS OWN THAT HE
6 ADORES. THEY LIVE WITH THEIR MOTHER, BUT REMAIN
7 CLOSE. HIS DAUGHTER ALSO SUFFERS FROM THE SAME
8 DISEASE, BUT AT LEAST HAS BEEN DIAGNOSED AT AN
9 EARLY AGE AND AFFORDED MEDICATIONS THAT WILL HELP
10 HER. YOU MAY SAY THAT JESSE HAS NO CONCERN FOR
11 THEM OR ANYONE ELSE. BUT I KNOW HE COULD NOT
12 CONTROL THE SITUATION. THE DISEASE HAD CONTROL
13 OF HIM.

14 HE HAS STRUGGLED ALL OF HIS LIFE TO CONTROL
15 SOMETHING SO OVERWHELMING. HE HAS ASKED FOR HELP
16 AND HE NEEDS THE HELP. I, TOO, SINCE DAY ONE
17 HAVE ALSO HAD THE SAME AGENDA THROUGH HIS
18 ATTORNEY. I BEGGED THIS COURT TO SEEK
19 PSYCHOLOGICAL HELP FOR MY SON.

20 I HAVE SPOKEN TO ROSE ONLY ONCE LAST JUNE, A
21 CONVERSATION FILLED WITH LOVE AND TEARS. AT THE
22 END OF OUR CONVERSATION, ROSE HAS TOLD ME THAT
23 SHE HAD FORGIVEN JESSE AND EVEN THOUGH SHE NEVER
24 WANTED TO SEE HIM, HOPED HE WOULD GET THE HELP
25 NEEDED.

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2 MY SON. PLEASE FINALLY GIVE HIM THE HELP THAT HE
3 HAS ELUDED HIM FOR SO MANY YEARS, IN HIS HEART
4 AND CLEAR OF MIND, YOU WILL FIND MY SON AN
5 INDIVIDUAL THAT IS WORTH SAVING.

6 MR. SCHNEIDER: YOUR HONOR, I HAVE NO
7 QUESTIONS OF THIS INDIVIDUAL.

8 MR. SALYERS: NO.

9 THE COURT: YOU MAY STEP DOWN, MA'AM. PLEASE
10 BE CAREFUL OF THE STEP.

11 KATHY DUNAWAY: THANK YOU.

12 MR. SCHNEIDER: YOUR HONOR, BROOK ROTH.
13 (WITNESS WAS SWORN.)

14 MR. SCHNEIDER: MA'AM, IF YOU COULD STATE
15 YOUR NAME AND HOW YOU KNOW JESSE.

16 BROOK ROTH: MY NAME IS BROOK ROTH, THE
17 MOTHER OF HIS TWO MINOR CHILDREN. WE LIVED
18 TOGETHER FROM 1993 TO 2000. AT THE BEGINNING OF
19 OUR RELATIONSHIP, I KNEW OF JESSE'S MENTAL ISSUES
20 AND HE WAS PRESCRIBED MANY DIFFERENT MEDICATIONS
21 WHILE TRYING TO FIND THE RIGHT COMBINATION, EVEN
22 LITHIUM.

23 DUE TO NO INSURANCE OR QUALIFYING HELP, HIM
24 NOR HIS FAMILY COULD AFFORD IT. BUT WHILE HE WAS
25 ON HIS MEDS, HE WAS TOTALLY DIFFERENT. HE WAS

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9

1 CALM, LOVING, GREAT TO BE AROUND. WHEN HE GOT ON

2 SSI, THEY STILL WOULDN'T COVER MIND-ALTERING
3 MEDICATIONS. THROUGH ALL OF THIS TESTING, I
4 WORKED FULL-TIME AND JESSE TOOK CARE OF THE
5 CHILDREN AT HOME. HE WAS A GREAT FATHER AND THE
6 CHILDREN BROUGHT SO MUCH JOY TO HIS LIFE.

7 WHEN OUR RELATIONSHIP CHANGED DUE TO EVERYDAY
8 STRESS WE ARGUED ALL OF THE TIME, MOSTLY OVER
9 MONEY AND HIS INABILITY TO WORK.

10 I FELT JESSE FELT HIS MANHOOD WAS STRIPPED
11 FROM HIM. THIS LED HIM INTO A DEEP DEPRESSION.
12 JESSE WAS ONE THAT COULDN'T CRY OR SHOW HIS
13 SADNESS.

14 I THINK THIS WAS A TURNING POINT THAT
15 EVENTUALLY LED HIM INTO DRUGS AND ALCOHOL, WHICH
16 LED TO MORE SERIOUS PROBLEMS THAT WE COULDN'T
17 HANDLE AS YOUNG PARENTS. AT ONE POINT WE HAD A
18 HUGE ARGUMENT AT THE DINNER PARTY, AND IN THE
19 PROCESS JESSE WAS HOLDING A STEAK KNIFE, AND I
20 JUMPED TOWARDS HIM TRYING TO GRAB IT OUT OF HIS
21 HAND, AND MY HAND WAS CUT SEVERELY. IT WAS A
22 REACTION DUE TO THE CHAOS WE LIVED, BUT IT WAS
23 NOT DONE INTENTIONALLY AND HE NEVER TRIED TO STAB
24 ME.

25 WE COULDN'T AFFORD HIS MEDICATION. THE

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10

1 ALCOHOL AND DRUGS BECAME PREVALENT ALTHOUGH OUR
2 RELATIONSHIP HAD ENDED. I NEVER UNDERSTOOD

3 JESSE'S MENTAL STATE UNTIL MY DAUGHTER AT AGE 4
4 WAS DIAGNOSED WITH THE SAME CONDITION. DUE TO
5 JESSE AND EVERYTHING, WE LIVED THROUGH IT, HELPED
6 ME TO RECOGNIZE HER SYMPTOMS AND HOW TO COPE AND
7 REACT TO ANY GIVEN SITUATION, WHICH THERE ARE
8 MANY.

9 I NOW REALIZE THAT THERE ARE TIMES WHEN THE
10 DISEASE IS IN CONTROL OF THEM. THIS HAS HELPED
11 ME TO BE ABLE TO FORGIVE HIM AND IN TIME WE
12 BECAME FRIENDS.

13 I'M HOPING ON BEHALF OF ME AND OUR
14 CHILDREN, JESSE FINALLY GETS THE HELP THAT HE HAS
15 ALWAYS NEEDED TO LIVE A NORMAL LIFE THAT HIM AND
16 HIS DAUGHTER BOTH DESERVE.

17 MR. SCHNEIDER: THANK YOU. JUDGE, I THINK
18 MR. DUNAWAY WOULD LIKE TO MAKE A STATEMENT ON HIS
19 OWN BEHALF AT THIS TIME.

20 THE DEFENDANT: I WOULD LIKE FOR ROSE TO --
21 THIS WAS NEVER AN INTENTIONAL --

22 MR. SALYERS: YOUR HONOR, IF I COULD OBJECT
23 AND HAVE HIM DIRECT HIS STATEMENTS TO THE COURT,
24 PLEASE.

25 THE DEFENDANT: NEVER HAVE I DENIED WHAT HAS

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11

1 HAPPENED HERE TODAY. FROM DAY ONE, I HAVE ALWAYS
2 ADMITTED TO THIS. I HAVE EVEN GONE SO FAR AS TO

3 RISK MY OWN CASE BY WRITING LETTERS OF APOLOGY.
4 THERE IS NOT A DAY THAT GOES BY THAT I DON'T
5 THINK ABOUT WHAT HAS HAPPENED. ONLY A PIECE A
6 SHIT OF A PERSON COULD DO THAT, AND NOT FEEL
7 ANYTHING FROM IT.

8 IT IS SOMETHING THAT I'LL NEVER BE ABLE TO
9 FORGIVE THIS. IT IS A HORRIBLE FEELING TO KNOW
10 THAT I HAVE HURT SOMEONE THAT I CARED ABOUT SO
11 DEARLY. I NEVER WOULD HAVE IMAGINED THAT
12 SOMETHING LIKE THIS COULD HAVE CAME FROM MY
13 HANDS.

14 THIS APOLOGY -- I HAVE NEVER STOPPED
15 APOLOGIZING FOR THIS. AN APOLOGY IS ONLY AS GOOD
16 AS A PERSON IS WILLING TO ACCEPT. IT'S NEVER
17 BEEN ACCEPTED, BUT I WILL NEVER STOP TRYING TO
18 APOLOGIZE FOR THIS.

19 YOU KNOW, I WISH I HAD AN ANSWER OF WHY. I
20 DON'T KNOW. ALL I KNOW IS THAT SOMETHING
21 HORRIBLE HAPPENED, AND IT HAPPENED TO SOMEONE
22 THAT I CARED ABOUT DEARLY. I WISH I COULD CHANGE
23 THE EVENTS THAT HAPPENED, BUT I CAN'T.

24 I WISH I HAD THE ANSWERS OF WHAT THE PURPOSE
25 OF EVERYTHING WAS, BUT I DON'T. ALL I KNOW IS

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12

1 THAT I WAS EXTREMELY INTOXICATED. I HAVE MANY
2 ADDICTIONS, AND I HAVE MENTAL ILLNESSES ON TOP OF
3 IT, AND I SELF-MEDICATE MYSELF WITH DRUGS AND

4 ALCOHOL.
5 I NEVER MEANT FOR ANY OF THIS TO HAPPEN, AND
6 I HAVE ALWAYS OWNED UP TO THIS, AND I HAVE
7 CONFESSED TO THIS, AND I WILL ALWAYS CONFESS TO
8 THIS, AND WILL ALWAYS EXPRESS MY APOLOGIES. NO
9 MATTER HOW MUCH THAT I SAY I'M SORRY, IT'S NEVER
10 ENOUGH FOR HER. AND I REALIZE THAT. AND
11 HOPEFULLY SHE GETS HER JUSTICE.
12 BUT, AGAIN, IT WAS SOMETHING THAT I NEVER
13 INTENDED. I CARED FOR HER TOO MUCH. AND FOR
14 THAT, I APOLOGIZE. THAT'S IT.
15 MR. SCHNEIDER: YOUR HONOR, IF I COULD ON
16 BEHALF OF MY CLIENT, I HOPE THAT NOTHING THAT HAS
17 EVER BEEN SAID HERE TODAY BY ANYONE ON BEHALF OF
18 THE PEOPLE THAT I HAVE PUT BEFORE YOU OR MYSELF
19 EVER SOUNDS AS THOUGH IT IS MINIMIZATION OF WHAT
20 MS. BEAN HAS GONE THROUGH. SHE HAS BEEN THROUGH
21 SOMETHING HORRIBLE, JESSE UNDERSTANDS THAT. WE
22 HAVE ACTUALLY TALKED ABOUT IT. JESSE AND I HAVE
23 HAD A ROCKY RELATIONSHIP THROUGHOUT THIS CASE.
24 THERE HAVE BEEN TIMES WHERE WE HAD GOOD
25 CONVERSATIONS. WE HAVE TALKED ABOUT THE FACT

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13

1 THAT THE PHYSICAL HEALING AND THE EMOTIONAL
2 HEALING HAS, THANK GOODNESS, OCCURRED OVER THE
3 PAST MONTHS AND REALLY THE EMOTIONAL HEALING HAS

4 dunawayjesse051109disposition.txt
BEEN ONGOING, AND TRULY WILL BEGIN TODAY. AND WE
5 HOPE IT WILL BRING SOME LEVEL OF CLOSURE.

6 I HOPE THE COURT DOESN'T MISUNDERSTAND THE
7 FACT THAT THIS CASE LINGERED ON FOR A WHILE AS
8 BEING SOME INDICATION BY JESSE THAT HE DID NOT
9 WANT TO ACCEPT RESPONSIBILITY. SIMPLY NOT THE
10 CASE, JUDGE.

11 THIS IS, AS I INDICATED TO THE COURT BEFORE,
12 IT HAS NEVER BEEN A MATTER OF DID HE DO IT. IT'S
13 ALWAYS BEEN A MATTER OF WHAT IS A FAIR SENTENCE.
14 AND LET'S FACE IT, THAT'S WHY WE ARE HERE TODAY
15 FOR YOU TO TELL US WHAT IS A FAIR SENTENCE
16 BECAUSE ULTIMATELY YOUR OPINION IS THE ONLY ONE
17 THAT MATTERS.

18 I HOPE THAT THE INFORMATION THAT HAS BEEN
19 PROVIDED TO YOU DOES NOT SOUND AS THOUGH IT'S
20 SOME TYPE OF EXCUSE ON BEHALF OF JESSE. WE'RE
21 SIMPLY TRYING TO GIVE YOU A GLIMPSE OF THE MAN
22 THAT IS THE OTHER SIDE OF THE INDIVIDUAL THAT YOU
23 HAVE SEEN AND HEARD ABOUT, THE HORRIBLE SIDE OF
24 JESSE THAT COMES OUT WHEN HE'S NOT DEALING WITH
25 HIS MENTAL HEALTH ISSUES, AND WHEN HE'S STARTING

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14

1 TO TREAT WITH -- SELF-TREAT WITH DRUGS AND
2 ALCOHOL. HE BECOMES A MAN THAT NOBODY
3 RECOGNIZES.

4 HIS MOTHER HERSELF TOLD ME THAT WHEN THAT
Page 13

5 HAPPENS, SHE CAN'T COMMUNICATE WITH HIM.

6 THAT WHEN HE IS NOT DOING THE ALCOHOL AND
7 DRUGS, AND WHEN HE IS DEALING WITH HIS MENTAL
8 HEALTH ISSUES IN AN APPROPRIATE WAY, HE IS A
9 CARING, LOVING INDIVIDUAL. HE MASKS THE PARANOIA
10 AND THE SCHIZOPHRENIA WITH ALCOHOL AND DRUGS AND
11 SUDDENLY BECOMES A MR. HYDE.

12 WHEN HE SPIRALS OUT OF CONTROL LIKE THAT BY
13 HIS OWN ADMISSION TO ME ON MARCH 14TH WHEN HE
14 CAME INTO CONTACT WITH ROSE, AND THEN ULTIMATELY
15 THE CHASE ENSUED, AND A CAR ACCIDENT OCCURRED,
16 THAT'S WHEN HE TRULY BEGAN TO SPIRAL OUT OF
17 CONTROL. THAT'S WHEN HE REALIZED OH, MY
18 GOODNESS, SOMETHING HAS GONE ON. THAT'S WELL
19 BEYOND MY CONTROL, AND INSTEAD OF DEALING WITH
20 THAT PROBLEM IN A WAY LIKE YOU OR I WOULD, HE
21 GOES TO DRUGS AND ALCOHOL.

22 AND AT THAT POINT, HE IS COMPLETELY OUT OF
23 CONTROL. HE HAS INDICATED TO ME THAT HE HAS
24 VIRTUALLY -- I WON'T SAY NO MEMORY, BUT VERY,
25 VERY, VERY LIMITED MEMORY OF THE EVENTS OF 3/15.

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15

1 ON THAT DAY, HIS PARENTS, ODDLY ENOUGH, WERE
2 ATTEMPTING TO HAVE HIM HOSPITALIZED AT
3 ST. ELIZABETH BEHAVIORAL. THEY COULD SEE IT.
4 THEY COULD SEE OVER THE WEEK OR SO THAT THINGS

5 HAD BEEN GOING ON, HE WAS GETTING OUT OF CONTROL.
6 THEY HAD JUST TAKEN THE STEPS NECESSARY TO TRY TO
7 GET HIM IN THE BEHAVIORAL UNIT TO TRY TO HELP
8 HIM. AND UNFORTUNATELY, THEY WERE JUST A LITTLE
9 TOO LATE.
10 YOUR HONOR, WHEN IT'S ALL SAID AND DONE, YOU
11 HAVE HEARD A LOT ABOUT MR. DUNAWAY AND WHAT HE IS
12 LIKE WHEN HE IS NOT DRINKING AND NOT DOING DRUGS.
13 IT IS OUR HOPE THAT WITH THE TESTIMONY YOU HAVE
14 HEARD, AND I BELIEVE THE GENUINE REMORSE AND
15 CONCERN THAT YOU HAVE SEEN FROM MR. DUNAWAY THAT
16 YOU WILL ISSUE THE FAIREST SENTENCE YOU CAN IN
17 LIGHT OF THE DIFFICULT FACTS YOU ARE DEALING
18 WITH.
19 IT IS OUR BELIEF THAT IN A CASE LIKE THIS
20 WITH ALL OF THE FACTS AND CIRCUMSTANCES IN THIS
21 COURT WOULD BE TEN YEARS, AND WITH THAT SAID,
22 YOUR HONOR, OTHER THAN TESTIMONY THAT REQUIRED
23 THE COURTROOM TO BE VACATED, I THINK THAT'S ALL
24 WE HAVE.
25 THE COURT: THANK YOU.

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16

1 MR. SALYERS: DOES THE COURT WANT TO
2 ENTERTAIN THAT TESTIMONY AND JUST CLEAR THE
3 COURTROOM OR IS MR. SCHNEIDER NOT OFFERING THE
4 TESTIMONY?
5 MR. SCHNEIDER: WE ARE PREPARED TO OFFER IT,
Page 15

6 JUDGE. I JUST DIDN'T KNOW IF YOU WANTED TO DO IT
7 NOW, JUDGE.

8 THE COURT: WOULD COUNSEL PLEASE APPROACH THE
9 BENCH?

10 (OFF THE RECORD.)

11 MR. SCHNEIDER: JUDGE, THAT'S ALL WE HAVE.
12 THANK YOU.

13 MR. SALYERS: IS THE COURT READY TO HEAR FROM
14 THE VICTIM?

15 THE COURT: WOULD YOU LIKE HER TO SIT?

16 MR. PAGAN: I'M GOING TO STAND RIGHT BY HER.
17 SHE WILL BE FINE. I REPRESENT ROSE BEAN, CHRIS
18 PAGAN AND HER FAMILY. SHE ASKED ME TO BE HERE.

19 ROSE BEAN: HELLO, MY NAME IS ROSELDA BEAN.
20 I JUST HAVE A LETTER OF WHAT I HAVE TO SAY. ON
21 BEHALF OF MY LOVED ONES, MY PARENTS, FRIENDS AND
22 MY BOYS, I WANT YOU TO KNOW YOU HAVE DESTROYED MY
23 LIFE PHYSICALLY AND MENTALLY. YOU HAVE CAUSED ME
24 PAIN EVERY DAY FOR THE REST OF MY LIFE.

25 MY WHOLE FAMILY STILL LIVE IN FEAR EVERY DAY.

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17

1 YOU HAVE INVADED ALL OF OUR PRIVACY. I HATE
2 THESE SCARS YOU HAVE LEFT IN MY BODY. EVERY TIME
3 I SEE THEM IT REMINDS ME OF HORRIBLE, VINDICTIVE
4 SELFISH, IMPURE, EVIL YOU ARE.

5 MY 12 YEAR-OLD BOY IS FOREVER SCARRED FOR

6 WHATEVER HE WITNESSED THAT HORRIBLE NIGHT, A
7 HORRIBLE ACT. YOU HAVE CAUSED ME TO LOSE THE
8 BABY THAT YOU WANTED SO BAD. I WAS 13 WEEKS
9 PREGNANT.

10 BUT FOR WHATEVER YOU HAVE DONE TO ME, I HAVE
11 FORGIVEN YOU BECAUSE IT IS THE ONLY WAY THAT I
12 CAN START HEALING FOR MYSELF.

13 AND FOR JUDGE ONEY, AND FOR MY LOVED ONES AND
14 MY FRIENDS AND FAMILY, ESPECIALLY MY 12-YEAR-OLD
15 BOY, PUT YOURSELF IN MY SHOES FOR ONCE. RELIVE
16 MY LIFE, MY STORY, EXPERIENCE THAT WHOLE
17 INCIDENT. THAT MAN NEVER GAVE ME A CHANCE. YOU
18 HAVE IN YOUR HANDS THE FACTS, THE TRUTH, OF WHAT
19 KIND OF MAN YOU ARE DEALING WITH, WHAT HAPPENED
20 THAT HORRIBLE NIGHT.

21 WE ARE HOPING AND PRAYING THAT YOU WILL GIVE
22 HIM AS MANY OR MORE YEARS HE DESERVES BECAUSE IF
23 YOU DON'T, HE WILL HURT OR POSSIBLY KILL THE NEXT
24 VICTIM. IT COULD BE SOMEONE VERY CLOSE TO
25 YOU.

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18

1 HOWEVER MANY YEARS YOU SENTENCE HIM, MY
2 NIGHTMARES FOREVER HAUNT ME FOR AS LONG AS I
3 LIVE. FOR THE RECORD, THIS IS THE WAY I HAVE TO
4 DEAL WITH THE REST OF MY LIFE (LIFTING SHIRT).

5 AND MY BACK, MY RIGHT SIDE OF MY BACK IS FULL
6 OF STAB WOUNDS THAT I HAVE TO DEAL WITH AND THE

7 PAIN. THAT IS ALL. THANK YOU.

8 THE COURT: THANK YOU. ANYTHING ELSE?

9 MR. SALYERS: YES, THERE ARE A COUPLE THINGS
10 I WOULD LIKE TO HIGHLIGHT AND ADDRESS SOME OF THE
11 ISSUES THAT MR. DUNAWAY'S ATTORNEY RAISED. THIS
12 WAS NOT AN ACCIDENT. MR. DUNAWAY WAS NOT OUT OF
13 CONTROL. HE WAS NOT BEING CARRIED ALONG BY
14 FORCES NOT IN HIS POWER.

15 TWO THINGS I WOULD LIKE TO DIRECT THE COURT'S
16 ATTENTION TO THAT I INCLUDED IN MY
17 MEMORANDUM, ONE, THAT WHEN IN FEBRUARY, MS. BEAN
18 FILED FOR PROTECTION ORDERS, SHE CLOSED THAT
19 APPLICATION WITH THESE WORDS. JESSE ALWAYS
20 CARRIES KNIVES WITH HIM. HE HAS ABUSED ALL OF
21 HIS EX-GIRLFRIENDS BEFORE. AND HE WENT TO JAIL
22 FOR TWO YEARS FOR STABBING HIS EX-GIRLFRIEND IN
23 ALL CAPS, PLEASE HELP ME. THAT WAS IN FEBRUARY.

24 THEN MARCH CAME AND THE FIRST OF THE
25 INCIDENTS IN WHICH HE BEGAN THE TELEPHONE

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19

1 HARASSMENT AND BROKE THE WINDOW OF HER VEHICLE,
2 SHE MADE A REPORT, I THINK IT WAS ABOUT MARCH 4TH
3 IN FAIRFIELD, TEXT MESSAGES THAT COME FROM HIM
4 AFTERWARDS, HE IS ASKING ABOUT HOW IS YOUR CAR
5 AND SPECIFICALLY SOME OF THOSE TEXT MESSAGES THAT
6 I INCLUDED IN THE MEMORANDUM, I WOULD LIKE TO

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7 READ FOUR OF THEM IN THE RECORD STARTING AT
8 SHORTLY AFTER MIDNIGHT ON MARCH 5TH, AND LET'S
9 KEEP IN MIND THIS IS SENDING TEXT MESSAGES, NOT
10 THE EASIEST THINGS TO DO WITH FINGERS AND PHONES
11 AND MR. DUNAWAY IS DOING IT NONSTOP, AND
12 SOMETIMES MINUTES AFTER EACH OTHER SUPPOSEDLY
13 DRUNK BEYOND ALL CONTROL.

14 HE TEXT MESSAGES, YOU HAVE UNTIL 6:00 A.M.,
15 WHICH AT THIS POINT WAS LESS THAN SIX HOURS AWAY,
16 YOU HAVE UNTIL 6:00 A.M. TO GIVE ME AN ANSWER AND
17 PICK ONE OF THE TWO, THE TWO BEING TWO OPTIONS HE
18 HAD PREVIOUSLY GIVEN HER IN TEXT MESSAGES TAKE
19 HIM BACK IN THIS RELATIONSHIP OR GIVE HIM A TRUCK
20 AND \$4,600 AND LEAVE HIM ALONE. YOU PICK ONE OF
21 THE TWO. IF YOU DON'T, THEN YOU BETTER BUY A GUN
22 IF YOU WANT TO KEEP PLAYING GAMES BECAUSE I'M
23 DONE. IT'S SERIOUS NOW. I AM AT MY LIMIT.

24 THE VERY NEXT MESSAGE, LISTEN CAREFULLY, I AM
25 ALREADY A TWO-TIME FELON. ANOTHER FELONY AND I

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20

1 ~~AM A THREE-TIME LOSER, AUTOMATIC LIFE SENTENCE.~~
2 YOU TAKE MY LIFE, AND I WILL TAKE EVERYTHING FROM
3 YOU. I WON'T CARE.
4 THE NEXT MESSAGE, SO BE CAREFUL WHEN YOU
5 PRESS A CHARGE ON ME BECAUSE IF IT IS A FELONY,
6 YOU ARE TAKING MY LIFE, AND I WILL TAKE YOURS AND
7 WHOEVER IS IN THAT HOUSE IF YOU DO THAT TO ME,

8 FIX THIS OR ELSE.

9 AND THEN THE VERY NEXT MESSAGE, I'M SERIOUS,
10 I AM AT A POINT OF NO RETURN, FIX THIS OR GIVE ME
11 MY MONEY OR GO IN PEACE. DON'T TRY TO TRICK ME.
12 I'M BEING MATURE, PICK ONE OF THE TWO, IF YOU
13 FUCK WITH ME IT IS GOING TO BE BAD. THAT WAS ON
14 MARCH 5TH.

15 MS. BEAN FILED A POLICE REPORT JUST LIKE THE
16 LAW ASKED HER TO DO OUT OF FEAR OF THESE THREATS.
17 MARCH 14TH, HE BEGAN THE PROCESS OF FOLLOWING
18 THROUGH ON THOSE THREATS. HE FOUND HER DOWN IN
19 FAIRFIELD AND HE CHASED HER, AND CAUSED A SIX-CAR
20 CRASH. SHE WENT TO THE POLICE, HE FLED ON FOOT.
21 HE THEN WENT TO INDIANA TO HIS FRIEND'S HOUSE,
22 AND STOLE A KNIFE AND STOLE A CAR, AND WENT TO
23 HER HOUSE IN TRENTON, AND KICKED IN THE BACK DOOR
24 AND KICKED IN THE BEDROOM DOOR, AND CARRIED OUT
25 THE VERY THREATS THAT NOT ONLY HE HAD PUT IN THE

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21

1 TEXT MESSAGE, BUT THAT SHE HAD FEARED IN THAT
2 PROTECTION ORDER. TRIED TO KILL HER WITH A
3 KNIFE.

4 HE FLED TO KENTUCKY AND HE WAS ARRESTED
5 SHORTLY THEREAFTER, STILL WITH HER BLOOD ON HIS
6 PANTS AND GAVE A FULL WRITTEN STATEMENT THAT WAS
7 COHERENT, LEGIBLE AND PROPER ENGLISH, AND

8 PUNCTUATION. HE WAS NOT DRUNK OR NOT SO
9 INTOXICATED THAT HE WAS JUST OUT OF CONTROL.
10 HE WAS ACTING OUT THE VERY THINGS THAT HE HAD
11 SAID HE WOULD DO. AND FOR THAT REASON AND THE
12 OTHERS THAT I PUT IN MY MEMORANDUM, I THINK
13 MR. DUNAWAY'S CASE, THE TRAGEDY OF THE MENTAL
14 ILLNESS AND OTHER THINGS NOTWITHSTANDING HIS
15 CRIME AND HIS RECORD, AND EVERYTHING ELSE, DEMAND
16 A VERY, VERY HARSH PRISON SENTENCE. THANK YOU.
17 THE COURT: THANK YOU. ANYBODY ELSE HAVE
18 ANYTHING ELSE?
19 MR. SCHNEIDER: NO, YOUR HONOR.
20 THE COURT: WE ARE TALKING ABOUT 11 STAB
21 WOUNDS, MANY OF WHICH, BY THE GRACE OF GOD, WOULD
22 HAVE KILLED HER EXCEPT FOR THE GRACE OF GOD.
23 JUST NOT OUT OF CONTROL HERE. STATE'S EXHIBIT
24 NUMBER 10, STATE'S EXHIBIT NUMBER 14, WHICH THE
25 LADY SHOWED US IN THE COURTROOM WAS THE ONE THAT

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22

1 HAD THE STAPLES IN IT.
2 ~~MANY OF THE 11 STAB WOUNDS -- JUST~~
3 CENTIMETERS DIFFERENCE WOULD HAVE BEEN -- HAVE
4 RESULTED IN HER MURDER.
5 I'M LOOKING AT A PETITION FOR DOMESTIC
6 VIOLENCE, CIVIL PROTECTION ORDER 08-02-0206. IT
7 INDICATED IT IN THE PETITION, GRABBING MY NECK
8 AND MY RIGHT HAND HIT THE DOOR AND SHUT THE DOOR

9 ON MY FEET. I STILL HAVE BRUISES AFTER A WEEK.
10 IT'S NOT THE FIRST INCIDENT. HE GRABBED ME
11 BEFORE AND DRAGGED ME OUT OF MY TRUCK.

12 DOWN FURTHER HE PUNCHED AND BROKE DOWN THE
13 DOOR AND GRABBED ME BY THE HEAD. SHOT MY FACE --
14 SHOVED MY FACE INTO HIS PARENTS' COUCH AND CHOKED
15 ME. HE THREATENED TO HURT MY KIDS AND PARENTS IF
16 I DIDN'T TAKE HIM BACK.

17 FURTHER ON, HE ALWAYS CARRIES KNIVES WITH HIM
18 AND HE HAD USED HIS EX-GIRLFRIEND BEFORE AND WENT
19 TO JAIL FOR TWO YEARS FOR STABBING HIS
20 EX-GIRLFRIEND. INDICATING AND ASKING THE COURT
21 THAT HE NEEDS TO GO TO AA MEETINGS AND ANGER
22 MANAGEMENT CLASSES AND TALK TO A PSYCHIATRIST.

23 LOOKING AT SOME OF THE TEXT MAILS, YOU FUCK
24 ME, IT IS GOING TO BE BAD. I WANT MY MONEY AND
25 YOU OUT OF MY FUCKING LIFE AND I AM TIRED OF THE

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23

1 FUCKING GAMES.

2 YOU BROKE INTO THE HOUSE AND KICKED IN THE
3 FRONT DOOR, KICKED IN THE BEDROOM DOOR, 11 STAB
4 WOUNDS, AND A RECORD THAT GOES BACK FOR A LONG
5 WAY, INCLUDES THREE CONVICTIONS FOR PUBLIC
6 INTOXICATION. THREE CONVICTIONS FOR DISORDERLY
7 CONDUCT, TWO CONVICTIONS FOR CRIMINAL MISCHIEF,
8 TWO CONVICTIONS FOR UNLAWFUL TRANSACTIONS WITH A

9 MINOR, CONVICTION FOR POSSESSION OF MARIJUANA,
10 CONVICTION FOR TERRORISTIC THREATENING, SIX
11 ASSAULT -- SEPARATE ASSAULT CONVICTIONS. THREE
12 SEPARATE HARASSMENT CHARGES. ONE DRUG CHARGE.

13 IN THE YEAR 2000 HE WAS CONVICTED OF
14 ASSAULT, F-2 FOR TWO COUNTS, AND SENTENCED TO TWO
15 YEARS, AND THAT WAS SUSPENDED AND PLACED ON
16 PROBATION. VIOLATED THAT AND YOU SERVED THAT
17 SENTENCE, AND HAD A TRESPASSING, AND FOUR
18 SEPARATE CONVICTIONS FOR DUI, '01 -- '02 AND '05
19 AND '07 AND IN 2002, HE HAD A CONVICTION FOR
20 AGGRAVATED ASSAULT, RECEIVED THREE YEARS IN A
21 KENTUCKY PRISON.

22 IN '03 HE HAD A FLEEING AND ALLUDING
23 CONVICTION, AND TWO COUNTS, TWO YEARS IN KENTUCKY
24 AND IN '05, HE HAD THE SAME CHARGES AND RECEIVED
25 ANOTHER TWO-YEAR CONVICTION. TWO HIT-AND-RUNS

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24

1 AND WANTON ENDANGERMENT, DRIVING UNDER SUSPENSION
2 AND THIS CASE.

~~3 YOU MAY BE SELF-MEDICATING, BUT SURELY WHEN~~

4 YOU TOOK THE ALCOHOL, YOU STEPPED OVER THE LINE
5 AND YOU BECAME MR. HYDE. AND WHAT YOU DID, YOU
6 CANNOT JUST SAY I'M SORRY, AND IT'S WIPED AWAY.

7 THE DEFENDANT: NO, YOU CANNOT.

8 THE COURT: YOU HAVE EXPRESSED HOW YOU FEEL,
9 BUT YOU CANNOT CURE WHAT HAPPENED BY THAT. AND
Page 23

10 THIS COURT HAS LOOKED AT WHAT ALL THE -- SOME OF
11 THESE PRIOR CONVICTIONS WERE ABOUT, AND WHAT ALL
12 WAS INVOLVED.

13 ON THE ASSAULT CASES, ONE ASSAULT CASE THAT
14 YOU PULLED THE VICTIM BY THE HAIR AND DRUG HER
15 ACROSS THE FLOOR, AND PUNCHED A HOLE IN THE WALL.
16 ON ONE ASSAULT CASE AND CONVICTION ON AN
17 EXTREMELY EMOTIONAL DISTURBANCE, SECOND DEGREE,
18 PROBATION PROGRAM, YOU VIOLATED THAT, GIVEN FIVE
19 YEARS IN KENTUCKY. THAT WAS SUSPENDED. ANOTHER
20 PROBATION VIOLATION, GAVE YOU TWO YEARS.

21 AND CAME HOME INTOXICATED AND ENGAGED IN
22 VERBAL ARGUMENT, PHYSICALLY ATTACKED THE VICTIM
23 AND REPEATEDLY STRUCK HER IN THE FACE WITH YOUR
24 FISTS AND FEET AND AFTER THE ATTACK THE VICTIM
25 WAS SITTING IN ANOTHER ROOM WITHOUT ACCESS TO THE

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1 PHONE, AND YOU DID NOT ALLOW HER TO LEAVE THE
2 RESIDENCE, AND YOU STATED YOU WOULD KILL HER IF
3 SHE TRIED TO CALL THE POLICE OR LEAVE THE

4 RESIDENCE FOR HELP.

5 A DIFFERENT ASSAULT CASE. THE VICTIM HAD
6 REPORTEDLY BEEN CUT WITH A KNIFE. THIS WAS IN
7 2000. YOU FLED THE SCENE AFTER THE OFFICERS
8 ARRIVED.

9 IN '01, A DUI, YOU WERE TRAVELING 82 MILES

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PER HOUR IN A 65 MILE PER HOUR ZONE.

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MR. SCHNEIDER: THE ASSAULT CASE, THAT WAS
MS. ROTH, JUST TO CLARIFY.

THE COURT: IN '02, YOU HAD AN AGGRAVATED
ASSAULT, YOU PUNCHED THE VICTIM IN THE FACE WITH
A CLOSED FIST AND PULLED OUT A KNIFE AND PULLED
OUT A PORTION OF THE VICTIM'S HAIR, AND THE
3-YEAR-OLD DAUGHTER WAS WITH THE VICTIM AT THE
TIME.

TERRORISTIC THREATENING, CALLED THE VICTIM
AND SAID YOU WOULD SLICE HER UP AND NOT AFRAID OF
THE POLICE AND CAME TO THE VICTIM'S HOME AND
BEGAN BEATING ON THE DOOR AND YELLING AT HER.
CRIMINAL MISCHIEF, THREW A BRICK THROUGH A WINDOW
OF A BUSINESS AND NEARLY STRIKING SEVERAL PEOPLE
INSIDE.

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MR. SCHNEIDER: JUDGE, MY CLIENT DID INDICATE
THE MOST RECENT ASSAULT YOU TALKED ABOUT, HE DOES
NOT RECALL THAT. DOES THE PSI INDICATE A
CONVICTION ON THAT?

THE COURT: WHICH ONE?
MR. SCHNEIDER: THE ONE YOU JUST TALKED ABOUT
PRIOR TO THE CRIMINAL MISCHIEF.

THE COURT: THESE ARE CONVICTIONS THAT WAS
BASED ON.

MR. SCHNEIDER: THANK YOU, YOUR HONOR.
Page 25

11 THE COURT: THERE ARE OTHER FACTORS THAT THIS
12 COURT KNOWS THE INFORMATION. IT WAS IMPORTANT.
13 BUT YOU HAVE BEEN INVOLVED FOR MANY YEARS IN
14 TERRORIZING PEOPLE YOU LOVE AND CUTTING THEM, AND
15 HITTING THEM AND KICKING THEM.

16 AND WHAT HAPPENED TO THIS YOUNG LADY IS
17 TERRIFYING. SHE WILL NEVER, EVER BE THE SAME.
18 ON COUNT ONE, ATTEMPTED MURDER, F-1, THE COURT IS
19 GOING TO SENTENCE YOU TO TEN YEARS IN THE OHIO
20 DEPARTMENT OF REHABILITATIONS AND CONTROL. GOING
21 TO IMPOSE A FINE OF \$10,000.

22 ON COUNT TWO, AGGRAVATED BURGLARY, FELONY
23 ONE, THE COURT IS GOING TO IMPOSE TEN YEARS IN
24 THE OHIO DEPARTMENT OF REHABILITATIONS AND
25 CONTROL, AND THAT IS CONSECUTIVE TO COUNT ONE.

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1 THE COURT IS GOING TO IMPOSE A FINE OF \$1,000
2 AND COSTS.

3 COUNT THREE, AGGRAVATED BURGLARY, FELONY
4 ONE, THE COURT IS GOING TO IMPOSE TEN YEARS IN

5 THE OHIO DEPARTMENT OF REHABILITATIONS AND
6 CONTROL, AND THAT IS CONCURRENT, FINE OF \$1,000
7 AND COSTS.

8 COUNT FOUR, FELONIOUS ASSAULT, FELONY TWO,
9 THE COURT IS GOING TO IMPOSE A SENTENCE OF EIGHT
10 YEARS, AND THAT IS CONCURRENT WITH COUNT TWO AND

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ONE, AND IMPOSE A FINE OF \$500.

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ON COUNT FIVE, FELONIOUS ASSAULT, FELONY TWO,
THE COURT IS IMPOSING EIGHT YEARS AND THAT IS
CONCURRENT, AND A FINE OF 500 AND COSTS AND BY
CONCURRENT THAT IS CONCURRENT WITH COUNTS ONE AND
TWO.

AND COUNT SIX, VIOLATING A PROTECTION
ORDER, FELONY THREE, THE COURT IS IMPOSING FIVE
YEARS, AND THAT IS CONCURRENT AND A FINE OF 500
AND COSTS. AND ON COUNT SEVEN, THAT'S MENACING
BY STALKING, FELONY FOUR, THIS COURT IS IMPOSING
18 MONTHS, AND THAT IS CONCURRENT AND A FINE OF
500 AND COSTS.

COUNT EIGHT, AND THAT IS DOMESTIC
VIOLENCE, FELONY FOUR, THE COURT IS IMPOSING

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18 MONTHS CONCURRENT, AND A FINE OF 500 AND
COSTS.

ON COUNT NINE, FELONIOUS ASSAULT, THE COURT
IS IMPOSING EIGHT YEARS, AND THAT IS CONCURRENT
AND A FINE OF 1500 AND COSTS.

AND COUNT TEN VIOLATING A PROTECTION ORDER,
FELONY THREE, THE COURT IS IMPOSING FIVE YEARS
CONCURRENT AND A FINE OF 500 AND COSTS.

ON COUNT ELEVEN, DOMESTIC VIOLENCE, FELONY
FOUR, THE COURT IS IMPOSING 18 MONTHS CONCURRENT
AND FINE OF 500 AND COSTS.

12 AND ON COUNT TWELVE, TELEPHONE HARASSMENT,
13 THE COURT IS IMPOSING SIX MONTHS CONCURRENT AND
14 COSTS ONLY ON THAT. I HAVE CREDIT FOR 423 DAYS
15 AS OF THIS DATE.

16 SIR, I'VE SENTENCED YOU TO 20 YEARS IN THE
17 OHIO DEPARTMENT OF REHABILITATIONS AND CONTROL.
18 THEY ARE GOING TO PUT YOU ON POST-RELEASE CONTROL
19 FOR A PERIOD OF FIVE YEARS AT THE TIME YOU ARE
20 RELEASED. IF YOU VIOLATE THEIR RULES AND
21 REGULATIONS, THEY CAN SEND YOU BACK IN INCREMENTS
22 OF 30, 60 OR 90 DAYS, AND THEY CAN SEND YOU BACK
23 FOR A TOTAL AMOUNT OR ADDITIONAL AMOUNT OF TEN
24 YEARS. THAT MEANS YOU CAN END UP DOING 30 YEARS
25 IF YOU DO NOT SUCCESSFULLY COMPLETE THE

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1 POST-RELEASE CONTROL. DO YOU UNDERSTAND THAT?

2 THE DEFENDANT: YES, MA'AM.

3 THE COURT: YOU HAVE A RIGHT OF APPEAL. IF
4 YOU ARE INDIGENT, THIS COURT CAN APPOINT AN
5 ATTORNEY TO REPRESENT YOU ON APPEAL. ANYTHING

6 ELSE?

7 MR. SALYERS: IF I MAY HAVE A SECOND.

8 THE COURT: THERE'S A QUESTION OF
9 RESTITUTION. I DON'T REMEMBER IF I HAVE THAT.

10 MR. SALYERS: THERE ARE TWO ISSUES, ONE WE
11 WOULD ASK FOR AN ORDER FROM THIS COURT

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12 PROHIBITING HIM FROM HAVING ANY CONTACT WHETHER
13 BY LETTER OR ANYTHING ELSE, NUMBER ONE, AND
14 NUMBER TWO, THERE IS SOME RESTITUTION THAT
15 MS. BEAN'S COUNSEL HAS A FIGURE FOR.

16 THE COURT: DO YOU HAVE A FIGURE FOR THAT
17 MR. PAGAN?

18 MR. PAGAN: I DO, AND IT ARISES OUT OF THE
19 CAR CHASE THAT PROCEEDED.

20 THE COURT: WHAT ABOUT THE MEDICAL BILLS?

21 MR. PAGAN: THE MEDICAL BILLS, THERE'S A
22 CLAIM THAT IS NOT ADJUDICATED YET, BUT IT IS
23 BEFORE THE VICTIMS OF CRIME, AND WE HAVE AN
24 EXPECTATION THEY WILL BE PAID BY THE VICTIMS OF
25 CRIME.

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1 THERE'S ANOTHER ECONOMIC ISSUE THAT WILL NOT
2 BE COVERED BY THE VICTIMS OF CRIME, AND THAT IS
3 THIS, THAT THE DAY BEFORE THERE WAS A CAR CHASE
4 THAT AROSE OUT OF THIS, MR. DUNAWAY STOLE ROSE'S
5 CAR AND THEN RAMMED HER FROM BEHIND CAUSING HER
6 TO HIT ANOTHER CAR, A THIRD PARTY.

7 AND THE THIRD PARTY'S INSURANCE COMPANY TOOK
8 THE POSITION THAT ROTH WAS LIABLE FOR THAT. AND
9 BEFORE I GOT INVOLVED, SHE SIGNED AN AGREEMENT TO
10 PAY THE PROPERTY DAMAGE FOR THE THIRD PARTY FOR
11 \$2500, AND THEY SAID THEY WOULD SUSPEND HER
12 DRIVER'S LICENSE UNLESS SHE DID THAT.

13 SO SHE IS BEING HELD RESPONSIBLE FOR THE
14 PROPERTY DAMAGE THAT REALLY MR. DUNAWAY SHOULD BE
15 RESPONSIBLE FOR, AND THAT'S A \$2500 BILL.

16 THE COURT: WHAT ABOUT THE DAMAGE TO THE CAR?

17 MR. PAGAN: TO HER CAR?

18 THE COURT: YES.

19 MR. PAGAN: THE U COVERAGE TOOK THE POSITION
20 IT WAS INCLUDED BECAUSE MR. DUNAWAY ENGAGED IN AN
21 INTENTIONAL ACT, SHE WASN'T REIMBURSED FOR
22 PROPERTY DAMAGE, AND HAD BODILY INJURY THAT WAS
23 EXCLUDED FROM COVERAGE BECAUSE OF THE INTENTIONAL
24 ACT EXCLUSION AS WELL.

25 THE COURT: WHAT WAS THE MEDICAL BILLS?

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1 MR. PAGAN: YOU KNOW, I DON'T RECOLLECT.

2 THE COURT: DO WE KNOW WHAT THE DAMAGES WERE
3 TO THE CAR?

4 MR. PAGAN: THE ONLY THING THAT OFFENDED MY
5 SENSE OF JUSTICE THAT I AM TRYING TO GET WORKED
6 OUT IN MIDDLETOWN MUNICIPAL COURT IS THE \$2500
7 THAT SHE SHOULDN'T BE LIABLE FOR, FOR THE THIRD
8 PARTY THAT HAD PROPERTY DAMAGE AND NO BODILY
9 INJURY.

10 AND THAT'S WHAT WE ARE ASKING FOR
11 RESTITUTION.

12 MR. SCHNEIDER: JUDGE, OUR OBJECTION TO THE

13 RESTITUTION IS SIMPLY THAT IT IS RESTITUTION TO A
14 THIRD PARTY. THEY COULD HAVE, SHOULD HAVE MADE A
15 CLAIM AGAINST MR. DUNAWAY. IT SOUNDS AS THOUGH
16 MS. BEAN WENT AHEAD ON HER OWN COMPROMISED AND
17 REACHED AN AGREEMENT WITH THEM AND WHEN, IN FACT,
18 HAD SHE BOUND MY CLIENT THROUGH BOOT STRAPPING
19 AND RESTITUTION, I DON'T THINK HE SHOULD BE
20 RESPONSIBLE FOR.

21 OTHER CLAIMS AND DAMAGES I UNDERSTAND, BUT
22 WITH REGARD TO THE THIRD-PARTY VEHICLE, IT
23 DOESN'T SEEM APPROPRIATE,

24 MR. PAGAN: MAY I REMIND THAT THE VICTIMS OF
25 CRIMES CLAIMS INCLUDES THE BODILY INJURY CLAIM

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1 ARISING FROM THAT CAR WRECK. THAT'S ALL WE HAVE.
2 THANK YOU.

3 THE COURT: I AM GOING TO ORDER THAT HE IS
4 RESPONSIBLE FOR THE \$2500 THAT SHE CONFESSED TO
5 THE OTHER SIDE BECAUSE OF THE STREETCAR COLLISION
6 CAUSED BY HIM.

7 ~~BUT THE TRUTH OF THE MATTER IS, IF HE IS IN~~
8 PRISON FOR 20 YEARS, YOU ARE NOT GOING TO GET
9 THAT.

10 MR. PAGAN: BUT IT MIGHT ALLOW US TO GO TO
11 COURT AND GET --

12 THE COURT: DRIVING PRIVILEGES.

13 MR. PAGAN: RIGHT, AND SHE HAS AN SR-22

14 REQUIREMENT NOW THAT THE BMV HAS IMPOSED THAT
15 COSTS HER 10 OR \$15 A MONTH FOR HIS INTENTIONAL
16 BEHAVIOR, SO IT WILL BE HELPFUL. THANK YOU.

17 MR. SALYERS: THAT'S ALL THE STATE HAS, YOUR
18 HONOR.

19 THE COURT: ANYTHING ELSE?

20 MR. SCHNEIDER: NOTHING, YOUR HONOR.

21 THE COURT: THANK YOU.

22 - - -

23 PROCEEDINGS CONCLUDED AT 4:30 P.M.

24 STATE OF OHIO)

25) SS. REPORTER'S CERTIFICATE

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1 COUNTY OF BUTLER)

2 I LINDA M. TUTTLE, RMR, DO HEREBY
3 CERTIFY THAT I AM A REGISTERED MERIT REPORTER AND

4 NOTARY PUBLIC WITHIN THE STATE OF OHIO.

5 I FURTHER CERTIFY THAT THESE PROCEEDINGS
6 WERE TAKEN IN SHORTHAND BY ME AND BY ELECTRONIC
7 MEANS AT THE TIME AND PLACE HEREIN SET FORTH AND

8 WAS THEREAFTER REDUCED TO TYPEWRITTEN FORM, AND
9 THAT THE FOREGOING CONSTITUTES A TRUE AND
10 ACCURATE TRANSCRIPT, ALL DONE TO THE BEST OF MY
11 SKILL AND ABILITY.

12 I FURTHER CERTIFY THAT I AM NOT
13 RELATED TO ANY OF THE PARTIES HERETO, NOR AM I IN

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ANY WAY INTERESTED IN THE RESULT OF THE ACTION
HEREOF.

DATED AT HAMILTON, OHIO, THIS
_____ DAY OF _____ 2009.

LINDA M. TUTTLE, RMR
OFFICIAL COURT REPORTER
BUTLER COUNTY COMMON PLEAS
HAMILTON, OHIO 45011

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