

**In the Supreme Court of Ohio**

**STATE OF OHIO,** :  
 :  
 **Appellee,** :  
 : **Case No. 1995-0042**  
 **v.** :  
 :  
 **JEFFREY WOGENSTAHL,** : **This Is A Capital Case.**  
 :  
 **Appellant.** :

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**REPLY BRIEF OF APPELLANT JEFFREY WOGENSTAHL**

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## **Proposition of Law No. 1**

### **The Hamilton County Court Of Common Pleas Lacked Jurisdiction Over The Aggravated Murder Charge Because The State Failed To Prove Subject Matter Jurisdiction Beyond A Reasonable Doubt.**

The State argues that it proved, pursuant to the version of R.C. § 2901.11 (B) in effect at the time of the Wogenstahl's trial, that Amber was killed in the State of Ohio. The State's argument contains two flaws. First, it employs an incorrect standard of review. Second, regardless of the standard this Court applies, the facts as developed at trial through the State's witness and prosecutorial argument, do not satisfy the statutory requirements for the trial court to have had jurisdiction. Wogenstahl will separately address each issue.

#### **I. Because this Court Conducts De Novo Review of Jurisdictional Issues, It Does Not Apply a Sufficiency of the Evidence Standard.**

Wogenstahl agrees with the State's assertion that "[w]hether a trial court has subject matter jurisdiction of a charge is a question of law which this court review's de novo." (Appellee's Brief, p. 8). He further agrees with the State's assertion "[u]nder the de novo standard or review we give no deference to the trial court's legal conclusions." (*Id.*). That would be especially true herein because the trial court did not address the jurisdictional issue and therefore no factual or legal findings exist to which this Court could defer.

While this Court has yet to address the issue, Ohio appellate courts have consistently held that the State has the burden of proof beyond a reasonable doubt as to subject matter jurisdiction. (*See* Appellant's Brief, p. 6). *Nowhere* in the State's Brief does the State contend that it met this burden of proof.

The State argues that the standard of review as to jurisdictional issues is whether "reasonable minds could reach different conclusions as to whether the jurisdiction over the offense has been proven beyond a reasonable doubt." (Appellee's Brief, p. 8) (citing *State v.*

*Hubbard*, 12th Dist. No. CA99-12-222, 2001-Ohio-4193,\* 4 (2001). This is incorrect. Such a standard is inapposite with the de novo review that the State concedes this Court is to apply. (Appellee’s Brief, p. 8).<sup>1</sup>

While this Court did not address the standard of review in *State v. Yarbrough*, 104 Ohio St. 3d 1, 2004-Ohio-6087, 817 N.E.2d 845 (2004), it appears that this Court applied de novo review therein. *Id.* at ¶ 44 (“However, undisputed evidence established that Muha and Land were shot in Washington County, Pennsylvania. Here, the act causing the deaths, the physical contact causing the deaths, and the deaths themselves all occurred in Pennsylvania”). In civil cases in which this Court has addressed jurisdictional issues, it has addressed factual issues de novo. *Fallang v. Hickey*, 40 Ohio St. 3d 106, 107, 532 N.E.2d 117 (1988); *Ky. Oaks Mall Co. v. Mitchell’s Formal Wear*, 53 Ohio St. 3d 73, 75-76, 599 N.E.2d 477 (1990); *United States Sprint Communications Co., P’Ship v. K’Foods*, 68 Ohio St. 3d 181, 185, 624 N.E.2d 1048 (1993).

Ohio appellate courts have also generally applied de novo review when reviewing jurisdictional issues in a criminal case. *State v. Cody*, 8th Dist. No. 100797, 2015 Ohio App. LEXIS 2172, 2015 Ohio 2261, ¶ 16, (June 11, 2015); *State v. Marzolf*, 9th Dist. No. 22459, 2009-Ohio-3001, ¶ 7 (June 24, 2009); *State v. Walls*, 12th Dist. No. 99-10-10-174, 2000 Ohio App. LEXIS 5779, \*5-7 (Dec. 11, 2000); *State v. Carlton*, 5th Dist. CA 01CA43, 2002 Ohio App. LEXIS 3191, 2002-Ohio-3073 ¶ 8 (June 12, 2002).

The single case upon which the State relies, *State v. Hubbard*, is distinguishable. In *Hubbard*, while it is not clear, it appears that the defendant challenged the trial court’s

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<sup>1</sup>While Wogenstahl disagrees with the State’s argument that a sufficiency of the evidence standard applies, he also asserts regardless of which standard this Court applies, his conviction must be vacated because the State did not meet its burden of proving subject matter jurisdiction. A capital crime that leads to a death sentence cannot be upheld based on mere supposition and speculation. *State v. Adams*, 144 Ohio St. 3d 429, 2015-Ohio-3954, 45 N.E.3d 127 (2016).

jurisdictional ruling in the context of a Rule 29 motion. (*Id.* at \*2-\*3). The Court in *Hubbard* relied on a single case, its prior holding in *State v. Moore*, 12th Dist. CA85-04-035, 1986 Ohio App. LEXIS 8836 (1986). In that case, it is clear that the defendant was challenging the trial court's Rule 29 issue on the jurisdictional issue. *Id.* at \*21 (“As for dismissal during trial, we believe the standard for granting a jurisdictional dismissal should be the same as that for failing to prove any other essential element of the offense.”). In *Moore*, the court cited to this Court's decision in *State v. Bridgeman*, 55 Ohio St. 2d 261, 381 N.E.2d 184 (1978), in which it established the standard for ruling on Rule 29 motions. Wogenstahl is not challenging the trial court's ruling on his Rule 29 motion. Thus, *Hubbard* is not applicable.

When ruling on factual issues in the context of jurisdictional issues, this Court applies the same standard as the trial court. *Fallang*, 40 Ohio St. 3d at 107 (jurisdictional issue was before this Court in the context of a Civil Rule 12(B)(2) motion and therefore it determined de novo whether the plaintiff had made a *prima facie* showing as to jurisdiction). Because the State bore the burden of proof in the trial court by proof beyond a reasonable doubt, this Court reviews the jurisdictional issue de novo applying a reasonable doubt standard.

## **II. The State's Brief Ignored the Prosecution's Multiple Concessions.**

In his merit brief, Wogenstahl asserted that the prosecution's arguments in both closing argument and on direct appeal constituted concessions that the trial court lacked jurisdiction. (Appellant's Brief, p. 12).

In its responsive brief, the State did not address, let alone attempt to “explain away” these concessions. The State's silence speaks volumes in support of Wogenstahl's argument that Amber was killed in Indiana.

The State's concessions for all intents and purposes preclude the State from prevailing on its argument that Amber was killed in the State of Ohio. The State previously won a conviction based upon the arguments that it made at trial—arguments that flatly put Amber's murder in the State of Indiana. (*See* State's Exhibit 54; Tr. 2538; Tr. 2800 (“He could have left her alive somewhere out in Indiana . . .”); Tr. 2802 (“as [the victim] lay on that hillside [where the body was found in Indiana] and that tiny little heart beat its last beat and those little lungs drew that last breath . . . All [the victim] had were the limbs of that juniper tree and the branches of that blackberry bush. . . .”). This is especially true given the fact that the State bears the burden of proof by beyond a reasonable doubt.

### **III. This Court On Direct Appeal Did Not Determine that Amber Was Murdered in Ohio.**

The State argues that this Court already decided the facts necessary to resolve the jurisdictional issue. (Appellee's Brief, pp. 12-13). In support of this argument, the State cites three portions of this Court's direct appeal opinion. (*Id.*). However, those three portions do not, either individually or collectively, support this conclusion.

First, the State cites to the portion of this Court's opinion in which it determined that “[at] some point, appellant killed Amber when he realized that he could not return her to the apartment without being identified as the perpetrator of the aggravated burglary and/or kidnapping offenses.” (Appellee's Brief, p. 12, citing *State v. Wogenstahl*, 75 Ohio St. 3d 344, 367, 662 N.E.2d 311 (1996)) (emphasis added). The State does not explain the manner in which the phrase “at some point” supports the conclusion that Amber was killed in Ohio.

Second, the State cites the portion of this Court's opinion in which it found that “[t]he evidence at the scene indicated that the murder had occurred *at a different location* and that the killer had carried Amber's body through the dense vegetation.” (Appellee's Brief, p. 13 citing

75 Ohio St. 3d 344 at 367). The State does not indicate the manner in which the phrase “different location” supports the conclusion that Amber was killed in Ohio, as opposed to Indiana. Because Amber may not have been killed in the exact location where her body was discovered in Indiana, it does follow that she was killed in Ohio.

Third, the State relies on the portion of this Court’s opinion summarizing the testimony of informant Bruce Wheeler:

he could get away with having removed her from the residence. However, someone was at the Garrett residence when appellant attempted to return Amber to her home. Thus, according to Wheeler, appellant said that he decided to have “sex” with Amber once again. Wheeler testified that appellant admitted stabbing Amber in the chest when she refused his further sexual advances.

(Appellee’s Brief, p. 13, citing 75 Ohio St. 3d at 350). The State offers no analysis concerning the manner in which it can be reasonably inferred from this portion of this Court’s opinion that Amber was killed in the State of Ohio. Wheeler does not claim that Wogenstahl told him that he killed Amber in Ohio.

Even when these three portions of this Court’s opinion cited by the State are considered cumulatively, the State’s argument fares no better. When combined, the three portions provide that Wogenstahl stabbed Amber after having attempted to return her to her mother’s apartment and the stabbing occurred “[at] some point” and in a “different location” other than where her body was found.

This Court’s opinion does not support the conclusion by proof beyond a reasonable doubt that Amber was murdered in Ohio.

**IV. The State’s Brand New Theory that Amber Was Killed at Wogenstahl’s Apartment Not Only Contradicts Its Theory at Trial, But Also Is Not Supported by the Facts.**

The State posits a new inconsistent theory as to where Amber was killed; it now claims that she was killed in Wogenstahl’s apartment. The State did not present this theory at trial and



instead waited twenty-three years to advance it. The State does not offer any explanation as to the reason that it took twenty-three years for it to identify this theory.

At trial, the prosecution told the jury that Wogenstahl stabbed Amber while they were riding in his motor vehicle:

[I]f you would pretend that you're in the car and you're parking someplace, you have got a knife in your right hand and the person next to you has not taken lightly to your advances. If you reach over to the person sitting next to you in that passenger seat and started to stab them, where would the wounds be? Where would those stab wounds be on Amber if she was sitting in the passenger seat of that car like Vickie Mozena talked about seeing her there or somebody like her or some little girl in a car like that? They would be on the left side of her body. And low and behold, that is exactly where they were.

(Tr. 2596-97).

The State now claims that Wogenstahl killed Amber at his apartment. (Appellee's Brief, pp. 13-14). As will be addressed herein, the State's new theory as to the location of the murder is even less compelling than its prior theory. To support its new found argument, the State is left to scrounge the record for any facts that can conceivably support its previously undisclosed theory. The State is unable to cite to any portion of either the trial court or direct appeal record in which the State, prior to filing its brief, contended that Amber was killed in Ohio.

Moreover, the State's lack of consistency highlights its failure to meet its burden, to prove beyond a reasonable doubt that the victim was killed in Ohio. If the State cannot set forth a consistent argument as to where in Ohio the victim was killed, then it certainly cannot meet its burden of proof to demonstrate that the victim was killed in Ohio.

Under this new theory, the State posits it is "more reasonable to conclude [Wogenstahl] took [Garrett] back to his apartment, gave her the chewing gum that was found in her throat, and stabbed her in the bathroom when she refuse his sexual advances." (Appellee's Brief, p. 14). The State is wrong. First, given the facts of this case, it is not more reasonable to conclude that

Amber was killed in Wogenstahl's apartment. Even if it was more reasonable to so conclude, the State's "proof" falls far short of beyond a reasonable doubt.

**A. The blood found in Wogenstahl's apartment does not link Amber to Wogenstahl's apartment.**

The State asserts that Wogenstahl's bathroom was "*littered* with blood smears and stains" and blood was found on a napkin in his kitchen. (Appellee's Brief, pp. 13-14) (emphasis added).

The State is incorrect on both accounts.

a. *The apartment was not littered with blood.*

The State does not offer any citation to the record to support its assertion that the apartment *was littered* with blood. The lack of citation is telling. There is no evidence that Wogenstahl's apartment was littered with blood, let alone the blood of Amber. Regardless of the manner in which the term "littered" is defined, the State's argument fails for lack of support.

Jeffrey Schaefer, a criminalist from the Hamilton County Coroner's Laboratory, testified that he detected the presence of blood on the following items found in Wogenstahl's apartment: one gym shoe (Tr. 1881), blue jeans (Tr. 1884), one white t-shirt (Tr. 1931), and a work boot (Tr. 1926). In addition, Schaefer detected blood on the outside of the bath tub and the cup holder in the bathtub. (Tr. 1884-87). Schaefer only performed presumptive tests for the presence of blood. (Tr. 1890). Presumptive testing is not conclusive; in order to confirm the presence of blood, confirmatory testing would need to be performed. Assuming that these stains were definitely blood, the tests that Schaefer performed did not, and could not, reveal whether this blood was consistent with either Amber or Wogenstahl's blood, or whether the blood was even human (Wogenstahl had a cat). (Tr. 1690).

Schaefer forwarded some of the physical evidence to Brian Wraxall for more specific blood testing. (Tr. 1880-81; 1922; 1924; 1929-30; 1937). But Wraxall's testing failed to provide

more conclusive results. His testing on the two pairs of blue jeans and the work boot did not indicate that the blood on those articles was of animal or human origin. He did not conduct any typing tests. He obtained no results from the stains in the bathroom beyond presumptive testing. Wraxall, however, determined that the blood on the towel was not consistent with the blood of Wogenstahl or Amber. (Tr. 2098). Therefore, the only confirmed human blood found in Wogenstahl's apartment did *not* match the blood of the victim.

b. *There was no blood on the napkin.*

The State claims that “[b]lood was also found on a napkin in his [Wogenstahl’s] kitchen.” (Appellee’s Brief, pp. 13-14). Detective Lieutenant Edward Bettinger found a napkin in Wogenstahl’s apartment that appeared to have single drop of blood on it. (Tr. 1764). However, when Schaefer performed his presumptive blood testing on the napkin, the results were negative for blood. (Defendant’s Ex. 1, p. 7).

**B. The chewing gum wrappers found in Wogenstahl’s apartment do not link Amber to Wogenstahl’s apartment.**

The State argues that the fact that investigators found several chewing gum wrappers on Wogenstahl’s kitchen counter “is significant because the coroner found a wad of chewing gum in her [Amber’s] esophagus. (T.p. 1411).” (Appellee’s Brief, p. 14). The State’s argument fails for two reasons.

First, the wrappers found in the apartment did not match the gum found in Amber’s throat. The gum found in Amber’s esophagus was light blue or light green. (Tr. 1422-23). The gum found in Wogenstahl’s apartment was pink, purple, and red. (State’s Exhibit 13).

Second, the State’s argument defies common sense. The State argues, without any support, that Wogenstahl kidnapped Amber, took her to his apartment where he sexually assaulted her, and subsequently killed her. If this were true, it is extremely unlikely that

Wogenstahl at some point during the course of the sexual assault and murder offered Amber a piece of chewing gum.

**C. The testimony of Informant Bruce Wheeler does not link Amber to Wogenstahl's apartment.**

The State, in an effort to prove Amber was killed in Wogenstahl's apartment, cites to the testimony of Bruce Wheeler who was housed with Wogenstahl in the Hamilton County Justice Center. (Appellee's Brief, pp. 12-13). However, Wheeler's testimony was problematic because it conflicts with the testimony of the State's forensic experts. In addition, his testimony does not reference Wogenstahl's apartment, or, at any point, state that Amber was killed in Wogenstahl's apartment.

- a. *The testimony of the State's experts calls into question Wheeler's testimony.*

Wheeler testified that Wogenstahl told him he had raped Amber. (Tr. 2415). However, the coroner, Dr. Michael Kenney, testified that he did not find any evidence of sexual assault. (Tr. 1428, 1431). The prosecution's decision not to charge Wogenstahl with rape is a strong indicator that the State did not even believe this portion of Wheeler's testimony.

Wheeler's flawed testimony was not limited to the non-existent rape, but extended to the manner in which Wogenstahl supposedly killed Amber. Wheeler testified that Wogenstahl said that after killing Amber he wrapped her in "some towels or some sheets or one of the two or some kind of wrapping that he wrapped her in at one time." (Appellee's Brief, p. 14, citing Tr. 2149-50). If Wogenstahl had in fact confessed to one of these methods, surely Wheeler would have remembered. The State presented voluminous expert testimony concerning Amber's person and clothing. (Tr. 1175-76; 1266-69; *see also* Defendant's Exhibit 1, pp. 10-11). None of the three State's experts found any trace evidence on her person or clothing that was consistent with

her body having been wrapped in towels, sheets or any other material. (*Id.*). Finally, the State's expert testified that the blood found on the towel in Wogenstahl's bathroom did not belong to Amber. (Tr. 2098).

The State recognized that Wheeler's testimony concerning the supposed confession did not match the physical evidence. (Tr. 2596). It attempted to explain the discrepancies in his testimony by claiming that Wogenstahl "puff[ed] up his story." (Tr. 2596). However, it is equally likely that Wogenstahl did not "puff up his story," but that Wheeler "made up his story" to curry favor with the State. Wheeler had a strong incentive to help the State given the lengthy sentence he was serving and his hopes of getting parole. (Tr. 2180).

b. *Wheeler's testimony did not reference Wogenstahl's apartment.*

Finally, the State's reliance on Wheeler's testimony is problematic for another reason. The content of his testimony does not support the State's new found argument that Amber was killed in Wogenstahl's apartment. (Appellee's Brief, p. 14). *None* of Wheeler's testimony either directly or inferentially references Wogenstahl's apartment. Throughout Wheeler's testimony he only references Amber and Wogenstahl in Wogenstahl's car. (Tr. 2145; 2148).

**D. The testimony of the State's Own Witness, Vickie Mozena, refutes the State's theory concerning Wogenstahl's apartment.**

The State's new found theory that Wogenstahl killed Amber at his apartment, wrapped her body in towels, sheets, or other some other material, and transported the body in his vehicle into Indiana were he disposed of the body suffers from yet another serious flaw. A State's witness saw Amber still alive when Wogenstahl was supposedly driving her body in southerly direction along the Ohio-Indiana border.

Vickie Mozena, an employee of the United Dairy Farmers (UDF) store located on State Street in Harrison, Ohio, testified that at 3:15 a.m. she saw a vehicle, later identified as

Wogenstahl's vehicle, driving south on State Street headed toward Bright, Indiana. (Tr. 1445). Shortly, thereafter (within minutes) four individuals saw Wogenstahl's vehicle parked on Jamison Road in Indiana next to where Amber's body was later found. (Tr. 1645-53, 1511-17, 1548-52, 1556-63). Mozena testified that when she saw Wogenstahl's vehicle proceeding along State Street (within Indiana), she observed the following:

- Q. When it did that, did you see silhouette persons in in the car?
- A. Yes, I seen [sic] a male silhouette and what looked liked to be a young girl sitting in the seat. *First I could not tell until she had moved.*
- Q. What did you see?
- A. I seen what looked like they were getting up and stretching and then laying back on the car door sleep.

(Tr. 1444-45) (emphasis added).

This testimony refutes the State's new found notion that Amber was killed in Ohio in Wogenstahl's apartment. Minutes before her body is dumped in Indiana, she is seen alive and moving, by a State's witness in a vehicle traveling at a high rate of speed down the Indiana side of State Street. The State offers two arguments in an attempt to call into question Mozena's testimony that Amber was alive when she saw her Wogenstahl's vehicle fleeing to the Indiana border. Neither argument is persuasive.

First, the State in an effort to discredit its own witness claims "that the 'stretching' Vickie Mozena saw, was actually the lethargic movements of a little girl whose lungs were filling with her own blood." (Appellee's Brief, p. 14). If Amber had been previously repeatedly and viciously stabbed at Wogenstahl's apartment, she would not have been physically capable of lethargically raising her arms. Furthermore, the little girl that Mozena saw in the vehicle was not wrapped in towels, sheets, or other material, as the State's new found theory propounds. And if

Amber was not wrapped with any of these items, yet had already been stabbed, as the State now postulates, how could Amber be transported in Wogenstahl's car without leaving *any* blood in the front seat of Wogenstahl's car?<sup>2</sup>

Second, the State argues that "Wogenstahl made multiples trips and *crossed the Ohio Indiana border several times that night.*" (Appellee's Brief, p. 13) (emphasis added). Under this scenario, Amber was still alive when Mozena saw her and it was not until one of the later trips in Ohio that Amber was killed. Based on the evidence the State used at trial to convict Wogenstahl, this is simply not possible. The State at trial argued it proved Wogenstahl's guilt because the testimony of witnesses created "a very tight timeframe." (Tr. 2838). That very tight timeframe now debunks the State's argument that Wogenstahl made multiple trips across the border that night. The following times are critical:

- Eric Horn testified that Wogenstahl left him at Troy Beard's house "a little after three." (Tr. 1002).
- Vickie Mozena, testified that at 3:15 a.m. she saw a vehicle with a young girl alive in the front seat, later identified as Wogenstahl's, driving south down State Street headed towards Bright. (Tr. 1445).
- Within five minutes of Mozena sighting the vehicle, Harold Borgman saw a car pull off the road and sit there. (Tr. 1652-53). The vehicle was parked next to where Amber's body was subsequently found.
- Three additional witnesses within the next few minutes drove by that car while it was still parked on the side of the road, facing the same direction, where Amber's body was subsequently found. (Tr. 1511-17, 1548-52, 1556-63).
- Mozena testified that at 3:45 a.m., she saw the same vehicle at the car wash across the street from the UDF in West Harrison, Indiana. (Tr. 1447).

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<sup>2</sup> Even if Wogenstahl vacuumed his car, as the State alleged at trial, a vacuum would not soak up blood. There was also no testimony that indicated the car was wet or had been washed on the inside. (See State's Exhibits 71 A-B, pictures of the inside of Wogenstahl's car).

The State argued, “We know the time. The time is clear . . . So we are clear on the time.” (Tr. 2438). It is impossible that Wogenstahl was able to drive back and forth between Ohio and Indiana as the State now suggests and drop Eric off, drive to the Garrett residence, abduct Amber, drive by UDF, drive beyond Borgman’s house, drive back to the road outside Borgman’s house, stand by his car for several minutes in order to be spotted by oncoming traffic, place Amber’s body in the ravine where it was later found, and drive to the car wash across the street from the UDF in the timeframe provided by the State’s witnesses at trial. (*See* Appellee’s Brief, p. 11). The jury convicted Wogenstahl under the State’s theory of the case, a theory that required that Wogenstahl traveled on State Street to Jamison Road without any detours according to the State’s “very tight timeframe.” (Tr. 2838).

**V. The Speck of Blood Found in Wogenstahl’s Car Does Not Give Ohio Jurisdiction.**

The State also cites to the fact that “Amber’s blood was recovered from the back door handle of his car.” (Appellee’s Brief p. 13). The speck of blood found on the door handle does not translate into a finding that the Amber was killed in Ohio.

First, this argument only begs the ultimate question of where Amber was killed. There is no testimony, expert or otherwise that identifies when and how the blood was transferred to the door handle. The State attempts to tie it to the blood found in the apartment. (*Id.*). For the reason set forth in Section IV, *supra*, the State’s argument concerning the blood in the apartment is not well taken.

This Court addressed a very similar argument in *Yarbrough*, 104 Ohio St. 3d at ¶¶16, 24. One of the victim’s blood was found in the living room and bedroom of the victim’s apartment, in Steubenville, Ohio. Further, blood from both victims was also found on Yarbrough’s



sweatpants and socks. Despite this conclusive blood evidence that was found in Ohio in that case, this Court still found that Ohio lacked jurisdiction over the homicide offenses.

### **Conclusion to Proposition of Law No. 1**

Jurisdiction was not established for the offense of aggravated murder in this case; the trial court erred and violated Wogenstahl's constitutional right to due process when it entered convictions and imposed a death sentence. Wogenstahl's conviction for aggravated murder should be reversed and the attendant death sentence should be vacated on the grounds that the evidence adduced at trial was insufficient to prove jurisdiction was proper in Ohio.

### **Proposition of Law No. 2**

#### **A Defendant Is Denied The Effective Assistance Of Counsel When A Trial Court Lacks Subject Matter Jurisdiction And Defense Counsel Fails To Raise The Issue.**

The State argues that if this Court finds the trial court had jurisdiction in Wogenstahl's case then trial counsel's failure to raise jurisdiction cannot be the basis of an ineffective assistance of counsel claim. (Appellee's Brief, p. 7). This is incorrect. Had Wogenstahl's trial counsel raised the issue at trial, they could have presented additional evidence or adduced further testimony that the murder necessarily occurred in Indiana.

### **Proposition of Law No. 3**

#### **Trial Of A Defendant In A Court Without Subject Matter Jurisdiction Would Necessarily Violate The Defendant's Substantive And Procedural Constitutional Rights To A Fair Trial And Due Process. U.S. Const. Amends. VI And XIV.**

The State argues that this proposition of law "is outside the scope of this Court's briefing order." (Appellee's Brief, p. 7). This is incorrect. This Court's order provided "[t]he parties' briefs shall be limited to addressing whether the trial court lacked jurisdiction with respect to the count in the indictment charging aggravated murder with death-penalty specifications." *State v.*

*Wogenstahl*, 145 Ohio St. 3d 1467, 2016-Ohio-2956, 49 N.E.3d 1310, 1311 (2016). In proposition of Law No. 1, *Wogenstahl* addresses the issue in terms of a statutory violation. In this proposition of law, *Wogenstahl* addresses the issue in terms of a federal constitutional violation.

### **Conclusion**

For the foregoing reasons, this Court should reverse *Wogenstahl*'s conviction for aggravated murder and vacate the attendant death sentence on the grounds that the evidence adduced at trial was insufficient to prove jurisdiction was proper in Ohio.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that a copy of the foregoing **Reply Brief of Appellant Jeffrey Wogenstahl** was served by U.S. mail addressed to Philip Cummings (0041497) and Sean M. Donovan (0086528), Hamilton County Assistant Prosecuting Attorneys, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 on this 11th day of October, 2016.

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