

IN THE COURT OF COMMON PLEAS, FULTON COUNTY, OHIO

FILED
FULTON COUNTY
COMMON PLEAS COURT

2018 APR 13 A 8:48

TRACY L. ZUVER
CLERK

STATE OF OHIO

Plaintiff

v.

JAMES D. WORLEY.

Defendant

CR16-106

Judge Jeffrey L. Robinson

DEFENDANT'S
SENTENCING MEMORANDUM

Mark D. Berling (0002444)
617 Adams St.
Toledo, Ohio 43604
Telephone: (419) 241-5506
Facsimile: (419) 242-3442

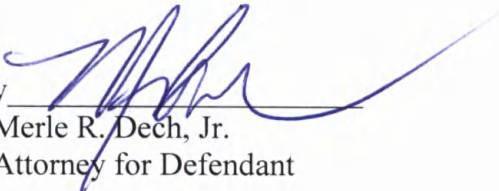
Counsel for Defendant

Merle R. Dech Jr.(0055835)
610 Adams St. 2nd Floor
Toledo, Ohio 43604
Telephone: (419) 241-5506
Facsimile: (419) 242-3442

Mark L. Powers (0015640)
142 N. Fulton St.
P.O. Box 393
Wauseon, Ohio 43567
Telephone: (419) 241-5506
Facsimile: (419) 335-5040

Now comes defendant by and through undersigned counsel and hereby files the attached
sentencing memorandum.

Respectfully submitted,

by 
Merle R. Dech, Jr.
Attorney for Defendant

MEMORANDUM

In the present case there are two issues that are before this court. The first issue is what Counts of the indictment merge and the second is the recommendation by the jury of a death sentence for the conviction of count twelve namely Aggravated Murder and Specification One: that the aggravated murder was committed by the defendant for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by the defendant.

A. MERGER ISSUES

A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

Ohio revised Code section 2925.41 (West 2018).

1. Aggravated Murder/Murder:

In the present case the defense acknowledges the State of Ohio electing to proceed on sentencing with the Aggravated murder charge set forth in Count Twelve with Counts Nine, Ten and Eleven merging with Count Twelve.

2. Specifications One and Two as to Count Twelve.

Defense agrees with the State of Ohio that the only relevant specification the court is to consider is Specification One to Count Twelve.

3. Abduction/Kidnapping

The defense acknowledges the state's election to proceed under Count Six with Counts One, Two, Three, Four and Five having merged into Count Six for sentencing.

Defense argues that Count Six should merge with the sentence as to Count Twelve in that the animus behind the kidnapping and aggravated murder are not clearly different and thus should merge for sentencing purposes.

4. Felonious Assault

The defense agrees that Counts Eight and Nine merge for sentencing purposes. Defense counsel state that the Felonious Assault sentence should merge with any other sentence imposed by this court.

5. Possession of criminal Tools

Defense agrees with the State of Ohio that this offense does not merge.

6. Gross Abuse of a Corpse/Tampering With Evidence

Defense agrees that counts Sixteen and Seventeen merge with each other for sentencing purposes.

7. Weapons Under Disability

Defense agrees with the State of Ohio that count Eighteen and Nineteen merge for sentencing purposes.

B. SENTENCING ISSUES:

A. Trial court's findings regarding Aggravated Murder:

The requirements for the imposition for Aggravated Murder are set forth R. C. 2929.03, which states, in pertinent part, as follows:

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023 of the Revised Code and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this

division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, 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, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, 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 of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) or (c) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) Except as provided in division (D)(2)(c) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or

information charging the offense, and the jury does not recommend a sentence of life imprisonment without parole pursuant to division (D)(2)(a) of this section, to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(c) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, life imprisonment with parole eligibility after serving thirty full years of imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment imposed as described in division (D)(2)(b) of this section or a sentence of life imprisonment without parole imposed under division (D)(2)(c) of this section, the sentence shall be served pursuant to section 2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

(i) Life imprisonment without parole;

(ii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

Ohio Revised Code 2929.03 (west 2018)

B) If one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age pursuant to section 2929.023 of the Revised Code or if the offender, after raising the matter of age, was found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court, trial jury, or panel of three judges shall consider, and weigh against the aggravating circumstances proved beyond a

reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:

- (1) Whether the victim of the offense induced or facilitated it;
 - (2) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;
 - (3) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;
 - (4) The youth of the offender;
 - (5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;
 - (6) 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;
 - (7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.
- (C) The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender but shall be weighed pursuant to divisions (D)(2) and (3) of section 2929.03 of the Revised Code by the trial court, trial jury, or the panel of three judges against the aggravating circumstances the offender was found guilty of committing.

Ohio Revised Code Section 2929.03 (West 2018)

In State v. Holloway, 38 Ohio State3d 238 (1988) (Syllabus) the Ohio Supreme Court stated:

“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.”

See, State v. Holloway, 38 Ohio St3d 238, 241 (1988) (Syllabus).

In the present case, the court was present throughout the proceedings. As such, the court is aware of the evidence put before it. As it relates to the mitigating factors, defense counsel submits that such factors are in favor of a life sentence. Defense counsel further submits that the court examine and find mitigating factors not presented in defense's case.

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

Ohio Revised Code Section 2929.03 (West 2018).

Defense counsel argues that cumulative mitigating factors are found in R.C. 2929.03 (B) (7) which are in favor of a Life Without Parole sentence.

(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

Ohio Revised Code Section 2929.03 (West 2018).

The first factor the defendant asks this court to consider are the mental disorders/illnesses which are present in the defendant.

Examination by Dr. John Fabian found the following mental illnesses/ disorders:

DSM-5 DIAGNOSTIC FORMULATION:

Sexual Sadism Disorder

Fetishistic Disorder

Other Specified Personality Disorder with Paranoid, Antisocial, Narcissistic, and Obsessive Compulsive Traits

Persistent Depressive Disorder

Cannabis Use Disorder

Attention Deficit Hyperactivity Disorder, combined type (inattention and impulsivity)

Possible Mild Neurocognitive Disorder Due to Concussive History

See, report of Dr. John Fabian dated April 1, 2018 page 40.

Dr. Fabian in his report stated,

“It was very difficult to evaluate Mr. Worley due to his denial of not only his criminal offense history but also his psychiatric symptoms. He also lacked the depth as to his emotional functioning and interconnectedness with other people. He seemed to lack insight into childhood issues and traumatic events. He also presented as not having any problems and certainly could not provide any insight or discussion into the nature of his offenses, particularly the 1990 abduction and this current kidnapping and murder of Sierah Joughin. Subsequently, there is some speculation on my end, but, after examining the approximately 488 murder cases in my career, and a dozen or so of them being sexual homicide cases, I can lend some insight into his criminal mindset. It should also be noted that many individuals who have severe paraphilic disorders (sexual deviancy disorders) that I believe Mr. Worley has, also have deep-rooted denial and deep-rooted sexual fantasy systems that they do not typically acknowledge. The only time they may acknowledge them is after intensive inpatient sex offender treatment therapy, along the lines of civil commitment. “

See Dr. Fabian report at page 45.

The first diagnosis to be discussed is the ADHD

“It is my opinion with a reasonable degree of psychological and neuropsychological certainty that Mr. Worley does have a neurodevelopmental disorder of ADHD. Neurodevelopmental disorders are impairments of the growth and development of the brain or central nervous system. They can affect the patient’s emotion, learning ability, self-control and memory.”

See Dr. Fabian report at page 46.

As noted, I believe that Mr. Worley does have a condition of attention deficit/hyperactivity disorder (ADHD) with evidence of inattention and impulsivity symptoms more so than hyperactivity. This is a severe neurodevelopmental condition present in childhood through adulthood. The history of concussions and their potential effects on brain structure and functioning would be enhanced with the use of neuroimaging in this case.

See Dr. Fabian report at page 48.

“From a mental health standpoint, Mr. Worley has evidence of a persistent depressive disorder, formally labeled dysthymic disorder. This is a continuous long-term form of chronic depression that is lower level and less severe than major depressive disorder. Individuals with this disorder often feel hopeless, lack productivity, low self-esteem, and feelings of inadequacy. He may experience irritability, anger, lack of energy, avoidance of social activities, loss of interest in daily activities, feeling empty and sad. His Clinical Assessment of Depression clearly indicated some evidence of anxiety and depression. His total score on the CAD was in the mild clinical risk range. Obviously, his depression and anxiety symptoms would be certainly affected by his legal situation. Although, I believe that he was depressed for many years.”

See Dr. Fabian report at page 48.

Regarding defendant's cannabis disorder

“In addition to the history of depressive symptomatology, there is also evidence of comorbidity with his substance use disorder to cannabis. In addition to the long history of persistent depressive disorder and chronic dysthymia, it is my opinion that he has a dual diagnosis condition of cannabis use disorder. In my opinion, he minimizes his cannabis use history and believes he can control his use, and never had any type of interpersonal, occupational, or lifestyle dysfunction, although I believe otherwise. Cannabis use disorder is considered with the following criteria, a problematic pattern of cannabis use leading to clinically significant impairment or distress, as manifested by at least two of the following, occurring within a 12-month period:

1. Cannabis is often taken in larger amounts or over a longer period of time than it was intended to.
2. There is a persistent desire or unsuccessful effort to cut down or control cannabis use.
3. A great deal of time is spent in activities necessary to obtain cannabis, use cannabis, or recover from its effects.
4. Craving or a strong desire or urge to use cannabis.
5. Recurrent cannabis use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued cannabis use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of cannabis.
7. Important social, occupational, or recreational activities are given up or reduced because of cannabis use.
8. Recurrent cannabis use in situations in which it is physically hazardous.

9. Cannabis use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by cannabis.

10. Tolerance, as defined by either a need for markedly increased cannabis to achieve intoxication or desired effect and markedly diminished effect with continued use of the same amount of the substance.

11. Withdrawal, as manifested by the characteristic of withdrawal syndrome for cannabis or cannabis is taken to relieve or avoid withdrawal symptoms.

It is my opinion, Mr. Worley has used cannabis in larger amounts for a longer period of time than it was intended, he has spent a great deal of time in activities necessary to obtain cannabis or use cannabis, and he has a strong craving, desire, or urge to use cannabis, and he has likely had difficulties with fulfilling major obligations for work due to his cannabis use. He has also likely continued cannabis use despite having persistent, recurrent social or interpersonal problems caused by his use of cannabis. He has continued his carelessness despite knowledge of having persistent or recurrent physical or psychological problems, again which he lacks insight into. He has likely developed a tolerance to cannabis as well.

There is a large body of literature that will focus on dual diagnoses relevant to cannabis use disorder and depression. One major 3-year follow up study suggests there is a significant relationship between cannabis use and a diagnosis of depression.”

See Dr. Fabian report at pages 48-49.

Combined with the defendant's mental health assessment defendant suffered from what is commonly described as “dual diagnosis”.

“Mr. Worley also qualifies for a severe personality disorder. Individuals with a sexual homicide history often have joint diagnoses of personality disorder and paraphilic disorder, which will both be described below.

In general, based on DSM-V criteria, a general personality disorder includes the following criteria:

A) An enduring pattern and/or experience of behavior of deviance markedly from the expectations of the individual's culture. This pattern is manifested in two or more of the following areas:

- 1) Cognition (ways of perceiving and interpreting self, other people, and events;
- 2) Affectivity (a range intensity, lability, and appropriateness of emotional response;
- 3) Interpersonal functioning;

4) Impulse control.

B) The enduring patterns, inflexibility, and pervasive across a broad range of personal and social situations.

C) The enduring pattern leads to clinically significant distress or impairment in social, occupational, and other areas of functioning.

D) The pattern is stable and of long duration. Its onset can be traced back to at least adolescence or early adulthood.

E) The enduring pattern is not explained as a manifestation or a consequence of another mental disorder.

F) The enduring pattern is not attributable to physiological effects of substances or another medical condition.

Personality traits, again, are enduring patterns of perceiving or relating to and thinking about one's environment and one's self that are exhibited in a wide range of social and personal context. When personality traits are inflexible, maladaptive, and causing significant functional impairment or subjective distress, they then constitute personality disorders. Again, the essential feature of personality disorders are an enduring pattern and/or experience a behavior that deviates markedly from the expectations of an individual's culture are manifested in at least two of the following areas, including cognition, affectivity, interpersonal functioning, or impulse control.

See Dr. Fabian report at page 49 .

The DSM-V Paranoid Personality Disorder criteria include the following:

Criterion A, a pervasive distrust and suspiciousness of others such as their motives are interpreted as malevolent, beginning by early adulthood and present in a variety of contexts as indicated by four or more of the following:

1. Suspects without sufficient basis, that others are exploiting, harming, or deceiving him.
2. Is preoccupied with unjustified doubts about the loyalty or trustworthiness of friends or associates.
3. Is reluctant to confide in others because of unwarranted fear that the information will be used maliciously against him.
4. Reads hidden demeaning or threatening meanings in benign remarks
5. Persistently bears grudges.

6. Perceives attacks on character or reputation not apparent to others and is quick to react angrily or counteract.
7. Has recurrent suspicions without justification regarding fidelity of spouse or sexual partner.

It appears that he has at least a few to several of these symptoms. He has likely looked at others in a hypervigilant fashion for potential threats, he is guarded, secretive, and is emotionally cold and lacking in intimacy. It should be noted that there is some evidence for increased problems of paranoid personality disorder in relatives of probands with schizophrenia and for a more specific familiar relationship with delusional disorder, persecutory type.

Regarding anti-social personality disorder Dr. Fabian found

Mr. Worley also qualifies for Antisocial Personality Disorder traits as an adult. Antisocial Personality Disorder includes the following criteria:

A. A pervasive pattern of disregard for and violation of the rights of others, occurring since 15, as indicated by three or more of the following:

1. Failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts or grounds for arrest.
2. Deceitfulness as indicated by repeated lying and use of aliases, or conning others for personal profit or pleasure.
3. Impulsivity and failure to plan ahead.
4. Irritability and aggressive as indicated by repeated physical fights or assaults.
5. Reckless disregard for safety of self or others.
6. Consistent irresponsibility as indicated by repeated failures to sustain consistent work behavior or other financial obligations.
7. Lack of remorse as indicated by being indifferent to rationalizing having hurt, mistreated, or stolen from another.

B. The individual is at least 18 years.

C. There is evidence of cognitive disorder with onset before age 15.

D. The occurrence of antisocial behavior is not exclusively during the course of schizophrenia or bipolar disorder.

In this case, Mr. Worley obviously has broken the law and failed to conform to social norms with respect to lawful behaviors. There is evidence, in my opinion, of conning others, impulsivity,

reckless disregard for safety of self or others, irritability, aggressiveness, and a lack of remorse. Mr. Worley did not appear to have evidence of conduct disorder by age 15. He certainly has antisocial personality traits in adulthood.

See Dr. Fabian report at page 51.

It is my opinion that Mr. Worley also qualifies for traits if not a full Narcissistic Personality Disorder. Narcissistic Personality Disorder has the following criteria:

A pervasive pattern of grandiosity (fantasy or behavior), need for admiration, and lack of empathy beginning by early adulthood and present in a variety of contexts, as indicated by five or more of the following:

1. Has a grandiose sense of self-importance (exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements).
2. Is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love.
3. Believes that he is special and unique, and can be understood by, or should associate with, other special or high-status people.
4. Requires excessive admiration.
5. Has a sense of entitlement.
6. Is interpersonally exploitative (takes advantage of others to achieve his own ends).
7. Lacks empathy and is unwilling to recognize or identify with the feelings and needs of others.
8. Is often envious of others or believes that others are envious of him.
9. Shows arrogant, haughty behaviors or attitudes.

In this case, Mr. Worley has evidence of lacking of empathy and there is some grandiosity and a definite sense of entitlement. He is interpersonally exploitive. He likely does not have a full narcissistic personality disorder, but definitely has traits.

The final personality disorder that warrants some attention in this case, at least with traits, includes obsessive compulsive personality disorder. The following criteria are noted, including a pervasive pattern of preoccupation with orderliness, perfectionism, mental and interpersonal control, at the expense of flexibility, openness, and efficiency, beginning by early adulthood and present in a variety of contexts, including four or more of the following:

1. Is preoccupied with details, rules, lists, order, organization, or schedules to the extent that the major point of the activity is lost.

2. Shows perfectionism that interferes with task completion, for example, is unable to complete a project because his overly strict standards are not met.
3. Is excessively devoted to work and productivity to the exclusion of leisure activities and friendships, which are not accounted for by obvious economic necessity.
4. Is over conscientious, scrupulous, and inflexible about matters of morality, ethics, or values (not accounted for by culture or religious identification).
5. Is unable to discharge worn-out or worthless objects even when they have no sentimental value.
6. Is reluctant to delegate tasks or work to others or to work with others unless they submit to exactly his way of doing things.
7. Adopts a marginally spending style toward both self and others (money is viewed as something to be hoarded for future catastrophes).
8. Shows rigidity and stubbornness.

In this case, Mr. Worley does present with a tendency to work excessively and be devoted to work and productivity at the exclusion of other leisure activities. He is inflexible about managing morality, ethics, or values, he is unable to discard worn-out or worthless objects, and is likely to be a hoarder.

See Dr. Fabian report at pages 51, 52.

Attachment Disorder

I had special concerns about the triad of personality disorder symptoms relevant to paranoid, narcissistic, obsessive compulsive, and antisocial personality disorder traits for Mr. Worley. In my opinion, he viewed the world in a suspicious way, expected other people to hurt him, and he viewed the world as suspicious, and believed others would treat him in a malevolent fashion. While he had a tendency to exploit others and was entitled, grandiose, believing he had no faults, and was upstanding, this was a veneer for an underlying extremely damaged low self-esteem and inadequate sense of self while having a tendency to engage in antisocial acts and be above the law. When we have these severe personality disorders, especially the antisocial, narcissist, and paranoid types, I will first look at the individual's early relationship and attachment with primary caregivers. Typically, there is a damaged and/or disorganized attachment to primary caregivers.

See Dr. Fabian report at page 53.

Sexual Paraphilic Disorders

Finally, and perhaps most importantly, is the evidence of a paraphilic disorder system for Mr. Worley. The term paraphilia denotes any intent and persistent to sexual interest, other than

sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. A paraphilic disorder is a paraphilia that is currently causing the stress or impairment or a paraphilia whose satisfaction has entailed personal harm or risk of harm to others.

In this case, it looks to me as though Mr. Worley has two paraphilias that are interconnected. The primary paraphilia is Sexual Sadism. The diagnosis of Sexual Sadism includes the following diagnostic criteria:

- A) Over a period of at least six months, recurrent, intense sexual arousal from physical or psychological suffering of another person, as manifested by fantasies, urges, or behaviors.
- B) The individual has acted out any sexual urges with a non-consenting person, or the sexual urges or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

In my opinion, Mr. Worley has definite evidence of sexual sadism. One could argue that he did not fulfill the six-month criteria of recurrent, intense sexual arousal from the physical or psychological suffering of another person as manifested by fantasies, urges, or behaviors. Many times we diagnose based on behavioral criteria in criminal offenses. In this case, the initial 1990 abduction was not a formal sexual offense, but one could surmise that the handcuffing and abduction, and potential kidnapping would have led to a sex offense if he had not gotten caught. Although this is speculative, it does deserve some attention. Obviously, the nature of this instant offense includes a breathable gag-ball mouth restraint with a combination of dressing the victim in a diaper. In my opinion, Mr. Worley had sexual fantasies that turned into deviant sexual practices and a paraphilic disorder related to kidnapping the victim and dominating her, having fantasies of bondage and having a potential fetishistic disorder to diapers and utilizing them in a sadistic fashion. Mr. Worley's current sexual offense is clearly indicated in that he had intense sexual arousal for the physical and psychological suffering of the victim, and he acted on these sexual urges and fantasies with a non-consenting person with the main goal of making them suffer and to humiliate them.

When we look at fetishistic disorder, the DSM-V criteria include the following:

- A) Over a period of at least six months, recurrent, intense sexual arousal from either the use of nonmoving objects or highly specific focus on nongenital body parts, as manifested by fantasies, urges, and behaviors.
- B) Fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of function. The use of the fetish objects are not limited to articles of clothing, usually cross-dressing (as in transvestic disorder) or devices specifically designed for the purpose of tactile genital stimulation (example, vibrator).

In my opinion, there is evidence of nonmoving objects, including diapers that he utilized to intensify sexual arousal and that were blended in with his sexual sadistic symptoms. In essence, Mr. Worley used handcuffs in the 1990 abduction and then used a diaper in the instant offense,

as well as bondage equipment to fulfill his sexual fantasies. There is a heightened sexual deviance condition when there are two or more paraphilic disorders versus just one (sexual sadism and fetishistic disorder in this case). When we look more at sexual sadism, there are a number of other traits that may be important to consider. In my opinion, some of these factors obviously are speculative, because Mr. Worley denied both the abduction from 1990, the instant offense, and any type of sexually deviant behaviors, thoughts, or fantasies. In my opinion, Mr. Worley likely was aroused by the criminal offense with Ms. Joughin. He certainly exercised power of control, domination over the victim, and the way she was dressed with the bondage gag ball, suggests that he certainly humiliated and degraded the victim. I do not know how long he had engaged in these behaviors with the victim, but certainly they appear to be torturous acts with inflicting severe cruelty and humiliation on her. Other signs of sexual sadism were not present. For example, I did not see that he mutilated sexual parts of her body. I did not see that there was evidence that he kept trophies of the victim (although if he kept her underwear this could be considered a trophy). I did not see that he mutilated nonsexual parts of her body, and I did not see that there was any insertion of objects into the victim's bodily orifices. There was evidence that she was abducted and confined. There was evidence that she was buried in a ditch. I did not see that there was any evidence of gratuitous violence toward the victim, although there may have been evidence of blunt force trauma to the head to gain control over the victim.

As noted, the sexual sadistic traits are certainly connected with the use of bondage erotica-type paraphernalia, as well as the use of the diaper. What is important to this case conceptualization regarding his mental state and psychiatric diagnoses, is the fact that this Mr. Worley displayed very obsessive and compulsive paraphilic and sexually deviant behaviors. It is my understanding from his attorneys, that Mr. Worley was very obsessive with his use of the internet searching for pornography, especially being obsessed with bondage and BDSM erotica-type material even within a couple of hours of Ms. Joughin's kidnapping. BDSM is different from sexual sadism. BDSM is a variety of often erotic practices or role playing involving bondage discipline, dominance, and submission, sadomasochism and other related interpersonal dynamics. The key issue here is that it is consensual and that an individual can engage in sadomasochism but the partner has to be consensual, whereas sexual sadism involves a non-consenting person and is a victim of a crime and a sexually oriented offense. While we have criminal sexual behaviors relevant to the kidnapping and murder, as well as the crime scene analysis, and Mr. Worley's internet search terms, we unfortunately do not have good evidence as to his thought process, his sexual fantasies, or his intersexual life. I have worked with many sex offenders from low risk to high risk, and especially the civilly committed, more dangerous sex offenders who are more likely to have ingrained paraphilic disorders, and often these high risk individuals will not admit to their deviant sexual practices or their criminal sex offenses."

See Dr. Fabian report at pages 54-56.

The culmination of these disorders is set forth in Dr. Fabian's report.

Reportedly in this case also is the combination of a severe personality disorder marked by antisocial, narcissistic traits with the sexual deviance/paraphilic diagnoses of primarily sexual sadism and fetishistic disorder. Once we arrive at these diagnoses, one may then ask the common sensical question as to why does this type of behavior happen? Obviously, this is a

biopsychosocial phenomenon and a nature-nurture phenomenon as all behavior and psychiatric diagnoses are. Again, Mr. Worley's denials do not assist us in being able to delve into more definitive elements of his mindset. Although, the research and my experience with these type of offenders points toward a sophisticated and obsessive, as well as dysfunctional deviant sexual fantasy process. Mr. Worley's sexually deviant behaviors and the nature of this sexual homicide are certainly triggered by obsessive deviant sexual fantasies. It is extremely rare for a sexual murderer or sexual offender to admit to and discuss these deviant sexual fantasies and behaviors.

When considering the overall mitigation in this case as its relevance to psychiatric and psychological factors to the crime, again, it is my opinion within a reasonable degree of psychological certainty that Mr. Worley qualifies for a neurodevelopmental disorder of attention deficit/hyperactivity disorder with symptoms more related to inattention and impulsivity than hyperactivity. He has mild brain dysfunction in auditory attention, processing speed, and nonverbal abstract reasoning and problem solving, that may be related to ADHD, and the effects of repetitive head injuries. Further neuroimaging may be informative to better understanding his brain structure and function and hence his cognitive, emotional, and behavioral functioning. He also qualifies for a persistent depressive disorder that is long term, mild, chronic depression and a dual diagnosis including evidence of long-term cannabis use disorder, which he minimizes. Mr. Worley presents as an individual with a severe personality disorder with evidence of antisocial, narcissistic, obsessive compulsive, and paranoid traits. Finally, he qualifies for paraphilic disorders of sexual sadism and fetishistic disorder, the latter with sexual interest and obsessional behaviors and fantasies relevant to diapers and bondage equipment. Obviously, the fetishistic disorder, in my opinion, also integrates with his sexual sadism as he likely humiliated and demeaned, dominated, and potentially tortured the victim in a sexually sadistic fashion. Basically, the fetishes towards bondage and bondage equipment and diapers would be relevant to an overall sexual sadism diagnosis as he used those objects to fulfill his sadistic sexual fantasies.”

See Dr. Fabian report at pages 54-57

In State v. Everett, a three judge panel consisting of Judge James D. Bates of the the Lucas County Common Pleas Court, Judge Robert V. Franklin sitting by assignment, formerly of the Lucas County Common Pleas Court and Judge James E. Barber at that time Judge of the Fulton County Common Pleas Court found a mitigating factors in favor of a life without parole Sentence.

“Because appellant was convicted of aggravated murder with a rape specification and appellant was classified as a sexual predator, the three-judge panel's only sentencing options were the death penalty or life imprisonment without parole. Pursuant to R.C. 2929.04(B), the court, in giving appellant a life sentence, found that the mitigating factors of appellant's age, (B)(4), appellant's mental capacity, (B)(3), and, under (B)(7), the bizarre and frenzied nature of the acts, outweighed the aggravating factors and precluded the imposition of the death penalty.

State v. Everett, Lucas App L-02-1382, 2004 WL 2334275.

The mitigating factor “the bizarre and frenzied nature of the acts is explained in the court’s opinion.

“In addition, the Court must look at any other factors that are relevant. The bizarre nature of the acts and the heightened frieze (frenzy) created by the defendant may be considered as a mitigating factor. The mental information coupled with the use of drugs and alcohol may explain the brutal response to these facts.”

See, State v Everett, 2002 CR 1659, (opinion of the trial court dated November 22, 2002). (See attached).

In the present case defendant asks this court to make the finding as a mitigating factor of “bizarre nature of the acts and the heightened frenzy created by the defendant as a mitigating factor. In the present case, the nature and circumstances of the offense are in a sense explained by the testimony of Dr. Fabian. The paraphilic disorder described by Dr. Fabian in his report and testimony coupled with diagnoses regarding other mental disorders and drug usage clearly becomes a mitigating factor which should be weighed in favor of a life sentence.

ECONOMIC COSTS

Ohio Revised Code 2929.11 states in its entirety:

2929.11 Overriding purposes of felony sentencing

(A) A court that sentences an offender for a felony shall be guided by the overriding purposes of felony sentencing. The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both.

(B) A sentence imposed for a felony shall be reasonably calculated to achieve the two overriding purposes of felony sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.

(C) A court that imposes a sentence upon an offender for a felony shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

Ohio Revised Code 2929.11 (West 2018).

In the present case, a sentence of life without parole would fulfill the overriding purposes of sentencing. The public would be protected in that the defendant would never be released from prison, simply put he would die in prison. This would adequately punish the defendant. Further such a sentence would not impose an unnecessary burden on state and/or local government resources. The cost of a death penalty sentence is significantly greater than a sentence of life without parole.

PROPORTIONALITY OF SENTENCE

Almost at the same time of the current proceeding capital murder case was taking place in the Franklin County Common Pleas Court. See, State v. Brian Golsby, 2017 CR 913. The State in that case proceeded on three aggravating circumstances as to 4 separate counts of Aggravated Murder. The jury in that case returned a sentence of life without Parole. Defense counsel respectfully requests a sentence of Life without Parole.

PREVIOUS MODIFICATION OF JURY'S RECOMMENDATION

Judges in Ohio have overridden a jury's recommendation for a death sentence. Courts have found mitigating factors and proportionality reasons not to impose the death penalty.

The three judge panel in State v. Everett, stated:

"this decision may not be popular with the family of the victim or the investigating officers. However the three of us have taken an oath and swore to uphold the law even when difficult and unpopular. The strength of judges in our present criminal justice system is dependent upon judges with the strength to impose the death penalty when appropriate and thwe

strength to deny the death penalty when inappropriate.”

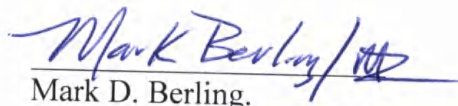
See, State v. Everett, 2002 CR 1659 (Opinion Of The Trial Court dated Nov. 22, 2002).

In the present case, counsel asks this court to find that Life Without Parole sentence is appropriate and impose said sentence.

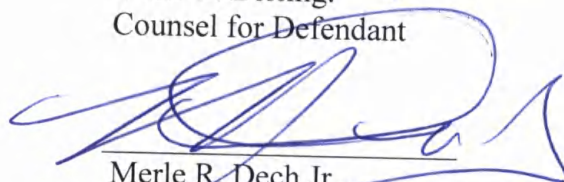
Wherefore, defendant through counsel moves this court to impose a sentence of Life without the possibility of Parole.

Respectfully submitted,

Respectfully submitted,


Mark D. Berling.

Counsel for Defendant



Merle R. Dech Jr.

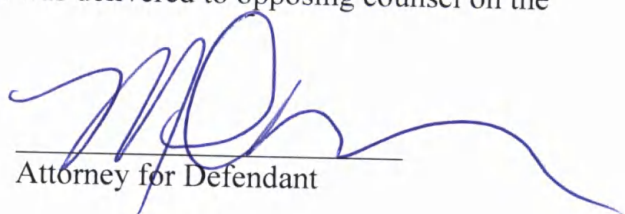
Counsel for Defendant


Mark L. Powers.

Counsel for Defendant

CERTIFICATION

This is to certify that a copy of this document was delivered to opposing counsel on the date of filing by means of electronic mail.


Attorney for Defendant

A

FILED ORIGINAL
LUCAS COUNTY

NOV 22 P 4:03

COMMON PLEAS COURT
CLERK
CLERK

IN THE COMMON PLEAS COURT, LUCAS COUNTY, OHIO

STATE OF OHIO

Plaintiff.

v.

STEPHEN EVERETT

Defendant.

* CASE NO: G-4801-CR-0200201659

* OPINION OF THE TRIAL COURT

* JUDGE JAMES D. BATES

This matter has come on for sentencing after the defendant, Stephen Everett, was found guilty of Aggravated Murder in violation of R.C. Section 2903.01(B) and three specifications. The defendant was also found guilty of Rape in violation of R.C. Section 2907.02(A)(2); Aggravated Robbery in violation of R.C. Section 2911.01(A)(3) and Aggravated Burglary in violation of R.C. Section 2911.11(A)(1). The Court has heard testimony at the mitigation hearing of Sandra Zollweg, Todd Black, Dr. Jolie Brams and Steven Everett's unsworn testimony. At the penalty stage, a three judge panel shall consider, and weigh against the aggravating circumstances of the offense, the history, character and background of the offender and all of the following factors presented by the defendant:

- 1) offender lacked substantial mental capacity to appreciate criminality or confirm his conduct to the law because of mental disease or defect;
- 2) youth of the offender
- 3) any other factors that are relevant

JOURNALIZED

NOV 22 2002

Cassette 223
P.G. 438

The existence of mitigating factors does not preclude the imposition of the death penalty, but they must be weighed pursuant to R.C. Section 2929.03(D)(2) and (3). As was noted the defendant must go forward with evidence to establish one or more of the mitigating factors. The State must prove beyond a reasonable doubt that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation.

It is clear from Ohio Supreme Court decisions that it is improper at the penalty stage to consider the nature and circumstances of the offense. State v. Steffen (1987), 31 O. St. 3d 111. The Court specifically said that the nature and circumstances may only be considered as evidence in determining mitigating factors to be weighed against the aggravating circumstances. The murder was so gruesome and vicious that no mitigation may be determined from the nature and circumstance. It appears to be inconsistent but the court may not add to the aggravating circumstances due to the seriousness of the circumstances but may only find a mitigating factor if one exists. It is recognized that the death sentence must be the product of law and reason and not passion or bias.

The aggravating circumstances that this defendant was convicted of Rape, Aggravated Burglary and Aggravated Robbery. The factors all merge together in this weighing process.

The Court must then look at possible mitigating factors such as age, IQ and mental capacity less than insanity. The evidence is clear that this defendant was eighteen at the time of the commission of the offense. This fact must be considered as a mitigating factor even though it may be outweighed. State v. Slagle (1992), 65 O. St. 3d 597 (18) and State v. Hill (1992), 64 O. St. 3d 313 (18).

Next, the court must look at his mental capacity. it was evident from the prosecution's evidence that the defendant was bipolar and suffered from depression. It became more apparent based upon the testimony of Dr. Jolie Brans that the defendant was mentally impaired, his IQ was very low his learning ability was affected. Therefore, the defendant's mental capacity must be

JOURNALIZED

NOV 22 2002

Cassette 223
P.G. 250

considered as a mitigating factor.

In addition, the Court must look at any other factors that are relevant. The bizarre nature of the acts and the heightened frieze created by the defendant may be considered as a mitigating factor. The mental information coupled with the use of drugs and alcohol may explain the brutal response to these facts.

Weighing the aggravating circumstances against the mitigation factors, the three judge panel finds that the prosecution has not proved beyond a reasonable doubt that the aggravated circumstances outweigh the mitigating factors. Thus, the Court will not impose the death penalty for the charge of aggravated murder but life imprisonment without the possibility of parole. The Court will also impose a sentence of 8 years for the offense of Rape in violation of R.C. Section 2907.02(A)(2); 8 years for the offense of Aggravated Robbery in violation of R.C. Section 2911.01(A)(3); and 8 years for the offense of Aggravated Burglary in violation of R.C. Section 2911.11(A)(1). These two sentences for Aggravated Burglary and Aggravated Robbery shall be run concurrently to each other but consecutive to the Aggravated Murder. The sentence for Rape shall be served consecutive to Aggravated Murder and the other two offenses. Being necessary to fulfill the purposes of R.C. 2929.11, and not disproportionate to the seriousness of the offender's conduct or the danger the offender poses and the Court FURTHER FINDS the defendant was under community control when the offense was committed and the harm caused was great or unusual.

This decision may not be popular with the family of the victim or the investigating officers. However the three of use have taken an oath and swore to uphold the law even when difficult and unpopular. The strength of judges in our present criminal justice system is dependent upon judges with the strength to impose the death penalty when appropriate and the strength to deny the death penalty when its inappropriate.

The Court further by agreement finds pursuant to 2950.01(E) the defendant to be a sexual predator.

JOURNALIZED

3

NOV 22 2002

Cassette 223
P.G. 218

Defendant was notified his right to an appeal.

Defendant is therefore ordered conveyed to the custody of the Ohio Department of Rehabilitation and Corrections forthwith. Credit for 236 days is granted as of this date along with future custody days while defendant awaits transportation to the appropriate state institution. Defendant is remanded into the custody of the Lucas County Sheriff's Department.

Date: 11/22/02


JUDGE JAMES D. BATES

FILED
LUCAS COUNTY
2002 NOV 22 P 4:03
CLERK OF COURTS
OHIO JUDICIAL BRANCH
NINTH PLEAS COURT

JOURNALIZED

NOV 22 2002

Cassette

P.G.

223

238