ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2011-2005
	:	
Appellee,	:	
	:	*Death Penalty Case*
- vs -	:	
	:	
JASON DEAN,	:	
	:	
Appellant.	:	

On Appeal from the Clark County
Court of Common Pleas
Clark County, Ohio, Case No. 05 CR 348

MERIT BRIEF OF APPELLEE STATE OF OHIO

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 4

LAW AND ARGUMENT 15

Response To Proposition 1: Application Of Settled Precedent Justifies A Death Sentence 15

Response To Proposition 2: Evidence In The Record And Prior Precedent Of This Court Show That Contentions of Insufficient Evidence Lack Merit 22

Response to Proposition 3: There Was No Abuse Of Discretion In Instructing The Jury With A Correct Statement Of Law, Where There Was An Abundance Of Evidence Of An Attempt To Kill By Multiple Gunshots Fired At Multiple Victims 31

Response To Proposition 4: Where None Of The Challenged Commentary Was Improper, Dean's Claim Of Prosecutorial Misconduct Lacks Merit 39

Response To Proposition 5: The Absence Of A Challenge For Cause Below And The Failure To Exercise An Available Peremptory Challenge, In Context Of Dean's Request For A New Rule, Means That Proposition 5 Fails On The Facts And The Law 41

Response To Proposition 6: Claims Of Ineffective Assistance Of Counsel Are Contradicted By Facts In The Record And Lack Factual And Legal Merit 45

Response To Proposition 7: Where Imposition Of Court Costs Are Required, And Dean Waived Any Claim Of Error By Not Addressing The Matter Below, Proposition 7 Lacks Merit 51

Response To Proposition 8: The Penalty Phase Instruction About The Purpose Of Mitigating Factors Was Accurate 52

Response To Proposition 9: Dean's Failure To Offer Valid Reasons Why The Haile And Burd 911 Tapes Were Erroneously Admitted Show That Proposition 9 Lacks Merit 56

Response To Proposition 10: Where Admission Of The Challenged Evidence Rests Soundly On The Rules Of Evidence, Dean Fails To Show Error 58

Response To Proposition 11: Dean's Claim Of Improper Joinder Lacks Merit, Where Simple And Direct Proof Linked Crimes That Were Part Of A Course Of Conduct 60

Response To Proposition Of Law No. 12: Where Dean's Merger Claims Were Not Raised Below, And the Facts Of The Case Show A Separate Animus As To Each, Proposition 12 Lacks Merit 63

Response To Proposition 13: Two Single Brief Comments Of Explanation By The Trial Court Fail To Show Judicial Bias 69

Response To Claim 14: Where The Parties And The Trial Court Expended Considerable Effort In Determining The Admission Of The State's Mitigation Phase Evidence, And Appropriate Relevance Has Been Shown, Dean's Claim Of Error Lacks Merit 72

Response To Proposition 15: This Court Has Repeatedly Held Ohio's Capital Sentencing Scheme To Be Constitutional 76

CONCLUSION and PROOF of SERVICE 77

APPENDIX

Transcript Summary ..... Apx. pg. 1

TABLE OF AUTHORITIES

Page(s)

CASES

Boyde v. California,
494 U.S. 370, 380, 110 S. Ct. 1190, 1198, 108 L. Ed. 2d 316, 329 (1990) 53

Cleveland Bar Assn. v. Cleary,
93 Ohio St. 3d 191, 201 (2001) 69

Cupp v. Naughten,
414 U.S. 141, 146-147, 94 S. Ct. 396, 400, 38 L. Ed. 2d 368, 373 (1973) 55

Getsy v. Mitchell,
2007 US App. LEXIS 17620 (6th Cir, en banc. 2007) 21

Jones v. United States,
527 U.S. 373, 389, 119 S. Ct. 2090,144 L. Ed. 2d 370 (1999) 53

Liteky v. United States,
510 U.S. 540, 555 (1994) 71

O'Brien v. Angley,
63 Ohio St.2d 159, 163 (1980) 73, 76

Parker v. Dugger,
(1991) 498 U.S. 308, 111 S. Ct. 731, 112 L. Ed. 2d 812 17

Penry v. Lynaugh,
492 U. S. 302, 319 (1989) 18

People v. Bland,
28 Cal. 4th 313 (2002) 39

State ex rel. Pratt v. Weygandt,
164 Ohio St. 463(1956) 69

State v. Brooks,
176 Ohio App. 3d 210, 216, 891 N.E.2d 797 (10th Dist. 2008) 54

State v. Brooks,
75 Ohio St. 3d 148, 162 (1996) 41

State v. Buell,
22 Ohio St. 3d 124, 22 Ohio B. Rep. 203, 489 N.E.2d 795 (1986) 76

State v. Burke,
73 Ohio St. 3d 399, 409 (1995).....16

State v. Clevenger,
114 Ohio St. 3d 258, P3 (2007). 51, 52

State v. Coleman,
45 Ohio St. 3d 298, 308, 544 N.E.2d 622, 633 (1989) 76

State v. Comen,
50 Ohio St. 3d 206, 210, 553 N.E.2d 640 (1990) 35

State v. Conway,
108 Ohio St. 3d 214, P140 – 143 (2006) 37

State v. Crotts,
104 Ohio St. 3d 432, P23 (2004) 59

State v. Cunningham,
105 Ohio St. 3d 197, P136 (2004) 19

State v. DePew,
38 Ohio St.3d 275, 282-283 (1988) 74

State v. Dixson,
2004 Ohio 2575, P33 (First Dist.).....64

State v. Eaton,
19 Ohio St. 2d 145, 149 (1969).....43

State v. Esparza,
39 Ohio St.3d 8, 14, 529 N.E.2d 192 (1988) 37

State v. Franklin,
62 Ohio St. 3d 118, 123, 580 N.E.2d 1, 5-6 (1991).....63

State v. Frazier,
115 Ohio St. 3d 139, 167, 2007-Ohio-5048 873 N.E.2d 1263 56

State v. Getsy,
84 Ohio St. 3d 180, 208 – 209 ..... passim

State v. Grant,
67 Ohio St. 3d 465, 475 (1993).....67, 76

State v. Green,
66 Ohio St. 3d 141, 151 (1993).....16

State v. Greer,
39 Ohio St. 3d 236, 253, 530 N.E.2d 382 (1988) 74

State v. Gross,
97 Ohio St.3d 121, 2002-Ohio-5524, P106, 776 N.E.2d 1061 54

State v. Gumm,
73 Ohio St.3d 413, 1995 Ohio 24, 653 N.E.2d 253 (1995) 73, 74

State v. Hamblin,
37 Ohio St. 3d 153, 159, 524 N.E.2d 476 (1988) 62, 63

State v. Hancock,
108 Ohio St. 3d 57, 76 (Ohio 2006).....73

State v. Hasan,
2013 Ohio 2071, P 24 (10th Dist.).....23

State v. Heinish
50 Ohio St. 3d 231 (1990).....73

State v. Herring,
94 Ohio St. 3d 246, 263 – 264 (2002).....17, 20, 53

State v. Holloway,
38 Ohio St. 3d 239 (1988).....54

State v. Issa,
93 Ohio St. 3d 49, 72 (2001).....16, 17, 20

State v. Jackson,
8th Dist. No. 76141, 2000 Ohio App. LEXIS 1741, *39-40 (2000).....37, 38

State v. Jamison,
49 Ohio St. 3d 182, 191 (1990).....16

State v. Jenkins,
15 Ohio St. 3d 164, 15 Ohio B. Rep. 311, 473 N.E.2d 264 (1984) 76

State v. Jester,
32 Ohio St.3d 147, 152, 512 N.E.2d 962 (1987) 37

State v. Johnson,
2009 Ohio 3383, P22 (10th Dist.).....56, 57

State v. Johnson,
56 Ohio St.2d 35, 39, 381 N.E.2d 637 (1978) 36, 57

State v. Johnson,
88 Ohio St. 3d 95, 108-110, 723 N.E.2d 1054 (2000) 63

State v. LaMar,
95 Ohio St. 3d 181, 193-195 (2002) 61, 62

State v. Lang,
129 Ohio St. 3d 512, P341 (2011) 20

State v. Lessin,
67 Ohio St. 3d 487, 493 (1993) 35

State v. Lewis,
67 Ohio St. 3d 200, 206, 616 N.E.2d 921, 926 (1993) 76

State v. Logan,
60 Ohio St. 2d 126, 131 (1979) 67

State v. Lott,
51 Ohio St. 3d 160, 163, 555 N.E.2d 293(1990) 61

State v. Lyles,
42 Ohio St. 3d 98, 99 (1989) 76

State v. Madrigal,
87 Ohio St. 3d 378, 400 (2000) 15, 16, 55

State v. Maurer
(1984), 15 Ohio St. 3d 239, , 473 N.E.2d 768 (1984) 76

State v. Mitts,
81 Ohio St. 3d 223, 228, 690 N.E.2d 522 (1998) 35

State v. Mughni,
33 Ohio St. 3d 65, 67 (1987) 68

State v. Mullins,
76 Ohio App.3d 633, 602 N.E.2d 769 (1992) 36

State v. Murphy,
91 Ohio St. 3d 516, 547 (2001) 15, 16, 21

State v. Nelson,
36 Ohio St. 2d 79 35

State v. Payne,
114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306 53

State v. Penix
(1987), 32 Ohio St. 3d 369, 371, 513 N.E.2d 744, 746 20

State v. Perez,
124 Ohio St. 3d 122, P 77 – 83 (2009) 30

State v. Phillips,
74 Ohio St. 3d 72, 656 N.E.2d 643 (1995) 76

State v. Poindexter
(1988), 36 Ohio St. 3d 1, 5, 520 N.E.2d 568, 572 ..... 43, 44

State v. Powell,
132 Ohio St.3d 233, 2012-Ohio-2577 ..... passim

State v. Powell,
132 Ohio St. 3d 233 P 149. (2012) 40

State v. Raglin,
83 Ohio St. 3d 253, 274 (1998) 15

State v. Robb,
89 Ohio St. 3d 59, 91 (2000) 19

State v. Robinson,
161 Ohio St. 213, 218-219, 118 N.E.2d 517 (1954) 36

State v. Sage,
31 Ohio St.3d 173, 180 (1987) 76

State v. Sapp,
105 Ohio St. 3d 104, P 52 (2004) 30

State v. Scott,
26 Ohio St. 3d 92, 97 – 98 (1986) 42, 43

State v. Skatzes,
104 Ohio St. 3d 195, P243 (2004) 19

State v. Smith
80 Ohio St. 3d 89, 122 (1997) 16

State v. Sneed,
63 Ohio St. 3d 3, 17 (1992) 17

State v. Sowell,
39 Ohio St.3d 322, 332, 530 N.E.2d 1294 (1988) 36, 76

State v. Spivey,
81 Ohio St. 3d 405, 424, 429 (1998).....15

State v. Steffen,
31 Ohio St. 3d 111 (1987).....20, 21, 22, 76

State v. Stojetz,
84 Ohio St. 3d 452, 456 (1999).....42

State v. Stumpf,
32 Ohio St. 3d 95, 108 (1987).....16

State v. Talley,
2006 Ohio 5322, at P62 (Eighth Dist.).....64

State v. Thompkins,
78 Ohio St. 3d 380, 387 (1997).....26, 27

State v. Treesh,
90 Ohio St. 3d 460, 463.....76

State v. Vrabel,
99 Ohio St.3d 184, P73 (2003).....74

State v. Wade,
53 Ohio St. 2d 182.....31

State v. Walburg,
10th Dist. No. 10AP-1087, 2011 Ohio 4762, ¶ 48.....54

State v. Walton,
2012 Ohio 2597 (5th Dist.).....68

State v. Watkins,
10th Dist. No. 01AP-1376, 2002 Ohio 5080, ¶ 39.....54

State v. Wheeler,
8th Dist. No. 66923, 1995 Ohio App. LEXIS 2146 (1995).....38

State v. Whipple,
2012 Ohio 2938 P40 (First Dist.).....67

State v. White,
85 Ohio St. 3d 433, 439 (1999).....42

State v. Widner,
69 Ohio St. 2d 267, 270, 431 N.E.2d 1025 (1982).....37

State v. Williams,
2003 Ohio 3950 at P20 (Eighth Dist.) 64

State v. Williams,
23 Ohio St. 3d 16 (1986)....41

State v. Wilson,
113 Ohio St. 3d 382 P25 -26 (2007)....23, 25

State v. Wogenstahl,
75 Ohio St.3d 344, 352-354, 662 N.E.2d 311 (1996)....73, 74

State v. Yarbrough,
95 Ohio St. 3d 227, P 79 (2002) 22, 24

United States v. Gabrion,
2013 U.S. App. LEXIS 10621 (6th Cir. En Banc)....18

Withrow v. Larkin,
421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975) 71

STATUTES

O.R.C. 2911.01(A)(1) 27

O.R.C. 2929.04(B)(6) 18

O.R.C. 2929.05(A)....16, 17, 20, 21

O.R.C. 2947.23 51

ORC 2929.04(A)(5) 63

ORC 2941.25(A)....63, 64

R.C. 2701.03 69

R.C. 2901.22 36

R.C. 2903.01 54

R.C. 2903.02 36

R.C. 2929.03(D)(1)....73, 74, 75, 76

R.C. 2929.04(A)....74

R.C. 2929.04(B)....54, 74

OTHER AUTHORITIES

Evid. R. 404(B) 58, 59, 61

Evid. R. 613 46

Evid. R. 801(D)(2) 60

Ohio Criminal Rule 8 (A) 60, 61

STATEMENT OF THE CASE

Dean was indicted by the Clark County Grand Jury on May 2, 2005, for charges as follows: Indictment, Record Entry 1.

Sixteen Count Indictment Against Dean

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

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

The trial court sua sponte ordered a competency examination, appointing Dr. Kidd. Record Entry 329. After review of the report from Dr. Kidd, the trial court found Dean competent. The trial court went on to order Dr. Kidd's report to be sealed. Record Entry 386.

At Dean's request, the trial court appointed an investigator. Record Entry 287. The defense notified the trial court it had mitigation experts. Record Entry 288. The trial court granted the defense request for release of all of Dean's medical and mental health records. Record Entry 368. The trial court granted the defense request for appointment of neuropsychologist Dr. Donninger. Record Entry 372 (defense motion), Record Entry 369 (entry granting appointment). The trial court granted Dean's request for mitigation psychologist Dr. Bob Stinson, mitigation neuropsychologist Dr. Nicholas Donninger, and mitigation specialist Jessica Love to have private jail access to Dean. Record Entry 373. So as to facilitate the neuropsychological exam, Dean made arrangements for an MRI exam to be conducted on him. Tr., Pre-Trial August 22, 2011, pgs. 25 – 28.

Dean stipulated to his prior conviction. Record Entry 400. Dean also stipulated that the letters designated as State's Exhibits 371 – 378, 379 – 436, 439 – 440, and 442 – 446 were in his handwriting. Record Entry 404.

Except as to the weapons under disability charges which were adjudicated by the trial court, the jury returned a guilty verdict on all counts. Tr. Vol. 10, pgs. 2552 – 2559; Sentencing Opinion, Record Entry 435, pg. 1; Record Entry 379, jury waiver for the weapons under disability counts; verdict forms, Record Entries 416 – 427.

The mitigation phase opened with an express waiver by Dean of a pre-sentence investigation. Tr. Vol. 10, pg. 256; Record Entry 435, Sentencing Opinion, pg. 1. Before presentation of evidence, the State announced that on the question of merger, it was proceeding

on Count 12 (aggravated murder: prior calculation and design) and not Count 13 (aggravated murder: felony murder-robbery; prior calculation and design). Tr. Vol. 11, pgs. 2597 – 2598. Furthermore, the State announced that "After taking a look at the law, the State still believes that merger does not apply in this situation; but for ease of presenting the arguments today and looking down the road, the State would be willing just to proceed on Specification One, which is the course of conduct specification. Tr. Vol. 11. pg. 2598. The trial court accepted this procedure and announced the State would be proceeding in the mitigation phase on Count 12, specification 1. Tr. Vol. 11. Pg. 2599.

After presentation of mitigation evidence, it was noted by the trial court that mitigation psychologists Drs. Stinson and Donninger had "fully developed " evidence and "that reports have been furnished and Defense Counsel had had adequate opportunity to discuss potential testimony of theses witnesses and that, as a matter of trial strategy, the Defense has chosen not to call them as witnesses." Tr. Vol. 11, pg. 2727; Record Entry 441, Order For Payment To Dr. Stinson; Record Entry 431, Defense Motion For Additional Funds. The jury returned a recommendation for a death sentence. Tr. Vol. 11, pgs. 2732 - 2738. The trial court imposed a death sentence. Record Entry 435, Sentencing Opinion. As to the non-capital sentences, the aggregate amounted to 125 years. Record Entry 438.

. The case is now before this Court on appeal as of right.

STATEMENT OF THE FACTS

By way of an overview, the trial court summarized Dean's conduct as follows:

> Jason Dean purposely caused the death of Titus Arnold as part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons. In this case, while Jason Dean was not the principal offender in the aggravated murder of Titus Arnold, he was a crucial participant in the crime, and his

> failure to fire the fatal shot was only due to a misfire by his weapon. Jason Dean was the principal offender in the attempted murder of Yolanda Lyles and Andre Piersol. And, Jason Dean was fully involved and a crucial participant in the events that resulted in the attempted murders of Shanta Chilton, Hassan Chilton, Shani Applin and JaeAda Applin. In all instances, Jason Dean provided the plan, the weapons, the vehicle, the leadership, and the motive. Here, one person was killed and there were attempts to kill six other persons due to the purposeful conduct of Jason Dean.
>
> Record Entry 435, Sentencing Opinion, Page 9.

The particular circumstances of each of the three crimes are set forth below. A more complete summary of the facts and evidence is set forth in a transcript summary, attached to the State's Merit Brief as Appendix Summary, which should be considered as an adjunct to this Statement of Facts.

Robbery And Attempted Murder At The Mini Mart

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

About ten minutes later, Lyles saw a figure lurking in the shadows by the side of the carry out. Seconds later, Piersoll heard Lyles say "Oh, shit." At that time, Lyles saw Jason Dean

rush from the side of the store brandishing a gun. Lyles heard Dean say "Give me the money." While still rushing up on the car, Dean started firing his gun, with bullets coming through the front windshield of Lyles car.

After the shooting stopped, Lyles and Piersoll were shocked and bloody. They decided to transport themselves to nearby Mercy Hospital. As Lyles drove to Mercy Hospital, they were pursued by a car that had it's headlights off. Lyles and Piersoll were pursued "all the way up Limestone", until the pursuit car turned off on a side street.

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

For transcript citations for these facts, see Appendix to the State's brief, being a summary of the evidence presented. Note especially, testimony of Yolanda Lyles, Tr. Vol. 6, pgs. 1444 - 1483, Appendix Summary pgs. 29 - 31; testimony of Andre Piersoll, Tr. Vol. 6, pgs. 11408 – 1443, Appendix Summary p. 29; testimony of emergency room Dr. Guy Newland, Tr. Vol. 6, pgs. 1520 - 1540, Appendix Summary pgs. 31 – 32. . For scene processing, evidence recovery and photos, see testimony of police officer Dave Emmel, Tr. Vol. 6, pgs. 1493 - 1497, Appendix Summary pg. 30; Detective Darwin Hicks, Tr. Vol. , pgs. 1540 - 1541, Appendix Summary pg. 31; police officer Doug Pergram, Tr. Vol. 6, pgs. 1485 - 1493; Appendix Summary p. 30.

Although the gun was never recovered, (Dean's girlfriend Kaboos said Dean traded it for drugs with a guy named "Bub" Tr. Vol. 8, pg. 1834), it was a .25 caliber semiautomatic pistol. A fired bullet recovered from the lining of Andre Piersoll's coat had class characteristics consistent with a weapon manufactured by Raven. Tr. Vol. 8, pg. 1975, Tr. Vol. 9, pg. 2112, (bullet

recovery), Tr. Vol. 8, pgs. 1975 – 1976, Tr. Vol. 9, pgs. 2112 – 2113, Tr. Vol. 9, pgs. 2123 – 2124. , pgs. 2001-2003 (ballistics testing), Appendix Summary, pg. 44.

The .25 caliber weapon used at against Piersoll and Lyles at the Mini Mart was consistent with ballistics evidence recovered from the subsequent Dibert Ave. drive-by shooting that took place two days later, on April 12, 2005. A fired .25 caliber bullet recovered from the Dibert drive by shooting also had class characteristics consistent with a weapon manufactured by Raven. Tr. Vol. 9, pg. 2104 (bullet recovery), Tr. Vol. 9, pgs. 2105 – 2106, (ballistics testing), Appendix Summary pg. 43.

There were also similarities between the ballistics evidence from the Mini Mart shooting and the Titus Arnold murder that took place three days later, on April 13, 2005. Cartridge casings recovered at the Mini Mart (April 10, 2005) were manufactured by Federal, (Tr. Vol. 8, pg. 1974, Tr. Vol. 9, pg. 2107 (casing recovery), Tr. Vol. 9, pg. 2108 (ballistics testing), Appendix Summary, pg. 45, and an unfired .25 caliber bullet was recovered from the Titus Arnold homicide scene (April 13, 2005) was also a Federal brand. Tr. Vol. 8, pg. 1979 (bullet recovery), Tr. Vol. 8, pgs. 1984 - 1985, Tr. Vol. 9, pg. 2106 – 2107(ballistics testing). Appendix Summary pg. 43.

Dibert Ave. Shooting And Titus Arnold Homicide Related To A Dispute With O-Z

A young man named Joshua Farmer was friends with Jeff Bowshier. Jeff Bowshier's sister, Angel Bowshier, was living with, and had a child by, Jason Dean's brother, Mark Dean. Tr. Vol. 7, pgs. 1591 – 1602. As a result of Farmer's conversation with three Bowshier brothers, being Jeff, TC, and Kevin, Farmer related that they were looking for the car owned by Devon Williams, whose street name was "Drastic." Their intent was to damage Drastic's car. Farmer

also explained that Jason Dean's brother Mark Dean, had a child with Angel Bowshier, the sister of the Bowshier brothers. Tr. Vol. 7, pgs. 1655 – 1660. Appendix Summary pgs. 31 – 32.

Jason Dean's other girlfriend, Rhonda Sions, tied the murder of Titus Arnold back to the dispute involving O-Z. Dean told Sions "that it was a case of mistaken identity, that it wasn't supposed to be Titus Arnold that got shot. It was supposed to be O-Z." Tr. Vol. 9, pg. 2204. Appendix A Summary, pg. 47.

Guns Blazing On Dibert Avenue

Two days after the shooting of Piersoll and Lyles at the Mini Mart, and one day before the murder of Titus Arnold, Devon Williams was at home at 609 Dibert Ave. Williams, who went by the street name "Drastic", was watching television with his girlfriend Shanta Chilton. Shanta Chilton's two school aged children were asleep in a bedroom. Visiting and watching television with them was Shanta's brother, Hassan Chilton. Also watching television was Shani Applin, and Shani's infant daughter, JaeAda Applin. When he got home from work earlier in the evening, Williams had to park his car across the street, in front of 604 Dibert Ave.

Just before midnight, the group heard gunfire coming from just outside the front of their house. The home video security camera, with a view of the front porch and sidewalk area, was activated, but the group saw nothing. Williams grabbed his gun, a Hi Point .40 caliber semi-automatic pistol, and went outside to investigate. Williams saw that his car had been shot up, and he and his girlfriend Shanta Chilton went to the car to investigate the damage. Hassan Chilton, Shani Applin, and Shani Applin's infant daughter, JaeAda, stayed on the front porch. As Shanta Chilton and Devon Williams looked at the gunfire damage to Williams' car, Shanta saw headlights of a car coming up the street. Shanta was afraid the car coming up the street was

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

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

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

Jason Dean's girlfriend, Crystal Kaboos, was in the back seat of Dean's Buick Riviera when Dean and Wade did the shooting on Dibert Ave. Kaboos testified that as a result of a conversation between Dean and his brother Mark, Dean was to look for a particular house. Dean mentioned the name O-Z. Dean didn't say why they were to be searching for this particular house. Kaboos got into the back seat. Josh Wade was driving. Jason Dean was in the front passenger seat. Dean had a small pistol and Josh Wade was carrying a big black pistol. Kaboos testified that the car stopped, and Dean an Wade fired gunshots. Kaboos ducked down and covered her ears. Although Kaboos stayed down, she was sure that the car turned around. Kaboos said she couldn't remember what happened after the car turned around. See testimony of

Crystal Kaboos, Tr. Vol. 11, pgs. 1815 – 1822, (testimony about the Dibert Ave. drive by shooting). See also Appendix Summary, Crystal Kaboos testimony, pgs. 39 – 41. .

For complete transcript citations to the facts of the Dibert Ave. shootings, see Appendix Summary to the State's brief.

Robbery And Murder Of Titus Arnold

The day after the Dibert Ave. drive by shooting, Dean told his girlfriend Crystal Kaboos that he and Wade were going to the Night Owl Tavern. Kaboos could not come along. Dean said that he and Wade would look for someone to lure out of the bar and then rob them. Dean and Wade were dressed in black. Tr. Vol. 8, pgs. 1822 1824.

The night of the murder of Titus Arnold, Rhonda Boyd was the bartender at the Night Owl Tavern. Danny Mansfield was the owner. Mansfield used a video security system that would continuously record all activities in the bar. The night of the murder of Titus Arnold, Boyd saw a short guy who looked just like Mark Dean, but was not Mark. The short guy who looked like Mark Dean was with a tall young guy. They came in together and went right for the pool table. They did not order any drinks. A few minutes later, the short guy and the tall guy left the bar. About 15 minutes after the short guy and the tall guy left, Boyd saw police lights flashing up the street. She didn't hear anything from outside, because of the music and noise inside the bar. Boyd narrated the video from the bar that night, showing where the short guy and the tall guy came in and out of the bar. Boyd identified the short guy in the bar that night as Jason Dean. Testimony of Rhonda Boyd Tr. Vol. 5, pgs. 1093 - 1104.. Appendix Summary pg. 7.

A short distance away from the Night Owl Tavern was a group home for troubled youth called Visions For Youth. Michelle Cherry was the third shift (midnight to 8 AM) youth counselor, and Titus Arnold worked the second shift. Michelle arrived at the facility about 20

minutes before midnight to relieve Titus Arnold. At the same time Arnold left the group home, Michelle walked up to the second floor. About two minutes after she reached the second floor, she heard gunshots. She looked out a second floor balcony and saw Arnold laying in the street. Michelle ran outside and saw that Arnold had been shot in the head. Michelle called 911. Tr. Vol. 5, pgs. 977 – 991. Appendix Summary, pg. 5. The emergency squad arrived at 2 seconds past midnight. Testimony of paramedic Brian Miller, Tr. Vol. 5, pgs. 1071 - 1082. Appendix Summary pgs. 6 – 7.

At the same time, Theodor Panstingel and his girlfriend Allison Nawman were at their home across the street from the murder scene. They heard gunshots and looked outside. They both saw the same thing. They saw a man lying in the street. A short white guy was standing over the man who was laying in the street. When Allison screamed, the short white guy looked in their direction. They went outside and saw the short white guy running for a nearby car that already had its brake lights lit up. The short white guy jumped in the car and the car drove off. Theodor and Allison went up to the man lying in the street. They saw the man had been shot in the head and had no life signs. Theodor took off his shirt and used it to cover the man's face. Testimony of Theodor Panstingel, Tr. Vol. 5, pgs. 1047 - 1069, Appendix Summary, pg. 6; testimony of Allison Nawman, Tr. Vol. 5, pgs. 1025 - 1046, Appendix Summary, pg. 6.

At the same time, Leo Banks was in his car, which was stopped for a red light at a nearby intersection. Banks heard gunshots. Banks looked up and saw two men running down the street. One was tall and one was short. Tr. Vol. 5, pgs. 992 - 999, Appendix Summary pg. 5.

At the same time, Amrosetta Haile was in her car. A car sped past her and suddenly stopped in a parking lot. Two men jumped out of the car. One was tall and one was short. Right by where the car had stopped, a man in a gold coat was walking down the street. The two men

who had just got out of the car started chasing the man in the gold coat. The chase was heading directly toward Haile. While the short guy was still chasing the man in the gold coat, the tall guy went back to the car and opened the passenger door. The tall guy and the short guy were side by side when Haile saw blue flashes and heard two gunshots. The man in the gold coat fell to the street. The tall guy and the short guy hovered over the body for a couple of seconds and then ran back to the car. They drove off. Haile got out and saw that the man in the gold coat had been shot in the head. Tr. Vol. 5, pgs. 999 – 1025. Appendix Summary pgs. 5 - 6.

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

did the shooting was their cousin, Josh Wade. Later, Kari and Terri went to the end of the street and saw there was a body lying in the street. Terri picked out Josh Wade's photo as the man who did the shooting. Testimony of Kari Epperson, Tr. Vol. 5, pgs. 1186 - 1213, Appendix Summary pg. 8; testimony of Terri Epperson, Tr. Vol.5, pgs. 1212 - 1242, Appendix Summary, pg. 9.

Based upon comparisons with shell casings recovered at the murder scene, the gun used to murder Titus Arnold was a Hi Point S&W .40 caliber semi- automatic pistol that was seized from a small table in the kitchen of Jason Dean's house. When the SWAT team arrested Dean on April 21, 2005, the first and second SWAT members through the door surprised Dean as Dean stood in his kitchen. The SWAT officers yelled several times for Dean to get down. Instead, Dean stood and grinned. The SWAT officers saw Dean's gaze become fixed on a small table. They rushed up on Dean and took him to the kitchen floor. The SWAT officers looked to see that Dean's gaze had been fixed on a .40 caliber semi-automatic pistol, which was laying in the open on a table a few feet from where Dean had been standing. The gun was fully loaded, with nine rounds in the magazine and one round in the chamber. Testimony of ballistics scientist Timothy Shepherd, Tr. Vol. 9, pgs. 2088 - 2134, Appendix Summary pgs. 43 - 45; testimony of detective Doug Estep (first through the door), Tr. Vol. 8, pgs. 1856 - 1911, Appendix Summary pg. 41 - 42; testimony of police officer William Harrington (second through the door) , Tr. Vol. 8, pgs. 1912 - 1921, Appendix Summary pg. 42.

The night of the murder of Titus Arnold, Kevin Bowshier was visiting at Mark Dean's house. Kevin and Mark were watching the fights that came on television at midnight. Kevin and Mark were drinking alcohol and doing cocaine. The fights were over, so the time was about 1:00 AM. Jason Dean and Josh Wade came into Mark's house. Dean said they had "smoked somebody", and they pulled a bullet casing out for display to Kevin and Mark. Dean said they

"smoked somebody and robbed them." Testimony of Kevin Bowshier, Tr. Vol. 9, pgs. 2247 - 2268, Appendix Summary pg.49.

The day after that, Crystal Kaboos was in Dean's bedroom with Jason Dean. There was a commotion in the hallway outside the bedroom. That commotion was Josh Wade, who was excitedly telling Jason Dean to come out in the hallway. Dean did so and then came back in the bedroom, throwing an edition of the Springfield News-Sun on the bed. The headline story was about the murder of Titus Arnold. Dean told Kaboos to read the story. Regarding the crime, Dean said they saw the guy walking down the street. Dean said they stopped their car. Dean said he got out and pointed the silver gun at the guy. Dean told the guy to get down, but the guy wouldn't get down. Dean said the guy tried to run and Dean tried to fire his gun, but his gun was on safety. (An unfired .25 caliber bullet was recovered from the murder scene. State's Exhibit 18A, Tr. Vol. 8, pgs. 1979 – 1980.) Dean said Josh Wade got the big gun and shot the guy. In a bragging fashion, Dean said they got six dollars in the robbery. A news story about the shooting also came on television. Dean excitedly told everybody to gather around and watch. While the story aired, Dean was laughing. Testimony of Crystal Kaboos, Tr. Vol. 11, pgs. 1822 1835, Appendix Summary pgs. 39 - 41.

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

LAW AND ARGUMENT

Response To Proposition 1: Application Of Settled Precedent Justifies A Death Sentence

Dean's contention that his troubled childhood and the life sentence imposed on co-defendant Wade amounts to sufficient mitigation to warrant a life sentence is contradicted by prior precedent of this Court and accordingly should be rejected.

When compared to other death penalty cases upheld by this Court, Dean's mitigation evidence of troubled childhood is weak. The upshot of his mitigation case was that Dean was neglected due to his father's alcoholism and his mother's chronic pot smoking. Except for passing references by Dean's aunt, Gloria Elliot, and cousin, Brandy Murphy, to the use of corporal punishment for misbehavior, there was no evidence of physical or emotional abuse. Tr. Vol. 11, pages 2640 – 2642 (Elliot), Tr. Vol. 11, page 2663 (Murphy). Nor was there any evidence of sexual abuse, or intellectual deficit, or psychological impairment. Instead, Dean's mitigation theme was that lack of parental supervision allowed him at a young age to drink alcohol, smoke pot, and skip school.

Although Dean's mitigation evidence of troubled childhood is arguably entitled to some weight, the amount of weight is less than that found in cases where this Court has upheld a death sentence. For example, in *State v. Spivey*, 81 Ohio St. 3d 405, 424, 429 (1998), this Court found the defendant had a "very difficult and troubled childhood," yet the death sentence was upheld. In *State v. Raglin*, 83 Ohio St. 3d 253, 274 (1998), this Court concluded the defendant had a "pathetic family background," yet the death sentence was upheld. In *State v. Madrigal*, 87 Ohio St. 3d 378, 400 (2000), this Court observed that "As in the majority of death penalty cases to come before this court, Madrigal's childhood was chaotic," yet the death sentence was upheld. In *State v. Murphy*, 91 Ohio St. 3d 516, 547 (2001) this Court found that the defendant had a

"neglected childhood" and "grew up with little or no moral guidance," yet the death sentence was upheld. Moreover, the *Madrigal* Court went on to say that "[W]e have seldom accorded strong weight to a defendant's childhood." *Id.*, at 547.

In Dean's case, the Court should conclude that while Dean's troubled childhood is entitled to some weight as mitigation, the aggravating circumstances Dean was found guilty of committing outweigh the mitigating factors in the case, and that the sentence of death is appropriate. O.R.C. 2929.05(A). See Record Entry 435, Sentencing Opinion, pages 5 – 6 ("These factors [Dean's "terrible childhood"] have some mitigating value, although that value is minimal.")

Dean's contention that the life sentence imposed on co-defendant Wade should be considered as mitigation should be rejected. This Court held in *State v. Jamison*, 49 Ohio St. 3d 182, 191 (1990), that "Disparity of sentence does not justify reversal when the sentence is neither illegal nor an abuse of discretion." This *Jamison* holding was applied with approval in *State v. Green*, 66 Ohio St. 3d 141, 151 (1993), *State v. Burke*, 73 Ohio St. 3d 399, 409 (1995), and *State v. Smith* 80 Ohio St. 3d 89, 122 (1997).

Moreover, in *State v. Issa*, 93 Ohio St. 3d 49, 72 (2001), the Court explained that "Neither [codefendants] Linda nor Miles received a death sentence, and their trial records are not before this Court; thus we refuse to include a review of those cases in our analysis." *Id.*, at 72. Accord, *State v. Stumpf*, 32 Ohio St. 3d 95, 108 (1987) ("The life sentence given to [co-defendant] Wesley is not an impediment to affirming the death sentence in the instant case.") A circumstance identical to that found in *Issa* is present in Dean's case, where the trial records of codefendant Wade are not before the Court. Accordingly, the Court should follow the *Jamison*

line of cases and decline to consider Wade's life sentence as proper mitigation evidence in Dean's case.

That is not to say, however, that this Court is precluded from consideration of a codefendant's sentence as a nonstatutory mitigating factor. In *State v. Getsy*, 84 Ohio St. 3d 180, 208 – 209, this Court noted that "In *Parker v. Dugger*, (1991) 498 U.S. 308, 111 S. Ct. 731, 112 L. Ed. 2d 812, the United States Supreme Court implicitly recognized that a codefendant's sentence could be considered a nonstatutory mitigating factor." See also, *State v. Herring*, 94 Ohio St. 3d 246, 263 – 264 (2002) ("Courts have divided over whether disparate treatment of accomplices is relevant mitigation.") Instead, as this Court determined in *Issa*, it would be imprudent to draw comparisons to sentences in non-capital cases whose records are not before the Court. In this regard, the ordinary limitation of sentencing comparison to other capital cases is consistent with the terms of ORC 2929.05(A) and this Court's prior decision in *State v. Sneed*, 63 Ohio St. 3d 3, 17 (1992) ("This court has held that the proportionality review mandated by R.C. 2929.05(A) is satisfied by 'a review of those cases already decided by the reviewing in which the death penalty has been imposed." – citing to *State v. Steffen*, 31 Ohio St. 3d 111 (1987), paragraph one of the syllabus.). Accordingly, because Wade's trial record is not before this Court, Dean's invitation to compare his sentence with Wade's sentence should be declined.

In addition, any comparison between Dean's death sentence and Wade's life sentence would be defective since Wade, being a juvenile, was ineligible for the death sentence imposed on Dean. Record Entry 435, Sentencing Opinion, page 7. ("The fact that Wade was legally ineligible for the death penalty does not create a mitigating factor that is entitled to any weight in Dean's favor.") In other words, the sentencing options applicable to Dean are fundamentally

different from those applicable to Wade, thus making an apples-to-apples comparison impossible.

Furthermore, Wade's sentence bears little or no relation to what should be considered as relevant mitigation evidence as to Dean, that being Dean's personal culpability and Dean's personal character. See, for example, *United States v. Gabrion*, 2013 U.S. App. LEXIS 10621, (6th Cir. En Banc). ("In summary: mitigation evidence is evidence relevant to 'a reasoned moral response to the defendant's background, character, and crime.'" – citing to *Penry v. Lynaugh*, 492 U. S. 302, 319 (1989).) The life sentence imposed on Wade does not cause Dean's personal culpability to be greater or lesser. In similar fashion, the life sentence imposed on Wade does not cause Dean's personal character to be better or worse. Under these circumstances, the sentence imposed on Wade lacks relevance to Dean's personal culpability and Dean's personal character, and this Court should accordingly decline Dean's invitation to consider Wade's sentence as mitigating evidence regarding the propriety of the death sentence in Dean's case.

It should also be noteworthy that Dean did not suggest to the trial court that the *life sentence* imposed on co-defendant Wade amounted to mitigation for Dean. Instead, Dean's argument to the trial court was that his culpability for the Arnold murder was supposedly less because he was not the shooter. See Record Entry 439, Dean's Sentencing Memorandum, filed September 30, 2011; Mitigation Closing Argument, Tr. Vol. 11, page 2695 – 2696; Sentencing Hearing, Vol. 1 of 1, Tr. pages 11 – 13. In this regard, Dean's argument is in keeping with the terms of O.R.C. 2929.04(B)(6), which provides for the enumerated mitigating factor that "If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim."

After careful consideration, the trial court concluded that since Dean was a "crucial participant" in the crime spree, the B(6) factor should be accorded "little weight." In part, the trial court wrote as follows.

> It is clear, from the evidence, that while Jason Dean was not the principal offender, the person who fired the fatal shot or the near fatal shots, that he was the central figure in the drama.
>
> As it relates to the murder of Titus Arnold, it is clear that the plan to rob and kill someone on the night of April 13, 2005 was hatched by Dean and Wade together. Dean was a full participant in the plan; not just along for the ride. Dean provided the vehicle to get the two of them to the scene; he provided the murder weapon to Wade and the ammunition for both weapons; and he was armed and ready himself. At the scene of the Arnold murder, Dean was the first person to get out of the car and give chase to Arnold. Dean attempted to fire the first shot at Arnold, and failed only because his pistol either jammed or had the safety on. Wade did not exit the car and fire the fatal shot at Arnold until after Dean's weapon failed. Dean's subsequent theft from the dying body of Arnold is further demonstration of the fact that Dean was a full and willing participant in the killing. Without Jason Dean, none of these murders or attempts would have occurred.
>
> Record Entry 435, Sentencing Opinion, pages 6 – 7.

As noted by the trial court in its sentencing opinion, this Court has found that a death sentence was appropriate even though the B(6) mitigating factor was present. For example, despite Jason Robb not being a hands-on killer, a death sentence was appropriate where Robb was one of the gang leaders in the SOCF riot that resulted in the aggravated murder of a prison guard. *State v. Robb*, 89 Ohio St. 3d 59, 91 (2000). ("Nonetheless, we accord that factor very little weight under the circumstances, particularly in view of defendant's critical role as a gang leader.") Similar outcomes were reached in *State v. Skatzes*, 104 Ohio St. 3d 195, P243 (2004); ("In view of Skatzes's prominent role in counseling an inmate to kill Elder, this factor is entitled to very little weight in mitigation."); *State v. Cunningham*, 105 Ohio St. 3d 197, P136 (2004);

("But for Cunningham's involvement, Jala Grant and Leneshia Williams would not have been killed."); *State v. Herring*, 94 Ohio St. 3d 246, 267 (2002); ("However, where the offender plays a 'critical role' as a 'leader,' we have held that the (B)(6) factor will carry less weight."); *State v. Issa*, 93 Ohio St. 3d 49, 71 (2001); ("Although appellant was not the actual killer, *State v. Penix* (1987), 32 Ohio St. 3d 369, 371, 513 N.E.2d 744, 746, he was nevertheless a crucial participant in Maher's murder.") See Record Entry 435, Sentencing Opinion, pages 6 – 7.

These circumstances should cause the Court to reject Dean's arguments that his troubled childhood and the life sentence imposed on Wade call for a sentence less than death. The Court should determine, as did the trial court, that the aggravating circumstances outweigh the mitigating factors and that a sentence of death is appropriate.

Relative to proportionality review, the Court should determine, pursuant to O.R.C. 2929.05(A), the penalty imposed in this case is not excessive or disproportionate to the penalty imposed in similar course of conduct cases. See *State v. Lang*, 129 Ohio St. 3d 512, P341 (2011), and cases cited therein. Dean does not argue that his penalty is disproportionate when compared to other course of conduct death penalty cases decided by this Court, which should be viewed by this Court as a significant concession. Instead, Dean's argument is that this Court should overrule paragraph one of the syllabus in *State v. Steffen*, 31 Ohio St. 3d 111 (1987). ("The proportionality review required by R.C. 2929.05(A) is satisfied by a review of those cases already decided by the reviewing court in which the death penalty has been imposed.") According to Dean, this Court should compare Dean's sentence with the life sentence imposed on Wade and determine that because Dean was not the shooter, Dean's penalty is disproportionate and should be reduced to a life sentence.

Dean's invitation to overrule syllabus one of *State v. Steffen* should be rejected. Initially, it should be noted that Dean fails to offer a viable rationale to overrule *Steffen*. Dean's citation to the views of dissenting Justice Pfeiffer in *State v. Murphy*, 91 Ohio St. 3d 516, 562 – 563 (2001) does not excuse the absence of any analysis in his case, where Justice Pfeiffer for policy reasons would greatly expand proportionality review to similar non-capital cases, as well as add statistical information on racial matters. In contrast, Dean seeks a comparison with only one other case, that being the case of his codefendant Wade. Dean offers not one word of analysis to justify this one-time proportionality review that would apply to his case only, and the absence of any plausible reason to overrule *Steffen* should cause this Court to reject Dean's invitation.

Next, since proportionality review is not required as a matter of federal constitutional law, there is no federal impetus to question how this Court interprets the requirements of proportionality review under O.R.C. 2929.05(A). See *State v. Getsy*, 84 Ohio St. 3d 180 (1998), and . *Getsy v. Mitchell*, 2007 US App. LEXIS 17620 (6th Cir, en banc. 2007). Under these circumstances, there is no occasion to determine how the *Steffen* rule may withstand federal scrutiny, since the entire matter of proportionality review is within the exclusive purview of State law.

Finally, even if the Court were inclined to revisit the *Steffen* rule, Dean's case does not present a worthy vehicle. Because Wade, being a juvenile, was not eligible for the death penalty, Wade's non-capital sentence may have little or no relation to the nature of the crime, nor to the culpability of the offender, nor to the history, character and background of the offender. The structural preclusion to Wade being eligible for a death sentence means that a fair comparison could never be made with the circumstances applicable to Dean. This fundamental dissimilarity between Dean and Wade suggest that even if the Court wanted to reevaluate the *Steffen* rule,

Dean's case does not present appropriate circumstances to do so. Accordingly, because Dean fails to offer sound reasons to overrule *Steffen*, this Court should adhere to prior precedent and determine Dean's sentence is proportionate to other course of conduct cases previously decided by this Court.

Response To Proposition 2: Evidence In the Record And Prior Precedent Of This Court Show That Contentions of Insufficient Evidence Lack Merit

Kaboos Was An Eyewitness To Dean Being Present And Shooting At Dibert Ave.

Where Dean concedes that Crystal Kaboos gave eyewitness testimony that Dean was present and shooting at the Dibert Ave. scene, his claim of insufficiency necessarily fails, since evaluation of witness credibility is not proper on review for sufficiency of evidence. *State v. Yarbrough*, 95 Ohio St. 3d 227, P 79 (2002). ("Appellant argues that the testimony implicating him was 'contradictory and incredible.' However, this contention calls for an evaluation of the witnesses' credibility, which--as we have repeatedly pointed out--is not proper on review for evidentiary sufficiency.")

Regarding the same claim under a manifest-weight-of-the-evidence standard, Dean repeats the same argument that although Crystal Kaboos gave eyewitness testimony that Dean was present and shooting at the Dibert Ave. scene, her testimony should not be believed. However, neither of two reasons Dean offers to discount the jury's acceptance of Kaboos' credibility withstand scrutiny.

As to the first reason, there is no incongruity between Kaboos being present in the backseat of the shooter car, while at the same time the drive-by shooting victims did not see Kaboos in the back seat. During the first round of shooting, all of the victims were inside the residence and did not see anything. During the second round of shooting, Kaboos testified that she was laying down in the back seat of the car. Tr. Vol. 8, page 1822. Any observations of the

car by the drive-by victims occurred during the second round of shooting, so it would be predictable the drive-by victims would not see Kaboos laying down in the back seat of the car. Furthermore, the drive-by victims understandably would have had only fleeting glances of who was in the car, since gunshots were coming at them from the inside the car. Consequently, the drive-by shooting victims would have had little time to study the identities of who was doing the shooting.

As to the second reason, Kaboos' ready acknowledgement she was not initially truthful with police gave a legitimate reason for the jury to question her credibility, and the return of a guilty verdict for the Dibert Ave. crimes necessarily required the jury to favorably assess Kaboos' credibility. Tr. Vol. 8, pages 1838 – 1843, 1845 – 1846. Under these circumstances, the awareness by the jury that Kaboos had not initially been truthful with police, in light of the guilty verdicts by the jury, should cause this Court, in application of the manifest-weight-of-the-evidence standard, to afford great deference to this outcome by the jury as the finder of fact. *State v. Wilson*, 113 Ohio St. 3d 382 P25 -26 (2007) (" ... *[State v.] Thompkins* instruct[s] that the fact-finder should be afforded great deference.")

Dean is correct that his conviction for the Dibert Ave. shootings rests largely on Kaboos' testimony, since in view of her own actual presence in Dean's car she squarely placed Dean at the scene and being a shooter. The jury was undoubtedly aware of this significance to her testimony, and its return of a guilty verdict despite the knowledge that Kaboos had not been initially truthful with police is a fact of significance to the application of the manifest-weight-of-the-evidence standard. This circumstances should give reason for this Court to defer to the finder of fact as to the credibility of Kaboos, and in so doing reject Dean's claim that the Dibert Ave. verdicts were against the manifest weight of the evidence. Cf. *State v. Hasan*, 2013 Ohio 2071, P

24 (10th Dist.) ("Appellant made these credibility arguments to the jury. The jury obviously disagreed with appellant's assessment of the witnesses' credibility.")

Prior Calculation and Design Evidence Grounded In Admissions By Dean

Where Dean concedes that evidence supporting prior calculation and design was grounded on his admissions as testified to by Crystal Kaboos, Jason Manns and Kevin Bowshier, his claim of insufficiency necessarily fails, since evaluation of witness credibility is not proper on review for sufficiency of evidence. *State v. Yarbrough*, 95 Ohio St. 3d 227, P 79 (2002). ("Appellant argues that the testimony implicating him was 'contradictory and incredible.' However, this contention calls for an evaluation of the witnesses' credibility, which--as we have repeatedly pointed out--is not proper on review for evidentiary sufficiency.")

Regarding the same claim under a manifest-weight-of-the-evidence standard, Dean's contention that neither Kaboos, Manns, nor Bowshier should be believed is a diversion from the important fact that their stories about what Dean said are consistent. In other words, the credibility of their testimony as to what Dean said is enhanced by consistency, where the only thing Kaboos, Manns and Bowshier have in common is having been separately present when on different occasions Dean was bragging about his crimes.

Relative to what Dean said about the Titus Arnold homicide, Kaboos testified that:

> [Dean] told me that the night they went out to lure somebody out of the bar to rob them, that they was driving down the street; and they seen the individual, Titus Arnold, walking by his self. And they stopped the car and pulled their guns out and told him to lay on the ground, and Jason Dean said that Titus Arnold didn't lay on the ground, that he started to run. And Jason Dean tried to fire his weapon, but he had it on safety; so Josh Wade jumped out of the driver's seat and said to Titus Arnold that he had a bigger gun and shot Titus Arnold.
>
> Tr. Vol. 8, pg. 1832 – 1833.

Relative to what Dean said about the Titus Arnold homicide, Manns testified that:

> [Dean] jumped out of the car and went to rob him. Titus Arnold turned to run. He tried to fire his gun. His gun jammed, and Josh Wade jumped out of the car and shot two shots, One went into a car door, and one went into Titus Arnold's head and killed him.
> Tr. Vol. 9, pg. 2177.

Relative to what Dean said about the Titus Arnold homicide, Bowshier testified that:

> [Dean and Wade] had came in in a little while after I was there, and they had held up a bullet shell and threw it and said they had smoked somebody.
>
> * * *
>
> No. Just that they had smoked somebody and robbed them.
>
> Tr. Vol. 9, pgs. 2250 – 2251.

In returning a guilty verdict on the felony murder specification, where the designation as to Dean was that the murder was committed with prior calculation and design, the jury undoubtedly concluded the renditions of Dean's admissions by Kaboos, Manns, and Bowshier were accurate. Under these circumstances, this Court, in application of the manifest-weight-of-the-evidence standard, should afford great deference to this outcome by the jury as the finder of fact. *State v. Wilson*, 113 Ohio St. 3d 382 P25 -26 (2007) (" ... *[State v.] Thompkins* instruct[s] that the fact-finder should be afforded great deference.")

It is also noteworthy that the trial court must have accepted as accurate the renditions of Dean's admissions by Kaboos, Manns, and Bowshier. This favorable assessment of the credibility of Kaboos, Manns, and Bowshier as to the accuracy of Dean's admissions can be seen where, relative to the issue of prior calculation and design, the trial judge wrote as follows:

> In the late evening hours of April 13, 2005, Dean and Wade went to the Nite Owl Bar, located at Main and Race Streets in Springfield, Ohio, looking for someone to rob. They stayed at the bar only a few minutes and followed a patron out of the bar to the parking lot. That patron met up with other

> individuals in the parking lot, and Dean and Wade left in Dean's automobile. About two blocks from the Nite Owl, Dean and Wade observed Titus Arnold walking in the 500 block of West High Street. Arnold had just left his place of employment on High Street. Dean exited the vehicle, brandishing his .25 caliber pistol and demanded money from Arnold. Arnold ran and Dean attempted to fire a shot at him. Dean's pistol misfired. Wade jumped out of the car, ran after Arnold and fired two shots from Dean's .40 caliber pistol. One shot struck a parked pickup truck and the other shot struck Arnold in the back, severing his spinal cord and entering the brain. While Arnold's death was not instantaneous, it occurred shortly after the shooting. Dean and Wade stole a small amount of money from Arnold before fleeing the scene in Dean's automobile.
>
> * * *
>
> As it relates to the murder of Titus Arnold, it is clear that the plan to rob and kill someone on the night of April13, 2005 was hatched by Dean and Wade together. Dean was a full participant in the plan; not just along for the ride. Dean provided the vehicle to get the two of them to the scene; he provided the murder weapon to Wade and the ammunition for both weapons; and he was armed and ready himself. At the scene of the Arnold murder, Dean was the first person to get out of the car and give chase to Arnold. Dean attempted to fire the first shot at Arnold, and failed only because his pistol either jammed or had the safety on. Wade did not exit the car and fire the fatal shot at Arnold until after Dean's weapon failed. Dean's subsequent theft from the dying body of Arnold is further demonstration of the fact that Dean was a full and willing participant in the killing. Without Jason Dean, none of these murders or attempts would have occurred.
>
> Record Entry 435, Sentencing Opinion, pages 4 and 6.

In conducting a review under a manifest weight of the evidence standard, the Court is entitled to look at all the evidence. *State v. Thompkins*, 78 Ohio St. 3d 380, 387 (1997) ("Weight of the evidence concerns 'the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in

their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief.*'") (Emphasis supplied). In that evaluation, this Court can be guided by the assessment of the prior calculation factor that was conducted by the trial court. That favorable assessment should cause the Court defer to the credibility assessment by the jury and accordingly to reject Dean's claim that the prior calculation and design factor does not pass muster under a manifest weight of the evidence standard.

Mini Mart Robbery Charge Supported By Lyle's Testimony About Dean's Demand For Money

In his brief to this Court, Dean acknowledges that Mini Mart victim Yolanda Lyles testified that while brandishing a gun, Dean shouted "give me your money" and then immediately began shooting at she and Piersoll through the windshield of her car. Dean Merit Brief, page 27; Tr. Vol. 6. pg. 1456 -1457. By this acknowledgement, Dean's contention of insufficient evidence of robbery is self-contradictory, where the referenced testimony of Lyles itself demonstrates an attempt to commit a theft offense while brandishing a deadly weapon with an indication the offender will use it. O.R.C. 2911.01(A)(1). With this portion of Lyles testimony, the test for sufficiency is met and Dean's claim to the contrary is incorrect. *State v. Thompkins*, 78 Ohio St. 3d 380, 387 (1997) ("With respect to sufficiency of the evidence, "'sufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.")

Although not expressly articulated, Dean may be attempting to advance a manifest-weight-of-the-evidence claim, arguing that while Piersoll heard Lyles say "Oh shit" just before Dean started shooting, Piersoll did not hear Dean say to Lyles "Give me your money." Dean

Merit Brief, pg. 27. Presumably, Dean's contention is that Lyle's testimony about Dean's demand for money should be nullified because Piersoll did not hear it himself.

Dean's contention lacks merit when the basic facts of the Mini Mart crime are examined. Lyles is in the driver seat, and Piersoll is in the passenger seat. Lyles' attention is directed to Dean as he approached from the left side of the building to the driver's side of Lyles' car. Lyles was thus focused on Dean when Dean made the money demand. A split second later, Dean started shooting. In contrast, at these same moments, Piersoll's attention was directed elsewhere, until Piersoll heard Lyles say "Oh, shit." Under these circumstances, Dean's approach from opposite side of Piersoll, with Piersoll's attention not being directed at Dean, could readily account for Lyles but not Piersoll hearing Dean's demand for money. Lyles testimony, Tr. Vol. 6, pgs. 1456 – 1458; Piersoll testimony, Tr. Vol. 6, pgs. 1412 – 1416. Under these circumstances, Piersoll not having heard the money demand that Lyles heard is readily reconciled with the basic facts of the crime.

Moreover, the State's evidence is not contradictory as to the money demand by Dean, where Piersoll does not deny Dean uttered a money demand. Rather, just before the gunfire started, the first sound heard by Piersoll was Lyles' exclamation "Oh, shit." In other words, Piersoll's own testimony is not directed to what Lyles did or did not hear. Piersoll's testimony is entirely about what he himself personally heard. Instead, Piersoll's testimony is fairly understood to be that he did not hear Dean's money demand, not that Dean did not utter a money demand. The otherwise-directed attention of Piersoll, when compared to the focused attention by Lyles, accounts for Lyles testimony she heard Dean say "Give me your money," where Piersoll did not hear what Lyles heard. Under these circumstances, the Court should conclude that Dean's attack on the evidence of robbery at the Mini Mart lacks merit.

Bullets Through The Windshield Support The Charge Of Attempted Murder

As to the attempted murder of Yolanda Lyles, Dean's claim of insufficiency is readily refuted by the bullet hole pattern in the front windshield of Lyles' car. Photographs of the windshield, being State's Exhibits 223 and 224, show three bullet strikes on the driver's side of the windshield, well to the right of green tree-shaped air freshener hanging down from the rear view mirror inside the car. Those photographs stand as objective evidence to support the attempted murder charge against the driver Lyles, and Dean's contention to the contrary lacks merit.

Course Of Conduct Evidence Meets Legal Requirements

None of Dean's contentions for legal insufficiency of the course of conduct evidence withstand scrutiny. Dean's contention "there is no indication that any of these events were interrelated" is simply not true. The commonality to all the crimes is that of Dean and Wade themselves; that within the span of four days in Springfield, Ohio, Dean and Wade committed multiple gun crimes culminating in the death of Titus Arnold. From the perspective of each of the victims, the *modus operandi* of their assailants was the same: aggressive combat-style gun assaults by Dean, who was actively assisted by his co-defendant Wade. The location of each assault was in close proximity to the others. The temporal span was narrow, where the crime spree lasted four days. One motive was greed, where obtaining money from the victims was a factor in the Mini Mart assault and the Arnold homicide. The other motive in the Dibert Ave. crimes was revenge for a dispute between victim Devon Williams and an individual named William Calhoun, whose street name was O-Z. See testimony of Laroilyn Burd, Tr. Vol. 7, pgs. 1574 – 1575; testimony of Joshua Farmer, Tr. Vol. 7, pgs. 1591 – 1602, 1655 – 1660; testimony

of Crystal Kaboos, Tr. Vol. 8, pgs. 1819 – 1820; testimony of Rhonda Sions, Tr. Vol. 9, pg. 2204.

Under these circumstances, commonalities are present such that Dean's conduct meets the course of conduct specification as construed by this Court. *State v. Sapp*, 105 Ohio St. 3d 104, P 52 (2004) ("Thus, for instance, the factual link [between the aggravated murder with which the defendant is charged and the other murders or attempted murders that are alleged to make up the course of conduct] might be one of time, location, murder weapon, or cause of death. It might involve the killing of victims who are close in age or who are related. It might involve a similar motivation on the killer's part for his crimes, a common getaway car, or perhaps a similar pattern of secondary crimes (such as rape) involving each victim."). Accord, *State v. Perez*, 124 Ohio St. 3d 122, P 77 – 83 (2009). ("However, [*State v.*] *Sapp*, [105 Ohio St. 3d 104 (2004)] illustrates that offenses can have significant differences in factual circumstances and *modus operandi* [*Id.* at P 58] and yet constitute a single course of conduct.") Id. at P 80.

In Dean's case, it may be that temporal proximity is the fact that predominates and affords a strong linkage to the crimes to meet the course of conduct specification. In some other case, the predominate fact could be a motive for sexual violence, like the Court faced in *Sapp,* where temporal proximity was not a predominate factor. In both cases, however, there was a linkage between the aggravated murder and the actual or attempted murder of other persons to sufficient to meet the course of conduct specification. Accordingly, Dean's contention there is insufficient evidence to support the course of conduct specification should be rejected.

A similar weakness is present in Dean's other contentions of insufficient evidence relative to the course of conduct specification . Dean gives no reason why his guilt of the "prior calculation and design" factor in the aggravated murder supposedly would cause him to be

excluded from a course of conduct capital specification. In similar fashion, Dean gives no reason why only the actual shooter could be charged with a course of conduct capital specification. Dean's failure to give reasons, or to cite this Court to legal precedent supporting his argument, should cause the Court to reject his contention that his guilt of the prior calculation and design factor precludes the application to him of the course of conduct capital specification.

Dean's remaining argument is that he is guilty of nothing, and therefore can't be guilty of the course of conduct specification. Where that argument stands in contradiction to the trial record, the jury verdict and the sentencing opinion, this Court should reject it and conclude that all of Dean's contentions of insufficiency lack merit.

Response to Proposition 3: There Was No Abuse Of Discretion In Instructing The Jury With A Correct Statement Of Law, Where There Was An Abundance Of Evidence Of An Attempt To Kill By Multiple Gunshots Fired At Multiple Victims

Although acknowledging that the transfer of purpose instruction was a correct statement of the law, Dean's objection below to the instruction was simply that it not be given at all. Tr. Vol. 10, pgs. 2534 – 2536. On appeal to this Court, Dean advances a new theory that the absence of actual injury to some of the attempted murder victims precludes application of the transfer of purpose instruction. Not having been presented below, this new theory is subject to plain error review. *State v. Wade*, 53 Ohio St. 2d 182, syllabus 1 ("A claim of error in a criminal case cannot be predicated upon the improper remarks of counsel during his argument at trial, which were not objected to, unless such remarks deny the defendant a fair trial.") Under either theory of error, however, there is no error and the Court should find Proposition 3 to be not well taken.

Initially, Dean is wrong for faulting the State for failing to anticipate the jury's question that "In attempted murder does it matter if the person identified in the charge is the intended

target or not?" Tr. Vol. 10, pgs. 2532 – 2533; Dean Merit Brief, pg. 35 ("In neither scenario [the Mini Mart and Dibert Ave. shootings] did the State argue that one person was the target and the others were victims by transferred intent.') There was no fault on the part of the State, since there was no effort by the State to designate a specific human target for the gunfire either at the Mini Mart or the Dibert Ave. scenes.

State's Evidence Of Accidental Victim Applied Only To Titus Arnold

Relative to the Mini Mart, there was no evidence or argument by the State that either Lyles or Piersoll was the intended target and the other was an innocent bystander. The evidence showed that Dean had a civil conversation with both Lyles and Piersoll shortly before the shooting, although the conversation was about an illegal drug sale. Lyles' testimony, Tr. Vol. 6, pgs. 1447 - 1452; Piersoll's testimony, Tr. Vol. 6, pgs. 1411 – 1413. In addition, the evidence showed that Lyles, who was in the driver's seat, had money. The evidence also showed that Dean saw Lyles hand money to Piersoll so that Piersoll could make a purchase inside the Mini Mart carry-out. Lyles testimony, Tr. Vol. 6, pgs. 1447 – 1449, 1477 - 1478. This fact, in context of Dean's subsequent demand to "Give me your money," suggests that Lyles would be a target for the gunfire, since she had displayed money in Dean's presence just minutes before. Even so, the State did not attempt, by evidence or argument, to characterize one victim as the intended target and the other as an innocent bystander. Consequently, Dean's characterization of Piersoll as the sole intended target of the Mini Mart gunfire is merely an inference he has drawn to support his argument, as opposed to being founded on evidence or argument presented by the State.

The same situation applied to the attempted murder victims on the front porch of 609 Dibert Ave. Although there was testimony from Crystal Kaboos that Dean and Wade were

looking for the car of Devon Williams, the implication was that vandalism of the vehicle was the goal. Tr. Vol. 8, pgs. 1815 – 1819. The facts warranted this implication, where Williams' car had been hit by gunfire, with bullet holes clustered around the gas tank. Testimony of Devon Williams, Tr. Vol. 7, pgs. 1689 – 1691; State's Exhibits 273 and 274, photographs of bullet strikes on Williams' car.

At the time of the second round of shooting when the bullets were directed at the persons on the front porch of Williams' house, Williams himself was on the other side of the street, crouched down behind his car. Testimony of Devon Williams, Tr. Vol. 7, pgs. 1682 – 1686. Under these circumstances, the State did not present evidence or argument that any one individual was the intended target of the Dibert Ave. gunfire, or that any one individual was an innocent bystander.

In contrast, however, the State did present evidence that Titus Arnold was targeted for gunfire under a mistaken assumption that Arnold was O-Z, the street name of William Calhoun, who was the supposed wrongdoer as against some of Dean's friends. Testimony of Michelle Cherry, Tr. Vol. 5, pgs. 989 – 991; testimony of Laroilyn Burd, Tr. Vol. 7, pgs. 1558 – 1562, 1573 - 1574; testimony of Joshua Farmer, Tr. Vol. 7, pgs. 1592 , 1595 - 1598, 1655 - 1658; testimony of Shanta Chilton, Tr. Vol. 7, pg. 1640; testimony of Devon Williams, Tr. Vol. 7, pgs. 1693 - 1695; testimony of Crystal Kaboos, Tr. Vol. 8, pgs. 1818 - 1819; testimony of Rhonda Sions, Tr. Vol. 9, pgs. 2202 – 2203 ("[Dean said] that it was a case of mistaken identity, that it wasn't supposed to have been Titus Arnold that got shot. It was supposed to be O-Z."). The State's closing arguments echoed this theme, that Titus Arnold was targeted by Dean for gunfire under the mistaken assumption that Arnold was O-Z. State's closing arguments, Tr. Vol. 10, pgs. 2408, 2418, 2448, 2453 - 2454, 2459.

Jury Question About The Attempted Murder Charges Could Not Have Been Anticipated

Under these circumstances, Dean's effort to obfuscate the reference by the State in its closing argument about "transferred intent" is misplaced. State's closing argument, Tr. Vol. 10, pg. 2386, Dean Merit Brief, pgs. 32 – 33. The evidence and argument of the State, in view of the express reference to "prior calculation and design" in the closing argument passage highlighted by Dean, shows the State's closing argument reference was undoubtedly about the Titus Arnold homicide, the only crime charged that involved a "prior calculation and design" factor. Consequently, there is no inconsistency or duplicity in the State's evidence or argument about who was or was not an unintended victim, and Dean's contention to the contrary is wrong.

In this context, where the only evidence and argument presented by the State about an unintended victim was in regard to Titus Arnold, it should be apparent that the jury question "In an attempted murder does it matter if the person identified in the charge is the intended victim or not?" could not have been anticipated by either the trial court or the State.

By the jury's reference to "attempted murder," their question could have been directed to either the Mini Mart or Dibert Ave. shootings, or maybe both. It is fair to say the jury question probably was not directed to the Titus Arnold shooting, since the Arnold crime was an actual murder, not an "attempted murder." In either event, this Court should note that any effort to discern the jury's thought process requires pure speculation, since there was no further questions by the jury on this topic, and no specialized inquiry into the deliberation process behind this particular jury question. In this regard, Dean is not entitled to claim as a fact what may or may not have been the motivation for the jury question, or whether the question represented a major or minor point during the deliberation process. Dean cannot do so because any rendition by him

is necessarily founded on pure speculation, where neither the litigants not the Court would have any superior insight as to what was the motivation behind this particular jury question.

Where the jury instruction given in answer to the jury question was straight out of OJI, and, as noted by eminently qualified and well regarded trial counsel for Dean, a "correct statement of law," Dean's effort to claim error should be rejected by this Court. Tr. Vol. 10, pg. 2535. ("Your Honor, just from a neutral assessment of it, it seems to be a correct statement of the law.") Dean Merit Brief, pg. 34 ("Defense counsel believed it was a generally correct statement of the law on transferred intent, but objected to giving the instruction."). Tr. Vol. 10, pg. 2534. ("After discussion, the Court proposes to bring the jury back into the courtroom, give them an additional charge which would be a modification of Charge No. CR 417.09 from OJI. It's on transferred intent.")

Multiple Gunshots At Multiple Victims Supports The Attempted Murder Convictions

The issue before this Court is not simply whether the trial court should or should not have given the challenged jury instruction. Instead, the issue is whether the trial court committed an abuse of discretion in giving the challenged instruction. The trial court is undoubtedly vested with broad discretion to determine how it will instruct a jury. Hand-in-hand with its duty to "fully and completely give the jury all instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact finder," *State v. Comen*, 50 Ohio St. 3d 206, 210, 553 N.E.2d 640 (1990), the trial court maintains discretion to determine whether the evidence presented at trial is sufficient to require a particular instruction. *See State v. Mitts*, 81 Ohio St. 3d 223, 228, 690 N.E.2d 522 (1998). And the court may not omit a requested instruction, if such instruction is "'a correct, pertinent statement of the law and [is] appropriate to the facts ***.'" *State v. Lessin*, 67 Ohio St. 3d 487, 493 (1993) (quoting *State v. Nelson*, 36 Ohio

St. 2d 79, paragraph one of the syllabus (1973)). Unless the trial abuses its discretion—i.e. proceeds with an attitude which is unreasonable, arbitrary or unconscionable—the court commits no error in issuing an instruction.

In this case, where the challenged instruction is a correct statement of law, and fairly responsive to the question posed by the jury, it should be evident the trial court was well within the bounds of discretion to instruct the jury as it did. The instruction is certainly a correct statement of the law. "The doctrine of transferred intent is firmly rooted in Ohio law," *State v. Sowell,* 39 Ohio St.3d 322, 332, 530 N.E.2d 1294 (1988). Attempted murder, like murder, requires purpose to kill, *see* R.C. 2903.02: "specific intention to cause a certain result" or "specific intention to engage in" prohibited conduct. R.C. 2901.22. The doctrine of transferred intent is applicable in determining the absence or presence of a purpose to kill in murder convictions. *State v. Mullins*, 76 Ohio App.3d 633, 602 N.E.2d 769 (1992). Under the doctrine of transferred intent, an individual whose intentional attempt to harm one person results in unintended harm to another is held criminally liable for such harm as if he had harmed his intended victim. *See id.* at 636. So the trial court's instructions undoubtedly hit the mark for correctness as a matter of law. In fact, this Court approved a very similar instruction to the instruction in this case in *State v. Powell*, 132 Ohio St.3d 233, 2012-Ohio-2577.

Moreover, given the nature of the Mini Mart and Dibert Ave. crimes, it should be evident there was an abundance of evidence of purpose to kill, where there were multiple gunshots fired at persons who were in close physical proximity to each other. "An intent to kill may be presumed where the natural and probable consequence of the wrongful act done is to produce death. It may be deduced from the surrounding circumstances, including the instrument used, its tendency to destroy life if designed for that purpose, and the manner of inflicting the

wound." *State v. Robinson*, 161 Ohio St. 213, 218-219, 118 N.E.2d 517 (1954); *State v. Johnson*, 56 Ohio St.2d 35, 39, 381 N.E.2d 637 (1978) ("a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts"). In addition, this Court has held that "a firearm is an inherently dangerous instrumentality, the use of which is reasonably likely to produce death." *State v. Widner*, 69 Ohio St. 2d 267, 270, 431 N.E.2d 1025_(1982). "[W]here an inherently dangerous instrumentality was employed, a homicide occurring during the commission of a felony is a natural and probable consequence presumed to have been intended. Such evidence is sufficient to allow a jury to find a purposeful intent to kill." *State v. Jester*, 32 Ohio St.3d 147, 152, 512 N.E.2d 962 (1987); *State v. Esparza*, 39 Ohio St.3d 8, 14, 529 N.E.2d 192 (1988).

Because there was an abundance of evidence to support all charges of attempted murder, the parameters of discretion to give the challenged instruction should be broad.

Under similar circumstances, this Court in *State v. Conway,* 108 Ohio St. 3d 214, P140 – 143 (2006) determined there was no error in instructing the jury on transferred intent. Like the evidence in this case, the evidence in Conway showed multiple gunshots "fired from close range at defenseless victims." *Id.*, at P143. Given that evidence, the *Conway* Court found it unnecessary to determine which of the "defenseless victims" was an intended target and which was an innocent bystander. Instead, this Court found no error in giving the transferred intent instruction because "with this evidence, no reasonable jury could have found that Conway did not purposely intend to kill both Williams and Gervais." *Id.,* at P143.

Other Courts have reached similar outcomes as this Court did in *Conway*. For example in *State v. Jackson*, 8th Dist. No. 76141, 2000 Ohio App. LEXIS 1741, *39-40 (2000), the Court found a transferred intent instruction to be supported on the evidence where the defendant had

threatened to kill his girlfriend and any other man she tried to date. When a vehicle with two passengers stopped and one of the passengers began speaking with the defendant's girlfriend, that defendant, fired multiple gunshots at the vehicle. One victim was killed, the other seriously injured. The Court found that the evidence supported an instruction on transferred intent. *Jackson*, at 39 - 40 ("The instruction given by the trial court merely informed the jury that if the defendant intended to kill when he pulled the trigger, it did not matter whether he killed the intended target or an innocent bystander.")

The Court found the same way in *State v. Wheeler*, 8th Dist. No. 66923, 1995 Ohio App. LEXIS 2146 (1995), which has facts analogous to Dean's case. Like in Dean's case, this event also took place in a convenience store parking lot. The intended victim had exited a car and approached the defendant. After a heated dispute between the intended victim and the defendant erupted into violence, the defendant pulled out a gun and began firing shots. The intended victim jumped into his car. *Id.* at *2-4. An unintended victim was also sitting in the car. Like Dean, the defendant fired multiple gunshots into the car. *Id.* The intended victim was hit by three of the bullets and later died. *Id.* One bullet passed through the shirt of the unintended victim, but did not strike him— much in the same way bullets passed by Yolanda Lyles, through her windshield, whizzing past her face. *Id.* at 11. And the Court of Appeals found that "Based upon the evidence presented and the doctrine of transferred intent, the jury could reasonably infer that the bullet that passed through [the unintended victim's] shirt was fired with intent to kill him." *Id.* at *11-12. The *Wheeler* Court reasoned that if one of the bullets had struck and killed the unintended victim, the defendant would have been guilty of murder. *Id.* "The fact that [the unintended victim] was not hit does not alter the fact that [the defendant] fired several shots with an intent to kill but merely indicates that he was unsuccessful in achieving his objective." *Id.* at 12.

A similar outcome should be had in this case. The intent to kill was fairly inferred from use of a deadly weapon, a gun, and fairly inferred from multiple gunshots being fired at multiple victims. The trial court instructed the jury that "[I]f there was no purpose to cause the death of anyone, the Defendant may not be found guilty of attempted murder, murder or aggravated murder." Tr. Vol. 10, pg. 2539 – 2540. Under these circumstances, the trial court was within the bounds of discretion to instruct the jury as it did, and Dean's contention to the contrary should be rejected.

Dean's new argument that this Court should follow the purported rule of California and condition a transferred intent instruction on "actual injury" to a victim should be summarily rejected. *Cf. People v. Bland*, 28 Cal. 4th 313 (2002), Dean Merit Brief pg. 37 – 38. Since this proposed rule is not the law of Ohio, it can hardly form the basis for a finding that the trial court abused its discretion in giving the jury instruction.

Dean's contentions of insufficiency lack merit.

Response To Proposition 4: Where None Of The Challenged Commentary Was Improper, Dean's Claim Of Prosecutorial Misconduct Lacks Merit

None of Deans claims of prosecutorial misconduct have merit, either individually or collectively. All of the alleged improper commentary was not objected to at trial, and is thus subject to plain error review. *State v. Powell,* 132 Ohio St. 3d 233, P177 (2012) ("...[D]efense counsel did not object to the alleged acts of prosecutorial misconduct and thus waived all but plain error.")

As to the supposed elicitation of victim impact evidence from Wanda Cherry, there was no impropriety where Cherry's testimony about Arnold's children was directly responsive to why Cherry would arrive at 11:30 PM for her shift to relieve Arnold that did not commence until midnight. Cherry testified that she arrived early so that Arnold could get home to his pregnant

fiancé and two other children. Testimony of Michelle Cherry. Tr. Vol. 5, pgs. 981 – 982. There is nothing improper about eliciting testimony that is directly pertinent to the conduct of the witness and the victim, simply because the evidence may cast the victim in a favorable light.

The evidence that, after the murder, Dean referred to Arnold as a "moon cricket" was elicited as an admission by Dean to support the State's charge Dean was guilty of aggravated murder by prior calculation and design. The "moon cricket" verbiage was Dean's, and the State is not precluded from eliciting evidence of an admission simply because the defendant used insensitive language.

Relative to the argument that to Dean "Titus Arnold was a slur. That's what he is." is a fair commentary on Dean's admission, which carried the implication that Dean was cold-blooded and therefore capable of murder by prior calculation and design. State's rebuttal closing argument, Tr. Vol. 10, pgs. 2463 – 2464. Moreover, the comment simply meant that Dean viewed Arnold in a demeaning fashion. There was no characterization by the State that Dean's admission was racist. Under these circumstances, the neither the elicitation of the evidence nor the comment was improper. *State v. Powell*, 132 Ohio St. 3d 233 P 149. (2012) ("The test regarding prosecutorial misconduct in closing arguments is whether the remarks were improper and, if so, whether they prejudicially affected substantial rights of the defendant." [citation omitted]. Prosecutors are granted wide latitude in closing argument, and the effect of any conduct of the prosecutor during closing argument must be considered in light of the entire case to determine whether the accused was denied a fair trial.[citation omitted]. The touchstone of the analysis 'is the fairness of the trial, not the culpability of the prosecutor.' [citation omitted].").

Dean mischaracterizes the prosecutor's penalty phase argument about the weight to be given to the course of conduct specification as an exhortation to the jury to succumb to public

demand. *Cf. State v. Williams*, 23 Ohio St. 3d 16, (1986) ("A request that the jury maintain community standards is not equivalent to the exhortation that the jury succumb to public demand as prohibited by the Eighth Appellate District in *State* v. *Cloud*, 112 Ohio App. 208, 217 1960)"). Moreover, Dean is misleading in the suggestion that trial counsel objected to this particular comment. Dean Merit Brief, pg. 45. The comment that was met with a sustained objection was in respect to a simple reference that the gun with which Dean was arrested was loaded. State's mitigation closing argument, Tr. Vol. 11, pg. 2688. This sustained objection was unrelated to the supposed "exhortation that the jury succumb to public demand." Accordingly, Dean's claim of error to this Court about a supposed appeal to a public demand is subject to a plain error review. In any event, the State's argument about the weight to be ascribed to the course of conduct specification is not the same as an "exhortation that the jury succumb to public demand." This challenged commentary is not improper and this Court should reject this claim of prosecutorial misconduct.

Finally, Dean is simply wrong in contending the prosecutor's comment that signing the verdict form is not a happy event amounts to a denigration of the "solitary juror" instruction required by *State v. Brooks*, 75 Ohio St. 3d 148, 162 (1996). The comment was not improper, and this Court should reject this and all of Dean's claims of prosecutorial misconduct.

Response To Proposition 5: The Absence Of A Challenge For Cause Below And The Failure To Exercise An Available Peremptory Challenge, In Context Of Dean's Request For A New Rule, Means That Proposition 5 Fails On The Facts And The Law

Where Dean concedes that success on his claims about the improper seating of so-called "automatic death penalty" jurors would require this Court to change the law, the Court should summarily reject Dean's Proposition 5. Moreover, where Dean concedes the only juror now

challenged who actually sat on the panel had not been challenged for cause below, or excused by an available peremptory challenge, Dean's Proposition 5 lacks merit.

Dean's claim about improper seating of so-called "automatic death penalty" jurors is fundamentally flawed because Dean concedes the record does not show any of the challenged jurors to be "automatic death penalty" jurors. Instead, Dean's grievance is that the record does not show an emphatic, vigorous, and boisterous promise by the challenged jurors to follow the law. Dean further concedes that under existing law, a successful appellate claim about seating of a so-called "automatic death penalty" juror does not require the record to show an emphatic, vigorous and boisterous promise by the challenged juror to follow the law. Instead, Dean would have this Court adopt a new rule that a "juror's tentative statements that they would try to decide this case on the evidence presented at trial" should be ignored in the determination of a challenge that a juror "will automatically vote for the death penalty in every case." Dean Merit Brief, pgs. 60 – 61. Latter quotation from *State v. Stojetz*, 84 Ohio St. 3d 452, 456 (1999).

In advancing his contention for adoption of a new rule, Dean concedes this Court has in the past deferred to the assessment of the trial court in the resolution of "what appear to be contradictory statements on voir dire" in respect to whether a juror should be excused for cause. Dean Merit Brief, pg. 59, citing to *State v. Scott,* 26 Ohio St. 3d 92, 97 – 98 (1986) ("The fact that the defense counsel was able to elicit somewhat contradictory viewpoints from these jurors during his examination does not, in and of itself, render the court's judgment erroneous.") and *State v. White*, 85 Ohio St. 3d 433, 439 (1999) ("But when a prospective juror makes what appear to be contradictory statements on voir dire, as Stafford did, it is for the trial court to decide which statements to believe. The issue is not conclusively determined by whatever the

prospective juror happens to say last."). However, Dean fails to offer any rationale for this Court to ignore prior precedent and adopt a new rule that is directly contrary to the existing standard.

Moreover, Dean fails to advise the Court it has expressly rejected an invitation to adopt a rule similar to what Dean proposes. *State v. Scott*, 26 Ohio St. 3d 92, 96 – 97 (1986). ("Appellant initially argues that pursuant to this court's decision in *State* v.. *Jenkins* (1984), 15 Ohio St. 3d 164, 180, a juror must express an irrevocable commitment to vote against the death penalty regardless of the circumstances and facts of the case in order to be properly excluded under R.C. 2945.25(C).")

Beyond the fact that acceptance of Dean's proposition would require existing precedent to be overruled, of the three jurors Dean now challenges, only one, juror 357, actually sat on the jury. The other two, jurors 342 and juror 449, were excused by Dean by a peremptory challenge. Dean Merit Brief, pg. 56 (juror 342), pg. 58 (juror 349). And, where Dean had more four opportunities to excuse juror 357 on a peremptory challenge but did not avail himself of that opportunity, any hypothetical error in failing to excuse juror 357 for cause is waived. *State v. Eaton*, 19 Ohio St. 2d 145, 149 (1969) ("A party cannot complain of prejudicial error in the overruling of a challenge for cause if it does not force him to exhaust his peremptory challenges. If there was error, as claimed by defendant, in the trial court's ruling on this challenge for cause, it is deemed waived by the acceptance of the jury where the number of peremptory challenges remains unexhausted.") Accord, *State v. Getsy*, 84 Ohio St. 3d 180, 191 (1998). ("We have previously held that error in the denial of a challenge of a juror for cause cannot be grounds for reversal when the defendant did not exhaust his peremptory challenges. *State v. Poindexter* (1988), 36 Ohio St. 3d 1, 5, 520 N.E.2d 568, 572. As the defense had three peremptory challenges remaining, any error was waived.").

Dean "passed" on peremptory challenges one, three, four and five; any one of which he could have used to peremptorily excuse juror 357. Exercise of peremptory challenges, Tr. Vol. 4, pgs. 912 – 922. Mr. Henderson, who was juror 357, was seated in the third seat at the commencement of the exercise of peremptory challenges. Henderson in seat three, Tr. Vol. 4, page 924; Henderson identified as juror 357, Tr. Vol.4, pg. 888. Because Dean skipped a total of four opportunities to peremptorily excuse juror 357, the only of the challenged jurors to have actually sat as a juror or an alternate, Dean has waived any claim as to the wrongful seating of juror 357. *State v. Poindexter*, 36 Ohio St. 3d 1, 5 (1986) ("In proposition of law eleven, appellant claims that the trial court erred by denying appellant's challenge for cause of a member of the jury panel. We have addressed and rejected similar arguments when criminal defendants fail to utilize all their peremptory challenges. [citations omitted]. Appellant failed to utilize six of his available twelve peremptory challenges. Accordingly, we find this proposition not well-taken.") And, as to the alleged failure to excuse juror 342 and juror 349, there is no claim at all, because they were excused by Dean's peremptory challenge and Dean had four more peremptory challenges he did not use. *State v. Getsy*, 84 Ohio St. 3d 180, 191 (1998). ("Juror Nos. 15 and 27 were eventually seated on Getsy's jury; the defense used one of its peremptory challenges to keep Juror No. 65 off the jury.")

Moreover, at trial Dean did not seek to excuse juror 357 for cause. Dean Merit Brief, pg. 51 ("Defense counsel in this case failed to request that [juror 357] be excused for cause and failed to use a peremptory challenge to excuse [juror 357] and [juror 357] sat on the trial jury that decided Jason Dean's fate.") Consequently, Dean has waived any claim to the seating of juror 357 for the additional reason that he did not challenge juror 357 for cause when the opportunity

was ripe. *State v. Getsy*, 84 Ohio St. 3d 180, 191 (1998). ("None of the jurors was challenged for cause by defense counsel.")

Beyond Dean having waived, for two independent reasons, any challenge in respect to juror 357, the record shows no grounds to have excused juror 357 for cause. On at least three occasions, juror 357 stated he could follow the law as instructed. Voir Dire of Juror 357, Tr. Vol. 3, pgs. 585 – 587, 595 – 596.

Proposition 5 fails on the facts and the law and this Court should so conclude.

Response To Proposition 6: Claims Of Ineffective Assistance Of Counsel Are Contradicted By Facts In The Record And Lack Factual And Legal Merit

Dean's claims of ineffective assistance of counsel lack merit and should be rejected.

Dean's subclaim that the record shows juror 357 and juror 406 to be biased is not true. To the contrary, the record shows that on at least 3 occasions, juror 357 stated he could follow the instructions of the Court. Voir Dire of Juror 357, Tr. Vol. 3, pgs. 585 – 587, 595 – 596. The same is shown as to juror 406, who at least three times stated she could follow the law. Voir Dire of Juror 406, Tr. Vol. 3, pgs. 691, 698 -699. There is no standard of practice that defense counsel are obligated to assume that during voir dire a prospective juror is lying. Consequently, Dean's subclaim about failure to challenge a so-called biased juror has no merit.

Dean's subclaim that the cross-examination of Crystal Kaboos was ineffective has no merit. The record shows defense counsel aggressively cross examined Kaboos about her admission she had not initially been truthful with police. Tr. Vol. 8, pgs. 1844 – 1847. Relative to the so-called inconsistency about Kaboos having told police she had a child when a child had not been born to her until a year later, it was defense counsel who brought the matter to the attention of the trial court, which itself stands as a contradiction to any notion that defense

counsel was ineffective. The response by defense counsel was aggressive, which also contradicts any notion that defense counsel was ineffective. Tr. Vol. 8, pgs. 2027 – 2031.

In addition, the matter was *de minimis*. The impeaching value would be minimal at best, where the matter came up only as a reason why Kaboos felt sympathy for the victim Titus Arnold, who had several young children at the time of his death. Moreover, the trial court determined the situation represented a collateral matter under Evid. R. 613, which is additionally suggestive that the matter was of minor significance. Tr. Vol. 8, pgs. 2027 – 2031.

That is not to say Dean would lack a means by which to challenge this particular matter. Instead of a claim of ineffective assistance of counsel, Dean could advance a substantive claim of error on the ruling by the trial court that the matter was collateral under Evid. R. 613. The fact that Dean has not done should suggest to this Court that the trial court was correct in its determination that the matter did not warrant the significance ascribed to it by defense counsel at trial, or by Dean on the appeal to this Court.

Finally, the record shows that if Kaboos had an opportunity to explain, the likelihood would be that her statement to police about she personally taking care of a child was in reference to her boyfriend's child by another woman whom she was helping to raise. Statement of Prosecutor Wilson, Tr. Vol. 8, pg. 2025. On appeal to this Court Dean does not address Prosecutor Wilson's proffer of her prospective testimony about the matter, which should be seen as an implied concession that the entire matter lacks significance. Accordingly, this subclaim about ineffective cross examination of Kaboos has no merit.

The subclaim about failure to object to admission of any of the Titus Arnold crime scene photographs lacks substance. Before any photographs were taken, emergency first responders had taken Titus Arnold to the local hospital. Testimony of paramedic Brian Miller, Tr. Vol. 5,

pgs. 1070 – 1082. There were no inflammatory images in the crime scene photographs, and no reason to object, even if the crime scene images were repetitive. The images displayed in that extensive series of photographs were benign, where parked vehicles, pavement, and evidence cones dominated the photographs. This subclaim lacks merit.

Dean unfairly denigrates defense counsel in his claim that no cross examination of some of the State's witnesses represents lack of preparation. Dean's Merit Brief, pages 68 – 69, listing 14 State's witnesses. To the contrary, most of the listed witnesses gave brief testimony about facts not in dispute, such as SPD Officer Neil Davis, who in a total of four pages of transcript explained how he transported evidence from the hospital to the crime lab. Testimony of Neil Davis, Tr. Vol. 8, pgs. 1790 – 1794. There would have been no strategic reasons to cross examine any of the listed witnesses, and Dean fails to offer any such reasons in his brief to this court. Accordingly, the absence of cross examination is simply a consequence of an unwillingness on the part of defense counsel to try the patience of the jury with pointless questioning as to benign background matters. Moreover, none of the listed witnesses purported to offer testimony about either Dean or Wade being the perpetrators of any of the shootings, which shows their testimony did not warrant cross examination. Of a total of 45 State's witnesses, defense counsel cross examined a total of 31 witnesses, and did so aggressively. In this regard, Dean fails to reconcile the aggressive cross examination of 31 State's witnesses with his unsubstantiated allegation that the absence of cross examination of 14 background witnesses represents a lack of preparation. This subclaim lacks merit.

The subclaims about failure to object to so-called prosecutorial misconduct (guilt phase and mitigations phase) lack merit, for the reasons expressed in response to Proposition 4.

Dean's subclaim about counsel being ineffective during the mitigation phase presentation of evidence is patently disingenuous. Defense counsel was fully aware their mitigation presentation had to be abbreviated to avoid "opening the door" to cross examination about Dean's extensive criminal record, as well as significant instances of misbehavior by Dean while incarcerated.

The record reveals several instances that show defense counsel was fully aware of the dilemma they faced by virtue of Dean's lifetime of violent criminal behavior. For example, during a pretrial hearing, defense counsel argued that Dean's misconduct while incarcerated since the time of his first trial should be excluded. Tr. Pre-Trial August 22, 1011, pgs. 16 – 17. More specifically, defense counsel stated to the trial court "So I guess to put it bluntly, we all know what we're talking about here is Mr. Dean accused of attacking a guard up on death row. That's not a specification. It happened after the fact of these underlying events; and if it's not otherwise admitted on our case in chief in mitigation, then it should not be admissible." Tr. Pre-Trial August 22, 1011, pgs. 19 – 20.

As another example, just before commencement of the mitigation case, defense counsel reiterated that "... [W]e now take the position frankly contrary to the face of that initial [defense] motion that this Court should rule as inadmissible any prison conduct that postdated the first trial, the most aggravating conduct of which occurred after Mr. – Dr. Stinson wrote his report in 2007." Tr. Vol. 10, pg. 2572. The trial court ruled that "... I will strictly limit the State on its cross-examination of the doctors as to any behavior issues unless there is an assertion by the Defense in mitigation as to what do we call it, jail adjustment?" Tr. Vol. 10, pg. 2573. In response, defense counsel said "We obviously are trying to avoid some pretty bad conduct, violent conduct of Mr. Dean's while incarcerated in between his first trial and second trial; and

we will do everything we can as Counsel to guard against our witnesses opening that door. And we know the issue, both sides obviously know the issue; and we certainly do not intend to offer proactive (sic) any evidence about prison conduct as being anything good." Tr. Vol. 10, pg. 2574.

Consistent with the expressed concern by the defense about opening the door to cross examination about other bad acts, Dean did not present any psychological evidence during mitigation. So as to be clear about the matter, after the mitigation presentation was completed, and outside the hearing of the jury, the trial court placed the following on the record.

> **The Court:** The Court just wants the record to reflect that at pretrial, the Court has furnished funds for expert witnesses, Dr. Stinson and Dr. Donninger for the Defense. The Court would like the record to reflect that the evidence was fully developed by these witnesses for the defense and that reports have been furnished and Defense Counsel had had adequate opportunity to discuss potential testimony of these witnesses and that, as a matter of trial strategy, the Defense has chosen not to call them as witnesses. Is that a fair statement, Mr. Meyers?
>
> **Mr. Meyers:** [lead defense counsel] Well, I would say this, Judge. Certainly the reports were generated and disclosed, were discovered; and as all things in trial, we on the defense make decisions based on our strategy, hope that they're effective.
>
> Tr. Vol. 11, pg. 2727.

Under these circumstances, where the record affirmatively and emphatically refutes Dean's contention that defense counsel were ineffective for not presenting psychological testimony during the mitigation case, the Court should find this subclaim to be without merit.

Dean's subclaim about supposed misstatement of the weighing process by defense counsel during mitigation phase closing argument has no merit. The challenged argument, that juror must "weigh the mitigating factors against the aggravating circumstance to determine if the aggravating circumstance outweighs beyond a reasonable doubt - not just outweighs, but

outweighs beyond a reasonable doubt – the mitigating factors," contains no inaccuracy and advances a position that is favorable to Dean. There is no merit to this subclaim.

In respect to the subclaim about imposition of court costs, as it relates specifically to Dean's case, the matter is *de minimis* and does not implicate the effectiveness of counsel. Dean had been incarcerated for a significant portion of his adult life, and had never been in a position where he was not indigent. Apart from any minimal pay Dean might have had from a prison job, Dean never had legal income, so any imposition of court costs on Dean would be a vain act that would have had absolutely no impact on Dean's day-to-day life. There is no standard of practice by which counsel would be obligated to test the patience of the trial court with pointless argument about a matter that lacks significance. This subclaim lacks merit.

In his claims of ineffective assistance of counsel, Dean is obligated to do more than recite grievances about what he perceives to be shortcomings by defense counsel. Instead, Dean is obligated to demonstrate how counsel's performance supposedly fell below a standard of practice, and how that supposed deficiency deprived him of a fair trial. *State v. Powell*, 132 Ohio St. 3d 233, P85 (2012). ("Reversal of a conviction for ineffective assistance of counsel requires the defendant to show that counsel's performance was deficient and that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial.") Dean has done nothing of the sort. Instead, Dean merely recites a list of grievances, which itself is fatal to any grant of relief. Moreover, especially in respect to the grievance about the lack of presentation of psychological evidence at mitigation, the factual premise of Dean's each and every one of claims of ineffective assistance of counsel are contradicted by the record. Under these circumstances, the Court should reject Proposition 6.

Response To Proposition 7: Where Imposition Of Court Costs Are Required, And Dean Waived Any Claim Of Error By Not Addressing The Matter Below, Proposition 7 Lacks Merit

Dean's claim of error about the imposition of court costs is specious in light of the levy being issued against the "land and tenements" of Dean, of which he has none. The Sheriff issued a return on the levy for court costs, noting there were "No goods or chattels, lands or tenements found whereon to levy." Record Entry 440, Execution For Costs In Felony. What this means is that, as a practical matter, the imposition of court costs on Dean is nothing more than a benign entry on the record that has no effect whatsoever on the merits of Dean's conviction and sentence.

Dean's contention that his hypothetical income from a prison job could be seized by a hypothetical levy is also specious, where there is nothing in the record to even remotely suggest Dean ever had, or ever will have, income from a prison job. To the contrary, the record is suggestive that Dean would not have a prison job, since defense counsel revealed there was an issue about "Mr. Dean [being] accused of attacking a guard up on death row." Statement of Defense Counsel, Tr. Pre-Trial August 22, 1011, pgs. 19 – 20. In the absence of anything additional from Dean, this Court would be entitled to assume that Dean is and has been under significant administrative segregation for "attacking a guard up on death row," and consequently will not be enjoying any income from a prison job at any time in the foreseeable future. Under these circumstances, there is no effect on Dean in any manner due to imposition of court costs.

Furthermore, the law cited by Dean does not preclude or prohibit the imposition of court costs on anyone, including the indigent. To the contrary, it would appear the imposition of court costs is mandatory under O.R.C. 2947.23. *State v. Clevenger*, 114 Ohio St. 3d 258, P3 (2007). (R.C. 2947.23 requires the imposition of court costs as a part of a criminal sentence. [footnote

omitted]. This court has held that R.C. 2947.23 requires a trial court to assess costs against all criminal defendants, and to do so even if the defendant is indigent. *State v. White,* 103 Ohio St.3d 580, 2004 Ohio 5989, 817 N.E.2d 393, P 8. Therefore, a defendant's financial status is irrelevant to the imposition of court costs.")

At the time of trial, defense counsel knew Dean had no "lands and tenements" on which to levy, and because of "Mr. Dean [being] accused of attacking a guard up on death row," there would be no prison income for Dean. Statement of Defense Counsel, Tr. Pre-Trial August 22, 1011, pgs. 19 – 20. Accordingly, there would be no reason for defense counsel to seek a waiver of payment of costs, and the record does not reflect any such request.

Under these circumstances, the absence of a request to the trial court for waiver on costs precludes Dean from making a claim of error to this Court. *State v. Clevenger*, 114 Ohio St. 3d 258, P5 (2007). ("In *State v. Threatt,* 108 Ohio St.3d 277, 2006 Ohio 905, 843 N.E.2d 164, paragraph two of the syllabus, this court held that a motion by an indigent criminal defendant to waive payment of costs must be made at the time of sentencing. The court stated: 'If the defendant makes such a motion, then the issue is preserved for appeal and will be reviewed under an abuse-of-discretion standard. Otherwise, the issue is waived and costs are *res judicata.*' Id. at P 23.")

For the reasons expressed, Proposition 7 lacks merit and should be rejected.

Response To Proposition 8: The Penalty Phase Instruction About The Purpose Of Mitigating Factors Was Accurate

The question here is whether the trial court committed plain error in defining mitigating factors for the jury: it did not. In the trial court's general penalty phase instructions, it explained that mitigating factors did not "justify or excuse the crime of aggravated murder" but were factors that "must be considered as they call for a penalty less than death." Vol. 11, Tr. .pg.

2603-2604. Dean voiced no objection at that time. When the parties rested, the Court charged the jury defining mitigating factors and explaining how they should be weighed. Dean did not raise this objection to the Court's explanation of mitigating factors at this time either. He objects now, arguing that the mere inclusion of the words "justify or excuse" in the trial court's definition of what mitigating factors are *not*, somehow misled the jury to believe that "justification" and "excuse" define what mitigating factors *are*. Dean is wrong.

As a preliminary matter, Dean's failure to object on this ground at trial means this claim is reviewed for plain error. "Under that review, relief is not warranted unless there has been (1) error, (2) that is plain, and (3) affects substantial rights." *Jones v. United Sta*tes, 527 U.S. 373, 389, 119 S. Ct. 2090,144 L. Ed. 2d 370 (1999); *see State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306.

Dean does not argue that the Court's instructions were factually or legally incorrect; he argues that the phrasing may have been misleading. Dean's argument—which depends on the premise that the instructions stating one thing led the jury to believe the opposite—falls short of satisfying even the first requirement of the plain-error doctrine, because no error occurred.

"Where an instruction is claimed to be 'ambiguous and therefore subject to an erroneous interpretation,' the court must inquire 'whether there is a reasonable likelihood that the jury has applied the challenged instruction' incorrectly." *State v. Herring*, 94 Ohio St. 3d 246, 250, 762 N.E.2d 940 (2002) (*citing Boyde v. California*, 494 U.S. 370, 380, 110 S. Ct. 1190, 1198, 108 L. Ed. 2d 316, 329 (1990)).

There is no reasonable likelihood that the jury applied the instructions incorrectly. For starters, the trial court's instructions were proper and plain statements of the law. The trial court explained the basics of mitigating factor in its general instructions:

> Mitigating factors are factors that while they *do not* justify or excuse that crime of aggravate murder, nevertheless in fairness, must be considered by [the jury] as they call for a penalty less than death.
>
> Vol. 11, Tr. pg. 2603-2604.

The Court then gave the following instruction in its charge to the jury:

> Mitigating factors are factors about an individual or an offense that weigh in favor of a decision that a life sentence rather than a death sentence is appropriate.
>
> Mitigating factors are factors that diminish the appropriateness of a death sentence. Mitigating factors *neither* excuse *nor* justify the aggravated murder. Rather, mitigating factors are those things which, in fairness, weigh against sentencing the Defendant to death.
>
> Vol. 11, Tr. p. 2709. (emphasis added).

Even taken in isolation, the general instruction and the charge to the jury are proper and plain statements of the law. *See State v. Holloway*, 38 Ohio St. 3d 239 (1988) paragraph one of the syllabus ("Mitigating factors under R.C. 2929.04(B) are not necessarily related to a defendant's culpability but, rather, are those factors that are relevant to the issue of whether an offender convicted under R.C. 2903.01 should be sentenced to death").

There is no reason, based on the record, to believe the jury would understand the Court's words to mean the opposite of what was said. Courts "presume that the jury can understand phrases expressed in plain English or that the jury will inquire as to the meaning of the phrase." *State v. Brooks*, 176 Ohio App. 3d 210, 216, 891 N.E.2d 797 (10th Dist. 2008). Further, it is well established that terms of common usage need not be defined for the jury. *See State v. Gross*, 97 Ohio St.3d 121, 2002-Ohio-5524, P106, 776 N.E.2d 1061 (quotation omitted). If a "term is one of common usage and is actually used in that sense, the failure to define the term does not mandate a reversal." *State v. Walburg*, 10th Dist. No. 10AP-1087, 2011 Ohio 4762, ¶ 48, quoting *State v. Watkins*, 10th Dist. No. 01AP-1376, 2002 Ohio 5080, ¶ 39. So the jury is presumed to

understand the trial court explanation that mitigating factors "do not justify" or "neither excuse nor justify."

Also, when these instructions are viewed in the context of the entire charge—as the law requires—there is clearly no reasonable likelihood that the jury believed that mitigating factors lessened the defendant's moral culpability. *See Cupp v. Naughten*, 414 U.S. 141, 146-147, 94 S. Ct. 396, 400, 38 L. Ed. 2d 368, 373 (1973) ("a single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge"); *State v.* Madrigal, 87 Ohio St. 3d 378, 396, 721 N.E.2d 52 (2000).

After the trial court's instruction above, the Court continued stating:

> You must consider all of the mitigating factors presented to you. Mitigating factors include, but are not limited to, the history, character, and background of the Defendant's life and any other factors that weigh in favor of a sentence other than death.
>
> The specific mitigating factors that you should consider in this case include, but are not necessarily limited to, the following factors: The fact that the Defendant was not the principal offender, meaning that he did not fire the fatal shot; and the testimony presented concerning the Defendant's family background; and any other factors that you find weigh in favor of a sentence other than death.
>
> This means that you are not limited to just the specific mitigating factors that were just described to you. You should consider all the mitigating factors that weigh in favor of a sentence other than death.
>
> Any one of the mitigating factors standing alone is sufficient to support a sentence of life imprisonment if the aggravating circumstance is not sufficient to outweigh that mitigating factor beyond a reasonable doubt. Also the cumulative effect of the mitigating factors will support a sentence of life imprisonment if the aggravating circumstance is not sufficient to outweigh the mitigating factors beyond a reasonable doubt.
>
> It's not necessary that the members of the jury unanimously agree on the existence of a mitigating factor before that factor can be weighed by any juror against the aggravating circumstances.

(Vol. 11, Tr. p 2710-2711).

Finally, the trial courts plain and correct statement of the law on mitigation cannot be plain error when this Court previously found an actual misstatement of the law to not be plain error. *See State v. Frazier*, 115 Ohio St. 3d 139, 167, 2007-Ohio-5048 873 N.E.2d 1263; *State v. Getsy*, 84 Ohio St. 3d 180, 201, 702 N.E.2d 866 (1998) (while the trial court's instruction state that mitigating factors lessen, weaken, or excuse strayed from the definition of mitigating factors, it did not mislead the jury when coupled with the remainder of the court's instructions). In *Fraizer*, the trial court actually did instruct the jury that mitigating factors lessen the moral culpability of the defendant. Nevertheless, this Court found that" the overall penalty-phase instructions informed the jury that the issue was punishment, not culpability." *Id.* at 167.

Viewed in context, the trial court's instructions adequately conveyed to the jury the definition of mitigating factors and the jury's duty to weigh those factors. There was no plain error.

Response To Proposition 9: Dean's Failure To Offer Valid Reasons Why The Haile And Burd 911 Tapes Were Erroneously Admitted Show That Proposition 9 Lacks Merit

Relative to the 911 call of Rose Haile, the content was relevant to the issue of prior calculation and design, where Haile expressed how she saw two men get out of a vehicle and chase a third man, before gunshots caused the third man to fall to the pavement. Testimony of Amrosetta Haile, Tr. Vol. 5, pgs. 1010 – 1019.

Other than stating a bare grievance about the Haile 911 call containing "emotional outbursts," Dean offers no legal rationale to support his claim of error. The sole case cited by Dean, being *State v. Johnson*, 2009 Ohio 3383, P22 (10th Dist.), stands for the proposition that "911 calls are generally admissible as excited utterances or present sense impressions." Dean Merit Brief, pg. 90. Moreover, while defense counsel below stated the single word "objection," neither then nor now does Dean articulate any factual or legal grounds to suggest the Haile 911

tape should have been excluded. Dean's contention that some of Haile's 911 call was "investigatory information" is an artificial distinction with no articulated legal meaning, and as such lacks any import to his claim or error. Dean Merit Brief, pg. 88.

Similar considerations apply to the 911 call of Laroilyn Burd. As noted by the *Johnson* Court, being the sole case cited by Dean, "911 calls are generally admissible as excited utterances or present sense impressions." *Id.*, P22. Dean Merit Brief, pg. 90. Consequently, Dean's contention of error lacks any legal support. Moreover, Dean mischaracterizes the trial court's question about relevance, since the record would show that reference was specifically in respect to Burd's statement to the 911 operator that Devon Williams, the ostensible target of the gunfire, had a connection with "O-Z, Snuff, and Aaron Johnson." Tr. Vol. 7, pg. 1562, 1574 – 1575. . The prosecutor's explanation to the trial court was accepted, that Burd's reference to "O-Z" was relevant, since the evidence suggested Dean and Wade were out to get O-Z. This is so because immediately after the prosecutor's explanation about relevance, the trial court without further comment overruled Dean's objection. Tr. Vol. 7, pg. 1558. More specifically, the State's evidence was that one motive for the Dibert Ave. shooting was revenge arising from a dispute with O-Z. T See testimony of Laroilyn Burd, Tr. Vol. 7, pgs. 1574 – 1575; testimony of Joshua Farmer, Tr. Vol. 7, pgs. 1591 – 1602, 1655 – 1660; testimony of Crystal Kaboos, Tr. Vol. 8, pgs. 1819 – 1820; testimony of Rhonda Sions, Tr. Vol. 9, pg. 2204. Under these circumstances, Dean's claim of error in the admission of the Burd 911 tape lacks any factual or legal foundation.

Dean is obligated to do more than merely state a claim of error and then cite a single case that that contradicts his claim of error. Dean's failure to articulate valid grounds for error, in context of the record standing in contradiction to his factual contentions, should cause the Court to reject Proposition 9.

Response To Proposition 10: Where Admission Of The Challenged Evidence Rests Soundly On The Rules Of Evidence, Dean Fails To Show Error

Relative to the subclaim of wrongful admission of Kaboos' testimony that Dean told her he had earlier intended to rob her, Dean appears to concede admission was proper as motive evidence under Evid. R. 404(B). Dean Merit Brief, pg. 96, last paragraph. Instead, Dean's claim appears to be the trial court erred in failing to expressly articulate whether the "probative value of the information outweighed any prejudice." Dean Merit Brief, pg. 96, last paragraph. However, other than making a bare claim of error, Dean fails to offer any additional analysis or to cite to any legal authority in support of this subclaim.

In response, it is fair to say no authority has been brought to the attention of the Court that would purport to require a trial court to expressly articulate its entire reasoning process in the admission of evidence. In this situation, the trial court entertained argument from both parties, and expressly ruled "The Court find it's probative of motive. I'm going to overrule the objection." Tr. Vol. 8, pg. 1805. Because Dean does not challenge the propriety of this ruling, this subclaim lacks merit.

Relative to the subclaim about the admission of evidence that a .380 caliber pistol was recovered from Wade's home, Dean erroneously contends the evidence was not relevant. To the contrary, after entertainment of argument from the parties, the trial court concluded the evidence was relevant, tending to show "the firearms were interchangeable -- between the two." Tr. Vol. 8, pg. 1942 - 1943.

Where two firearms were used in both the Titus Arnold and the Dibert Ave. shootings, and Wade was the shooter of Arnold with what the State said was a gun supplied by Dean, Wade's own gun at his own home was properly relevant to show concerted action between Dean and Wade, especially in regard to the .40 caliber weapon used by Wade. The evidence that Wade

had another weapon in his own home served to corroborated the linkage between Dean and the murder weapon, the implication being that Dean was the primary force behind the death of Titus Arnold. This factor was discerned by the trial court, where in the Sentencing Opinion it was written "Jason Dean was a full participant and the leader in the criminal conspiracy, of himself and Joshua Wade, to kill Titus Arnold and attempt to kill six other individuals. Dean provided the motive, the leadership, the weapons, the vehicle and the opportunity to Wade to accompany him in these events." Record Entry 435, sentencing Opinion, pg. 9. Under these circumstances, evidence that Wade has his own gun, separate and apart from Dean, was relevant to the issues in the case, and Dean's subclaim lacks merit.

Relative to the subclaim about admission of redacted versions of Dean's written letters and audio recordings, Dean's grievance appears to be that this evidence was "prejudicial" and cast him in a bad light with the jury. In response, it would appear this grievance by Dean simply does not state a claim of error. In other words, a mere characterization that evidence was "prejudicial" does not state a claim of error. *State v. Crotts*, 104 Ohio St. 3d 432, P23 (2004) ("Thus, it is fair to say that all relevant evidence is prejudicial. That is, evidence that tends to disprove a party's rendition of the facts necessarily harms that party's case. Accordingly, the rules of evidence do not attempt to bar all prejudicial evidence -- to do so would make reaching any result extremely difficult. Rather, only evidence that is *unfairly* prejudicial is excludable.") (Emphasis supplied). Moreover, since there was no objection before the trial court to the admission of this evidence, this subclaim is subject to plain error review. *State v. Powell,* 132 Ohio St. 3d 233, P177 (2012).

Although Dean is correct that this evidence showed Dean to be callous as to the death of Titus Arnold, admission of the evidence was not grounded on "other bad acts" pursuant to Evid.

R. 404(B). Dean Merit Brief, pg. 102. Instead, admission of this evidence would have been pursuant to Evid. R. 801(D)(2), being an admission by a party-opponent. In this regard, Dean can only blame himself if the evidence portrayed him "as cold-blooded, racist, misogynistic, and generally unfit to be in society," since that impression would have been cast by his own words, not by any argument uttered by the State. Quotation from Dean Merit Brief, pg. 102.

This evidence was pertinent to the charges against Dean, where the general theme of his defense as to the aggravated murder charge was that Wade was solely and exclusively responsible for that crime. In contrast, Dean's letters and audio recordings suggested he considered himself as being responsible for the death of Titus Arnold, as opposed to being merely unwittingly present when Wade of his own accord shot Arnold. Moreover, the callous tone of the letters and audio recordings was pertinent to Dean's intent and state of mind in respect to the death of Titus Arnold, where there was no dispute that Dean himself did not fire the fatal shot.

Given these factors, that Dean fails to state a claim for error, that any present claim is subject to plain error review only, and that the admission of the challenged evidence rests solidly on the provisions of Evid. R. 801(D)(2), the Court should conclude this subclaim lacks merit. That same outcome should apply to Dean's other subclaims, where Dean fails to show error.

Response To Proposition 11: Dean's Claim Of Improper Joinder Lacks Merit, Where Simple And Direct Proof Linked Crimes That Were Part Of A Course Of Conduct

This claim is about proper joinder of multiple offenses. Before trial, Dean motioned for the trial court to sever his criminal offenses into separate trials because there were three different shooting incidents. However, as the prosecution pointed out, Ohio law favors joinder, the charges were properly joined under Ohio Criminal Rule 8 (A), and the incidents were a part of a course of conduct. The trial court overruled Dean's motion and properly used its discretion in

doing so as the evidence of all three incidents would have been admissible for valid noncharacter purposes and the evidence of each charge was simple and direct. A court's denial of a motion to sever joined offenses is reviewed for abuse of discretion. *State v. LaMar*, 95 Ohio St. 3d 181, 193-195 (2002).

The trial court properly joined the offenses. Ohio Crim. R. 8(A) allows joinder of two or more offenses that "are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct." *Id.* Here, the three shooting incidents were specifically alleged to be part of a "course of conduct" that involved the "purposeful killing of or attempt to kill" two or more persons. So, without doubt, the claims were properly joined.

The abuse of discretion Dean alleges is easily rebutted. While an accused may move to sever count of the indictment on the grounds that he is prejudiced by the joinder, the State may rebut that claim of prejudice in two ways: 1) by showing that state could introduce evidence of the joined offenses as 'other acts under Evid. R. 404(B), or 2) by showing "that evidence of each crime joined at trial is simple and direct." *State v. Lott*, 51 Ohio St. 3d 160, 163, 555 N.E.2d 293(1990). Here the State satisfied both tests.

First, the evidence of each shooting incident would have been admissible under Evid.R. 404(B). The aggravated murder of Titus Arnold; the attempted murders of Yolanda Lyles and Andre Piersol; and the attempted murders of Shanta Chilton, Hassan Chilton, Shani Applin, and JaeAda Applin were specifically alleged to be part of a "course of conduct" that involved the "purposeful killing of or attempt to kill" two or more persons. Even if these counts had been tried separately, the State would have had to present evidence of each of the attempted murder incidents in order to prove this specification. *See State v. LaMar*, 95 Ohio St. 3d 181, 193-195,

2002-Ohio-2128, 767 N.E.2d 166. "Thus, there would have been a valid noncharacter purpose for admitting evidence of the other murders." *LaMar*, 95 Ohio St. 3d at 190. And the trial court did not abuse its discretion. S*ee State v. Hamblin*, 37 Ohio St. 3d 153, 159, 524 N.E.2d 476 (1988) ("Where the evidence of each of the joined offenses would be admissible at separate trials, severance is not required because prejudice due to the cumulation of evidence or the inference of a criminal disposition is largely absent.")

Also, as the prosecution pointed out at the pretrial motion hearing, the evidence in each tended to prove a number of other noncharacter purposes. 1) Common scheme or plan: In the Mini Mart incident, Dean had attempted to rob Lyles and Piersol, and testimony from Chrystal Kaboos explained that Dean had initially planned to rob her on the street, but changed his mind. This evidence together tended to show motivation, plan or common scheme to rob individuals whom Dean encountered on the streets. Further, Dean's argument regarding the murder of Titus Arnold and the Dibert Avenue shooting was that he was never present at these incidents—that Wade was operating alone. However, evidence from the Mini Mart incident that Dean carried and shot a .25 caliber pistol. This would go toward identity as the evidence showed that a .25 caliber pistol was used to shoot the car of Devon Williams at Dibert Avenue, and an unfired .25 caliber round was found near in a vehicle near where Titus was shot.

Second, the evidence of each crime is "simple and direct." The three shooting incidents took place in three separate locations on three different days: the Mini Mart shooting on April 10, 2005, the Dibert Avenue shooting on April 12, 2005, and the Titus Arnold shooting on April 13, 2005. While each crime was accomplished by multiple gunshots, the shootings themselves were simple and direct. In the Mini Mart shooting, Dean ran firing gunshots through a car windshield. In the Dibert Avenue shooting, Dean and Wade fired shots at a parked car and then

at persons standing on a porch. And in the Titus Arnold shooting, Dean approached Titus Arnold brandishing a gun. When Arnold ran, Dean attempted to fire a shot at him, but his pistol misfired. Afterwards, Wade ran after Arnold and shot him in the back. Each of these incidents carries easily distinguishable facts such that one could not be confused for the other.

Moreover, Dean has not attempted to argue that he would have defended any of cases differently if the charges had not been joined. Under these circumstances, the trial court did not err in refusing to sever the offenses. *See State v. Johnson,* 88 Ohio St. 3d 95, 108-110, 723 N.E.2d 1054 (2000) (finding no error in joinder of criminal offenses where defendant did not attempt to argue that he would have defendant any joined case differently); *see also State v. Franklin*, 62 Ohio St. 3d 118, 123, 580 N.E.2d 1, 5-6 (1991).

"[T]he jury is capable of segregating the proof of multiple charges when, as in the present case, the evidence of each crime is uncomplicated." *Hamblin*, 37 Ohio St. 3d at 159. Proposition 11 should be denied.

Response To Proposition Of Law No. 12: Where Dean's Merger Claims Were Not Raised Below, And the Facts Of The Case Show A Separate Animus As To Each, Proposition 12 Lacks Merit

Relative to the merger claims stated in Proposition 12, it does not appear that Dean brought any of them to the attention of the trial court at the time of sentencing. Sentencing Hearing, pages 5 through 21. Consequently, Proposition 12 is subject to plain error review. *State v. Powell,* 132 Ohio St. 3d 233, P177 (2012).

There is no error, plain or otherwise. The first subclaim in Dean's Proposition Of Law Number 12 is founded on the erroneous notion that a linkage of discrete crimes by a "course of conduct" capital specification pursuant to ORC 2929.04(A)(5) causes those discrete crimes to merge to a single crime for sentencing purposes under ORC 2941.25(A). Such a proposition

lacks foundation in law or logic. For example, gunshots that were fired into a car that happened to be occupied by four persons, constitutes dissimilar crimes against those victims, even though there was but a single series of gunshots. *State v. Dixson*, 2004 Ohio 2575, P33 (First Dist.). ("Felonious assaults arising from the same course of conduct, but against multiple victims, are of 'dissimilar import.' Where Dixson fired gunshots into a car containing four occupants and caused a separate risk of harm to each of those victims, he was properly convicted of four counts of felonious assault."). In similar fashion, distinct crimes against multiple victims do not merge simply because they encompass events under a course of conduct capital specification. Accordingly, the discrete crimes within a course of conduct specification remain discrete crimes for sentencing purposes, and Dean's subclaim in this regard lacks merit.

In his next subclaim, Dean erroneously contends his firearm specifications are subject to merger analysis. This contention is simply wrong. A gun specification is a sentencing provision, and not a separate offense. Consequently, merger analysis under ORC 2941.25(A) is inapplicable. *State v. Williams*, 2003 Ohio 3950 at P20 (Eighth Dist.) ("However, it is settled law in this district that the specification contained in R.C. 2929.71 is a sentencing provision, not a separate offense; thus, the specification cannot be an allied offense.") *Cf. State v. Talley*, 2006 Ohio 5322, at P62 (Eighth Dist.). ("Defendant contends that having weapons while under disability is an allied offense of similar import to a firearm specification. This exact argument has been considered and rejected by this Court.")

Relative to Dean's subclaims there is no separate animus as to the discrete use of firearms during the Mini Mart, Arnold, and Dibert Ave. crimes, the facts readily show otherwise. This separate animus factor was perceived by the trial court, where in the sentencing opinion it was said "These multiple attempts to murder six people and the ultimate murder of Titus Arnold

occurred over a four day period. They were not committed in the heat of the moment, as part of one continuous event. The three events were committed discretely with sufficient time in between each for a cooling-off, and with ample opportunity to reflect upon the crimes that had already been committed." Record Entry 435, Sentencing Opinion, pg. 4. Consequently, where there was a separate animus behind each of the charges that took place at separate times with different victims, Dean's subclaim about merger of the firearm charges lacks merit.

Separate Animus As to The 609 Dibert Ave. Habitation

Relative to shooting at victims huddled together on the front porch of a dwelling, being 609 Dibert Ave., there is a separate animus as to the discharging a weapon into the habitation, just as there would be a separate animus as to a hypothetical fifth victim standing on the porch. Firing gunshots at known victims standing on the porch of the dwelling poses an independent threat to any unseen victims who may be inside the dwelling. In this regard, spraying gunshots at people on the front porch of a habitation poses a separate animus that might not be present if the victims happened to be, for example, standing in an open parking lot, or seated in a car.

This factor of an independent threat to persons inside a habitation is especially pertinent in this case. The first round of gunshots included shots to Devon William's car, which was parked on the other side of the street from his residence. However, the evidence also showed the first round of gunshots were also directed into 604 Dibert Ave. These gunshots into 604 Dibert Ave. were not accidental, since during the first round of gunfire the bullets that were fired into the car were tightly clustered around the gas tank. The tight cluster in the car suggested purposeful aiming, which also suggests a purposeful aiming into the residence of 604 Dibert Ave.

It is significant that Dean does not challenge the propriety of the conviction for shooting into 604 Dibert Ave., where the evidence did not suggest that first round of gunfire was directed at people. Instead, the evidence showed the gunfire at 604 Dibert Ave. was specifically directed at a habitation. By these facts, and in context of this particular conviction not being challenged on appeal, there is a conclusive showing Dean possessed an animus to support a charge of shooting into a dwelling. Thus, a conclusive fact of this appeal is that Dean possessed an animus to shoot into a habitation, which should inform the Court as to the question of animus for shooting into the different dwelling across the street at 609 Dibert Ave. .

The second round of gunshots were all directed at the 609 Dibert Ave. residence. Granted, there were people readily visible on the front porch of 609 Dibert Ave. The significance, however, is that 609 Dibert Ave. was on the other side of the street from the 604 Dibert Ave. residence. Directing a new round of gunshots to a different residence is suggestive of an intent to terrorize a neighborhood. In other words, if a person or persons only were the target of gunfire, there would have been no reason to shoot into 604 Dibert Ave., where there were no readily visible people.

In this regard, a second round of gunshots into a residence, which followed a first round of gunshots into a different residence across the street, is suggestive of an animus directed toward habitations. More specifically, the animus in this is regard is directed against a neighborhood. This is not an unreasonable position, where there were no persons on the front porch of 604 Dibert, so those gunshots from the first round would not appear to have been directed at people, but rather to the habitation only. This would be especially so in this case, where the 604 Dibert Ave. occupants were two ladies who had absolutely no connection with any dispute with O-Z. Consequently, gunshots into 604 Dibert Ave. form a necessary

framework under which the gunshots into 609 Dibert Ave. should be examined. That framework suggests an effort to frighten and terrorize people in that neighborhood; to send some message to the neighborhood about the dispute with OZ.

By the creation of a distinct offense for discharge of a firearm into a habitation, the General Assembly intended the offense could be separately punished from the crime of shooting at a person who happened to be in the residence at the time of the gunfire. In other words, conviction of a charge of shooting into a habitation would not be precluded simply because a person inside the residence is struck by gunfire. *State v. Whipple*, 2012 Ohio 2938 P40 (First Dist.) ("The testimony and photographic evidence demonstrated that Whipple and his confederates had gone on a shooting rampage at this Lincoln Heights home, shooting through vehicles, doors, windows, and walls.") Cf. *State v. Grant,* 67 Ohio St. 3d 465, 475 (1993). ("Ohio's statutory scheme of punishment under R.C. 2903.01(B) of both aggravated murder and aggravated arson does not violate constitutional guarantees against double jeopardy. The General Assembly intended that both offenses be *separately* punished.") (Emphasis supplied). Consequently, there is no automatic preclusion in Dean's case for separate punishment for discharging a weapon into a habitation, simply because the victims were on the porch of the residence when the gunfire took place.

Instead, the determination whether a separate punishment is lawful must be done on a case by case basis. *State v. Logan*, 60 Ohio St. 2d 126, 131 (1979) ("However, R. C. 2941.25 (B), by its use of the term "animus," requires us to examine the defendant's mental state in determining whether two or more offenses may be chiseled from the same criminal conduct. In this sense, we believe that the General Assembly intended the term "animus" to mean purpose or, more properly, immediate motive.") Moreover, to prevail on a claim, a defendant must do more

merely assert it. Instead, a defendant bears the burden to explain how there would supposedly be a single animus, despite the convictions for two distinct crimes. *State v. Mughni*, 33 Ohio St. 3d 65, 67 (1987) ("The defendant bears the burden of establishing his entitlement to the protection, provided by R.C. 2941.25, against multiple punishments for a single criminal act.") In this regard, the Court should reject Dean's subclaim about 609 Dibert Ave. due to his failure to explain how the facts supposedly reveal a single animus for separate and distinct crimes.

Other cases could present different outcomes. For example, if a defendant had chased a victim into a residence and shot into the door that the victim had just slammed shut, there may not necessarily be a separate animus to support a charge of shooting into a habitation. Cf. *State v. Walton*, 2012 Ohio 2597 (5th Dist.) ("The count of murder was expressly based on the theory that Singleton's death was the proximate result of appellant's underlying unlawful act of firing a gun into a habitation. While our conclusions would not necessarily apply to every conceivable scenario of a killing from a drive-by shooting into a house, under the circumstances of the case *sub judice,* we are persuaded that the act and animus of murder as charged herein under R.C. 2903.02(B) are inextricably part of the same conduct as the count of improper discharge of a weapon into a habitation under R.C. 2923.161(A)(1).")

In contrast, the primary fact in this case to suggest a separate animus as to the shooting into the habitation of 609 Dibert Ave. is the shooting into the habitation of 604 Dibert Ave. This fact, in context of the global purpose of the shooting as having arisen over a dispute involving OZ, suggests a purpose to terrorize a neighborhood, and that factor shows a separate animus between shooting at the persons on the porch from the habitation itself. Consequently, Dean's subclaim about shooting into 609 Dibert Ave. lacks merit.

Where none of Dean's subclaims have merit, in light of the matter not having been raised below, this Court should reject Proposition 12.

Response To Proposition 13: Two Single Brief Comments Of Explanation By The Trial Court Fail To Show Judicial Bias

This claim is about the absence of judicial bias; nothing on the record shows its presence. In support of his claim, Dean cites a single-sentence comment from the court explaining to Dean his right of appeal and a brief explanation of the trial court, and a single-sentence comment at sentencing, as to why the Court sentenced Dean to an additional 125 years of imprisonment. These two isolated and brief statements of explanation do not meet the standard for judicial disqualification, and neither demonstrates actual bias.

Moreover, Dean made no effort to raise these claims below. This failure is significant, since Dean's accusation of judicial bias could have been addressed by the trial court, and the record on appeal would have been illuminated by the response of the trial court to the accusation of bias. Under these circumstances, Dean's claim of judicial bias should be governed by plain error review. *State v. Powell,* 132 Ohio St. 3d 233, P177 (2012)

As an initial matter, Dean failed to avail himself of the procedures described in R.C. 2701.03, which allows a party to file an affidavit of bias and prejudice with this court seeking judicial disqualification for bias.

As to the first comment about addressing the trial court's explanation of Dean's rights, there is no indication of bias. Judicial bias is "a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts." *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463(1956) paragraph four of the syllabus; *see also Cleveland Bar Assn. v. Cleary*, 93 Ohio St. 3d

191, 201 (2001). The comment in question was simply a rote recitation of a standard statement that had undoubtedly been uttered by the trial judge in some various form many times in the past.

The exact statement of the trial court is as follows:

> Mr. Dean, you are notified that you have not only the right to appeal this judgment, but that an automatic appeal will be filed for you directly at the Supreme Court of Ohio after the death sentence is imposed and that you have the right to appeal without prepayment of any costs necessary for appeal.

(Vol. 11, Tr. p. 2737).

The comment in question was simply a recitation of the defendant's rights. And further, this single-sentence comment is not an indication of a fixed *anticipatory* judgment. This statement comes after all of the evidence of the trial and mitigation had been heard by the trial court and the jury had made its recommendation. Granted, the comment was out of sequence, given that the sentencing hearing had yet to take place. However, there is nothing further in the record to suggest intemperate behavior or ill will. Moreover, had the comment been brought to the attention of the trail court, which it wasn't, the trial court undoubtedly would have corrected the statement as being out of sequence. Under these circumstances, it is unfair for Dean to draw a sinister inference from an out of sequence statement that failed to catch his attention at the time it was spoken. In this regard, the absence of objection by Dean at the time the statement was made, suggests he did not perceive the ill will and bias he now says was present. Regardless, this Court should view Dean's failure to object at the time as clear indication the trial court's comment was inadvertently out of sequence

The second statement from which Dean draws an adverse inference, is also a benign explanatory statement. In explaining the Court's reasoning in imposition of an additional 125 year sentence, the trial judge explained the following:

> Mr. Dean, it may sound ridiculous to you that I have sentenced you to death plus an additional 125 years of imprisonment. However, as difficult and as painful as it is for me to impose the death sentence upon you, I know that a lot of things can happen to that sentence prior to its imposition. Therefore, I want to make sure that you understand that it is my fervent hope that you never walk the streets again as a free man.

DH, 9-30-11, Tr. p. 18.

The trial court's remark is simply a statement of explanation. It is not a display of bias. "Because a sentencing judge must ordinarily explain the reasons for imposing a sentence, judicial comments during sentencing, even if disapproving, critical, or heavy-handed, do not typically give rise to a cognizable basis for disqualification." *State v. Campbell* (In re Winkler), 2013 Ohio 890 (2013); *see Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge").

This particular remarks came only at the end of all presentation of evidence, which would show that the remark was not a sign of anticipatory judgment, but rather an opinion formed on the basis of the evidence presented in the course of trial. In fact, the Court explained that it had considered the sentencing memoranda furnished by the parties, and the Court heard the statements of Dean. Sentencing Hearing, Tr. pgs. 10-11, 13. "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky*, 510 U.S. at 555, 114 S.Ct. 1147, 127 L.Ed.2d 474. Accordingly, there is no error.

There is a heavy "presumption of honesty and integrity in those serving as adjudicators." *Withrow v. Larkin,* 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975). Dean has failed to

overcome this presumption. Proposition 13 should be denied.

Response To Claim 14: Where The Parties And The Trial Court Expended Considerable Effort In Determining The Admission Of The State's Mitigation Phase Evidence, And Appropriate Relevance Has Been Shown, Dean's Claim Of Error Lacks Merit

In this claim, Dean asserts that none of the State's evidence should have been admitted for the mitigation phase of the trial. That assertion simply is not true: Dean construes admissibility too narrowly.

At mitigation, the State moved forward on only one of the two aggravated murder specifications: that the aggravated murder of Titus Arnold was part of a course of conduct involving the purposeful killing or attempt to kill two or more people. (Vol. 11 Tr. p. 2597). The parties and the Court engaged in a series of email exchanges to determine which exhibits to be admitted in the penalty phase. Paring down the list of exhibits, the Court actually admitted the photo lineup and information sheet shown to Andre Piersol (State's Ex. 6A and B); the shell casings and live round found in the street at the Arnold Scene (State's Ex. 16, 16A, 17, 17A, 18, 18A); the Poster Board Diagram of 609 Dibert Avenue (State Ex. 129); the handgun and magazine (State's Ex. 130, 130A, 131); photos of 609 Dibert Avenue (State's Ex. 170-194); a bullet from inside 609 Dibert Avenue porch pillar (State's Ex. 217, 217A); the Mini Mart crime scene photos (State's Ex. 219-234); a bullet from Mini-Mart Incident (State's Ex. 236, 236A); the cassette tape of Burd's 911 Call (State's Ex. 239); a bullet recovered from 609 Dibert Avenue (State's Ex. 266, 266A); two shell casings (State's Ex. 293, 293A, 293B); a box of ammunition, a live round, and an empty box of ammunition (State's Ex. 336, 336A, 336B); live rounds recovered from St. Ex. 130 (handgun) and 131 (magazine) (State's Ex. 338, 338A-H, 338A-G); an excerpt of a letter sent from Jason Dean to Ronda Sions (State's Ex. 426B); and an excerpt of a letter sent from Jason Dean to Ronda Sions (State's Ex. 474B). (Vol. 11, Tr. p.

2602-2603). Both then and now, Dean's assertion has been that the evidence was not relevant to the aggravating circumstance. Dean is wrong.

First, as Dean points out in his brief, after all of the email exchanges between the parties and the court, "[o]n the morning that the penalty phase was to begin, the trial court had pared the list down." Dean's Merit Brief at 125. In so doing, the trial court fulfilled its responsibility in determining which evidence was admissible for the mitigation phase. *See, State v. Getsy*, 84 Ohio St. 3d 180, 201 (1998); *State v. Heinish* 50 Ohio St. 3d 231 (1990).

This procedure should be seen by this Court as significant, where it is clear the matter was given considerable attention by the parties, as well as by the trial court. In other words, the expenditure of attention and effort by the trial court illustrates an exercise of discretion. The trial court should be given wide latitude in the exercise of discretion in its individual decisions concerning admissibility of evidence. Dean has failed to show how these decisions resulted in a clear and prejudicial abuse of discretion. *See, State v. Hancock*, 108 Ohio St. 3d 57, 76 (Ohio 2006) (quoting *O'Brien v. Angley*, 63 Ohio St.2d 159, 163 (1980). Consequently, Dean's failure to demonstrate error is reason enough to deny Proposition 14.

Second, Dean's assertion that this evidence was irrelevant is wrong. While he argues that the evidence presented did not pertain to the aggravating circumstance, by the terms of the statute, the capital penalty-phase hearing is not limited solely and strictly to evidence of aggravating circumstances only. *See State v. Wogenstahl,* 75 Ohio St.3d 344, 352-354, 662 N.E.2d 311 (1996); *State v. Gumm*, 73 Ohio St.3d 413, 1995 Ohio 24, 653 N.E.2d 253 (1995) syllabus. To the contrary, under R.C. 2929.03(D)(1), "the jury is statutorily required to consider (1) the aggravating circumstances proven at trial, (2) the nature and circumstances of the offense, (3) the history, character and background of the defendant, (4) all the mitigating factors listed in

R.C. 2929.04(B) including 'any other factor,' (5) the presentence investigation report requested by defendant, and (6) the mental examination report requested by defendant."[1] *State v. Greer*, 39 Ohio St. 3d 236, 253, 530 N.E.2d 382 (1988). And the jury "shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing." R.C. 2929.03(D)(1). Accordingly, "[t]he jury is thus required to 'consider' 'other evidence' relevant to [the death] specifications, including evidence relevant to the nature and circumstances of those specifications." *Gumm* (1995), 73 Ohio St.3d 413, 419, 1995 Ohio 24, 653 N.E.2d 253. So Dean's assertion that each piece of the State's evidence had to relate to the existence of the course of conduct specification is wrong.

"It is ludicrous to assert, as does appellant here, that the jury is to be carefully fed only that information which reflects positively upon appellant. As they share in the trial court's function, the jurors require access to the wide range of information which the function requires." *State v. Greer*, 39 Ohio St. 3d at 253-254, 530 N.E.2d 382.

Moreover, "the trial court may properly allow repetition of much or all that occurred in the guilt phase pursuant to R.C. 2929.03(D)(1)." *State v. Vrabel,* 99 Ohio St.3d 184, P73 (2003); *accord State v. DePew*, 38 Ohio St.3d 275, 282-283, (1988) (The Revised Code "appears to permit repetition of much or all that occurred during the guilt stage"). In fact, "a literal reading of the statute given to us by the General Assembly mandates such a result, especially in light of the prosecution's obligation to demonstrate, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation. R.C. 2929.03(D)(1)." *DePew*, 38 Ohio St.3d at 282-283,

[1] "Because findings of guilt are only made as to the specifications contained in the indictment, it is clear that the reference in these provisions to [the statutory language,] 'aggravating circumstances the offender was found guilty of committing' means the R.C. 2929.04(A) specifications set forth in the indictment and at issue in each case." *State v. Wogenstahl*, 75 Ohio St. 3d at 352-356 (1996).

As additional grounds to show the trial court acted within the bounds of discretion, R.C. 2929.03(D)(1) also provides that the court and the trial jury "* * * shall hear * * * the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. * * *" *Id.*

In this case, all of the admitted evidence was properly admissible for at least one of statutorily required considerations of R.C. 2929.03(D)(1). The lineup photos from the Mini-Mart shooting related to the course of conduct specification showing that Dean was personally and directly involved in the shooting of Piersol and Lyles. The shell casing, live rounds, pistols, and magazines used in the commission of Dean's course of conduct to kill two or more people certainly meet the relevancy requirement. And the diagram of 609 Dibert Avenue, photos of the building after the shooting, and the bullet recovered from the porch are plainly relevant to the nature and circumstances of the Dibert Avenue shooting and may be considered in the jury's determination whether the nature and circumstances mitigate. For the same reasons photos and bullets recovered from the Mini Mart shooting were also properly admitted. The 911 recording of Laroilyn Burd served to succinctly describe the scene of the first Dibert Avenue shooting; this was part of the same course of conduct. Rather than using a photograph to describe the scene, the tape was a proper and effective means of conveying this information.

In addition, the letter excerpts served to show Dean's state of mind and motivations in his actions and qualify, at minimum, as "other" evidence relevant to the death specification. Dean's own words made him appear cold-blooded and accepting of responsibility for the death of Titus Arnold. Nowhere in any of Dean's statements does he claim a lack of involvement in the murder. This evidence is certainly relevant to the aggravating circumstance, and the weight mitigating evidence should be afforded against it.

The question of relevance is left to the sound discretion of the trial Court. *See State v. Lyles*, 42 Ohio St. 3d 98, 99 (1989) ("The question of whether evidence is relevant is ordinarily not one of law but rather one which the trial court can resolve based on common experience and logic"). As such, the admission of relevant evidence is left to the sound discretion of the trial court. *See State v. Sage*, 31 Ohio St.3d 173, 180 (1987). This Court has held that it will not interfere with a relevancy issue unless it finds the trial court abused its discretion. *See O'Brien v. Angley*, 63 Ohio St.2d 159 (1980).Each item admitted by the trial court met the qualifications for admission of R.C. 2929.03(D)(1). Accordingly, the trial court did not abuse its discretion. This claim should be denied.

Response To Proposition 15: This Court Has Repeatedly Held Ohio's Capital Sentencing Scheme To Be Constitutional

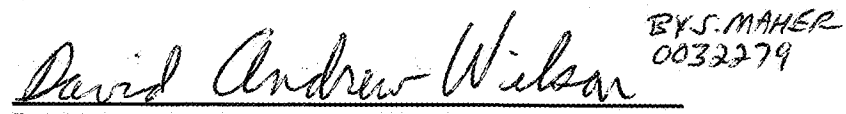
Dean argues that Ohio's capital sentencing scheme violates the United States Constitution. This Court has previously examined and disposed of the issues presented here. *See State v. Jenkins*, 15 Ohio St. 3d 164, 15 Ohio B. Rep. 311, 473 N.E.2d 264 (1984) (rejecting arguments that Ohio's capital sentencing scheme was arbitrary and capricious; *State v. Sowell*, 39 Ohio St. 3d 322, 336, 530 N.E.2d 1294, 1309 (1988); *State v. Steffen*, 31 Ohio St. 3d 111, 125, 31 Ohio B. Rep. 273, 285-286, 509 N.E.2d 383, 396 (1987); *State v. Grant*, 67 Ohio St. 3d 465, 483, 620 N.E.2d 50, 69 (1993); *State v. Maurer* (1984), 15 Ohio St. 3d 239, , 473 N.E.2d 768 (1984) paragraph six of the syllabus; *State v. Lewis*, 67 Ohio St. 3d 200, 206, 616 N.E.2d 921, 926 (1993); *State v. Buell*, 22 Ohio St. 3d 124, 22 Ohio B. Rep. 203, 489 N.E.2d 795 (1986); *State v. Phillips*, 74 Ohio St. 3d 72, 656 N.E.2d 643 (1995); *State v. Coleman*, 45 Ohio St. 3d 298, 308, 544 N.E.2d 622, 633 (1989).

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

CONCLUSION

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

Respectfully submitted,



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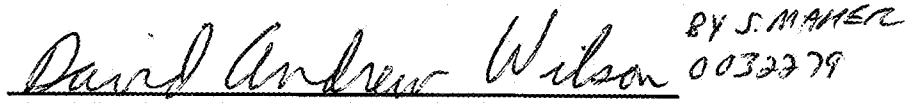
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Merit Brief of Appellee State of Ohio has been delivered by e-mail to Kathleen McGarry, Counsel of Record, and to William Lazarow, co-counsel, on this 11th day of June, 2013.



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State v. Dean
Clark County Court Of Common Pleas
Case No. 05-CR-348 - RETRIAL
Trial Transcript Summary

Law Enforcement Witnesses

Allen, David : Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 6, pgs. 1497 - 1501. Summary pg. 30.

Baader, Travis: Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 7, pgs. 1718 -1723. Summary pg. 33.

Bauer, Brett: Springfield Police Officer. Arnold homicide. Tr. Vol. 5, pgs. 1118 - 1154. Summary pgs. 7 - 8.

Beedy, Mike: Springfield Police Officer. Dibert Ave. drive by shooting and search of defendant's and co-defendant's homes. Tr. Vol. 7, pgs. 1759 - 1768. Recalled Tr. Vol. 8, pgs. 1922 – 1956, pgs. 1964 - 1966. Summary pgs. 34 - 39.

Davis, Neil: Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 8, pgs. 1790 - 1794. Summary pg. 39.

Emmel, David: Springfield Police Officer. Mini Mart and Dibert Ave. shootings. Tr. Vol. 6, pgs. 1493 - 1497. Tr. Vol. 7, pgs. 1707 - 1710. Summary pg. 30.

Estep, Douglas: Lead Detective, Springfield Police. Tr. Vol. 8, pgs. 1865 - 1911. Recalled Tr. Vol. 9, pgs. 2137 - 2165. Summary pgs. 41 – 42.

Harrington, William: Springfield Police Officer. Search of defendant's home and car. Tr. Vol. 8, pgs. 1912 - 1921. Summary pg. 42.

Hicks, Darwin: Detective, Springfield Police. Mini Mart shooting. Tr. Vol. 7, pgs. 1540 - 1551. Summary pg. 31.

Kranz, Michael: Springfield Police Officer. Arnold homicide. Tr. Vol. 6, pgs. 1265 - 1296. Summary pg. 9.

Lewis, Dana: Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 7, pgs. 1710 - 1717. Summary pg. 33.

Meyer, Jeffrey: Springfield Police Officer. Dibert Ave. drive by shooting. Tr. Vol. 7, pg. 1723 - 1726. Summary pg. 33 - 34.

Pergram, Doug: Springfield Police Officer. Mini Mart and Dibert Ave. shootings. Tr. Vol. 6, pgs. 1485 – 1493, Tr. Vol. 7, pgs. 1700 – 1707. Summary pg. 30.

Forensic Science Witnesses

Duerr, Timothy: Forensic Criminalist with the Miami Valley Crime Lab. Ballistics. Tr. Vol. 8, pgs. 1967 - 1989. Summary pgs. 43- 44.

Parsons, Mark: Springfield Police CSI. Arnold homicide and Dibert Ave. drive by shooting. Tr. Vol. 6, pgs. 1394 – 1406, Tr. Vol. 7, pgs. 1727 - 1757. Summary pgs. 10 - 28.

Roggenbeck, Robin: BCI Fingerprint Examiner. Gun seized from defendant's home. Tr. Vol. 8, pgs. 1989 - 2011. Summary pg. 46.

Steinmetz, Jeffrey: Springfield Police CSI. Arnold homicide and Dibert Ave. drive by shooting. Tr. Vol. 6, pgs. 1313 - 1394. recalled for testimony regarding the seizure of Dean's car. Tr. Vol. 9, pgs. 1836-1851. Summary pgs. 10 - 28.

Shepherd, Timothy: Forensic Criminalist with the Springfield Police. Ballistics. Tr. Vol. 9, pgs. 2088 - 2134. Summary pgs. 43 - 45.

Medical Witnesses

Miller, Brian: Paramedic, Springfield Fire Department. Arnold homicide. Tr. Vol. 5, pgs. 1070 - 1082. Summary pgs. 6 - 7.

Newland, Dr. Guy: Emergency Room Doctor at Mercy Hospital. Mini Mart Shooting. Tr. Vol. 6, pgs. 1520 - 1540. Summary pgs. 31 – 32.

Stewart, Dr. Robert: Clark County Deputy Coroner. Arnold homicide. Tr. Vol. 5, pgs. 1155 - 1185. Summary pg. 8.

Civilian Witnesses

Applin, Shani: Dibert Ave. Shooting Victim. Tr. Vol. 7, pgs. 1603 - 1609. Summary pg. 32.

Banks, Leo: Citizen eyewitness. Arnold homicide. Tr. Vol. 5, pgs. 992 - 999. Summary pg. 5.

Bowshier, Kevin: Friend Of Dean. Statements and conduct of defendant. Tr. Vol. 9, pgs. 2247 - 2268. Summary pg. 49.

Boyd, Rhonda: Barmaid, Nite Owl Tavern. Arnold homicide. Tr. Vol. 5, pgs. 1093 - 1104. Summary pg. 7.

Burd, Laroilyn: Resident of 604 Dibert Ave. Dibert drive by shooting. Tr. Vol. 7, pgs. 1552 - 1578. Summary pg. 31.

Buskirk, Victoria: Civilian Eyewitness. Arnold homicide. Tr. Vol. 5, pgs. 1104 - 1117, Summary pg. 7.

Cherry, Michelle: Counselor at Visions For Youth. Arnold homicide. Tr. Vol. 5, pgs. 997 - 991. Summary p. 5.

Chilton, Hassan: Dibert Ave. Shooting Victim. Tr. Vol. 7, pgs. 1660 - 1675. Summary pg. 32 -33.

Chilton, Shanta: Dibert Ave. Shooting Victim. Tr. Vol. 7, pgs. 1619 - 1642. Summary pg. 32.

Epperson, Kari: Eyewitness, Citizen eyewitness, Arnold homicide. Tr. Vol. 5, pgs. 1186 – 1213. Summary pgs. 8 -9.

Epperson, Terri: Citizen eyewitness, Arnold homicide. Tr. Vol. 5, pgs. 1213 – 1242. Summary p. 9.

Farmer, Joshua: Associate of Bowshier family. Tr. Vol. 7, pgs. 1591 - 1602. Summary pg. 31.

Haile, Amrosetta: Citizen eyewitness. Arnold homicide. Tr. Vol. 5, pgs. 999 – 1025. Summary pgs. 5- 6.

Kaboos, Crystal: Girlfriend of Jason Dean. Statements and conduct of defendant. Tr. Vol. 8, pgs. 1794 - 1864. Summary pgs. 39 - 41.

Lyles, Yolanda: Mini Mart Shooting Victim. Tr. Vol. 6, pgs. 1444 – 1483. Summary pgs. 29-31.

Manns, Jason: Cellmate and Friend Of Jason Dean. Statements of defendant. Tr. Vol. 9, pgs. 2170 - 2189. Summary pgs. 46 -47.

Mansfield, Danny: Owner of the Nite Owl Tavern. Arnold homicide. Tr. Vol. 5, pgs. 1083 - 1093. Summary pg. 7.

Mays, Aliscea: Friend of Josh Wade. Conduct of defendant. Tr. Vol. 6, pgs. 1304 - 1312. Summary pg. 10.

Nawman, Allison: Citizen eyewitness. Arnold homicide. Tr. Vol. 5, pgs. 1025 - 1046. Summary pg. 6.

Nott, Forrest E. II: Owner Of A Car Customizing Shop. Dibert Ave. drive by shooting. Tr. Vol. 7, pgs. 1769 - 1776. Summary pg. 39

Panstingel, Theodor: Citizen Eyewitness. Arnold homicide. Tr. Vol. 5, pgs. 1047 - 1069. Summary pg. 6.

Piersoll, Andre: Mini Mart Shooting Victim. Tr. Vol. 6, pgs. 1408 – 1443. Summary pg. 29.

Sions, Rhonda: Girlfriend of Jason Dean. Statements and conduct of defendant. Tr. Vol.9, pgs. 2192 - 2246. Summary pgs. 47 – 49.

Williams, Devon: Dibert Ave. Property Damage Victim. Tr. Vol. 7, pgs. 1675 - 1700. Summary pg. 33.

Pre-Trial Hearings Summary

Competency Hearing: Tr. Vol. 1 of 1, August 15, 2011, pgs. 30 – 33. Following submission of a report by Dr. Kidd on the trial court's own motion to determine competence, the trial court found Dean competent. Dr. Kidd's report marked as Court's Exhibit 1 and ordered sealed.

Jury Waiver re: Weapons Under Disability Charges: Tr. Vol. 1 of 1, August 15, 2011, pgs. 34 – 37. Following a colloquy with Dean, the trial court accepted a jury waiver as to the weapons under disability charges.

Argument re: Admissibility Of Other Bad Acts During Mitigation: Tr. Vol. 1 of 1, August 22, 2011, pgs. 15 – 19. Following argument by the parties, the trial court determined that in respect to any possible defense mitigation testimony about Dean's adaptability to prison life, the State would be entitled to rebut with evidence of Dean's bad prison behavior.

Status re: MRI Testing Of Dean: Tr. Vol. 1 of 1, August 22, 2011, pgs. 24 – 27. Following an evaluation of Dean by neuropsychologist Dr. Donninger, the parties agreed to proceed with MRI testing of Dean at the Springfield Regional Imaging Center.

Voir Dire Summary

Juror 342: Tr. Vol. 3, pgs. 563 – 573, pgs. 589 – 593, 607 – 609; Juror 342 stated his opinion was that the death penalty is appropriate for murder, but that he could set those opinions aside and apply the law as instructed by the Court. Defense challenge for cause overruled. Juror 342 excused by defense peremptory challenge, Tr. Vol. 4, pg. 912.

Juror 357: Tr. Vol. 3, pgs. 561 - 565, pgs. 584 – 587, pgs. 593 – 595. Juror 357 stated his opinion that the death penalty appeal process should be shortened, but that he would make his decision based on the evidence before him. No defense challenge for cause and no defense peremptory challenge. Juror 357 was seated on the jury. Tr. Vol. 4, pg. 923.

Juror 446: Tr. Vol. 4, pgs. 784 – 788, pgs. 792 – 799, pgs. 810 – 819. Juror 446 stated that the death penalty should be imposed for every murder, but that she would listen to everything before deciding. Defense challenge for cause sustained. Tr. Vol. 4, pg. 833.

Juror 449: Tr. Vol. 4, pgs. 784 – 788, pgs. 792 – 799, pgs. 810 – 823. Juror 449 stated that he personally favored the death penalty for every murder, but that the mitigating factors are important to the penalty decision. Defense challenge for cause overruled. Tr. Vol. 4, pgs. 833 – 835. Juror 449 was excused by a defense peremptory challenge. Tr. Vol. 4, pg. 918 – 919.

Peremptory Challenges: Tr. Vol. 4, pgs. 911 – 921. The State exercised each one of its six peremptory challenges for the main jury and each one of its three peremptory challenges for the alternate jurors. The defense passed on its first, third, fourth, and fifth peremptory challenges of the main jury, striking juror 342 with its second peremptory challenge and juror 311 with its sixth peremptory challenge. The defense utilized each one of its three peremptory challenges for the alternate jurors, striking jurors 430, 449 and 447.

Trial Transcript Summary

State's Opening Statement: Tr. Vol. 4, pgs. 946 - 959.

Defense Opening Statement: Tr. Vol. 4, pgs. 960 - 965.

State's Case In Chief

Michelle Cherry: Co-Worker of victim Titus Arnold. Tr. Vol. 5, pgs. 977 - 991. Cherry was the night shift (12:00 midnight to 8:00 AM) counselor at the Visions for Youth facility, a group home for troubled youth, located nearby to the Nite Owl Tavern and the homeless shelter. Titus Arnold was the second shift (4:00 PM to 12:00 midnight) youth counselor, whom Cherry would relieve. Cherry identified a photograph of Titus Arnold. (**State's Exhibit 7**). On the day of the shooting, April 13, 2005, Cherry arrived at work at 20 minutes until midnight. After Titus had a phone call with his friend Franco, Titus began to walk home. Titus left, carrying a blue back pack over his shoulder. About two minutes later, Michelle heard gunshots. Michelle looked out a second floor balcony and saw Titus laying in the street. Michelle called 911, and identified a recording of the call that was played for the jury. **State's Exhibit 5B**. Michelle ran outside and saw Titus laying in the street with a bullet hole through his head. Police arrived shortly thereafter. Michelle also testified that her nephew, William Calhoun, goes by the name of "Oz", and that her son, Adonte Cherry, goes by the name of "Tune." Shanta Chilton is a close friend of her son Tune.

Leo Banks: Citizen eyewitness. Tr. Vol. 5, pgs. 992 - 999. On the night of the shooting, April 13, 2005, Banks was a passenger in a car stopped at a red light at the intersection of Yellow Springs and High Street. Banks identified his location on a map of the area. **State's Exhibit 9**. Banks heard two gunshots. Banks saw two men running across High Street in back of the homeless shelter. One was tall and one was short.

Amrosetta Haile: Citizen eyewitness. Tr. Vol. 5, pgs. 999 – 1025. At 11:50 PM on the night of the shooting, April 13, 2005, Haile was driving her car northbound on Light,

intending to turn eastbound on High. That intersection is about a block away from the Nite Owl Tavern. Before Haile turned, a car traveling eastbound on High sped past her. As Haile turned eastbound on High, the speeding car stopped in the nearby parking lot of the family shelter. Two people got out of the car. One was tall and one was short. The two people began chasing the man in a gold coat, who was running across the street. Haile thought the pursuers were black because their clothes were baggy. The tall pursuer went back to the passenger side of the car. Haile saw blue flashes and heard two gunshots. The man in the gold coat fell to the street. The distance between Haile and the shooting was the same as the distance between the witness chair and counsel table. The tall one and the short one hovered over the body for a couple of seconds and then ran back to the car. The car drove off. Haile got out of her car and saw that the victim was black, and was bleeding from gunshot wound to the head. Haile drove about four blocks away to the Executive Inn and called 911. Haile identified the recording of her 911 call, which was played for the jury. **State's Exhibit 5C**. Haile identified a picture of the victim as he was laying in the street at the shooting scene. **State's Exhibit 10**.

Allison Nawman: Citizen eyewitness. Tr. Vol. 5, pgs. 1025 - 1046. On the night of the shooting, April 13, 12005, Nawman was seated in the front room of the home of her husband, Theodore Panstingel, located at the corner of Race and High. Using a map, Nawman pointed out the location of the home. Nawman heard a gunshot and looked out the window. She saw a man standing over a man lying in the street. The man was short, about five foot six, and wore a hooded jacket. Nawman grabbed her phone and went outside to the porch. Once on the porch, Nawman saw the same short man standing over the man lying in the street and another man running away. The short man who had been standing in the street ran to a car. As the short man was running, the brake lights on the car were already lit up. The short man jumped in the car. The car drove off eastbound on High. Nawman then went to the victim in the street and took the victim's hand. The victim had no pulse. Her husband took off his own shirt and used the shirt to cover the victim's face. Nawman identified a photo of the victim laying in the street. **State's Exhibit 10**.

Theador Panstingel: Citizen Eyewitness. Tr. Vol. 5, pgs. 1047 - 1069. On the night of the shooting, April 13, 12005, Panstingel was seated in the front room of his home at the corner of Race and High. Outside the house, Panstingel heard a loud pop and looked out the window. Panstingel saw a man lying on his back in the street and another man standing at the feet of the man lying in the street. The man standing up was short and wore a hoodie type jacket. Panstingel's wife Allison Nawman screamed, and the short man in the hoodie looked in their direction. The short man in the hoodie ran to a car that was parked in the family shelter parking lot and jumped in the driver's side. The brake lights of that car were already lit. Panstingel and his wife, Allison Nawman, went outside to help the victim, who was bleeding from a head wound. The victim had no pulse. Panstingel took off his shirt and used it to cover the victim's face. Panstingel identified a photo of the victim as he laid in the street. **State's Exhibit 10**.

Brian Miller: Paramedic, Springfield Fire Department. Tr. Vol. 5, pgs. 1070 – 1082. Paramedics arrived at the scene at 2 seconds past midnight. Springfield police were present and removed the victim's backpack. The victim was hooked to a heart monitor but registered no pulse. The victim was transported to Mercy Hospital, although there were no signs of

breathing or consciousness. Upon arrival at Mercy Hospital, the victim remained without life signs.

Danny Mansfield: Owner of the Nite Owl Tavern. Tr. Vol. 5, pgs. 1083 - 1093. Inside the Nite Owl Tavern, Mansfield had a four camera video (no audio) security system that continuously recorded activity in the bar. On the night of the shooting, April 13, 2005, Mansfield maintained a video tape and identified it as **State's Exhibit 4B**. Because Mansfield hadn't yet changed the time stamp, the video showed a time one hour earlier than the true time. The video was played for the jury, showing activities from 11:44 PM to 11:47 PM when two men were shown leaving the bar.

Rhonda Boyd: Barmaid of the Nite Owl Tavern. Tr. Vol. 5, pgs. 1093 - 1104. On the night of the shooting, April 13, 2005, two young guys came into the Nite Owl Tavern where Boyd was a barmaid. On was tall and one was short. After a few minutes, the two young guys went out the back door. One of the two guys resembled Mark Dean, a man known by Boyd as a former patron of the Nite Owl Tavern. Boyd narrated a security videotape **State's Exhibit 4B** showing the two young guys enter at 11:45 PM and then leave the bar at 11:47 PM. About 15 or 20 minutes after the two guys left, Boyd saw lights from emergency vehicles nearby. Boyd heard nothing outside due to the noise and music from inside the bar. Boyd identified the photo lineup where she picked out Jason Dean's picture as the shorter of the two guys who were in the bar that night. **State's Exhibits 3A and 3B**. Boyd also did an in-court identification of Jason Dean.

Victoria Buskirk: Civilian Eyewitness. Tr. Vol. 5, pgs. 1104 – 1117. While in the front room of her home on Race street near the Nite Owl Tavern on the night of the shooting, Buskirk heard a car make an loud and distinctive sound. Buskirk looked outside and saw a silver colored car that was making the loud distinctive sound park across the street. Two occupants, one who was tall and one who was short, got out of the car and went into the back door of the Nite Owl Tavern. The driver was the shorter of the two. Buskirk knew one of the two men to be Josh Wade, the son of her cousin, Jean Wade. About 15 minutes later, Buskirk heard the car with the loud distinctive sound start up again. Buskirk heard the car travel around the corner and about 30 seconds later she heard two gunshots. Buskirk heard a lady yell "he's been shot." Buskirk went outside and saw the victim laying in the street. Buskirk identified a videotape made of the silver car **State's Exhibit 125A** that was played for the jury. Buskirk testified that the sound made by the car in the video was similar to the sound made by the car she heard the night of the shooting. Buskirk also identified photographs of the shooting scene. **State's Exhibit 126** and **State's Exhibit 127**. Buskirk pointed out locations on the area diagram marked as **State's Exhibit 9**.

Brett Bauer: Springfield Police Officer. Tr. Vol. 5, pgs. 1118-1154. Bauer identified **State's Exhibit 9** as an accurate diagram of the streets and locations surrounding the Arnold crime scene. Bauer saw a young black male lying in the street in a pool of blood and identified **State's Exhibit 10** as a photograph of that person. The victim had no life signs. Bauer pulled up the victim's white toboggan hat and saw a wound on the forehead. Bauer identified **State's Exhibit 22A** as the white toboggan hat taken from the victim and **State's Exhibit 19A** as the gold coat worn by the victim. The shirt that was draped over the victim's

face was identified as **State's Exhibit 13A**. Bauer identified photographs marked as **State's Exhibit 10Y, State's Exhibit 10 X, State's Exhibit 10W, State's Exhibit 10G, State's Exhibit 10V, State's Exhibit 10U, State's Exhibit 10T, State's Exhibit 10S, State's Exhibit 10R** as images of the street area around the victim. Bauer identified **State's Exhibit 14A** as the victim's backpack and **State's Exhibit 15A** as the cellphone recovered from underneath a nearby pickup truck. **State's Exhibit 15 B** was identified as the belt clip recovered from underneath the pickup truck, and **State's Exhibit 10A** was identified as a photograph of the license plate of the pickup truck. **State's Exhibit 10B, State's Exhibit 10D** and **State's Exhibit 10E** were identified as a photographs of the pickup truck showing a bullet hole. **State's Exhibit 10K, State's Exhibit 10L** and **State's Exhibit 10N** were identified as a photograph of bullet casings on the street pavement. Bauer identified **Defense Exhibit A** as an interoffice communication he wrote to Lieutenant Alexander about activities at the homicide scene.

Dr. Robert Stewart: Clark County Deputy Coroner. Tr. Vol. 5, pgs. 1155 - 1185. Dr. Stewart identified a picture of the victim's face taken during autopsy proceedings. **State's Exhibit 120, State's Exhibit 119**. The victim had a gunshot wound to the base of the neck **State's Exhibit 118** that exited the forehead. A photo of the entrance wound **State's Exhibit 122** did not reveal gunshot residue. Dr. Stewart identified a photo of the victim's jacket **State's Exhibit 121** showed a hole in the collar area, consistent with that which would be caused by a bullet. There were no muzzle marks or gunshot powder marks on the jacket. A photo was identified showing a contusion to the victim's head. **State's Exhibit 119**. A photo was identified showing a metal fragment at the area where the victim's spinal cord meets the brain. **State's Exhibit 123**. Dr. Stewart used a diagram **State's Exhibit 124** to illustrate the victim's injuries. The bullet fragment recovered from the victim was identified. **State's Exhibit 23A. State's Exhibit 23B** is a blood standard from the victim **State's Exhibit 23C** is a vial of blood from the victim. Dr. Stewart found tears in the toboggan hat **State's Exhibit 22A** that were consistent with a bullet strike. The cause of death was a gunshot wound to the neck.

Kari Epperson: Citizen eyewitness, cousin of Joshua Wade. Tr. Vol. 5, pgs. 1186 - 1213. During the month of April 2005, Kari was visiting her mother, who had an apartment on High Street. Kari identified the location on a map. **State's Exhibit 9** Earlier in the month, while hanging out on Liberty Street, she saw her cousin, Josh Wade, with a man she later leaned was named Jason Dean. Kari identified the defendant as the man she saw with her cousin Josh Wade. Kari also saw Josh and Jason together at a Wendy's restaurant. On the night of the shooting, April 13, 2005, Kari was next to a window that looked out onto High Street. She heard squealing tires. Kari looked out the window onto High Street and saw a car pull into the parking lot across the street. The driver's door was already opened. She saw a man run into the middle of the street. The man fired two gunshots. She knew it was gunshots because she saw the fire from the gun and heard the shots. Kari didn't see anyone else, and did not see at whom the man was shooting. The man turned slowly back toward the car. At that point, Kari recognized the man as her cousin, Josh Wade. Wade turned slowly, looked up, and then ran to the car. Wade got into the driver's side. Kari did not see anyone else get into the car with Wade. Wade drove off on High towards Yellow Springs Street. After the car drove off, Kari ran outside. She saw a body lying in the street. At first, Kari said nothing to

anyone about her recognition of her cousin Josh Wade as the person who shot the gun. That night, Kari did show police where the shooter had been standing, and it was at that location police shone a flashlight and Kari saw casings from a gun. Later, Kari revealed to a police detective that it was her cousin Josh Wade that she saw shooting the gun.

Terri Epperson: Citizen eyewitness, cousin of Joshua Wade. Tr. Vol. 5, pgs. 1212 - 1242. On the night of the shooting, April 13, 2005, Terri was visiting her mother, Brenda, who lived in a second floor apartment on High Street. Terri identified locations on a map. **State's Exhibit 9**. Intending to get her son's diaper bag out of her car parked outside her mother's apartment, Terri looked out the window before she went outside. When Terri looked out the window, she saw a car pulling into the parking lot across the street. Then, she saw a man running down the street being chased by two other men. At that point, Terri came down the stairs and lost sight of the street. As she stepped outside onto the porch of the apartment, she saw a the driver's door opening up of the same parked car she had seen from the apartment window. A guy got out of the driver's side of the parked car. The guy ran down the street. The same guy stopped and fired two gunshots. Terri saw the guy shoot the gun, and she saw fire come out of the end of the gun and heard two gunshots. After shooting, the guy stopped and looked around. That's when Terri recognized the shooter as her cousin, Josh Wade. Terri saw Wade run back to the same parked car. Terri saw Wade get into the driver's side saw the car drive off. After the police arrived, Terri went to the end of the street and saw a man lying in the street in the same direction that she had seen the person being chased by two men. Later, on April 27, 2005, Terri picked Josh Wade's photo out of a police photo lineup, **State's Exhibit 2A,** as being the person she saw shoot a gun that night.

Stipulation Regarding Weapons Under Disability: Tr. Vol. 5, pgs. 1243 – 1244. The trial court accepted a written stipulation of fact regarding the weapons under disability counts.

Michael Kranz: Springfield Police Officer. Tr. Vol. 6, pgs. 1265 - 1296. Officer Kranz checked the victim Titus Arnold for life signs but found none. Officer Kranz cut the back pack off the victim's back. **State's Exhibit 14A**. Officer Kranz saw two shell casings about 50 feet from the body. Following a recitation of his training in firearms, Officer Kranz demonstrated before the jury the operation of a semiautomatic pistol, using dummy bullets. Officer Kranz went on to explain the misfire process and the ejection process. Officer Kranz identified **State's Exhibit 130**, a .40 caliber semiautomatic pistol manufactured by Hi-point. This pistol uses a striker pin instead of a traditional hammer to fire the bullet. Using a demonstration .25 caliber semiautomatic pistol, Officer Kranz showed the size comparison with **State's Exhibit 130,** where the .40 caliber semiautomatic pistol is significantly larger than the .25 caliber pistol.

Hannah Smith: Dean's niece. Tr. Vol. 6, pgs. 1297 – 1304. In early April, 2005, while visiting at Dean's house, Smith saw Dean with a little gun, silver and black in color. While she was standing by the front door, Dean stood on the front porch and shot that gun once into the air. During the same time frame, Dean asked Smith to retrieve some CD's from his car. When she did so, she felt a gun underneath the driver's seat of Dean's car. Smith

pulled the gun out and looked at it. That gun was all black in color and large in size. Smith placed the gun back underneath the driver's seat.

Aliscea Mays: Wade's friend. Tr. Vol. 6, pgs. 1304 – 1312. In the early part of April 1995, Jason Dean began associating with her friend Josh Wade. Once Dean appeared, Wade spent a considerable amount of time with Dean. Josh Wade was brought into the courtroom and Mays identified him. To show the size comparison between Dean and Wade, they stood next to each other.

Jeffrey Steinmetz and Mark Parsons: Springfield Police CSI. **Steinmetz:** Tr. Vol. 6, pgs. 1313 – 1394 (Arnold Crime Scene). Steinmetz processed the Arnold shooting scene. The spent bullet casings were .40 caliber Smith & Wesson. Tr. Vol. 6, pgs. 1359 - 1361. The live round from the sidewalk by the parking lot was .25 caliber. Tr. Vol. 6, pgs. 1364. **Parsons:** Tr. Vol. 6, pgs. 1394 – 1406 (Arnold homicide). Parson photographed and inventoried victim Titus Arnold's back pack and contents at the police station. Tr. Vol. 7 , pgs. 1727-1757 (Dibert Ave.) Parsons took photos and processed evidence at the shooting scene at 604 and 609 Dibert Ave.

Photos & Videos

State's Exhibit Number	Exhibit Description
9	Graphics chart, computer created, showing overall scene at Race & High. Tr. Vol. 6, pg. 1317.
12	Graphics chart, computer created, showing the scene as focused on the 500 block of West High Street. Tr. Vol. 6, pgs. 1318 - 1319. Photo ID numbers 1 through 12, and measuring points A, B, C, and D are explained. Tr. Vol. 6, pgs. 1371 – 1377.
28	Photo of Race & High street sign. Tr. Vol. 6, pg. 1334.
29	Photo of exterior of 538 W. High St.. Tr. Vol. 6, pg. 1334.
30	Photo of pickup truck in relation to where the victim had been laying in the street. Tr. Vol. 6, pg. 1335.
31	Street scene photo looking eastbound. Tr. Vol. 6, pg. 1335.

Photos & Videos

State's Exhibit Number	Exhibit Description
40	Photo of a white shirt laying in the street Tr. Vol. 6, pg. 1335 - 1336.
41	Photo close up of the bullet hole in the pickup truck door. Tr. Vol. 6, pg. 1336.
42	Photo of the exterior of 534 West High Street. Tr. Vol. 6, pg. 1336.
43	Photo of victim's backpack and pool of blood in the street. Tr. Vol. 6, pg. 1336.
44	Photo of cell phone and cell phone holder underneath the pickup truck. Tr. Vol. 6, pg. 1336 – 1337.
45	Photo of white t-shirt and pool of blood in the street. Tr. Vol. 6, pg. 1337.
46	Photo of cell phone and cell phone holder underneath the pickup truck. Tr. Vol. 6, pg. 1337.
47	Photo of white short and the pickup truck. Tr. Vol. 6, pg. 1337.
48	Photo of the exterior of 532 W. High St. Tr. Vol. 6, pg. 1338.
49	Photo of street scene of the 500 block of West High Street. Tr. Vol. 6, pg. 1338.

Photos & Videos

State's Exhibit Number	Exhibit Description
50	Photo of red Chevy Blazer parked in the 500 block of West High Street. Tr. Vol. 6, pg. 1338.
51	Photo of road flares used to mark the location of the spent bullet casings. Tr. Vol. 6, pgs. 1338 - 1339.
52	Photo of road flares used to mark the location of the spent bullet casings. Tr. Vol. 6, pg. 1339.
53	Photo of road flare in relation to the license plate of the vehicle. Tr. Vol. 6, pg. 1339.
54	Photo of exterior of 530 West High Street. Tr. Vol. 6, pg. 1340.
55	Photo of road flares. Tr. Vol. 6, pg. 1340.
56	Photo close up of spent bullet casing next to road flare marker. Tr. Vol. 6, pg. 1341.
57	Photo of road flare and spent bullet casing. Tr. Vol. 6, pg. 1341.
58	Photo of light pole by the address of 522 West High Street. Tr. Vol. 6, pg. 1341.
59	Photo of the telephone pole used as measuring point C. Tr. Vol. 6, pg. 1341.
60	Photo of the identifying number on the telephone pole used as measuring point C. Tr. Vol. 6, pg. 1341 - 1342.

Photos & Videos

State's Exhibit Number	Exhibit Description
61	Photo of the identifying number on the telephone pole used as measuring point C. Tr. Vol. 6, pg. 1342.
62	Photo of a car parked at 522 West High Street. Tr. Vol. 6, pg. 1342.
63	Photo of a car parked in front of 528 West High Street . Tr. Vol. 6, pg. 1342.
65	Photo of a house showing the address 528 West High Street. Tr. Vol. 6, pg. 1342.
66	Photo of the telephone pole used as measuring point C, also showing location of the live .25 caliber round. Tr. Vol. 6, pg. 1343.
67	Photo of live .25 caliber bullet laying on the sidewalk and tread marks also shown in photo ID 12. Tr. Vol. 6, pg. 1343.
68	Photo of live bullet laying on the sidewalk across from 522 West High Street. Tr. Vol. 6, pg. 1343.
69	Photo of cones showing tire marks in the street. Tr. Vol. 6, pgs. 1343 – 1344.
70	Photo of cones showing tire marks in the street. Tr. Vol. 6, pg. 1344.
71	Photo of cones showing tire marks in the street. Tr. Vol. 6, pg. 1344 - 1345.

Photos & Videos

State's Exhibit Number	Exhibit Description
72	Close up photo of tire marks with ruler showing width of tread. Tr. Vol. 6, pg. 1345.
73	Photo of light pole at 538 West High Street showing measuring points A and B. Tr. Vol. 6, pg. 1345.
74	Photo of evidence placards A and B in front of 538 West High St. Tr. Vol. 6, pgs. 1345 - 1346.
75	Photo of telephone pole used as measuring point A. Tr. Vol. 6, pg. 1346.
76	Photo of telephone pole in front of 538 West High Street used as measuring points A and B. Tr. Vol. 6, pg. 1346.
77	Photo of light pole in front of 538 West High Street used as measuring points A and B, where the victim had been lying in the street . Tr. Vol. 6, pg. 1346.
78	Photo showing evidence reference numbers placed where the victim had been lying in the street. Tr. Vol. 6, pg. 1346 - 1347.
80	Photo of blood pool with a 3 inch ruler. Tr. Vol. 6, pg. 1347.
81	Photo of white T shirt and victim's belongings in the street. Tr. Vol. 6, pg. 1348.
82	Photo of victim Titus Arnold's backpack. Tr. Vol. 6, pg. 1352.
84	Photo of evidence placard 4, showing where the backpack had been located. Tr. Vol. 6, pg. 1352.

Photos & Videos

State's Exhibit Number	Exhibit Description
85	Photo backpack and belongings. Tr. Vol. 6, pg. 1354.
86	Photo of bullet hole in pickup truck parked in front of 534/538 West High Street. Tr. Vol. 6, pg. 1355.
87	Photo of bullet hole in pickup truck. Tr. Vol. 6, pg. 1355.
88	Photo of bullet hole in the driver's door of the pickup truck with a metric measuring ruler, where the bullet travelled from the back of the vehicle toward the front of the vehicle. Tr. Vol. 6, pgs. 1355 - 1356.
89	Photo of bullet hole with metric measuring ruler. Tr. Vol. 6, pg. 1356.
90	Photo showing evidence placards 8 and 9 and road flares. Tr. Vol. 6, pg. 1358.
91	Photo of spent bullet casing associated with Photo ID 8. Tr. Vol. 6, pg. 1359.
92	Photo of spent bullet casings associated with Photo ID placards 8 and 9. Tr. Vol. 6, pg. 1359.
93	Photo of spent bullet casing associated with Photo ID placards 8 and 9. Tr. Vol. 6, pg. 1361 - 1362.
94	Photo of spent bullet casing with a three inch ruler, associated with Photo ID placard 9. Tr. Vol. 6, pg. 1362.
95	Photo of tire marks in the street associated with Photo ID placards 11 and 12. Tr. Vol. 6, pg. 1362 - 1363.

Photos & Videos

State's Exhibit Number	Exhibit Description
96	Photo of live bullet in the street area nearby to the parking lot associated with Photo ID placard 10. Tr. Vol. 6, pg. 1136.
97	Photo of live bullet in the street area nearby to the parking lot with a three inch ruler associated with Photo ID placard 10. Tr. Vol. 6, pg. 1363.
98	Photo of tire marks in the street, associated with placards 11 and 12, and associated with diagram State's Exhibit 12 in relation to placard 10 showing the live .25 caliber round. Tr. Vol. 6, pgs. 1365 - 1366.
99	Photo of tire mark in the parking lot associated with placard 11. Tr. Vol. 6, pg. 1366.
100	Photo of tire mark in the parking lot associated with placard 12. Tr. Vol. 6, pg. 1366.
101	Photo of tire mark in the parking lot associated with placard 12. Tr. Vol. 6, pg. 1366.
102	Photo of utility pole measuring point C and manhole cover measuring point D. Tr. Vol. 6, pg. 1366.
103	Photo of manhole cover measuring point D and utility pole measuring point C. Tr. Vol. 6, pg. 1367.
104	Photo of measuring points. Tr. Vol. 6, pg. 1370.
105	Photo of measuring points. Tr. Vol. 6, pg. 1370 - 1371.

Photos & Videos

State's Exhibit Number	Exhibit Description
106	Photo of victim Titus Arnold's gray muscle shirt. Tr. Vol. 6, pg. 1377 - 1378.
107	Photo of victim Titus Arnold's gray muscle shirt with bullet hole and three inch ruler. Tr. Vol. 6, pg. 1379.
108	Photo of victim Titus Arnold's white toboggan hat. Tr. Vol. 6, pgs. 1379.
109	Photo of victim Titus Arnold's white toboggan hat, showing bullet hole and three inch ruler. Tr. Vol. 6, pg. 1380 - 1381.
110	Photo of victim Titus Arnold's white toboggan hat, showing bullet hole and three inch ruler. Tr. Vol. 6, pg. 1381.
111	Photo of victim Titus Arnold's 's gray shirt. Tr. Vol. 6, pg. 1381 - 1382.
112	Photo of victim Titus Arnold's gray shirt with bullet hole and three inch ruler. Tr. Vol. 6, pg. 1383.
113	Photo of hospital identification tag on victim Titus Arnold's shirt. Tr. Vol. 6, pg. 1383.
114	Photo of victim Titus Arnolds gold jacket. Tr. Vol. 6, pg. 1383 - 1384.
115	Photo of bullet hole in jacket with three inch ruler. Tr. Vol. 6, pg. 1384 - 1385.
116	Photo of inside of the jacket with manufacturer's label. Tr. Vol. 6, pg. 1385
117	Photo of the inside of victim Titus Arnold's gold jacket showing a bullet hole. Tr. Vol. 6, pg. 1385.

Photos & Videos

State's Exhibit Number	Exhibit Description
125A	Video (with audio) of Dean's car. Played for jury and narrated by Officer Steinmetz. Tr. Vol. 8, pgs. 1958 - 1960.
128	Crime scene video. Played for jury and narrated by Officer Steinmetz. Tr. Vol. 6, pgs. 1321 - 1330.
129	Graphics chart, computer generated, of shooting scene at 609 Dibert Ave. Tr. Vol. 7, pg. 1737
132	Photo of pickup truck with a bullet hole that was at the front of 538 West High Street, now at the storage facility. Tr. Vol. 6, pg. 1387 - 1388.
133	Photo of pickup truck with a bullet hole that was at the front of 538 West High Street, now at the storage facility. Tr. Vol. 6, pg. 1388.
134	Photo of license plate of pickup truck at towing facility. Tr. Vol. 6, pg. 1388.
135	Photo of VIN of pickup truck at towing facility. Tr. Vol. 6, pg. 1388 - 1389.
136	Photo close up of the bullet hole in the pickup truck with measuring ruler. Tr. Vol. 6, pg. 1388 - 1389.
137	Photo of inside panel of the pickup truck door with the bullet hole. Tr. Vol. 6, pg. 1390.
138	Photo of the bullet located in the inside panel of the door of the pickup truck. Tr. Vol. 6, pg. 1390 - 1391.

Photos & Videos

State's Exhibit Number	Exhibit Description
140	Photo of victim's back pack at police headquarters. Tr. Vol. 6, pg. 1396.
141	Photo of victim's back pack at police headquarters. Tr. Vol. 6, pg. 1396.
142	Photo of victim's back pack contents at police headquarters. Tr. Vol. 6, pg. 1397.
143	Photo of victim's back pack contents at police headquarters. Tr. Vol. 6, pg. 1397.
144	Photo of the contents victim's backpack at police headquarters. Tr. Vol. 6, pg. 1397.
145	Photo of exterior of 604 Dibert Ave. Tr. Vol. 7, pg. 1728.
146	Photo of exterior of 604 Dibert Ave. Tr. Vol. 7, pg. 1728.
147	Photo of bullet strikes that hit 604 Dibert Ave. Tr. Vol. 7, pgs. 1728 – 1729.
148	Photo of bullet strike marked with evidence placards 5 and 6. Tr. Vol. 7, pgs. 1729.
149	Photo close up of bullet strike marked with evidence placard 5. Tr. Vol. 7, pg. 1729.
150	Photo close up of bullet strike marked with evidence placard 5. Tr. Vol. 7, pg. 1729.

Photos & Videos

State's Exhibit Number	Exhibit Description
151	Photo of bullet strikes that hit 604 Dibert Ave. Tr. Vol. 7, pg. 1729.
152	Photo close up of bullet strike in window at 604 Dibert Ave. marked with evidence placard 5. Tr. Vol. 7, pgs. 1729 -1730.
153	Photo close up of bullet strike in window at 604 Dibert Ave. marked with evidence placard 6. Tr. Vol. 7, pg. 1730.
154	Photo of inside of the house at 604 Dibert Ave. where the bullet from the window would have traveled. Tr. Vol. 7, pg. 1730.
155	Photo of inside of the house at 604 Dibert Ave. showing evidence placards 5 and 6. Tr. Vol. 7, pgs. 1730 - 1731.
156	Photo of inside of the house at 604 Dibert Ave. where the bullet from the window would have traveled, showing evidence placard 5. Tr. Vol. 7, pg. 1731.
157	Photo of inside of the house at 604 Dibert Ave. showing bullet strike marked with evidence placard 6. Tr. Vol. 7, pg. 1731.
158	Photo of inside of the house at 604 Dibert Ave. showing bullet strikes on the wall. Tr. Vol. 7, pgs. 1731 - 1732.
159	Photo of inside of the house at 604 Dibert Ave. showing bullet strikes. Tr. Vol. 7, pg. 1732.
160	Photo close up of inside of the house at 604 Dibert Ave. showing bullet strikes associated with evidence placard 5. Tr. Vol. 7, pg. 1732.

Photos & Videos

State's Exhibit Number	Exhibit Description
161	Photo close up of inside of the house at 604 Dibert Ave. showing bullet strikes associated with evidence placard 6. Tr. Vol. 8, pg. 1554.
162	Photo of outside of 604 Dibert Ave. where the bullet strike marked with evidence placard 5 went through a porch pillar. Tr. Vol. 7, pg. 1732.
163	Photo of inside of the house at 604 Dibert Ave. showing bullet strikes on wall above the fireplace, showing evidence placards 5 and 6. Tr. Vol. 7, pg. 1733.
164	Photo close up of inside of the house at 604 Dibert Ave. showing bullet strikes associated with evidence placard 5. Tr. Vol. 7, pg. 1733.
165	Photo close up of inside of the house at 604 Dibert Ave. showing bullet strikes associated with evidence placard 6. Tr. Vol. 7, pgs. 1733 - 1734.
166	Photo of inside of the house at 604 Dibert Ave. where the bullet from the window would have traveled. Tr. Vol. 7, pg. 1734.
167	Photo of living room of 604 Dibert Ave. Tr. Vol. 7, pg. 1734.
168	Photo of inside of the house at 604 Dibert Ave. showing bullet strikes on the wall. Tr. Vol. 7, pgs. 1734 - 1735.
169	Photo of living room of 604 Dibert Ave. Tr. Vol. 7, pg. 1735.

Photos & Videos

State's Exhibit Number	Exhibit Description
170	Photo of the outside of 609 Dibert Ave. Tr. Vol. 7, pg. 1735.
171	Photo close up of bullet strike on pillar at 609 Dibert Ave. Tr. Vol. 7, pg. 1735 - 1736.
172	Photo close up of bullet strike on pillar at 609 Dibert Ave. Tr. Vol. 7, pg. 1736.
173	Photo of the outside of 609 Dibert Ave. Tr. Vol. 7, pg. 1736.
174	Photo close up of bullet strike on pillar at 609 Dibert Ave. with a three inch ruler. Tr. Vol. 7, pg. 1736
175	Photo close up of bullet strike after exiting the pillar at 609 Dibert Ave. Tr. Vol. 7, pg. 1736.
176	Photo close up of back side of the pillar at 609 Dibert Ave. Tr. Vol. 7, pg. 1737.
177	Photo close up of back side of the pillar at 609 Dibert Ave. with a three inch ruler. Tr. Vol. 7, pg. 1737.
178	Photo of bullet strike on the porch floor at 609 Dibert Ave. associated with projectile no. 1. Tr. Vol. 7, pg. 1737.
179	Photo close up of bullet strike at 609 Dibert Ave. Tr. Vol. 7, pg. 1737 - 1738.
180	Photo close up of bullet strike at 609 Dibert Ave. Tr. Vol. 7, pg. 1738.

Photos & Videos

State's Exhibit Number	Exhibit Description
181	Photo close up of bullet strike at 609 Dibert Ave. Tr. Vol. 7, pg. 1738.
182	Photo of the front door of 609 Dibert Ave. Tr. Vol. 7, pg. 1738.
183	Photo of bullet strike by the front door of 609 Dibert Ave. Tr. Vol. 7, pgs. 1738 - 1739.
184	Photo close up of bullet strike by the front door of 609 Dibert Ave. Tr. Vol. 7, pg. 1739.
185	Photo close up of bullet strike by the front door of 609 Dibert Ave. with ruler. Tr. Vol. 7, pg. 1739.
186	Photo of mailbox at 609 Dibert Ave. showing a bullet strike. Tr. Vol. 7, pg. 1739.
187	Photo close of a bullet strike by the mailbox at 609 Dibert Ave. Tr. Vol. 7, pg. 1739.
188	Photo of a bullet strike on the front porch ceiling at 609 Dibert Ave. Tr. Vol. 7, pg. 1739 – 1740.
189	Photo of bullet path associated with evidence placard no. 1 at 609 Dibert Ave. Tr. Vol. 7, pg. 1740.
190	Photo of bullet path associated with evidence placard no. 1 at 609 Dibert Ave. Tr. Vol. 7, pg. 1741 - 1742.
191	Photo of bullet path associated with evidence placard no. 1 at 609 Dibert Ave. Tr. Vol. 7, pg. 1742.

Photos & Videos

State's Exhibit Number	Exhibit Description
192	Photo of bullet path associated with evidence placard no. 1 at 609 Dibert Ave. Tr. Vol. 7, pg. 1742.
193	Photo of bullet path that struck the porch floor at 609 Dibert Ave. Tr. Vol. 7, pgs. 1742 - 1743.
194	Photo close up of bullet path that struck the porch floor at 609 Dibert Ave. Tr. Vol. 7, pg. 1743.
196	Photo close up of bullet path that struck the porch floor at 609 Dibert Ave. Tr. Vol. 7, pg. 1743.
197	Photo of bullet strikes with evidence placards at 609 Dibert Ave. Tr. Vol. 7, pg. 1744.
198	Photo close up of bullet strikes with evidence placards at 609 Dibert Ave. Tr. Vol. 7, pg. 1744 – 1745.
199	Photo of projectile strike no. 2 at 609 Dibert Ave. Tr. Vol. 7, pg. 1745.
200	Photo of projectile strike no. 3 at 609 Dibert Ave. Tr. Vol. 7, pg. 1745.
201	Photo of projectile strike no. 4 at 609 Dibert Ave. Tr. Vol. 7, pg. 1745 - 1746.
202	Photo of projectile strike no. 3 at 609 Dibert Ave. Tr. Vol. 7, pg. 1746.
203	Photo of projectile strike no. 4 at 609 Dibert Ave. Tr. Vol. 7, pg. 1746.

Photos & Videos

State's Exhibit Number	Exhibit Description
204	Photo showing where the bullets entered the house at 609 Dibert Ave. Tr. Vol. 7, pg. 1746 - 1747.
205	Photo of inside of 609 Dibert Ave. showing bullet strike by the light switch. Tr. Vol. 7, pg. 1747.
206	Photo of the inside of 609 Dibert Ave. showing projectile strike no. 4. Tr. Vol. 7, pg. 1747.
207	Photo of the inside of 609 Dibert Ave. showing the path of projectile no. 4. Tr. Vol. 7, pg. 1747.
208	Photo of the inside of 609 Dibert Ave. showing the path of projectile no. 4. Tr. Vol. 7, pgs. 1747 - 1748.
209	Photo of the inside of 609 Dibert Ave. showing the path of projectile no. 4. Tr. Vol. 7, pg. 1748.
210	Photo of the inside of 609 Dibert Ave. showing the path of projectile no. 4. Tr. Vol. 7, pg. 1748.
211	Photo of the inside of 609 Dibert Ave. showing projectile strike in the living room. Tr. Vol. 7, pg. 1748 - 1749.
212	Photo of the inside of 609 Dibert Ave. showing projectile strike in the living room. Tr. Vol. 7, pg. 1749.
213	Photo of projectile strike inside 609 Dibert Ave. that went into the bedroom wall. Tr. Vol. 7, pg. 1749.
214	Photo of projectile strike inside 609 Dibert Ave. that went into the bedroom wall. Tr. Vol. 7, pg. 1749.

Photos & Videos

State's Exhibit Number	Exhibit Description
215	Photo of dismantled porch pillar at 609 Dibert Ave. showing recovered bullet. Tr. Vol. 7, pg. 1749 - 1750.
216	Photo of dismantled porch pillar at 609 Dibert Ave. showing recovered bullet. Tr. Vol. 7, pg. 1750.

Tangible Objects

State's Exhibit Number	Exhibit Description
13	Evidence bag containing T shirt with blood stains. Tr. Vol. 6, pg. 1349.
13A	T shirt with blood stains, which relates to photo State's Exhibit 81. Tr. Vol. 6, pg. 1349.
14A to 14LL	Victim Titus Arnold's backpack with contents, which relates to photo State's Exhibit 84 and evidence placard 4. Tr. Vol. 6, pg. 1352 , 1396.
15A	Victim Titus Arnold's cell phone, which relates to photo State's Exhibit 84 and evidence placard 5. Tr. Vol. 6, pgs. 1353 – 1354.
15B	Victim Titus Arnold's cell phone holder, which relates to photo State's Exhibit 84 and evidence placard 6. Tr. Vol. 6, pg. 1354.
16A	Spent bullet casing, Smith & Wesson 40 caliber, which relates to photo State's Exhibit 92, evidence placard 8. The casing shows pinching on the edge not associated with the firing process, due to being stepped on or run over. Tr. Vol. 6, pgs. 1359 -1361 .
17A	Spent bullet casing, Smith & Wesson 40 caliber,. which relates to photo State's Exhibit 92, evidence placard 9 The casing shows pinching on the edge not associated

Tangible Objects

State's Exhibit Number	Exhibit Description
	with the firing process, due to being stepped on or run over. Tr. Vol. 6, pgs. 1360 - 1361.
18A	Live .25 caliber bullet from the street nearby to the parking lot, associated with photo State's Exhibit 97, placard 10. Tr. Vol. 6, pg. 1364.
19	Evidence bag used to hold the victim Titus Arnold's gold jacket. Tr. Vol. 6, pg. 1384.
19A	Victim Titus Arnold's gold jacket with bullet hole, which relates to photo State's Exhibit 114. Tr. Vol. 6, pg. 1384.
20	Evidence bag containing victim Titus Arnold's first gray shirt. Tr. Vol. 6, pg. 1382.
20A	Victim Titus Arnold's first gray shirt, which relates to photo State's Exhibit 111. Tr. Vol. 6, pgs. 1382 – 1383.
21	Evidence bag containing victim Titus Arnold second gray shirt. Tr. Vol. 6, pg. 1378.
21A	Victim Titus Arnold's second gray shirt with bullet hole in neck area, which relates to the photo State's Exhibit 106. Tr. Vol. 6, pg. 1378 – 1379.
22	Evidence bag containing victim's white toboggan. Tr. Vol. 6, pg. 1379 - 1380.
22A	Victim's white toboggan with bullet hole, which relates to photo State's Exhibit 108. Tr. Vol. 6, pg. 1380.
23	Evidence bag containing bullet fragment from victim. Tr. Vol. 6, pg. 1386.

Tangible Objects

State's Exhibit Number	Exhibit Description
23A	Bullet fragment recovered from victim Titus Arnold. Tr. Vol. 6, pg. 1386 - 1387.
23B	DNA specimen card with victim Titus Arnold's blood. Tr. Vol. 6, pg. 1387.
23C	Laboratory vial of victim Titus Arnold's blood. Tr. Vol. 6, pg. 1387.
24A	Victim's Iceberg brand blue jeans. Tr. Vol. 8, pg. 1526.
25A&B	Victim's tennis shoes. Tr. Vol. 8, pgs. 1526-1527.
26A	Victim's socks. Tr. Vol. 8, pg. 1527-1528.
27A	Victim's underwear. Tr. Vol. 8, pg. 1528.
130A	Hi-Point brand handgun. Tr. Vol. 6, pg. 1332 .
131	Magazine from gun. Tr. Vol. 8, pgs. 1472-1474.
139A	Bullet recovered from the inside of the driver's door of the pickup truck, which relates to photo State's Exhibit 89. Tr. Vol. 6, pg. 1356.
217	Bullet recovered from porch pillar at 609 Dibert Ave. Tr. Vol. 8, pg. 1568-1569.

Andre Piersoll: Mini Mart Shooting Victim. Tr. Vol. 6, pgs. 1408 - 1443. Piersoll was with Yolanda Lyles at the Selma Road Mini Mart on April 10, 2005. Piersoll went inside for chips and pop and saw Jason Dean, with whom he was acquainted. Dean was in the store with Josh Wade. Piersoll left the store and sat down on the passenger side of Yolanda's car. At that point, Dean leaned into the open passenger window and was talking about selling Valium pills. Piersoll's friend Neil Scott was approaching Yolanda's car while Dean was talking to Piersoll. Piersoll declined to buy the pills and Dean walked off. Neil Scott then got into the back seat of Yolanda's car. Dean had a gray Cougar car with Josh Wade in the passenger seat. After that, Piersoll saw Dean at the side of the building. A few minutes later, Piersoll heard Yolanda say "Oh, shit." Piersoll looked up and saw Dean running up on Yolanda's car and shooting at them. The gun was a silver colored .25 caliber. Dean approached from the driver's side of Yolanda's car. Piersoll was shot in the left arm and the face. At Piersoll's insistence, Yolanda drove off for Mercy Hospital. They were being followed by Dean and Wade in Dean's car. Dean was driving and Wade was the passenger. The headlights of Dean's car were off. At Piersoll's direction, Yolanda drove and eventually evaded Dean's pursuit. Piersoll identified the police photo array from which he picked out Jason Dean's photo as the person who shot him. **State's Exhibit 6A.**

Yolanda Lyles: Mini Mart Shooting Victim. Tr. Vol. 6, pgs. 1444 – 1483. On the night of the shooting, April 10, 2005, Yolanda Lyles and her friend Andre Piersoll stopped at the Selma Road Mini Mart. Lyles, who was driving a rental car, pulled directly in front of the store. Jason Dean approached Lyles car. At the same time, Lyles had her purse in her lap to give Piersoll money to get her cigars and a Coke from the store. Dean displayed pills in a baggie and asked Lyles and Piersoll if they wanted to buy some pills. They declined. Lyles saw Dean go to a peach colored car an switch places with a man whom she later learned was Josh Wade, so that Wade was in the driver's seat. The next time Lyles looked, Dean's car was gone. After Piersoll came back from the store, their friend Neil Scott also came to Lyle's car. At this point, Dean, who was brandishing a handgun, suddenly emerged from the left side of the store. Dean rushed to the driver's side of Lyles's car. Dean was shouting to Lyles "Give me your money." Dean started shooting. Piersoll was hit in the arm, and Lyles and Piersoll were struck by window glass flying from the bullet strikes to windshield. At Piersoll's insistence, Lyles drove off, racing to Mercy hospital to get treatment for Piersoll's injuries. On the way to the hospital, Lyles saw they were being followed by the peach colored car that she had seen Dean and Wade in at the Mini-Mart. Piersoll and Lyles got to Mercy hospital and were treated for their injuries. Lyles had minor cuts on her face from flying glass. Lyles made a report to police regarding the shooting.

Lyles identified photographs as follows: the Selma Road Mini Mart, **State's Exhibit 219**; the car she was driving, **State's Exhibit 221**; a photo of the back of the car she was driving, **State's Exhibit 222**; bullet holes in the windshield of the car she was driving **State's Exhibit 223, State's Exhibit 224**; the interior of the car she was driving, **State's Exhibit 225**; and a photo of Andre Piersoll. **State's Exhibit 231.**

Some days after the shooting, Lyles went to visit her dad on Liberty Street. Lyles saw the peach colored car with tinted windows she had first seen at the Selma Road Mini Mart.

Dean and Josh Wade were standing outside the car. Lyles recorded the license plate number of the car, DGU 8986, and the house address where the car was parked. Lyles called the police. Some days after that, Lyles saw Dean and Josh Wade's pictures in the newspaper. Lyles identified Dean's picture that was on the front page of the newspaper edition dated April 22, 2005, **State's Exhibit 218**. After seeing the picture in the newspaper, Lyles reported to detective Hicks that Dean was the man who shot at she and Piersoll. After seeing the picture in the newspaper, Lyles also wrote a letter to police with this information as well as the license plate number of the car she saw on Liberty Street, which in redacted form she identified as **State's Exhibit 235**.

Doug Pergram: Springfield Police Officer. Tr. Vol. 6, pgs. 1485 - 1493. Officer Pergram responded to the Selma Road Mini Mart shooting scene, as well as to Mercy Hospital. Officer Pergram took photographs and identified them as follows: the Selma Road Mini Mart, **State's Exhibit 219**; the license plate of Lyles's car, **State's Exhibit 220**; the front of Lyles's car **State's Exhibit 221**; the rear of Lyles's car **State's Exhibit 222**; bullet holes in the windshield of Lyles's car, **State's Exhibits 223 and 224**; interior of Lyles's car, **State's Exhibit 225**; spent shell casings, **State's Exhibit 226, 227, 228, 229**; photo of the face of Andre Piersoll, **State's Exhibit 230**; the arm of Andre Piersoll, **State's Exhibits 232, 233**; evidence tag for the series of pictures **State's Exhibit 234**.

Officer Pergram was later recalled for testimony about the Dibert Ave. shooting scene Tr. Vol. 7, pgs. 1700 - 1707. Pergram responded to the Dibert Ave shooting scene and identified photos as follows: outside of 604 Dibert Ave. **State's Exhibit 240**; bullet hole through the front window **State's Exhibits 241, 242**; bullet hole in the wall **State's Exhibits 243, 244, 245**; bullet hole through the picture that was hanging on the wall **State's Exhibit 246**; outside of 609 Dibert Ave **State's Exhibit 247**; front door way area of 609 Dibert Ave. **State's Exhibits 248, 249, 250** bullet holes inside 609 Dibert Ave. **State's Exhibits 251, 252, 253, 254, 255, 256, 257**; bullet holes in Devon's car **State's Exhibits 258, 259, 260, 261, 262, 263, 264**; evidence tag for this series of pictures **State's Exhibit 265**.

David Emmel: Springfield Police Officer. Tr. Vol. 6, pgs. 1493 - 1497. Recovered a spent bullet from the sleeve of Andre Piersoll's coat at Mercy Hospital, **State's Exhibit 236** – tangible object.

Officer Emmel was later recalled for testimony about the Dibert Ave. shooting scene Tr. Vol. 7, pgs. 1707-1710. Recovered a spent bullet from inside 609 Dibert Ave. from the hallway floor. **State's Exhibit 266A**– tangible object.

David Allen: Springfield Police Officer: Tr. Vol. 6, pgs. 1497 - 1501. Allen recovered two .25 caliber shell casings from the from the parking lot of the Selma Road Mini Market shooting scene on April 10, 2005. Allen identified the property receipt for this evidence **State's Exhibit 291, State's Exhibit 292,** and the two .25 caliber shell casings, **State's Exhibit 293**.

Dr. Guy Newland: Emergency Room Doctor at Mercy Hospital. Tr. Vol. 6, pgs. 1520 -1540. A little after 2 AM on April 10, 2005, Piersoll presented himself with injuries to the face and left arm. Piersoll said the injuries were from bullets coming through a windshield. Dr. Newland identified medical record he created of Piersoll's injuries and treatment. **State's Exhibits 238A and 238B**. Dr. Newland identified photos of Piersoll and his injuries. **State's Exhibits 230, 231, 232, 233**.

Darwin Hicks: Springfield Police Detective. Tr. Vol. 7, pgs. 1540 - 1551. Identified the coat recovered from Andre Piersoll, showing a bullet hole in the left arm. **State's Exhibit 237** – evidence bag, **State's Exhibit 237A** – the coat. Detective Hicks showed Piersoll a photo spread and Piersoll picked the photo of Jason Dean as the person who shot him at the Selma Road Mini Mart. **State's Exhibit 6A and 6B**.

Laroilyn Burd: Resident of 604 Dibert Ave. Tr. Vol. 7, pgs. 1552 -1578. Burd, who lived at 604 Dibert Ave., was in the living room of the home with her sister Jinada Madison. Gunshots flew through her living room window. This occurred on April 12, 2005. Burd and Madison fell to the floor. Burd called 911, and the recording of that call was played for the jury. **State's Exhibit 239**. Burd went to her front porch and saw that the car of Devon Williams, who lived across the street at 609 Dibert Ave. was parked in front of Burd's house at 604 Dibert Ave. Devon Williams,' his girlfriend, Shanta Chilton, one other adult and one child were standing on the front porch of 609 Dibert Ave. A car made a second pass and shots were fired. Burd, who heard the gunshots, fell to the porch floor along with her sister Madison. Burd identified a picture of the outside **State's Exhibit 145, State's Exhibit 146**, and inside of 604 Dibert Ave. **State's Exhibit 143, 154, 155**. The bullets struck the old brick mantle inside 604 Dibert Ave. and could not be recovered from the brick rubble.

Burd was aware of a dispute between two persons with street names O-Z and Snuff and her neighbor Devon Williams, which is why Burd mentioned the names of O-Z and Snuff to the 911 operator during her call about the shooting.

Jinada Madison: Resident of 604 Dibert Ave. Tr. Vol. 7, pgs. 1579 – 1590. Madison, who lived at 604 Dibert Ave., was in the living room of the home with her Laroilyn Burd. Gunshots flew through her living room window. This occurred on April 12, 2005. Burd and Madison fell to the floor. Burd called 911. A few minutes later, she and Burd went onto their front porch. Madison saw their neighbor Devon Williams looking at his car which was parked in front of the house of Madison and Burd. Madison saw that Williams' car had been shot up. Madison identified a picture of the outside of 604 Dibert Ave. **State's Exhibit 145, State's Exhibit 146.**

While Madison and Burd were on their front porch, a second round of gunshots were fired. Madison and Burd laid down on the porch floor. Madison identified photos of the interior of their home, showing bullet strikes. **State's Exhibits 241, 242, 243**.

Joshua Farmer: Associate of Bowshier Family. Tr. Vol. 7, pgs. 1591 - 1602. Farmer knew William Calhoun, whose street name was O-Z. Farmer also knew Adonte Cherry, whose street name was "Tuna," and individuals named Jeff Bowshier, TC Bowshier,

and Kevin Bowshier. Following objection by the defense, Farmer was excused without further testimony. Later, at sidebar, the trial court determines some of Farmer's proposed testimony to be inadmissible Tr. Vol. 7, pgs. 1650 – 1654. Farmer testimony resumed. Tr. Vol. 7, pgs. 1655 – 1660. Farmer testified that as a result of a conversation with Jeff, TC and Kevin Bowshier, he and the Bowshiers went looking for Drastic's (Devon Williams') car in order to damage the car as an act of retaliation. Farmer also testified that he knew Jason Dean and Mark Dean, Jason's brother. Farmer knew that Mark Dean had a child with Angel Bowshier, who was the sister of the Bowshier brothers.

Shani Applin: Dibert Ave. Shooting Victim. Tr. Vol. 7, pgs. 1603 - 1619. On the night of the shooting, April 12, 2005, Shani and her one year old daughter Jaida, were visiting at Devon William's house at 609 Dibert Ave. Devon is the boyfriend of Shani's best friend Shanta Chilton. Present at the house was Shani, Shanta, Devon, Shanta' brother Hassan, and two other children belonging to Shanta. Devon is known by the street name "Drastic." There was at Devon's house a video security system. Video from a camera mounted on the front porch could be viewed on the television in the house. They heard gunshots outside. Everyone went out on the front porch to see what was going on. Shanta and Devon went across the street to look at his car that had been shot up. Shanta came back to the front porch. As Shani, Shani's child, Shanta, and Hassan and were on the front porch, a car being driven by a white person, stopped in front of the house. The driver fired shots at Shani, who was on the front porch. Everyone dove to the porch floor. Using a diagram of 609 Dibert Ave., **State's Exhibit 129,** Shani identified locations in the house and the porch of 609 Dibert Ave. Shani identified **State's Exhibit 247**, a photo of the front of 609 Dibert Ave, the house of Devon Williams, and **State's Exhibit 182**, a photo of the front door to 609 Dibert Ave.

Shanta Chilton: Dibert Ave. Shooting Victim. Tr. Vol. 7, pgs. 1619 - 1642. On the night of the shooting, April 12, 2005, Shanta was living at 609 Dibert Ave. with her two children and her boyfriend Devon Williams. Devon was known by the street name "Drastic." Visiting at the home was Shanta's girlfriend Shani, along with Shani's infant daughter. Also visiting was Shanta's brother, Hassan. Using a diagram, (**State's Exhibit 129**) Shanta identified locations in the residence. The home security system video camera covered the front porch and the street in front of the house. When all were gathered in the living room, about five gunshots were heard outside. Devon and Shanta went outside and saw that Devon's car, which was parked across the street, was shot up. Shanta saw bullet holes that made it look like the shooter was trying to blow up the gas tank. Shanta identified **State's Exhibit 260,** a photo of the bullet holes in Devon Williams' car. A car was coming up the street. Shanta went to the front porch of 609 Dibert Ave. Shanta saw a car coming down the street. She went back onto the front porch. The car stopped in front of the house. Shanta saw a white boy in the driver's seat. Next, she saw flames from gunfire and heard about six gunshots coming out of the car. Shanta dropped to the floor of the porch. The car pulled off, and the others came to check on Shanta.

Hassan Chilton: Dibert Ave. Shooting Victim. Tr. Vol. 7, pgs. 1660 - 1675. On the night of the shooting, April 12, 2005, Hassan was visiting at the home of Devon Williams and his sister Shanta Chilton at 609 Dibert Ave. Devon Williams was known by the street name "Drastic." Also present were Shanta's two children and Shanta's friend, Shani Applin, and

Shani's infant child Jaida. The home had a video security system that could display video images of the outside front of the home. Hassan and the others heard five or six gunshots outside and went to investigate. Devon went to his car and saw that it was shot up around the gas tank. As Hassan was on the front porch with Shani and Shani's infant child Jaida, a car came up the street, and more gunshots were fired at the front porch area. When the shots were going off, Devon was on the other side of the street from 609 Dibert Ave. Hassan identified **State's Exhibit 178** and **State's Exhibit 184** as photos of the front porch of 609 Dibert Ave, and **State's Exhibit 179, State's Exhibit 180**, as photos of bullet holes in the porch area. Using a diagram, (**State's Exhibit 129**) Hassan pointed out various locations, and their positions when the second set of gunshots went off. When the second set of gunshots went off, about four or five in number, Shanta dropped to the floor of the porch. Hassan identified and then put on the coat her was wearing that night. **State's Exhibit 268A**. While wearing the coat, Hassan demonstrated how he grabbed Shani's baby Jaida and rushed inside the house. Bullets struck the door frame area inches from where Hassan would have been with the baby, and inches from where Shanta's head would have been at as Shanta would have laid on the porch floor. Hassan pointed out where there was a bullet hole in his coat. **State's Exhibit 268A**.

Devon Williams: Dibert Ave. Property Damage Victim. Tr. Vol. 7, pgs. 1675 - 1700. On the night of the shooting, April 12, 2005, Devon (nickname Drastic), his girlfriend Shanta Chilton, Shanta's brother Hassan Chilton, and Shanta's friend Shani Applin, along with Shani's infant daughter, Jaida, were watching television at 609 Dibert Ave. Devon heard five or six gunshots from outside. The gunshots triggered his car alarm. Also, the gunshots triggered his outdoor security camera to activate, showing a video image on his television screen of the front porch area. Devon grabbed his gun, a Hi Point .40 caliber, and went outside to see that his car, which was parked across the street, was shot up. Devon identified photos of his car, a 1984 Olds Delta 88, showing bullet holes clustered around the gas tank. (**State's Exhibits 273, 274, 275, 286, 287, 288, 289, 290**). At this time, a car drove up the street and stopped in front of his house. As soon as the car stopped, gunshots came from the car toward the front porch of Devon's house. Devon, standing on the driver's side of the car, saw Josh Wade in the driver's seat. Devon did not see the passenger area of the car.

Dana Lewis: Springfield Police Officer. Tr. Vol. 7, pgs. 1710 - 1717. Responded to the Dibert Ave. shooting scene, which occurred on April 12, 2005, along with his partner Travis Baader. Lewis saw bullet strikes at 609 Dibert and on Devon's car across the street. Lewis identified a photo of bullet strikes that were clustered around the gas tank of the car. **State's Exhibit 258**. Lewis identified more photos of the car showing bullet strikes. **State's Exhibits 260, 262**. Lewis identified a photo of a bullet he recovered from Devon's car **State's Exhibit 263** as well as the actual bullet from Devon's car. **State's Exhibit 267** – tangible object.

Travis Baader: Springfield Police Officer. Tr. Vol. 7, pgs. 1718 - 1723. Responded to the Dibert Ave. shooting scene, which occurred on April 12, 2005, along with his partner Dana Lewis. The night of the shooting, April 12, 2005, Baader saw that a number of bullet holes were clustered around the gas cap area.

Jeffrey Meyer: Springfield Police Officer. Tr. Vol. 7, pgs. 1723 - 1726. Meyer was working the desk at the police station on May 3, 2005, when a man came in and handed over a multi-colored jacket. Meyer collected it as evidence and identified it in Court. (**State's Exhibit 268** – the evidence bag, **State's Exhibit 268A** – the jacket).

Mike Beedy: Springfield Police Officer. Tr. Vol. 7, pgs. 1759 - 1768. Beedy examined photographs of Devon Williams car, an Oldsmobile Delta 88, a 1980's model. Beedy identified photographs of the car as follows: Left rear showing bullet holes **State's Exhibit 269**; license plate of the car **State's Exhibit 270**; overall view of the car **State's Exhibit 271**; VIN number from left windshield **State's Exhibit 272**; back of the car **State's Exhibit 273**; bullet holes in the car marked with evidence placards **State's Exhibits 274, 275, 276, 277, 278, 279, 280**; dowel rod inserted in bullet strike placard 7 showing the bullet came from a slight downward angle **State's Exhibits 281, 282, 283**; dowel rod inserted in bullet strike placard 8 showing the bullet came from a slight downward angle **State's Exhibits 285, 286**; dowel rod inserted in bullet strike placard 9 showing the bullet came from a slight downward angle **State Exhibits 287**; close up of bullet strike placard 10 **State's Exhibit 288**). These bullet strikes were in a tight, close pattern. Photos of dowel rod inserted in bullet strike placard 11, the rearmost bullet strike, showing the bullet came from a slight downward angle **State's Exhibits 289, 290**.

Beedy was recalled regarding items seized pursuant to search warrants. Tr. Vol. 8, pgs. 1922 – 1956, pgs. 1964 - 1966. Search warrants for the homes of Jason Dean (415 E. Liberty) and Joshua Wade (502 E. Liberty) were executed on April 21, 2005. The car title for a 1991 Buick Riviera from the Dean's jeans pocket shows Yvonne Slone as title holder and Angel Bowshier as previous owner. Although six live .380 caliber rounds were recovered from a pants pocket laying on a bedroom floor in the Dean house, there was no .380 caliber gun recovered from the Dean house. However, a .380 caliber gun was recovered from the home of Joshua Wade. Police did not recover any .25 caliber handgun at any location. Relative to the search warrant of the Dean and Wade homes, Beedy identified the following items.

Photos & Videos

State's Exhibit Number	Exhibit Description
307	Front of Dean house, 415 E. Liberty. Tr. Vol. 8, pg. 1923.
308	Inside of Dean house in dining room. Tr. Vol. 8, 1924.
309	Handgun inside a cabinet in dining room of Dean house. Tr. Vol. 8, pg. 1924.
310	Jeans draped over a bicycle in dining room of Dean house. Tr. Vol. 8, pg. 1924.

Photos & Videos

State's Exhibit Number	Exhibit Description
311	Handgun inside cabinet with evidence placard in Dean house, associated with handgun identified as State's Exhibit 130A, and the magazine identified as State's Exhibit 131. Tr. Vol. 8, pgs. 1924 - 1925.
312	Car title in pocket of jeans draped over a bicycle in dining room with evidence placard in Dean house, associated with the car title envelope State's Exhibit 330C and car title State's Exhibit 330D. Tr. Vol. 8, pg. 1932.
313	Jeans draped over a bicycle in dining room with evidence placard in Dean house. Tr. Vol. 8, pg. 1933.
314	Dining room of Dean house showing a baseball cap. Tr. Vol.8, pgs. 1933 – 1934.
315	Dining room of Dean house showing a baseball cap with evidence placard, associated with State's Exhibit 331A, the baseball cap. Tr. Vol. 8, pg. 1934.
316	Dining room of Dean house showing a jacket hanging on a coat tree. Tr. Vol. 8, pg. 1934.
317	Dining room of Dean house showing a jacket hanging on a coat tree with evidence placard, associated with State's Exhibit 332B, the jacket. Tr. Vol. 8, pg. 1935.
318	Upstairs bedroom in Dean house. Tr. Vol. 8, pgs. 1935 – 1936.
319	Upstairs bedroom in Dean house. Tr. Vol. 8, pg. 1936.

Photos & Videos

State's Exhibit Number	Exhibit Description
320	Top shelf of bedroom closet showing a bucket in Dean house. Tr. Vol. 8, pg. 1936.
321	Upstairs bedroom in Dean house showing pants laying on the floor, associated with State's Exhibit 333A, the pair of pants.. Tr. Vol. 8, pgs. 1936 - 1937
322	Top shelf of bedroom closet showing a bucket containing bullets in Dean house, associated with State's Exhibit 336 A, an ammo box with 18 bullets, and State's Exhibit 336B, an empty ammo box of .40 caliber bullets. Tr. Vol. 8, pgs. 1938 – 1939.
323	Front of Wade house, 502 E. Liberty. Tr. Vol. 8, pg. 1942.
324	Front of Wade house, 502 E. Liberty. Tr. Vol. 8, pg. 1942.
325	Upstairs bedroom in Wade house. Tr. Vol. 8, pg. 1946.
326	Cabinet next to bed in upstairs bedroom in Wade house. Tr. Vol. 8, pg. 1946.
327	Cabinet next to bed in upstairs bedroom in Wade house. Tr. Vol. 8, pg. 1947.
328	Gun in cabinet next to bed in upstairs bedroom in Wade house with evidence placard 7, associated with State's Exhibits 329A, 329B and 329C, being a .380 caliber pistol with bullets. Tr. Vol. 8, pg. 1947.

Tangible Objects

State's Exhibit Number	Exhibit Description
130A	Handgun recovered from Dean house. Tr. Vol. 8, pgs. 1924 - 1925.
131	Magazine from handgun recovered from Dean house. Tr. Vol. 8, pg. 1925.
329	.380 caliber semiautomatic handgun recovered from upstairs bedroom at the Wade house. Tr. Vol. 8, pg. 1947 – 1948.
329B-H	Clip and bullets from handgun recovered from upstairs bedroom at the Wade house. Tr. Vol. 8, pg. 1948 - 1949.
330	Evidence bag for jeans and car title from Dean house. Tr. Vol. 8, pg. 1965.
330B	Jeans that were draped over the bicycle in Dean House. Tr. Vol. 8, pg. 1965.
330C-D	Car title from jeans pocket in Dean house. Tr. Vol. 8, pgs. 1932 - 1933.
331	Evidence bag for the baseball cap from Dean's house. Tr. Vol. 8, pg. 1934.
331A	Baseball cap from Dean's house. Tr. Vol. 8, pg. 1934.
332	Evidence bag for jacket from coat tree from Dean's house. Tr. Vol. 8, pg. 1935.

Tangible Objects

State's Exhibit Number	Exhibit Description
332A	The jacket from the coat tree in the Dean house. Tr. Vol. 8, pg. 1935.
332B-E	Contents of the pockets of the jacket from the coat tree in the Dean house. Tr. Vol. 8, pgs. 1965 – 1966.
333	Evidence bag for pants from the bedroom floor of the Dean house. Tr. Vol. 8, pg. 1937.
333A	Pants from the bedroom floor of the Dean house. Tr. Vol. 8, pg. 1937.
334	Evidence bag for bullets from pants pocket from Dean house. Tr. Vol. 8, pg. 1937.
334A-G	Six live .380 caliber bullets from pants pocket from Dean house. Tr. Vol. 8, pgs. 1937 – 1938, which are the same caliber and manufacturer as the bullets recovered at Wade's house, State's Exhibit 329B-H. Tr. Vol. 8, pgs. 1948 – 1949.
335	Evidence bag for the bucket from the bedroom closet shelf in the Dean house. Tr. Vol. 8, pg. 1940.
335A-H	Various items contained in the bucket from the bedroom closet shelf in the Dean house. Tr. Vol. 8, pg. 1940 - 1941.
336	Evidence bag for two bullet boxes contained in the bucket in the Dean house. Tr. Vol. 8, pg. 1938.

Tangible Objects

State's Exhibit Number	Exhibit Description
336A	25 caliber American Eagle bullet box, with 18 bullets, from the bucket in the Dean house. Tr. Vol. 8, pg. 1938 - 1939.
336B	40 caliber Blazer Brass brand bullet box, empty of bullets, from the bucket in the Dean house. Tr. Vol. 8, pg. 1939.
337	Evidence bag for bullet recovered from floor of Buick Riviera. Tr. Vol. 8, pg. 1953.
337B	Live bullet recovered from the floor of the Buick Riviera. Tr. Vol. 8, pg. 1953.

Forrest E. Nott II: Owner Of A Car Customizing Shop. Tr. Vol. 7, pgs. 1769 - 1776. Devon Williams brought his car to Nott's car customizing shop for repairs of bullet holes. Nott identified pictures of the bullet holes. **State's Exhibits 269, 271**. While dismantling the custom stereo speakers, Nott found bullet fragments, **State's Exhibit 291**, lodged against a magnet in the speaker. Nott turned the bullets over to the police department.

Neil Davis: Springfield Police Officer. Tr. Vol. 8, pgs. 1790 - 1794. Davis was dispatched to Nott's shop and recovered from Nott two bullet fragments. Davis identified the bullet fragments. **State's Exhibit 291**.

. **Crystal Kaboos:** Girlfriend of Jason Dean. Tr. Vol. 8, pgs. 1794 - 1864. A few days before the Titus Arnold homicide on April 13, 2005, Kaboos moved in with Jason Dean in Dean's mother's house located at 415 E. Liberty. **State's Exhibit 307,** photo of the outside of 415 E. Liberty. Dean had his own bedroom off an upstairs hallway. Dean's dad lived , and Dean's mother stayed in a downstairs bedroom. Dean was friends with Josh Wade, and Jason Dean and were always together. Jason Dean had a car, a gold colored Riviera. **State's Exhibit 294** – photo of Dean's car. Dean normally parked the Riviera behind the house on E. Liberty.

Dean had a small silver .25 caliber handgun. This gun had wood grain on the side. Josh Wade had a big black .40 caliber handgun, which Kaboos identified as **State's Exhibit 130**.

Dean would go out at night and Kaboos would stay at the house. Dean told Kaboos that he and Wade would go out to local bars to lure people outside they could rob them. Tr. Vol. 8, pgs. 1813 – 1814.

Crystal Kaboos - Dibert Ave. Shooting

Kaboos went with Dean to his brother Mark Dean's home. Kaboos saw drugs and guns at Mark Dean's home that he shared with his wife. Kaboos was present during a conversation between Mark and Jason Dean. After the conversation Dean said to his brother Mark that he, Jason, will go look for the car and the house on Dibert Ave. At that point, Kaboos saw Dean retrieve a gun from the top of the kitchen cabinet in Mark Dean's kitchen. Tr. Vol. 8, pgs. 1815 – 1819.

Kaboos took a ride, on April 12, 2005, with Dean and Wade in Dean's car. Wade was driving, Dean was in the front passenger seat, and Kaboos was by herself in the rear seat. Dean told Kaboos they were going to look for a car at a house. Dean mentioned the name O-Z. Kaboos knew during the car ride that both Dean and Wade were carrying guns. Dean had a smaller silver gun and Wade was carrying a .45 caliber black gun. Tr. Vol. 8, pgs. 1819 – 1820.

During the ride, the car slowed down on Dibert Ave. Dean and Wade were shooting their guns out the passenger window. Kaboos ducked down and covered her ears. The car turned around, but Kaboos does not remember whether she heard more gunshots. All three went back to Dean's house. Tr. Vol. 8, pgs. 1821 - 1822.

Crystal Kaboos - Titus Arnold Homicide

The next night, April 13, 2005, Dean said they were going to the Nite Owl Tavern to rob somebody and make some money. Dean wore a black jacket, which she identified as **State's Exhibit 332B** with matching black jeans, which she identified as **State's Exhibit 333A**. Dean also wore a blue hat with an "X" on it, and white tennis shoes with red shoe laces. Wade wore black jeans, a black hoodie, and a black cap. Tr. Vol. 8, pgs. 1822 - 1824.

Kaboos looked at the security video from the Nite Owl bar, **State's Exhibit 4B,** and identified Dean and Wade in the video. Tr. Vol. 8, pgs. 1824 – 1829.

The next morning, Kaboos was doing laundry. She had already washed her clothes and went to put her clothes in the dryer. In the dryer, she saw the clothes that Dean and Wade wore the night before, along with Dean's tennis shoes. Since Kaboos needed the dryer, she took the clothes and shoes out and set them on top of the dryer.

The next day, April 15, 2005, Kaboos and Dean were in Dean's bedroom. Wade called Dean out in the hallway. Kaboos heard Dean and Wade laughing. Dean brought the newspaper into the bedroom, threw it on the bed and told Kaboos to read the article about Titus Arnold. **State's Exhibit 369,** Tr. Vol. 8, pg. 1831 - 1832.

Dean told Kaboos about the homicide. While Dean was telling the story, he was bragging about his actions and had a "smirky grin" on his face. Dean said they got six dollars in the robbery. A news show came on television about the Titus Arnold homicide. Dean told everybody to watch, which included Wade, Kaboos and Dean's mother and father. Dean was smiling and laughing during the news story. Tr. Vol. 8, pgs. 1832 - 1835.

A: [Crystal Kaboos] He (Dean) told me that the night when they went out to lure somebody out of the bar to rob them, that they (Dean and Wade) was driving down the street; and they seen the individual, Titus Arnold, walking by his self. And they stopped the car and pulled their guns out and told him to lay on the ground, and Jason Dean said that Titus Arnold didn't lay on the ground, that he started to run. And Jason Dean tried to fire his weapon, but he had it on safety; so Josh Wade jumped out of the driver's seat and said to Titus Arnold that he had a bigger gun and shot Titus Arnold. Tr. Vol. 8, pg. 1832 – 1833.

A couple of days after the Titus Arnold homicide, Dean got rid of the .25 caliber handgun. Kaboos was present when Dean traded the gun for some drugs with a guy named Bub, who was a member of Josh Wade's family. Tr. Vol. 8, pgs. 1834 - 1835.

Crystal Kaboos - Mini Mart Shooting

Relative to the Selma Road Mini Mart shooting, April 10, 2005, Dean showed Kaboos a newspaper article about a shooting at a convenience store. Kaboos asked Dean if he was the one who shot that person and Dean said yes. Dean said he ran up on the car and fired through the windshield. Tr. Vol. 8, pgs. 1812 – 1813.

Doug Estep: Springfield Police Officer. Tr. Vol. 8, pgs. 1865 - 1911. Recalled for identification of letters written by Jason Dean to his friends Jason Manns and Rhonda Sions. Tr. Vol. 9, pgs. 2137 – 2165. On the night of the Titus Arnold homicide, detective Estep recovered a live .25 caliber round (**State's Exhibits 66, 67, 68** – photos) from the sidewalk near the alley next to the Epperson apartment and the family shelter parking lot. **State's Exhibit 18A** – tangible object.

Estep showed Nite Owl tavern barmaid Rhonda Boys a photo array and she immediately identified Jason Dean's photo **State's Exhibits 3A and 3B**) as the person who was in the bar the night of the Titus Arnold homicide, April 13, 2005. Tr. Vol. 11, pgs. 2192-2196.

Estep also showed eyewitness Terri Epperson a photo array and she picked out Josh Wade's photo. **State's Exhibit 2A and 2B**

Estep also met with Kari Epperson, who agreed to help police identify the car she saw at the Titus Arnold shooting scene. Estep prepared photos of various cars to show Epperson, **State's Exhibits 297, 298, 299, 300 301, 302, 303, 304, 305,** with one series of photos being that of a Buick Riviera parked at the rear of Dean's home at 415 E. Liberty Street. **State's Exhibits 294, 295, 296,; State's Exhibit 306** – evidence tag for the series of photos.

Search warrants were obtained for the Dean house at 415 East Liberty, and the Wade house at 502 East Liberty. During the early AM hours of April 21, 2005, the Springfield SWAT team made a no-knock entry to the Dean house. Estep, who was the first through the door, encountered Dean in the kitchen and took him to the floor. While on the floor, Dean kept looking at a spot next to Estep. Estep looked at the same spot and saw a handgun on a small table next to the wall. **State's Exhibit 309** – photograph. Estep identified the gun **State's Exhibit 130** and the magazine **State's Exhibit 131** that was recovered from the small table. Dean was arrested and taken to police headquarters.

Based upon investigative information obtained from Robert Farmer, Estep obtained and executed a search warrant at Lebanon Correctional on the cell of inmate Jason Manns. Seized in that search were eight letters written by Jason Dean to Jason Manns. (**State's Exhibits 370** –evidence envelope- **371, 372, 373, 374, 375, 376, 377, 378**) The letters were sent to BCI for handwriting analysis.

Estep questioned Rhonda Sions, believed to be Jason Dean's girlfriend. As a result of that questioning, Sions voluntarily turned over 48 letters written to her by Jason Dean. **State's Exhibits 379 through 425**. **State's Exhibits 426 through 436** were additional letters to Rhonda Sions. Estep identified handwriting exemplars of Dean. **State's Exhibits 441, 442, 443, 444, 445, 446.** Estep identified letters seized from the search of Sions home that were not submitted to BCI, **State's Exhibits 447 through 507**.

Dean stipulated to authorship of the letters. Tr. Vol. 9, pgs. 2155 – 2156.

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William Harrington: Springfield Police Officer. Tr. Vol. 8, pgs. 1912 - 1921. Harrington was the second SWAT team member through the door at the Dean house. Immediately upon entry, Harrington saw Dean in the kitchen area. Despite five or six commands to get to the floor, Dean was non-compliant. Dean was grinning and looking at a handgun that was laying on a small table. Harrington could see the handgun. **State's Exhibit 309 – photo.** Harrington identified the handgun a (**State's Exhibit 130**) and the magazine from the handgun. (**State's Exhibit 131**). Harrington searched Dean's car, **State's Exhibit 294**, and saw a live bullet under the passenger seat. Harrington called for the CSI personnel to process the car.

Timothy Shepherd and Timothy Duerr: Shepherd is a Forensic Criminalist with the Springfield Police. Tr. Vol. 9, pgs. 2088 - 2134. Duerr is a Forensic Criminalist with the Miami Valley Crime Lab. Tr. Vol. 8, pgs. 1967 - 1989. Both were called relative to results of ballistics testing.

Ballistics Test Results

State's Exhibit Number	Description Of Item	Test Results
16 and 17	Two casings recovered from the Titus Arnold homicide scene that took place on April 13, 2005. Tr. Vol. 8, pgs. 1979; tr. Vol. 9, pg. 2108.	The two casings (State's Exhibits 16 and 17) were microscopically compared to casings test fired (State's Exhibits 339A and C) from the Hi-Point S&W .40 caliber semiautomatic pistol recovered from the kitchen of the Dean home. (State's Exhibit 130A). The two casings (State's Exhibits 16 and 17) were fired from the pistol recovered from the kitchen of the Dean home. Tr. Vol. 8, pgs. 1979 – 1980; Tr. Vol. 9, pgs. 2108 – 2109. These casings are the same brand as designated on the bullet box that was identified as State's Exhibit 336B, which had been recovered from a bucket at Dean's house. Tr. Vol. 9, pg. 2113.
18A	Live .25 caliber unfired bullet from the street nearby to the parking lot at the Titus Arnold homicide scene that took place on April 13, 2005. Tr. Vol. 8, pgs. 1979 – 1980; Tr. Vol. 9, pg. 2105.	Insufficient marks for comparison purposes. Can't say if it was or was not ejected from a weapon. Tr. Vol. 8, pgs. 1980 - 1983. Same manufacturer as State's Exhibits 293A and 293B, being casings recovered from the Mini Mart shooting. Tr. Vol. 8, pg. 1983. Same manufacturer as State's Exhibit 336A, which were bullets recovered from Dean' house. Tr. Vol. 8, pgs. 1984 – 1985; Tr. Vol. 9, pgs. 2106 – 2107.
130A	Hi-Point S&W .40 caliber semiautomatic pistol. Tr. Vol. 6, pg. 1283, Serial number X708047, Tr. Vol. 8, pg. 1997.	The gun is manufactured with seven lands and grooves with a left hand twist. Tr. Vol. 9, pgs. 2110 - 2111.

	The handgun and magazine were recovered from a small table in the kitchen of Dean's house. Tr. Vol. 8, pgs. 1889 – 1892.	The gun has a 9 lb. trigger pull, an operable thumb safety, and is in excellent operating condition. Tr. Vol. 9, pgs. 2099 - 2100.
131	Magazine from the .40 caliber handgun recovered from Dean's house. Tr. Vol. 9, pg. 2097	
139	Bullet recovered from the inside of the driver's door of the pickup truck at the Titus Arnold homicide scene that took place on April 13, 2005. Tr. Vol. 8 pg. 1977; Tr. Vol. 9, pg. 2110.	Deformed bullet. Since a majority of the bullet is missing, further identification that it was fired from a particular weapon is precluded. Tr. Vol. 8, pgs. 1977 – 1978; Tr. Vol. 9, pg. 2111. The bullet was probably a .40 a S&W caliber bullet that was fired from a weapon that had seven lands and grooves with a left hand twist, which are characteristics consistent with State's Ex. 130, the .40 caliber pistol recovered from Dean. Tr. Vol. 9, pgs. 2110 – 2111.
217	Bullet recovered from front porch pillar at 609 Dibert Ave. Tr. Vol. 8, pg. 1978; Tr. Vol. 9, pg. 2111..	.40 caliber bullet, but too degraded for comparison. Tr. Vol. 8, pgs. 1978 – 1979; Tr. Vol. 9, pg. 2111 – 2112.
236	Spent bullet recovered from the sleeve of Andre Piersoll's coat at Mercy Hospital, flowing the shooting at the Selma Road Mini Mart on April 10, 2005. Tr. Vol. 8, pg. 1975; Tr. Vol. 9, pg. 2112.	.25 caliber bullet, with class characteristics (six left) such that it was fired by a gun manufactured by Astra, Colt, FIE Titan, or Raven. Tr. Vol. 8, pgs. 1975 – 1976, Tr. Vol. 9, pgs. 2112 - 2113. Particles in the bullet appeared to be glass. Tr. Vol. 9, pgs. 2123 – 2124.
266	A bullet recovered at Devon Williams' house at 609 Dibert Ave. The shooting took place on April 12, 2005. Tr. Vol. 9, pg. 2102.	The bullet is a .40 caliber S&W, but too degraded to match to being fired from a particular gun, although the bullet has a left hand twist, which is consistent with the left hand twist of State's Exhibit 130, the .40 caliber pistol recovered from Dean. Tr. Vol. 9, pg. 2102 - 2103.

267	A bullet recovered from Devon's car at the Dibert Ave. shooting scene that took place on April 12, 2005. Tr. Vol. 9, pg. 2104	The bullet is .25 caliber, having been fired from a weapon having six lands and grooves with a left hand twist. Consistent with a gun manufactured by Phoenix, Raven, Master Cub, Raven MP-25 or Avis D-25. Tr. Vol. 9, pgs. 2105 - 2106.
293	Recovered from the from the parking lot of the Selma Road Mini Market shooting scene on April 10, 2005, two .25 caliber shell casings. Tr. Vol. 8, pg. 1974; Tr. Vol. 9, pg.2107.	.25 caliber cartridge casings manufactured by Federal. The casings were fired from the same weapon. Tr. Vol. 9, pg. 2108.
329, 329A through C	Evidence bag (329), a .380 caliber handgun (329A) and the magazine (329B) and a round of ammunition (329C) recovered from a coffee table drawer in an upstairs bedroom where Josh Wade was arrested. Tr. Vol. 8, pg. 1947 – 1948.	.380 caliber handgun, 9 lb. trigger pull, operable thumb safety, excellent operating condition. Tr. Vol. 9, pg. 2101.
338, 338 A through H	Evidence bag (338) and eight bullets (338 A through H) remaining from ten bullets recovered from the Hi-Point S&W .40 caliber pistol recovered from a small table in the kitchen of Dean's house. Tr. Vol. 9, pg.2114.	These are Remington Peters .40 caliber hollow point bullets. Tr. Vol. 9, pg. 2114.
339, 339A through D	Evidence bag (339), with two casings (339 A and C) and two bullets (339B and D) test fired from the Hi-Point S&W .40 caliber semiautomatic pistol, serial no. X708047, recovered from a small table in the kitchen of Dean's house. Tr. Vol. 8, pg. 1979; Tr. Vol. 9, pg. 2100, 2109.	The test fired casings matched the .40 caliber casings recovered from the Titus Arnold homicide scene. (State's Exhibits 16 and 17) The .40 caliber casings recovered from the Titus Arnold homicide scene were fired from the gun recovered from a small table in the kitchen of Dean's house. (State's Exhibit 130A). Tr. Vol. 9, pgs. 22108 - 2109.
340, 341, 342, 343, 344, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368	Photographs of State's Exhibit 130A, the Hi-point .40 caliber handgun recovered from Dean, as the weapon had been disassembled for fingerprint analysis by BCI technician Robin Roggenbeck. The weapon was reassembled and photographed after reassembly. Tr. Vol. 9, pgs. 2113 – 2123	When the disassembled weapon was returned to SPD, the seer assembly was missing. The seer assembly holds the firing pin back in the firing position. A replacement seer assembly was installed to make the gun operable. The seer assembly does not affect how a bullet is identified after the test firing process. Tr. Vol. 9, pgs. 2113 – 2123. The gun had been test fired before being disassembled by BCI. Tr. Vol. 9, pg. 2134.

Robin Roggenbeck: BCI Fingerprint Examiner. Tr. Vol. 8, pgs. 1989 - 2011. Roggenbeck received an evidence envelope, a Hi Point .40 caliber gun, and the magazine for the gun on May 3, 2005. (**State's Exhibits 130, 130A, 131**). The items had already been tested for prints on the exterior using a super glue method before they were received by Roggenbeck. Roggenbeck was asked to disassemble the gun and check the internal slide mechanism for prints. After using a superglue process and a fluorescent dye stain process, Roggenbeck did not detect an area of sufficient ridge detail to make an identification. Roggenbeck identified **State's Exhibits 344, 345, 346 and 347,** which are photographs of the High Point .40 caliber gun, **State's Exhibit 130A**, after disassembly. (The handgun and magazine were recovered from a small table in the kitchen of Dean's house. Tr. Vol. 8, pgs. 1889 – 1892.)

Stipulation As To Dean's Authorship Of Letters To Manns And Sions Tr. Vol. 9, pg. 2085. Published to the jury, Tr. Vol. 9, pg. 2167.The parties stipulated that Dean wrote letters to Joshua Manns, **State's Exhibits 371 through 378**, and to Rhonda Sions, **State's Exhibits 379 through 436, 439, 440, and 448 through 507**.

Stipulation As To Dean's Voice On Jail Call Recordings: Tr. Vol. 9, pgs. 2167 – 2168. The parties stipulated that Dean's voice was on recordings of jail telephone calls identified as **State's Exhibits 509, 509A, 509B and 509C**.

Jason Manns: Cellmate and Friend Of Jason Dean. Tr. Vol. 9, pgs. 2170 - 2191. Manns was celled with Jason Dean. Manns has known Jason Dean all his life Manns identified the letters seized from his cell. (**State's Exhibits 371, 372, 373, 374, 375, 376, 377, 378**).

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

> Q. [Prosecutor Schumaker] And during that time of incarceration, did Mr. Dean have occasion to mention anything to you concerning a shooting at a Mini Mart in Springfield, Ohio?
>
> A. [Jason Manns] Yes, sir.
>
> Q. And can you please tell these jurors what Mr. Dean told you occurred there at the Mini Mart?
>
> A. He ran across an individual that supposedly drugged and robbed his brother, chased him down, got out, shot him, and robbed him.
>
> Q. Okay. Now, while you were incarcerated with

Mr. Dean, did he also discuss with you a drive-by shooting on Dibert Avenue in Springfield, Ohio?

A. Yes, sir.

Q. Can you please tell these jurors what he told you concerning that shooting?

A. He said he was paid to do a drive-by shooting. He drove down the street, shot up the house, turned around at the end of the street, came back and shot at people coming out of the house; and one of them was holding a baby in his arms that he almost shot because the bullet actually went through his shirt sleeve.

Q. And did he also make any statements to you concerning the killing of Titus Arnold?

A. Yes.

Q. Will you please tell these jurors what he told you?

A. He jumped out the car and went to rob him. Titus Arnold turned to run. He tried to fire his gun. His gun jammed, and Josh Wade jumped out the car and shot two shots. One went into a car door, and one went into Titus Arnold's head and killed him.

Rhonda Sions: Girlfriend of Jason Dean. Tr. Vol. 9, pgs. 2192 - 2246. Sions was Dean's girlfriend after Crystal Kaboos. Josh Wade and Jason Dean were always together. Dean had a Buick Riviera. Wade usually drove the car.

Sions testified that Dean's former girlfriend was upset because Dean made Kaboos leave his home because Sions was Dean's new girlfriend. After Kaboos left, Wade said he was worried that Kaboos might turn he and Dean into the police, but Dean said "No, I'm not worried about that bitch." . Dean made that statement about Kaboos when he and Wade were talking about the newspaper story about the Titus Arnold homicide. Tr. Vol. 9, pg. 2201.

Relative the Titus Arnold homicide, Dean said "that it was a case of mistaken identity, that it wasn't supposed to be Titus Arnold that got shot. It was supposed to be O-Z." Tr. Vol. 9, pg. 2204.

Following Dean's arrest, Sions visited Dean in jail. She would take Dean's telephone calls from the County jail. Dean wrote letters to her as well.. Sions and Dean would communicate about Dean's cases, including the Titus Arnold homicide.

Recording Of Dean Call From Jail To Sions

One of Dean's telephone calls to Sions from County jail was played for the jury. On it, Dean said the prosecutors weren't going for a deal. Dean said the prosecutors were going for the death penalty "because we killed a moon cricket." Dean was concerned about the eyewitnesses. Dean was concerned that the murder weapon was in his house. **State's Exhibit 509C** .Tr. Vol. 9, pgs. 2205 - 2206. Later, the parties stipulated that Dean's voice was on this recording, and that Dean's voice was also on **State's Exhibit 510B**, which was a transcript made from a jail telephone call recording. Tr. Vol. 9, pgs. 2283 - 2286.

Letters From Dean To Sions

Sions identified letters Dean wrote to her. In one letter, Dean wrote that sometimes he gets angry and can't control himself, which is one reason why he's now in jail. The man was in his grave because he was in the wrong place at the wrong time. (**State's Ex. 436B**) Tr. Vol. 9, pgs. 2212 - 2213. Dean wrote that he got caught up in the fast life, "doing what comes natural to a beast like me...." **State's Exhibit 426B** Tr. Vol. 9, pgs. 2213 - 2214. Dean has to wait and see what kind of deal he can get. **State's Exhibit 428B** Tr. Vol. 9, pgs. 2213 - 2214. Dean was concerned about what Wade has said, or will say, to the police. Wade should tell police that 'I know nothing about no murder.' **State's Exhibit 429B** Tr. Vol. 9, pgs. 2215 – 2216.

Dean wrote that Sions should not have any further contact with an unidentified male, because "I don't need another life on my conscience." (**State's Exhibit 430B**) Tr. Vol. 9, pgs. 22217 - 2218. Dean wrote that if he and Sions got together before, Sions would not have allowed Dean to run the streets at night, and Sions "wouldn't have been having all the crazy shit I was doing." **State's Exhibit 431B** Tr. Vol. 9, pgs. 2218 - 2219. Dean wrote that the police and prosecutors know most of the truth, and that "it doesn't look like they're going to offer much of anything." Dean needs his "discovery pack" so he can "find out exactly what they know and don't know." **State's Exhibit 432B** Tr. Vol. 9, pgs. 2219 - 2220.

Dean wrote that "When I was down at book-in I was talking to a dude I know, Mike Crowley. And like I said, I'm fucking chained up. You see how had have me. (sic) Anyway, this dude walks up to me and say 'That dude you and your boy killed was my cousin.' I looked at him and said, 'I don't give a fuck.' So he takes a swing at me and catches me in the jaw." (**State's Exhibit 433B**) Tr. Vol. 9, pgs. 2221 - 2222. Dean wrote that he can't blame anybody but himself for the mess he's in. **State's Exhibit 434B** Tr. Vol. 9, pgs. 2222 - 2223.

Dean wrote "I just lost control. I made a lot of mistakes and I'm just going to have to pay for them. And it's nobody's fault but my own." **State's Exhibit 462B** Tr. Vol. 9, pgs. 2223 - 2224. Dean writes that he wishes he could undo what happened, but "what's done is done." **State's Exhibit 463B** Tr. Vol. 9, pgs. 2224 - 2225. Dean wanted to know what Kaboos remembered about what he was wearing "that day." Dean was worried about the bullets police found in his jacket or pants. **State's Exhibit 466B** Tr. Vol. 9, pgs. 2225 - 2226.

Dean wrote that "Most of this shit is my fault." **State's Exhibit 467B** Tr. Vol. 9, pg. 2226. Referring to another male, Dean wrote "If I could just get my hands on that motherfucker. I would crush him. If I could get my hands on him, there would be another mother mourning the loss of her child." **State's Exhibit 468B** Tr. Vol. 9, pgs. 2226- 2227. Sions explained that in Dean's reference to "moon cricket", he was referring to a black person. Dean wrote that Sions should stay out of trouble, because "Baby, I don't need no more blood on my hands or my conscience." Dean also wrote "By them [the prosecution] saying that we robbed a dude after we killed him, that's what made it aggravated murder; and that's the only one that applies to me is the robbery part." **State's Exhibit 471B** Tr. Vol. 9, pg. 2228.

Dean wrote that "Because at that point in time, if I wanted something, I took it. And damn the consequences. But that kind of thinking has led me to know where I am right now, locked in a concrete and steel cage. **State's Exhibit 474B** Tr. Vol. 9, pgs. 2229. Dean wrote "I didn't choose to go to jail. I just made a lot of bad decisions and I was led down the wrong path." **State's Exhibit 475B** Tr. Vol. 9, pgs. 2229 - 2230. Dean expressed concern about what Wade would say. Dean felt betrayed because he had helped Wade and his family. "If he [Wade] would just keep his fucking mouth shut, everything would be a lot better." Wade doesn't realize that by talking "He is just digging himself deeper hole." The prosecution has Wade scared "with this life without parole bullshit" such that Wade would say anything the prosecution wanted Wade to say. But, "They [the prosecution] have fucking eyewitnesses. It doesn't get any simpler than that." **State's Exhibit 478B**. Tr. Vol. 9, pgs. 2231 – 2232.

Dean wrote that "I sit here all the time and think about all the things I should have done and all the fucking decisions I made." **State's Exhibit 482B** Tr. Vol. 9, pg. 2232.

Kevin Bowshier: Friend Of Dean. Tr. Vol. 9, pgs. 2247 - 2268. Bowshier knows Jason Dean because Jason Dean's brother, Mark, has a child with Bowshier's sister, Angel Bowshier. During the early AM hours around April 13, 2005, Kevin Bowshier was snorting cocaine with Mark Dean at Mark's house. Dean appeared with Josh Wade. Dean said they had "smoked somebody and robbed them." Dean said the robbery proceeds were "like three bucks."

Dean said they tackled Arnold and Dean's gun didn't go off and that Josh shot Titus. Dean said he tried to shoot but his gun jammed. and one of them shot him.

State's Exhibits Admitted: Tr. Vol. 9, pgs. 2286 – 2334.

Argument Regarding Jury Instructions: Tr. Vol. 10, pgs. 2354 - 2377.

State Rests: Tr. Vol. 2377 – 2378. Defense motion for acquittal pursuant to Rule 29 overruled. Tr. Vol. 10, pgs. 2378 - 2380

Defense Rests: Tr. Vol. 10, pgs. 2380 – 2381.

State's Closing Argument: Tr. Vol. 10, pgs. 2385 - 2421.

Defense Closing Argument: Tr. Vol. 10, pgs. 2421 - 2442.

State's Rebuttal Closing: Tr. Vol. 10, pgs. 2443 - 2465.

Jury Charge: Tr. Vol. 10, pgs. 2468 - 2520.

Jury Questions: Tr. Vol. 10, pgs. 2531 - 2532 The question was "Does complicity apply to each count or only Counts Twelve-Thirteen." The agreed response was "Complicity is a concept that applies to all criminal charges."

Tr. Vol. 10, pgs. 2532 – 2533. The question was "If we believe the Defendant did not fire the gun into 609 Dibert, can Defendant still potentially be found guilty of Charge 5 on the concept of complicity." The agreed response was "The instructions are a complete statement of the law. You must apply that law to the facts that you find."

Tr. Vol. 10, pgs. 2533 – 2540. The question was "In attempted murder does it matter if the person identified in the charge is the intended target or not.?" The response was to give the jury an additional charge on transferred purpose, which would be a modification of Charge No. CR 417.09 from OJI. The charge given reads:

> All offenses of murder, including attempted murder and aggravated murder, have as one of the essential elements that the Defendant had a purpose to cause the death of another. The purpose required is to cause the death of another person, not any one specific person. If the death was intended for one person but resulted in an attempt on or the death of another, the offense is complete. However, if there was no purpose to cause the death of anyone, the Defendant may not be found guilty of attempted murder, murder or aggravated murder.

Over a defense objection that the doctrine of transferred intent did not apply to the Dibert Ave. shooting since the victims were expressly named in the verdict forms, the Court gave the foregoing instruction to the jury.

Jury Verdict And Polling: Tr. Vol. 10, pgs. 2550 – 2559. Guilty of all charges and specifications.. As to Titus Arnold, guilty of aggravated murder of, with prior calculation and design; guilty of course of conduct specification as applied to Andre Piersoll, Yolanda Lyles, Shanta Chilton, Hassan Chilton, Shani Applin and Jaida Applin; guilty of aggravated robbery

specification, not as principal offender, but with prior calculation and design., plus gun specification. (Count 12) ; guilty of aggravated murder of, during an aggravated robbery; guilty of course of conduct specification as applied to Andre Piersoll, Yolanda Lyles, Shanta Chilton, Hassan Chilton, Shani Applin, and Jaida Applin; guilty of aggravated robbery specification (not as principal offender, but with prior calculation and design. (Count 13).

Mitigation Phase

Argument Regarding Admission Of State's Exhibits For The Mitigation Phase: Tr. Vol. 10, pgs. 2563 - 2570. Following the State's approved election to proceed on Count 12 aggravated murder , prior calculation and design, and Specification 1, the course of conduct specification, the trial court entertained additional argument on the matter . The trial court granted the admission of State's Exhibits as specifically enumerated. Tr. Vol. 11, pgs. 2996 – 2604.

Argument Regarding Other Bad Acts Evidence During Mitigation: Tr. Vol. 10, pgs. 2570 - 2574.

Argument Regarding Admissibility of Co-Defendant Wade's Life Sentence: Tr. Vol. 10, pgs. 2574 – 2579.

Argument Regarding Diminished Capacity Mitigation: Tr. Vol. 10, pg. 2580.

Argument Regarding Merger Of Counts 12 And 13: Tr. Vol. 10, pgs. 2580 - 2588, . pgs. 2597 – 2598. Relying on *State v. Perez*, 124 Ohio St. 3d 122 (2009), the State's position was that the aggravated murder counts merger, but the specifications do not merge. The defense objected. Following a weekend recess and e-mail exchanges with the Court and counsel, the State notified the Court it intended to proceed on Count 12, prior calculation and design, Specification 1, the course of conduct specification, to which the defense did not object.

Argument Regarding Jury Instructions: Tr. Vol. 11, pgs. 2604 – 2605. The defense announced that Dean does plan to make an unsworn statement, and that modifications to the instructions will be requested if Dean decides not to present expert testimony. The defense preserved objections to the exclusion of a mercy instruction as well as to the exclusion of a residual doubt instruction.

State's Opening Statement: Tr. Vol. 11, pgs. 2617 - 2620.

Defense Opening Statement: Tr. Vol. 11, pgs. 2620 - 2625.

Dean's Unsworn Statement: Tr. Vol. 11, pgs. 2626 – 2628.

Gloria Elliott: Tr. Vol. 11, pgs. 2628 - 2653. Dean's paternal aunt. Dean's father was a violent alcoholic and Dean's mother was a chronic pot smoker. Dean drank alcohol and

smoked pot from a young age. Due to chaos in the Dean household, Ms. Elliot would frequently be the primary caretaker for Dean and his two brothers for extended periods until Dean was a teenager. Dean's father was physically abusive to Dean and Dean's mother.

Brandy Murphy: Tr. Vol. 11, pgs. 2653 – 2678. Dean's cousin. Ms. Murphy is two years older than Dean. During her teenage years, she would spend the summers in the Dean household. Dean's father was a violent alcoholic and Dean's mother was a chronic pot smoker. Neither Dean nor his brothers were encouraged to attend school. Dean's mother encouraged a lawless lifestyle.

Defense Rests: Tr. Vol. 11, pg. 2680.

Colloquy Regarding Psychological Expert Reference: Tr. Vol. 11, pg. 2680. The defense asked the trial court "Did the Court have the opportunity then to remove from the final instructions the language on expert?" The trial court responded that "I removed that as well as a phrase here relating to where I'm describing the mitigating factors and removing psychological diagnoses, measure of intellectual functioning.

State's Closing Argument: Tr. Vol. 11, pgs. 2682 - 2688.

Defense Closing Argument: Tr. Vol. 11, pgs. 2689 - 2696.

State's Rebuttal Closing: Tr. Vol. 11, pgs. 2697 - 2706.

Jury Charge: Tr. Vol. 11, pgs. 2707 – 2724.

Colloquy Regarding Psychological Experts: Tr. Vol. 11, pg. 2727. Outside the presence of the jury, the trial court stated "The Court just wants the record to reflect that at pretrial, the Court has furnished funds for expert witnesses, Dr. Stinson and Dr. Donninger for the Defense. The Court would like the record to reflect that the evidence was fully developed by these witnesses for the defense and that reports have been furnished and Defense Counsel had had adequate opportunity to discuss potential testimony of these witnesses and that, as a matter of trial strategy, the Defense has chosen not to call them as witnesses. Is that a fair statement, Mr. Meyers?" Gregory Meyers, lead defense counsel responded "Well, I would say this, Judge. Certainly the reports were generated and disclosed, were discovered; and as all things in trial, we on the defense make decisions based on our strategy, hope that they're effective.

Verdict And Polling: Tr. Vol. 11, pgs. 2732 - 2738.

Sentencing Hearing: Tr. Vol. 1 of 1, pgs. 1 – 22.