

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	
Plaintiff,	:	Case No. B 926287
-vs-	:	Judge Christian A. Jenkins
JEFFREY A. WOGENSTAHL,	:	
Defendant.	:	Death Penalty Case

DEFENDANT JEFFREY A. WOGENSTAHL’S MOTION FOR NEW TRIAL

Defendant Jeffrey A. Wogenstahl respectfully requests the Court to vacate his conviction and order a new trial based on newly discovered evidence pursuant to Criminal Rule 33(A)(6). Among the new evidence, newly discovered police reports detail the existence of numerous alternate suspects—including Peggy Garrett and Eric Horn—and statements that impeached numerous State’s witnesses. In addition, the State also suppressed substantial other evidence, including, but not limited to, multiple police reports that prove Amber had been abused and previously sexually assaulted; evidence that the forensic evidence admitted at trial was false; that the blood found in Wogenstahl’s apartment did not match the victim; and that one State’s witness, Bruce Wheeler, had received consideration for his testimony. As the Sixth Circuit Court of Appeals found, with this new evidence: “Wogenstahl has made a prima facie showing that he can establish by clear and convincing evidence that no reasonable factfinder would have found him guilty.” *In re Wogenstahl*, 902 F.3d 621, 6529 (6th Cir.2018). Thus, this Court should likewise find that this new information has undermined any confidence in the outcome of Wogenstahl’s capital trial. A memorandum in support follows.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

/s/ Kimberly S. Rigby

Kimberly S. Rigby – 0078245

Managing Counsel, Death Penalty Dept.

Kimberly.Rigby@opd.ohio.gov

Counsel of Record

/s/ Cassandra S. Goodpaster

Cassandra S. Goodpaster – 0100283

Assistant State Public Defender

Cassandra.Goodpaster@opd.ohio.gov

250 East Broad St., Suite 1400

Columbus, Ohio 43215

614-466-5394 (Phone)

614-644-0708 (Fax)

COUNSEL FOR JEFFREY WOGENSTAHL

MEMORANDUM IN SUPPORT

I. Introduction

This case is a miscarriage of justice—complete with perjured testimony, false forensic evidence, and a Prosecutor’s office that hid numerous relevant and necessary documents from the defense. *See generally* Wogenstahl’s Petition for Post-Conviction Relief (April 26, 2017). For instance, key State’s witness Eric Horn testified that he had never sold nor seen marijuana around his home. (Tr. 986.) However, “Horn had been arrested and adjudicated as a delinquent for trafficking in marijuana,” and the prosecution was well aware of this fact. *State v. Wogenstahl*, C-030945, 2004-Ohio-5994, 970 N.E.2d 447, ¶¶ 14, 45-82. Two members of the Harrison Police force—both of whom had testified at Wogenstahl’s trial—testified under oath in sworn depositions in federal court that the prosecutors in the murder trial had known about Horn’s drug arrest before Wogenstahl’s trial. *Id.* at ¶¶ 45-82.

As another example, along with voluminous evidence that Peggy Garrett and/or Eric Horn committed this homicide, the Sixth Circuit Court of Appeals also cited “newly discovered scientific inaccuracies in the testimony regarding the hair analysis” in finding that Wogenstahl had demonstrated that “no reasonable factfinder would have found him guilty.” *See In re: Jeffrey Wogenstahl*, No. 18-3287. This finding meant that Wogenstahl had met the extremely high standard to file a successive habeas petition found in 28 U.S.C. section 2244.

Wogenstahl also recently secured affidavits from Donald and Mellisa Ellis, who indicated that they observed Peggy Garrett with a white male (who was definitively not Jeffrey Wogenstahl) in the early morning hours of November 24, 1991, at the Waffle House in Harrison, Ohio. Peggy Garrett was acting erratic and saying things like “What am I gonna do? Fuck. Fuck. Fuck.” (Exhibits 96, 97 to Second Amendment to the Petition for Post-Conviction Relief).

Moreover, crime scene expert Gary Rini, M.F.S., was very bothered by the investigative errors that took place in this case. He specifically concluded his report with the following:

In my nearly forty years of experience in law enforcement and forensic investigation, it is my opinion that the investigation of this case was so deficient in its thoroughness and adherence to established procedures of professional competence that ***it rates in the top 10% of the most troublesome cases that I have reviewed, or personally have been involved with***, since I began my law enforcement career in 1975.

(Exhibit 83) (emphasis added).

Finally, this is a case where multiple courts have already found egregious errors took place at trial, yet Wogenstahl still sits on Ohio’s death row. *See In re: Jeffrey Wogenstahl*, No. 18-3287, attached to Wogenstahl’s Notice of Supplemental Authority, filed 9/14/18 (emphasis added) (“Wogenstahl has made a prima facie showing that ***no reasonable factfinder would have found him guilty***.”); *see also State v. Wogenstahl*, 75 Ohio St.3d 344, 1996-Ohio-219, 662 N.E.2d 311

(1996) (“the prosecutor’s final closing argument was riddled with improper comments regarding the nature and circumstances of the offense.”)

With all the evidence now before this Court, no reasonable juror would have convicted Wogenstahl of the offense for which he currently sits on death row. *Schlup v. Delo*, 513 U.S. 298 (1995). This Court should follow what the Sixth Circuit Court of Appeals already found and conclude that, at the very least, Wogenstahl has shown that this new evidence puts the whole case in a different light, meaning that it has undermined any confidence in the outcome of his capital trial. This Court should grant Wogenstahl’s motion and order a new, fair trial.

II. Statement of Facts

Ten-year-old Amber Garrett was reported missing from her home in Harrison, Ohio on November 24, 1991. Her body was found in Bright, Indiana on November 27, 1991.

At trial, the State attempted to show that Wogenstahl lured Amber’s half-brother, Eric Horn, out of the house at 3:00 a.m. while he was babysitting Amber and her two younger siblings. The State theorized that Wogenstahl kidnapped Amber from the room she shared with her younger siblings as they slept, drove her to Indiana, and murdered her in his car before leaving her body in an area off the side of a rural road.

In 2016, the Ohio Public Defender was granted access to the Harrison Police Department’s file on the Amber Garrett murder. The file included numerous reports, statements, and notes that were previously unavailable to defense counsel for 25 years. Following that discovery, on April 26, 2017, Wogenstahl filed a Successive Petition for Postconviction Relief.¹ The evidence raised

¹ The contents of the file have been fully briefed as *Brady* claims in Wogenstahl’s Petition for Postconviction Relief (April 26, 2017) and his Second Amendment to the Petition for Postconviction Relief (July 27, 2021) and are incorporated herein by reference. All numbered Exhibits referenced in this memorandum are attached to the Petition for Postconviction Relief.

in that petition both exculpates Wogenstahl and also implicates Amber's mother, Peggy Garrett, Amber's brother, Eric Horn, and several other alternate suspects in Amber's death.

On March 22, 2022, the Ohio Supreme Court decided *State v. Bethel*, Slip Opinion No. 2022-Ohio-783. This decision changes (or at the very least clarifies for the lower courts) the standard to be applied with regard to both successive postconviction petitions and Motions for New Trial. Thus, in light of that decision, Wogenstahl now files this Motion for New Trial.

III. Legal Standard

A. Crim.R. 33

The Ohio Rules of Criminal Procedure provide that a new trial may be granted “when new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at trial.” Crim.R. 33(A)(6).

Generally, to prevail on a Crim.R. 33(A)(6) motion for a new trial on the ground of newly discovered evidence, “it must be shown that the new evidence (1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is material to the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence.” *State v. Petro*, 148 Ohio St. 505, 76 N.E.2d 370 (1947), syllabus.

However, when evidence is suppressed by the prosecution, “the usual standards for new trial are not controlling because ‘the fact that such evidence was available to the prosecution and not submitted to the defense places it in a different category than if it had simply been discovered from a neutral source after trial.’” *State v. Johnston*, 39 Ohio St.3d 48, 60, 529 N.E.2d 898 (1988),

citing *United States v. Kelly*, 252 U.S.App.D.C. 308, 790 F.2d 130, 135 (1986). The proper inquiry is a due process analysis. *Id.*

B. Due Process

A defendant's right to due process is violated when the State withholds favorable, material evidence from the defense. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). There are three components of a *Brady* violation: (1) the evidence must be favorable to the defendant because it is either exculpatory or impeaching, (2) the evidence was suppressed by the State, and (3) the suppression caused prejudice to the defendant. *Strickler v. Greene*, 527 U.S. 263, 281-282, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999).

Favorable evidence encompasses exculpatory and impeachment evidence. *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, 880 N.E.2d 31, ¶ 338, citing *United States v. Bagley*, 473 U.S. 667, 674. Evidence is material, and therefore causes prejudice to the defendant, when there is a reasonable probability that the inclusion of the suppressed evidence would lead to a different result at trial. *Johnston*, 39 Ohio St.3d at 61, citing *Bagley* at 682. Importantly, "a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." *Kyles v. Whitley*, 514 U.S. 419, 434. The standard is that the suppressed evidence puts the whole case in a different light, undermining confidence in the outcome of the trial. *Id.*

Evidence must be considered collectively "in the context of the entire record," not item by item. *Id.* at 436; *United States v. Agurs*, 427 U.S. 97, 112, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

IV. Argument

A summary of the *Brady* claims raised in Wogenstahl's Petition for Postconviction Relief pending before this Court is as follows:

- Amber Garrett’s mother Peggy Garrett and brother Eric Horn were both hypnotized by a Harrison police officer (Second and Seventh Grounds for Relief);
- Newly discovered police reports contradicted Peggy Garrett’s testimony (Third Ground for Relief);
- Peggy Garrett’s pretrial statements contradicted her testimony (Fourth, Fifth, and Sixth Ground for Relief);
- Eric Horn was a suspect in Amber’s death, and Horn lied during his polygraph session (Eighth Ground for Relief);
- Police reports contradicted Eric Horn’s testimony (Ninth and Tenth Ground for Relief);
- Bruce Wheeler received consideration in exchange for testifying against Wogenstahl (Eleventh Ground for Relief);
- The prosecution misrepresented Bruce Wheeler’s role in the assault of a two-year-old child and Wheeler’s willingness to admit his involvement (Twelfth Ground for Relief);
- Police reports undermine the credibility of the testimony of two witnesses: Michelle Hunt and Brian Noel (Thirteenth Ground for Relief);
- The prosecution had documents that indicated that Amber had been sexually assaulted previously (Fourteenth Ground for Relief);
- Police reports showed that Peggy Garrett frequently abused controlled substances (Fifteenth Ground for Relief);
- Police notes contradicted the prosecution’s theory that Amber Garrett was abducted from her bed (Sixteenth Ground for Relief);
- Nine documents in the prosecution’s possession contradicted the prosecution’s theory that Amber Garrett was killed at approximately 3:30 a.m. on November 24, 1991 (Seventeenth Ground for Relief); and
- Police documents indicated that Wogenstahl was telling the truth about the origin of the blood in his apartment, contrary to the prosecution’s statements at trial (Eighteenth Ground for Relief).

A. The evidence is favorable to Wogenstahl’s defense.

The evidence is favorable to the defendant because it encompasses both exculpatory and impeaching evidence, as addressed in the materiality section *infra*.

B. The State suppressed the police file until 2016.

As fully addressed in Wogenstahl’s Motion for Leave to File a Motion for New Trial and incorporated here by reference, Wogenstahl did not have access to the police file until 2016.

C. Considered collectively, the suppressed evidence is material.

Wogenstahl is not required to demonstrate that once the undisclosed evidence comes to light, there is not enough evidence to convict. *Kyles*, 514 U.S. at 434-435. However, there is a

plethora of evidence that, considered cumulatively, significantly undermines confidence in the outcome of the trial:

- The Sixth Circuit found “voluminous evidence casting considerable doubt on the credibility of Amber Garrett’s mother [Peggy Garrett] and brother [Eric Horn] and suggesting that they were implicated in her death.” *In re Wogenstahl*, 902 F.3d 621, 629 (6th Cir.2018).
- The State’s star expert witness from the FBI, who linked a single hair on the victim’s clothing to Wogenstahl, was completely discredited after an investigation by the United States Department of Justice.
- Newly discovered documents show that Amber was sexually assaulted and stalked multiple times, which would be motive for her true attacker.
- Other documents discovered after the trial impeach the credibility of the State’s witnesses, including the four eyewitnesses in addition to Amber’s mother and brother and the FBI expert.
- Crime scene expert Gary Rini and forensic pathologist Carl J. Schmidt both determined that the State’s theory that Amber was killed in Wogenstahl’s car was next to impossible.
- There is no substantial physical evidence that connects Wogenstahl to the crime.

In addition, the new evidence casts doubt on each piece of evidence relied upon by the First District Court of Appeals as “overwhelming evidence” of Wogenstahl’s guilt.

i. Previous Motions for New Trial

Wogenstahl filed motions for a new trial in 2004 and 2015. *State v. Wogenstahl*, 2004-Ohio-5994, 970 N.E.2d 447 (1st Dist.); *State v. Wogenstahl*, 1st Dist. Hamilton No. C-140683, 2015-Ohio-5346. In its 2004 decision, the First District affirmed the trial court’s denial of Wogenstahl’s motion for new trial based on new evidence suppressed by the prosecution: namely, Eric Horn had perjured himself when he said that he never sold drugs, despite being adjudicated delinquent by the same prosecutor’s office only a month prior to trial for trafficking marijuana. *Wogenstahl*, 2004-Ohio-5994 at ¶ 2. Using the *Petro* factors, the court of appeals held that there was overwhelming evidence pointing to Wogenstahl’s guilt.

In 2015, the First District again relied on the *Petro* factors in denying a motion for new trial based on the false forensic evidence from the FBI. *Wogenstahl*, 2015-Ohio-5346 at ¶ 40. In both cases, the court of appeals relied on the following evidence from trial:

1. Several witnesses saw Wogenstahl on the road at 3:40 a.m. the night of Amber's disappearance near where her body was later found.
2. Experts from several crime laboratories identified plant material on Wogenstahl's jacket and shoes as being similar to that found around Amber's body.
3. Wogenstahl's favorite leather jacket, which was in good condition earlier that night, was scratched as if it had been worn while walking through a wooded and brushy area similar to the one where Amber's body was found.
4. A pubic hair was found in Amber's clothing that matched the characteristics of Wogenstahl's pubic hair.
5. Police found evidence of blood in Wogenstahl's home and in his car.
6. An expert testified that the blood from Wogenstahl's car matched Amber's blood to a degree that only about five percent of the population would have had the same blood characteristics.
7. Wheeler testified that Wogenstahl had told him the details of the crimes while they were both incarcerated in the Hamilton County jail.
8. Amber's blunt-force injuries were consistent with having been administered with a car jack handle, and the screw jack found in the trunk of Wogenstahl's car was missing its handle.

Wogenstahl, 2004-Ohio-5994 at ¶ 31; *Wogenstahl*, 2015-Ohio-5346 at ¶ 40.

However, through further investigation and/or the discovery of suppressed evidence, each piece of "evidence" has been called into question since the court's decisions in 2004 and 2015.

1. The eyewitness identification was procedurally and substantively flawed.

In 2015, eyewitness identification expert Dr. Harvey G. Shulman evaluated the evidence in this case and found the testimony of eyewitnesses Vicki Mozena, Kathy Roth, and Brian Noel to be flawed. (*See* affidavit, Exhibit 80). Dr. Shulman found that United Dairy Farmers clerk Vicki Mozena's testimony that she encountered Wogenstahl in other contexts (as a customer at UDF prior to the crime) can be a factor in false identification. *Id.* Further, the instructions given to Ms. Mozena when she was given a photo array were suggestive. *Id.*

According to Kathy Roth's testimony, she saw a person on the side of the road for a very limited amount of time with poor lighting, which makes it "extremely challenging to form a durable, detailed memory." *Id.* Additionally, Ms. Roth could not make an identification until eleven months after the crime, after she saw Wogenstahl's photo on TV. *Id.* Ms. Roth told an investigator from the Office of the Ohio Public Defender that she "wasn't sure about her identification of Wogenstahl" until she saw him in court. (Exhibit 43).

Brian Noel's testimony is also flawed because he saw the individual for a limited amount of time from a moving vehicle with poor lighting. (Exhibit 80). Mr. Noel's identification of Wogenstahl in the police lineup also indicated that he used a "best match" strategy to identify Wogenstahl, which has been proven to be prone to errors. *Id.*

Additionally, police documents call into question the credibility of two witnesses: Michelle Hunt and Brian Noel. Michelle Hunt, a waitress at the Waffle House restaurant, testified that she was working at Waffle House when Peggy Garrett and Lynn Williams dined in the early morning hours of Amber's disappearance. (Tr. 1083-84). She testified that a car with two individuals in the front seat arrived in the parking lot shortly after Peggy and Lynn arrived. (Tr. 1086-87, 1096, 1098). However, her original statements to the Harrison Police Department and the FBI make no mention of seeing this, or any, vehicle enter or leave the parking lot, let alone how many people were inside the vehicle. (Exhibits 38-39).

Brian Noel testified that he saw Wogenstahl on the side of the road at 3:40 a.m. on the night that Amber went missing. (Tr. 1524-25). Though he testified that he only had two beers that night, the police report states that he actually ingested five beers. (Tr. 1529; Exhibit 40). Mr. Noel's testimony at trial could have been impeached twofold, by (1) the fact that he lied about his alcohol

intake and (2) the fact that he may have been under the influence of alcohol when he claimed to see Wogenstahl.

2. *The testimony regarding the plant material found on Wogenstahl's jacket and shoes was misleading.*

The plant material on Wogenstahl's jacket and shoes is very common to the Midwest. At trial, Department of Agriculture research botanist Dr. Robert D. Webster testified that the plant material found on Wogenstahl's jacket and shoes was juniper (evergreen) and "prickles" from blackberry vines. (Tr. 1353-54, 1359). Dr. Webster did not examine the plant material that he identified as from a juniper plant under a microscope. (Tr. 1376).

A juniper plant is a "large and variable genus [which] contains about 60 species from North America, Asia, and Europe, many of them important landscape trees, shrubs, and ground covers." Frances Tenenbaum, *Taylor's Encyclopedia of Garden Plants*, Page 216 (2003). The juniper plant is "widely distributed throughout the northern hemisphere."² Additionally, the genus *Rubus* (blackberry vines) "is found widely distributed throughout the world" and "comprises around 700 species."³ The botanist at trial did not even identify the species of plants that were found at the scene or on Wogenstahl's jacket and shoes. Since these plants are so common and widely distributed, this cannot be the basis for compelling "evidence" against Wogenstahl.

3. *The testimony regarding the condition of Wogenstahl's leather jacket was flawed.*

Three witnesses testified to the condition of Wogenstahl's leather jacket earlier in the night: Peggy Garrett, Eric Horn, and Lynn Williams.⁴

² American Conifer Society, *Juniperus Genus (juniper)*, <https://conifersociety.org/conifers/juniperus-1/> (accessed June 6, 2022).

³ Rocabado, *Rubus – A Review of its Phytochemical and Pharmacological Profile*, Natural Product Communications (November 19, 2007) 423.

⁴ Peggy Garrett testified that Wogenstahl's jacket was "nice" and did not have any cuts or rips. (Tr. 870). Eric Horn testified that Wogenstahl "looked fairly neat." (Tr. 954). Lynn Williams testified that Wogenstahl's jacket was not "torn up or all full of holes," and that he looked "neat and clean." (Tr. 1034).

The Sixth Circuit Court of Appeals found that there was “voluminous evidence casting considerable doubt on the credibility of Amber Garrett’s mother [Peggy Garrett] and brother [Eric Horn] and suggesting that they were implicated in her death.” *In re Wogenstahl*, 902 F.3d 621, 629 (6th Cir.2018). Peggy and Eric had the motive to lie on the stand about Wogenstahl’s appearance that night to cover up their own involvement in Amber’s death.

Not only was Peggy Garrett’s trial testimony rife with inconsistencies, newly discovered police documents show that her prior statements to the police also contradicted her trial testimony. At trial, she stated twice that Wogenstahl’s jacket did not have any cuts or rips. (Tr. 870-71). However, she told a detective that she remembered that Wogenstahl showed her a spot on the jacket and asked if it could be fixed. (Exhibit 13a).

Further, the police had diary entries wherein Amber wrote about Peggy abusing her.⁵ Some police reports show that Peggy allowed the men in her house to touch her daughter inappropriately.⁶ The police even contemplated charging Peggy with child endangerment. (Exhibit 29). Some reports indicated that Peggy sold her daughter to settle a drug debt.⁷ If Peggy could have been implicated in Amber’s disappearance, she had motive to lie about the condition of Wogenstahl’s jacket.

⁵ Amber wrote in her diary that her mother punched her in the back: “I hate myself. I hate my life. I hate my classmates Sometimes I just feel like running away or killing myself. ... Just yesterday before I came to school my mom beat me she was punching me in the back. She just would not stop.” (Exhibit 17); a police report shows that Peggy hit Amber three times in the head the night before Amber went missing (Exhibit 18).

⁶ There was a report that stated that some of the men who frequented Peggy’s apartment would rub Amber’s hair and legs as she walked by; Amber said that when Peggy saw this, her mother would just laugh (Exhibit 43). A note in the police file states that “She [Amber] was raped by one of [sic] men who come in there.” (Exhibit 54).

⁷ Linda Campbell heard from a friend that sold drugs in Harrison that “Peggy got in too deep in debt and sold her [Amber] to dealer,” (Exhibit 53); Peggy was seen crying at Waffle House, stating that she had really “fucked up” because she sold Amber for fifteen hundred dollars (Exhibit 56); Peggy was at Waffle House the day before Amber’s disappearance with no money, and then returned to Waffle House two days later with fifteen hundred dollars (Exhibit 57); Peggy was heard saying “he said that he wasn’t going to beat her that bad” after Amber’s body was discovered (Exhibit 58); police notes state that “Peggy Garrett owed \$8,000.00 for drugs” (Exhibit 51).

Eric Horn's testimony is equally tainted and inconsistent. The suppressed police documents directly contradict Eric's testimony about Wogenstahl's jacket. Eric told one officer that Wogenstahl was wearing "a wine colored windbreaker type jacket." (Exhibit 16). But in a second report, Eric indicated Wogenstahl wore a white sweater. (Exhibit 33).

Further, new police reports indicate that Eric was a suspect in Amber's disappearance.⁸ The police even asked Eric to take a polygraph, where the administering officer concluded "[t]here were significant emotional and physiological disturbances indicative of deception in Eric Horn's polygraph" when confronted with questions about his involvement in Amber's death. (Exhibit 28).

At trial, Eric lied about his involvement with drugs, testifying that he had never sold marijuana when he had in fact been adjudicated delinquent for trafficking in marijuana by the same prosecutor's office mere months prior to trial. (Tr. 986; Exhibit 34).

In an attempt to force recall of what Wogenstahl was wearing on the night of Amber's disappearance, both Peggy and Eric were hypnotized by Patrolman Lowry of the Harrison Police Department on November 28, 1991. (Exhibit 16). Patrolman Lowry was neither a psychiatrist nor a psychologist, and he was actively involved in the investigation. (Exhibits 13a and 13b). Such hypnosis is unreliable and casts further doubt on their recollections. *State v. Johnston*, 39 Ohio St.3d 48, 55, 529 N.E.2d 898 (1988).

Lynn Williams also testified to the condition of Wogenstahl's jacket, but on cross examination, she could not remember other details of Wogenstahl's attire. (Tr. 1056). There were no police reports or notes where Lynn described Wogenstahl's jacket or outfit when she was

⁸ Notes in the police file stated "need to talk to Eric again. How would Eric get her [Amber] to Jamison Road?" where body was found (Exhibit 29); two individuals reported to police that they saw Eric with a knife (*id.*); Steven Kemper gave a written statement to police that stated that Eric told Steven two weeks before Amber's death "that he hated his sister and that he wished she was dead." (Exhibit 30). Police were also in possession of two letters that Amber wrote to her friends two days before the murder, where she wrote that she secretly stole cigarettes from Eric. (Attached Exhibit A).

interviewed shortly after Amber disappeared. Her only statements regarding Wogenstahl's jacket were at trial, more than two years after the night in question.

The State heavily relied on this testimony, more than two years after the fact, from two people both known to lie and deceive the court, who were suspected to be involved in Amber's disappearance, who were improperly hypnotized by one of the police officers, and another individual that could not remember any other details when asked. Yet, unbeknownst to Wogenstahl at the time, there were no police reports or other documentation supporting their testimony. In fact, these reports were contrary to their testimony in almost all respects.

4. *The hair evidence was determined to be false by the United States Department of Justice.*

A Department of Justice investigation found that the FBI's expert testimony comparing hair characteristics was inaccurate. At trial, FBI Special Agent Douglas Deedrick testified that it was his opinion to a reasonable degree of scientific certainty that the hair from the victim's underwear belonged to Wogenstahl. (Tr. 1286; 1290-91). In 2013, the United States Department of Justice disclosed that the FBI laboratory examiners had employed improper practices and failed to meet prevailing professional standards when testifying at Wogenstahl's trial. (Exhibit 87). At least one juror affirmed that the hair evidence was "what convinced [her] of Jeff's guilt." (Exhibit 77).

5. *The blood found in Wogenstahl's apartment was not Amber's – it belonged to his cat.*

Stains resembling blood were found in the bathtub of Wogenstahl's apartment. (Tr. 1856). A towel in the bathroom had small speckles of blood. (Tr. 1878). There was a napkin with a single drop of blood found in the trash can. (Tr. 1764; 1797). Wogenstahl told police that his cat was injured. (Tr. 2297).

The bathtub stains did not test positive for blood. (Tr. 1774). The speckles of blood on the bathroom towel were never tested by the Hamilton County Coroner's Office to determine whether it was human. (Tr. 1880). After the towel was sent to the Serological Research Institute, the blood could not be matched to Jeffrey Wogenstahl or Amber Garrett, *or even confirmed as human*. (Tr. 2098-2103; 2077-78).

The police had documents that confirmed Wogenstahl's explanation: after bringing the cat to a veterinarian, the police discovered that the cat had a chipped tooth and a scabbed tail – consistent with Wogenstahl's statement to police and his trial testimony about the origin of the blood. (*Id.*; Tr. 2297; Exhibit 73).

Not only was this information suppressed from the defense at the time of trial, but the prosecution used the defense's lack of knowledge of these reports to its advantage. Despite knowing that the cat had a chipped tooth and a scabbed tail, just as Wogenstahl said, the prosecutor commented on how Wogenstahl's explanation of the blood in his apartment was from his "psychopathic cat" was "absolutely ridiculous." (Tr. 2294; 2461; 2592).

6. *The blood found in Wogenstahl's car was substantially smaller than a drop of blood.*

At trial, the State presented the theory that Amber was killed inside Wogenstahl's car. The blood found in Wogenstahl's car was "a very small trickle" on the rear door handle. (Tr. 1895). It was "substantially smaller than a drop of blood." (Tr. 1896). The amount of blood was so miniscule that the collecting officer had to use a single cotton thread, instead of the normal cotton fabric swab. (Tr. 1895). The lead detective on the case, Ed Bettinger, testified that at the time of trial, the quantity of blood was insufficient to test in Hamilton County – "it was necessary to send [the blood sample] to a special lab out in San Diego where it was physically enhanced size wise." (Tr. 1778).

Because Amber's injuries would have generated a high volume of blood, and the amount of blood found in Wogenstahl's car was so minute, crime scene expert and former police officer Gary Rini stated that it is "highly unlikely that the victim was killed or transported in [Wogenstahl's] vehicle." (Exhibit 83). "Even if the body had been wrapped in some manner the body would have been leaking a large amount of fluid (including blood, saliva, brain matter, water, etc.) from the injuries incurred, and it is unreasonable to believe that a significant portion of this fluid would not have leaked in the transportation of the body. It would be extremely hard to thoroughly clean up this blood and fluid, particularly in a small space, such as a car that it includes absorbent materials like carpeting." *Id.*

Forensic pathologist Dr. Carl J. Schmidt also opined "it is my opinion to a reasonable degree of medical certainty [] that that victim in this case was killed outside of the car ... The injuries were likely inflicted while the body, and the head, were lying on an irregular surface, such as the ground outside." (Exhibit 82).

7. The jury was never informed that Bruce Wheeler received consideration in exchange for his testimony.

At trial, Bruce Wheeler testified that he did not receive any consideration for his testimony. (Tr. 2156). Now it has been revealed that Wheeler did in fact receive consideration – Wheeler signed an affidavit that stated that the prosecution "implied that [he] would do less time in prison if [he] testified" against Wogenstahl, promised to write a letter on Wheeler's behalf to the Parole Board, and facilitated Wheeler's transfer to Ross Correctional Institution at Wheeler's request. (Exhibits 35-36). This revelation impeaches Wheeler's trial testimony. Because the State suppressed this information, the jury never had the opportunity to properly weigh Wheeler's credibility.

8. *There is no way to determine what was used to administer the victim's injuries.*

Finally, Dr. Schmidt reviewed the case and found that “it is not possible to ascertain what kind of instrument was used to inflict the blunt injuries because no discernible pattern was present on soft tissue or bone.” (Exhibit 82). The murder weapon was never found.

ii. Additional Issues

In addition to picking apart the evidence relied on by the state courts previously to deny Wogenstahl relief, there is additional evidence that weighs in favor of granting Wogenstahl a new trial.

1. *Peggy Garrett's credibility is severely lacking due to wildly inconsistent trial testimony and contradictory police reports.*

Between police reports, grand jury testimony, and trial testimony, Peggy Garrett made multiple contradictory statements.

Peggy Garrett testified that Wogenstahl had only visited her apartment “four or five times maybe,” and a couple of those times, “he just came in the kitchen door and asked me if I needed a way to the store.” (Tr. 896-97; 901). She also testified that he gave her a ride to the store twice and “the longest he ever stayed [at the Garrett apartment] was maybe twenty minutes to a half hour.” (Tr. 902). However, Peggy's son, Justin Horn, reported to police that Wogenstahl “would stop by for a few minutes every day. He would take Peggy to the grocery store or make little trips for her.... Most of the time JEFFREY WOGENSTAHL would come to see his mom or his brother Eric. JEFFREY was new to the area and seemed not to know very many people and was trying to catch on by knowing PEGGY and Eric.” (Exhibit 14). Additionally, there was a report that Wogenstahl's car had been seen in the alley behind the Garrett apartment several times in the past. (Exhibit 15). Further, Peggy's former roommate Troy Russell reported to police that he had seen Wogenstahl in

Peggy's apartment more than once, and in early November, he saw Peggy and Wogenstahl smoking crack in the apartment. (Exhibit 16).

Peggy also testified that Amber could not see without her glasses, and her eyesight "was very, very bad." (Tr. 862). The prosecution made this an important point, since Amber's glasses were left in her room on the night she disappeared. (Tr. 2428; 2590). However, the police had notes and reports that Amber's aunt, Kim Garrett, told police that Amber could see without her glasses. (Exhibit 21). Further, two individuals whose names were redacted from the report told an FBI agent and a Harrison police officer the same information. (*Id.*).

The police also had documents from the Indiana Highway Patrol and an Indiana court that contradicted Peggy's testimony regarding her prior criminal record. Peggy testified at trial that she sold "a couple of pills." (Tr. 897-98). However, one document stated that on February 25, 1982, while tending to two small children, Peggy sold five Methaqualone tablets to an Indiana State trooper. (Exhibit 25). On March 5, 1982, Peggy sold six Lysergic Acid Diethylamide (LSD) to the same Trooper. (Exhibit 42). Peggy later pled guilty to two counts of dealing in a controlled substance and was sentenced to two to ten years on each count, to be served concurrently. (Exhibit 26).

Importantly, the suppressed police reports contradict Peggy's testimony regarding her whereabouts on the night of Amber's disappearance. In her detailed testimony, Peggy met her friend Lynn Williams at the Escape bar at midnight. (Tr. 868). She testified that she left the Escape between "12:30 or quarter to 1" (tr. 907), and before she left, she had two drinks of "Pepsi and a shot of rum." (Tr. 908). Police notes show that April Kennedy "saw Peggy doing Coke Sat. Eve (Sun. Morn) 24 Nov. @1230/ w/ 2 guys: 'Bikers' @ Escape." (Exhibit 23).

Peggy then testified that she and Lynn Williams went to several other bars, and then went to Waffle House from “probably 3 or a quarter after...until 4 or a quarter after 4.” (Tr. 876). However, Donald B. Ellis reported to police that “on 11-24-91 at approx. 0300 - 0330 hrs. He observed Peggy Garret at the Waffle House in Harrison and was with a m/w subject short hair possibly having a mustache and approx 602.” (Exhibit 24).⁹

Peggy also testified that she and Amber had a close relationship. (Tr. 860-62). As discussed *supra* in footnotes 5 and 6, the police had reports of Peggy abusing and neglecting Amber. Police also had a report where Amber told a witness that she (Amber) was not allowed to enter her mother’s apartment at times, “which forced AMBER GARRETT to stay elsewhere on several weekends.” (Exhibit 19). Another witness reported that “Amber has been talking about running away a lot [sic] lately.” (Exhibit 20). Amber wrote the following in her diary: “I hate myself. I hate my life. I hate my classmates...Sometimes I just feel like running away or killing myself...***Just yesterday before I came to school my mom beat me [sic] she was punching me in the back. She just would not stop.***” (Exhibit 17) (emphasis added).

Peggy sold and heavily abused drugs. Several individuals reported to police that Peggy sold and/or used drugs. (Exhibits 43; 48-53; 56). The police were notified by at least four different individuals that suggested that Peggy sold Amber to settle a drug debt. (*See supra* footnote 7).

Additionally, Peggy testified that her son, Justin Horn, was “gone for the weekend” when Amber disappeared – he left “sometime in the afternoon on Friday” until his return “probably around 3 o’clock or something like that” on Sunday. (Tr. 864-65). Justin Horn told the FBI that “on Saturday, November 23, 1991, he left [the Garrett apartment] at about twelve noon and went to the apartment of Chris Marshall,” and returned to the apartment Saturday evening at

⁹ This was further explored in Wogenstahl’s Second Amendment to the Petition for Postconviction Relief (July 27, 2021) and is hereby incorporated by reference. *See* Exhibits 96 and 97.

“approximately 7 to 10 p.m., more likely around 8:30 to 9:00” to get something to eat. (Exhibit 14). He left shortly after because “there was very little to eat.” He came back to the apartment with his friend Steve “at approximately 8:00 a.m. and woke Peggy up and “said hi to her.” (*Id.*) Another report states that “Justin came home about 4:45 a.m. and Erick [sic] left about 0500.” (Exhibit 27; *see also* Exhibit 81). In total, Peggy’s testimony was extremely contradictory, and, in turn, her credibility as a witness is virtually nonexistent.

2. *Eric Horn’s credibility is also severely lacking, if not virtually nonexistent.*

Eric Horn’s testimony is entirely incredible. As addressed *supra*, Eric lied on the stand when he said he had never been involved in drugs, when he had just recently been adjudicated delinquent of drug trafficking before trial. (Tr. 986; Exhibit 34). Eric lied to police when the responses to his polygraph indicated deceit. (Exhibit 28). He had also told at least one person that he “hated his sister, and that he wished she was dead.” (Exhibit 30). One of Amber’s friends related that Amber told them that Eric had inappropriately touched her, and that Eric would “cuss at her and grab her by the throat.” (Exhibit 76).

As detailed above, Eric told the police two different stories about what Wogenstahl was wearing that night, which were both different than what he testified to at trial. (Exhibits 16 and 33; tr. 954, 997, 999). Eric was also hypnotized by a Harrison police officer during the investigation, which calls into question even more his memory—or what he claims to be his memory—of the evening. (Exhibit 16).

At trial, Eric testified that he was inside the Garrett apartment for the entire night when Amber went missing from 11:00 p.m. to 4:45 a.m., except for 3:00 a.m. to 3:30 a.m. (Tr. 953; 968-69; 953-57; 1007-08). However, two individuals told the FBI that they saw Eric on Harrison Avenue at 2:30 a.m. that night. (Exhibit 31). Additionally, the police had a report that said Eric left at 3:30 a.m. and returned to the apartment at 5:00 a.m. (Exhibit 32).

In addition, Eric's "story" made absolutely no sense. Eric testified that despite realizing that Amber was missing from her bed after he returned from Troy Beard's house, he laid on the couch, fell asleep, and never checked on her again. When Eric left the house at 5:00 a.m., he passed his mother on the street, yet said nothing to her concerning Amber's whereabouts. (Tr. 972-75; 1008; 1012-13). In addition, other state's witnesses' testimony contradicted Eric's. *Compare* testimony of Eric Horn, Tr. 969 ("I told [Troy Beard] that Jeff Wogenstahl told me that Peggy needed me there.") *with* testimony of Troy Beard, Tr. 1116 ("[Eric] just asked me if I had seen Peggy or anything.") and Tr. 1118 (Question: "Did [Eric] ever tell you who the person was that brought him there?" Answer: "No."). *Compare* testimony of Eric Horn, Tr. 1016 (Eric stated that he did not know Vicki Mozena and did not go to the United Dairy Farmers asking about Amber's disappearance) *with* testimony of Vicki Mozena, Tr. 154 (Mozena testified that Eric Horn came to the United Dairy Farmers and questioned her about Amber's disappearance.). *See also* Tr. 880; 905; 928-29; 951-52; 971-72; 988; 992-94; 1018; Grand Jury Tr. 63.

3. *There was no substantial physical evidence that connected Wogenstahl to the crime.*

Crime scene expert and former police officer Gary Rini reviewed the evidence in 2015:

In my nearly forty years of experience in law enforcement and forensic investigation, it is my opinion that the investigation of this case was so deficient in its thoroughness and adherence to established procedures of professional competence that it rates in the ***top 10% of the most troublesome cases that I have reviewed, or personally have been involved with***, since I began my law enforcement career in 1975.

(Exhibit 83) (emphasis added).

There were no fingerprints, hairs, or fibers that would have connected Amber to Wogenstahl's car or apartment. (Tr. 1231; 1799; Exhibit 83). The police even tested the drains in Wogenstahl's apartment for blood and bleach and found nothing. (Exhibit 83).

Unknown to Wogenstahl at trial, physical evidence that did exist exculpated Wogenstahl, or at the very least failed to connect him to the crime. In total, the “physical evidence” used to convict Wogenstahl was entirely deficient:

- The hair evidence has been discredited completely. (Exhibit 87).
- The blood in Wogenstahl’s apartment belonged to his cat. (Exhibit 73).
- The police tested for bleach in Wogenstahl’s apartment and found nothing that would cover up the presence of blood. (Exhibit 83).
- The blood in Wogenstahl’s car was less than a drop in volume, not nearly enough to match the crime. (Exhibits 82-83).
- The K-9 unit used a dog to sniff the area where the victim was found and near Jeff’s apartment, and there was nothing that connected Wogenstahl to the victim. (Tr. 1999-2015).

4. *There was little to no investigation or follow up on other suspects.*

As discussed *supra* in footnote 8, Eric Horn was a suspect in Amber’s murder. His responses to questions about Amber’s death during a polygraph indicated deception, and when confronted by the administering officer, Eric said “fuck you, fuck the machine, and I’m out of here.” (Exhibit 28). At least three individuals told police about Eric’s concerning behavior. (Exhibits 29-30). There is nothing in the file that indicates that the police followed up after Eric stormed out of the polygraph.

The same can be said about Peggy Garrett. Despite a host of information that Peggy was involved in Amber’s homicide (*See supra*, sections IV.C.i.3; IV.C.ii.1 and IV.C.ii.2; footnotes 5-8), police did not seem to follow up on this lead either.

Wogenstahl had purchased his vehicle only one week prior to Amber Garrett’s disappearance. (Tr. 2308). However, the police possessed a report that stated that two individuals recognized Wogenstahl’s car and had said that it was parked behind the Garrett apartment several times in the past. (Exhibit 15). There was no further investigation into when the vehicle was

observed in the Garrett apartment parking lot, or identity of the prior owner of the car and whether that person may have known Amber.

Amber's body was also discovered not in her pajamas, but in her church clothes—in a dress that she had been given by Michelle Bickel. (Exhibits 62-64). Annette Knox (f/k/a Ida Philpot) also told an investigator that she and Amber would frequently ride a bus to church on Sundays. The bus would stop at Amber's house first, then went on to Annette's. However, on the morning of November 24, 1991, the church bus driver was late picking Annette up, and he was driving his personal vehicle that day, instead of a bus. He would typically arrive between 8:45 and 9:00 a.m.; however, that day, he did not get there until 9:30 a.m. Annette further indicated that the bus driver, Chuck Pennington, had always seemed odd. (Exhibit 43). There is no indication that police even tried to locate or talk to Mr. Pennington, or Amber's friends, with whom she would attend church.

Donald and Mellisa Ellis recently reached out to Wogenstahl's defense counsel. They indicated that they observed Peggy Garrett with a white heavy-set male with big black-rimmed glasses in the early morning hours of November 24, 1991, at the Waffle House in Harrison, Ohio. Peggy was acting erratic, while the man kept telling her, "you gotta calm down, you gotta calm down." (Exhibits 96, 97 to Second Amendment to the Petition for Post-Conviction Relief). The man "kept going over to the window and looking out. He probably went over to the window at least 4-5 times while [they] were there." (*Id.*)

The police failed to investigate other alternate suspects: an anonymous caller to Dearborn County relayed that Troy Russell "said to 'someone' he was 'guilty as hell' of the Amber Garrett kidnapping and murder." (Attached Exhibit B). Jamie Wiemeyer, who lived above the Garretts, told Tracy and Ollie Wolf that Amber's body would be found in Bright, Indiana. (Exhibit 59). Bill Elsbernd told his ex-wife that he was friends with the Garretts and that two men had killed Amber

and only one was in jail. (Attached Exhibit C). Amber's classmate, Amanda Beard, saw Amber crying in a pickup truck on the day of her disappearance with a driver who was described as a white male, age 37, having black hair, a beard, and mustache. (Exhibit 68). The police also noted the appearance of Bernie Wegford at Amber's visitation and thought it significant enough to warrant a report. (Attached Exhibits D and E).

Additionally, the police file is replete with notes and reports detailing instances of Amber being sexually assaulted and stalked:

- On September 27, 1991, Amber wrote in her diary that she was sexually assaulted by a 17-year-old male named Doug. (Exhibit 17).
- One individual reported to police after Amber's disappearance that "last summer Amber was a victim of an attempt [sic] rape by a 14 yoa m/w." (Exhibit 41).
- Amber's cousin said that "approx., one month ago [Amber] was raped by one of the men who came to the house." (Exhibit 42).
- A note in the police file states that "She [Amber] was raped by one of [sic] men who come in there." (Exhibit 54).
- An individual who worked at Emmarson [sic] North Hospital reported to police that "Amber was treated for sex abuse about 6 mo ago." (Exhibit 55).
- Amber was a victim of importuning in May of 1991. (Exhibits 13b, 44).
- Before Amber's murder, Pam Petti and Amber saw a man watching them as they played in the woods behind the local community center. (Exhibit 43).
- Amber's aunt, Barbara Goins, told police that Amber had a secret "older boyfriend, Jeff Ertzel." (Exhibit 45).

None of these potential alternate suspects were ever investigated. And recall, Wogenstahl was new to town and does not fit the various descriptions given; and, thus, he could not be the man or even one of the men described above.

5. *Several reports call into question the time of Amber's death.*

Three witnesses testified that they saw Wogenstahl at approximately 3:40 a.m. on the side of Jamison Road near where Amber's body was found. As discussed *supra*, these witness identifications were unreliable. The police had at least nine reports that conflicted with these witnesses that were never investigated:

- Charlene Macaluso reported that she “saw a white car by guard rail on Sunday morning around 8:30 a.m. green army jacket on m/w 5’10 – 5’10½ at Jamison Creek near or at scene.” (Exhibit 65). The trunk of the vehicle was open. (Exhibit 55; 65).
- Matt Barnes reported that his spouse “[s]aw a car pulled off the road Sunday nite [sic] about 12:30 a.m.” (Exhibit 66).
- Susan Crowder telephoned Sergeant Bettinger and reported that “she had some info regarding Amber. She seen [sic] 2 trucks on Jamison Road, one was a brown truck with Ky plates.” (Exhibit 67).
- Amanda Beard, a classmate of Amber’s, reported seeing her at 10:00 a.m. the following day in a “blue p/u with white cap” which was “going toward Indiana.” (Exhibit 68; 69). Amber was “leaning against the window of truck crying wearing jean overalls.” (*Id.*). Amanda reported that it was “definitely Amber.” (*Id.*). Amber’s mother reported to the media that “Amber may be wearing blue jean overalls. The overalls are gone.” (Exhibit 78).
- Mary Jo Puckett reported that on Monday, November 25, 1991, at approximately 4:10 a.m. to 4:15 a.m., she saw an “old, dark, small car off to the side of the road.” (Exhibit 70). She added that this car was “reddish in color, two door. Reddish as in rusty-red, not bright red.” (*Id.*).
- Jo Ann Black reported to Harrison Police Department Patrolman Steve Mathews that she also saw a car parked on Jamison Road “at the top of the hill.” (Exhibits 71; 72). She saw this car while travelling to work on either Saturday or Sunday morning at 6:00 a.m. (*Id.*).
- Two other individuals reported seeing either a person and/or a car on Jamison Road that seemed suspicious during the timeframe when Amber was missing. (Exhibit 72).

If the State had not suppressed these police reports, the defense could have conducted a more thorough investigation and cast doubt on the State’s theory at trial. These reports may have also led defense counsel to hire an eyewitness identification expert to inquire into these statements further.

6. *The prosecutorial misconduct was unacceptable.*

This case is teeming with prosecutorial suppression and misconduct. In withholding information from the defense regarding Eric Horn’s trafficking conviction, the First District stated that “the prosecutors’ conduct needs review by other authorities.” *State v. Wogenstahl*, 2004-Ohio-5994, 970 N.E.2d 447, ¶ 2 (1st Dist.). In addition, the Sixth Circuit found that the prosecutor made comments that were improper at trial. *Wogenstahl v. Mitchell*, 668 F.3d 307, 334 (6th Cir.2012). With the context of the trove of documents suppressed from the defense, these

admonitions are just another factor in this case that diminishes the fairness of the trial and renders Wogenstahl's trial fundamentally unfair. At the very least, Wogenstahl deserves a new trial.

V. Conclusion

After maintaining his innocence for the past 30 years, Wogenstahl has learned that material, exculpatory evidence was withheld at trial; that State's witnesses presented false testimony to the jury; and that there were several possible suspects – people with motive to harm Amber – that law enforcement failed to investigate. He deserves an opportunity to present this evidence to a jury in a fair trial. His jurors agree. One of the jurors who sat on Wogenstahl's jury stated that the "evidence in the first phase was not overwhelming." That same juror stated that information concerning alternate suspects "definitely would have caused reasonable doubt on [her] part." (Exhibit 77; *see also* Exhibits 43, 79). As the Sixth Circuit Court of Appeals found, with this new evidence: "Wogenstahl has made a prima facie showing that he can establish by clear and convincing evidence that no reasonable factfinder would have found him guilty." *In re Wogenstahl*, 902 F.3d 621, 6529 (6th Cir.2018). This Court should find likewise that Wogenstahl's conviction has been undermined, vacate Wogenstahl's conviction, and order a new trial.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

/s/ Kimberly S. Rigby
Kimberly S. Rigby – 0078245
Managing Counsel, Death Penalty Dept.
Kimberly.Rigby@opd.ohio.gov
Counsel of Record

/s/ Cassandra S. Goodpaster
Cassandra S. Goodpaster – 0100283
Assistant State Public Defender
Cassandra.Goodpaster@opd.ohio.gov

250 East Broad St., Suite 1400
Columbus, Ohio 43215
614-466-5394 (Phone)
614-644-0708 (Fax)

COUNSEL FOR JEFFREY WOGENSTAHL

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June 2022, I have sent through email a copy of the foregoing to Philip Cummings [0041497], Assistant Hamilton County Prosecutor at *Phil.Cummings@hcpros.org*.

/s/ Kimberly S. Rigby
Kimberly S. Rigby – 0078245
Managing Counsel, Death Penalty Dept.

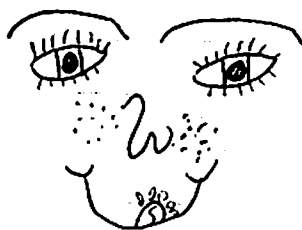
COUNSEL FOR JEFFREY WOGENSTAHL

Terry,

You can keep the twelve cigs if you have them O.K. because I have a whole pack and about seventeen in another. I can't believe it. I stole them from Eric and he don't even know! He always finds out about them when I steal them. Have you paid him back for that one pack? I think he forgot about them. Don't you? Well got to go. See ya later, .!



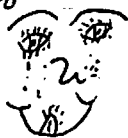
P.S. Who are you going out with?



Amber

Garrett

P.S.S. I am not going out with anyone!



Written 2 days before the murder
NYPD to give to police

EXHIBIT

A

Pam,

Hey chic what's up? Not much here. Well except for writing you a ~~good~~ letter. Guess what! I got a whole pack of cigs and about seventeen sigs in another pack. Eric still has not found out about them yet. Can you believe it?! Any other time he finds about them. Well I am grounded, for the whole weekend

JANET L. SHERMAN (HENRY L BOB)
1200 HOWGURD Drive
Hidden Valley
537-2437

White "SKI" JACK rimless glasses, dark hair
moustache N. bound into Harrison dark eyes
between 5 & 6 "Looked like he didn't belong
there" next dresser

Tape from Dearborn Cnty Hosp. Lun

T/X (ANONYMOUS) received by Sgt. KERRY GREENE
(IS P Versailles Post) Advising that Troy Russ.
is in D/C Jail for B+E his girl friends home
JESSICA TERRY

M/W 18 or 19

Said to "Someone" that he was "Guilty
as Hell" of the Amber Garrett Kidnapping
and Murder

Probation Violation TUESDAY NIGHT

Rocky VANCE broke out windows to his
residence trying to get to his girl friend:

JESSICA TERRY (Vance's step-daughter)

Troy Russell lives w/ his father: DAN Russell

21915 Salt Fork 637-1727

has a Blk Mont/Carlo & a Chevette

EXHIBIT

B

CN 12/7/91 A MRS Sigleit of the Taylor Creek Condos, TX. 353-4542, called HPD and stated that her grandchildren were possibly being abused by their father, Bill Elsbernd, of 312 DAIR APT #2. The children are, Elizabeth A. Elsbernd, Age 7, and Johnaton W. Elsbernd, Age 4. The mother, SUSAN Sigleit has custody and lives with Mrs. Sigleit at the Taylor Creek Condos. SUSAN is divorced from Bill. Per a Maryland Court order Bill has visitation rights every other week from Thursday to Monday. SUSAN Sigleit was told by Bill Elsbernd that he was personal friends of the Garrett's and that two men had killed Amber and only one was in jail. SUSAN also stated that Bill has a fascination with horror videos, books, and the Occult. SUSAN stated that Bill said that two men had killed Amber the Saturday following Thanksgiving. Susan states that Beth had commented that Daddy (Bill) has to take pills before he goes to sleep or he throws up. Susan states Bill is unemployed and that his DOB is 10/25/60. Mrs. Sigleit states the divorce was very violent and that the children have returned home with scrapes after being with Bill. Mrs. Sigleit also states that Beth told her a lot of people go in and out of Daddy's (Bill) apartment and that Daddy (Bill) told her not to tell anyone that. SUSAN has a lawyer and is in process of changing the situation she'd.

PA1 Liniseu advised Mrs Siga - to immediately go to the Court

CNETCSTC

EXHIBIT

C

2. FORM USED AS CONTINUATION SHEET FOR CURRENT REPORT		3. FORM USED TO REPORT FOLLOWUP INVESTIGATION OR SUPPLEMENTAL INFORMATION		4. DAY DATE OF THIS REPORT TIME		5. NAME OF COMPLAINANT/REPORTING PERSON	
				Sun 12-8-91 1515		PTL C. Lindsey	
6. KIND OF REPORT CONTINUED				7. CORRECT OFFENSE OR INCIDENT CLASSIFICATION			
<input checked="" type="checkbox"/> OFFENSE <input type="checkbox"/> TRAFFIC ACCIDENT <input type="checkbox"/> ARREST <input type="checkbox"/> FOLLOWUP OR SUPPLEMENTARY				KIDNAPPING/MURDER			
8. STATUS (CHECK ONE)		9. IS FURTHER POLICE ACTION REQUIRED?		10. IF CASE IS CLEARED, HOW CLEARED? (USE CLEARUP LIST.)		11. BOX FOR SINGLE CLEARUP OR FIRST CLEARUP OF MULTIPLE COMPLAINTS	
<input type="checkbox"/> CLEARED <input type="checkbox"/> UNCL. <input checked="" type="checkbox"/> NOT CLEARED		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> COMPLAINANT DIRECTED TO PROSECUTE <input type="checkbox"/> COMPLAINANT REFUSED TO PROSECUTE		<input type="checkbox"/> STATION ADJUSTMENT <input type="checkbox"/> OTHER EXCEPTIONAL	
12. RECORD ALL DEVELOPMENTS IN THE CASE SINCE THE LAST REPORT WAS FILED IF THE CLASSIFICATION IS CHANGED, EXPLAIN WHY. GIVE THE DESCRIPTION, DISPOSITION, & INVENTORY NUMBERS OF ALL PROPERTY RECOVERED.				13.			

children to the family doctor/call 911 if the kids return home from visitation with the father bruised or making statements of Abuse.

The children have made no statements in regards to Bill Abusing them and Mrs Sigert says that no bruises have been seen on the children since moving to Ohio From Maryland in April, 1991.

Finally, Susan states Bill wears a silver ring with a large skull on it. Susan states Bill is very violent and believes he is using drugs.

16. EXTRA COPIES REQUIRED (NO. & RECIPIENT)		17. ARREST MADE		18. HOW BY		19. STATE FORM TO FOLLOW	
ONE to S70		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
20. LEADS NCIC NO.		21. SENT DATE		22. CANCELED DATE		23. SUPERVISOR APPROVING	
25. REPORTING OFFICER		26. REPORTING OFFICER		27. FILE NO.		28. COMPLAINT NO.	
PTL P. Lindsey #197				24054		2144-91	
				000343			

68

2. FORM USED AS CONTINUATION SHEET FOR CURRENT REPORT <input type="checkbox"/>		3. FORM USED TO REPORT FOLLOWUP INVESTIGATION OR SUPPLEMENTAL INFORMATION <input checked="" type="checkbox"/>		4. DAY (DATE OF THIS REPORT) TIME HRS. 12-9-91 1845 AM PM		5. NAME OF COMPLAINANT-REPORTING PERSON Mathews / Pyl.			
6. KIND OF REPORT CONTINUED OFFENSE <input type="checkbox"/> TRAFFIC/ACCIDENT <input type="checkbox"/> ARREST <input type="checkbox"/> FOLLOWUP OR SUPPLEMENTARY <input checked="" type="checkbox"/>				7. CORRECT OFFENSE OR INCIDENT CLASSIFICATION AGG. Murder / Kidnapping				CHANGED <input type="checkbox"/> YES	
A. STATUS (CHECK ONE) C.L.D. UNFD. NOT C.L.D. C.T. <input checked="" type="checkbox"/>		9. IS FURTHER POLICE ACTION REQUIRED? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		10. IF CASE IS CLEARED, HOW CLEARED? (USE CLEAR-UP LIST.) <input type="checkbox"/> ARREST & PROSECUTE <input type="checkbox"/> COMPLAINANT DIRECTED TO PROSECUTOR <input type="checkbox"/> COMPLAINANT REFUSED TO PROSECUTE <input type="checkbox"/>		BOX FOR SINGLE CLEAR-UP OR FIRST CLEAR-UP OF MULTIPLE		STATION ADJUSTMENT <input type="checkbox"/> OTHER EXCEPTIONAL <input type="checkbox"/>	
11. INSTRUCTIONS FOR FOLLOWUP OR SUPPLEMENTAL USAGE.		12. RECORD ALL DEVELOPMENTS IN THE CASE SINCE THE LAST REPORT WAS FILED IF THE CLASSIFICATION IS CHANGED, EXPLAIN WHY. GIVE THE DESCRIPTION, DISPOSITION, & INVENTORY NUMBERS OF ALL PROPERTY RECOVERED.				13.		14.	

On 12-4-91 Mathews responded to Minges Funeral Home for Visitation. While there Mathews observed Bernie Wegford come in. Wegford did not talk to anyone that Mathews could see and left at 1823 hours.

CONFIDENTIAL

27. FILE NO. 24133

16. EXTRA COPIES REQUIRED (NO. & RECIPIENT)		17. ARREST MADE YES <input type="checkbox"/> NO <input type="checkbox"/>		ARREST NO.		18. TOW BY		19. PROP. INV. NO.	
20. LEADS NCIC NO.		21. SENT DATE TIME HRS.		22. CANCELLED DATE TIME HRS.		23. <input type="checkbox"/> CONT. ON SUP. FORM		24. SUPERVISOR APPROVING	
25. REPORTING OFFICER Pyl Mathews BADGE NO. 289		26. REPORTING OFFICER		BADGE NO.		DATE		28. COMPLAINT NO. 2144-91	

EXHIBIT D

Bernie Wegford Left 1823

Tim Hopkins

Layout

000457

EXHIBIT

E