

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

v.

JEFFREY WOGENSTAHL,

Appellant.

Case No. 1995-0042

This Is A Capital Case.

Appellant Jeffrey Wogenstahl's Motion to Supplement the Record on Direct Appeal

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**COUNSEL FOR APPELLANT,
JEFFREY WOGENSTAHL**

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STATE OF OHIO,

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v.

JEFFREY WOGENSTAHL,

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Case No. 1995-0042

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**Appellant's Motion to Supplement the Record on Direct Appeal,
Or to Remand for an Evidentiary Hearing**

Appellant Jeffrey Wogenstahl, through counsel, requests this Court order that the record on direct appeal before this Court be supplemented with the three Exhibits attached hereto. *See* Exhibits 1, 2, and 3. The reasons for this request are set forth more fully in the attached memorandum.

Respectfully Submitted,

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Counsel for Appellant, Jeffrey Wogenstahl

MEMORANDUM IN SUPPORT

Jeffrey Wogenstahl was convicted and sentenced to death for the murder of Amber Garrett in 1993. On October 9, 2015, Wogenstahl filed a Motion to Vacate His Execution Date and to Re-open His Direct Appeal. This Court granted that Motion on May 4, 2016. *State v. Wogenstahl*, 145 Ohio St. 3d 1455, 2016-Ohio-2807, 49 N.E.3d 318 (2016). This Court allow full briefing and oral argument on one discreet issue: After briefing and oral argument concluded, the Court filed its fractured opinion on July 25, 2017. *See State v. Wogenstahl*, Slip Opinion No. 2017-Ohio-6873.

In that opinion, the majority of this Court committed two grievous errors: (1) the Court improperly shifted the burden of proof to Wogenstahl, finding that Wogenstahl failed to “establish that the murder occurred in Indiana” and (2) the Court engaged in improper speculation based upon what off-the-record evidence might exist to support a determination that the murder could have occurred in Ohio. *Wogenstahl*, 2017-Ohio-6873 at ¶¶ 43-46. Since the Court shifted the burden to Wogenstahl and then engaged in speculation about what off-the-record evidence might exist to support a determination that the murder could have occurred in Ohio, Wogenstahl now must rebut this speculation with actual off-the-record evidence that trial counsel should have obtained at the time of trial. *See* attached Exhibit 1 (affidavit of Carl J. Schmidt, M.D, M.P.H. (finding that “to a reasonable degree of medical certainty . . . the victim in this case was killed outside of the car seen in the pictured. . . .”)); Exhibit 2 (affidavit of Gary A. Rini, M.F.S. (the State’s contention that the victim was murdered elsewhere, or in Wogenstahl’s car, which was then used to transport the victim to the scene, is not supported by the physical evidence in the car, at the scene or on the victim.”)) and Exhibit 3 (two affidavits of Bruce Wheeler that would challenge his credibility by admitting that he received consideration for his testimony in Wogenstahl’s case)).

In order to clear-up the record, rebut the speculation relied upon by the majority opinion for jurisdiction, and to protect Wogenstahl’s constitutional right to a fair trial and due process of

the law on direct appeal, this Court must supplement the record on Direct Appeal with the Exhibits attached to this Motion and order re-briefing on the issues. Exhibits 1, 2, and 3. Or, in the alternative, this Court must send this case back to the trial court for an evidentiary hearing where this outside-the-record evidence can be considered in the first instance by the trial court.

Respectfully Submitted,

Office of the Ohio Public Defender

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Counsel for Appellant, Jeffrey Wogenstahl

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2017, I served a copy of the foregoing **Appellant's Motion to Supplement the Record on Direct Appeal, or to Remand for an Evidentiary Hearing** via ordinary U.S. Mail, postage prepaid, upon counsel for the State of Ohio at his address of record, to wit:

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Cincinnati, Ohio 45202

By: /s/ Kimberly S. Rigby
Kimberly S. Rigby (0078245)
Counsel for Appellant

THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	CASE NO. B 9206287
Plaintiff-Respondent,	:	JUDGE NADEL
vs.	:	
JEFFREY WOGENSTAHL,	:	Death penalty case
Defendant-Petitioner.	:	

Affidavit of Carl J. Schmidt, M.D., M.P.H.

State of Michigan)
) ss:
County of Monroe)

1. I am a licensed physician in the States of Ohio and Michigan with a subspecialty in forensic pathology. My curriculum vitae is attached.
2. I reviewed the materials related to the death of Amber Nicole Garrett, which included a video taken of the scene, scene and autopsy pictures, the autopsy report (Hamilton County Coroner Number OC-249-91), and the court testimony of Dr. Michael Kenney in the criminal trial of Jeffrey Wogenstahl.
3. The victim suffered multiple blunt trauma, mainly to the left side of the head, and multiple stab wounds. I created body diagrams (attached to this affidavit) to more easily demonstrate the wide distribution of injuries on the victim's body.
4. There was multiple blunt trauma seen on the victim. Much of the blunt trauma was concentrated to the left side of the head, with multiple contusions and lacerations. Aside from extensive subcutaneous hemorrhage, there was one larger laceration on the left temple with comminution (i.e. crushing) of the skull and exposure of the brain and soft tissue. There was no external or internal evidence of sexual injury, and none was documented.
5. There were multiple stab wounds, concentrated on the left neck and left chest and shoulder. One of the stab wounds to the neck punctured blood vessels in the supraclavicular region, the pleural cavity and the left lung. One of the wounds to the chest punctured the pericardium, diaphragm and liver.

EXHIBIT

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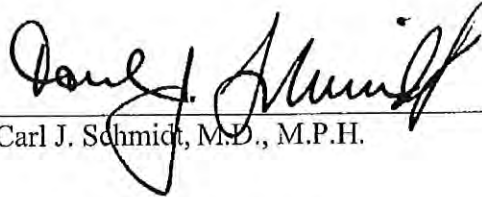
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6. The autopsy report states that there was 1000 ml of blood in the left chest as a result of the stab wounds. It is my opinion to a reasonable degree of medical certainty that this is an overestimate of the amount of blood in the victim's chest cavity. Unless a precise measurement is taken, which was not indicated in the materials I reviewed, it is very difficult to accurately estimate the amount of blood based merely on observation. Overestimates are common and I have seen them frequently throughout my career. My reasoning for this opinion is that the report mentions that the deceased weighed 78 lbs, or about 35 kg. Assuming a circulating blood volume of 75 ml / kg of body weight, this means that the intravascular volume was about 2659 milliliters. Hence, 1000 ml would represent 37% of that circulating blood volume. After about a loss of 15% of blood volume there is a significant drop in blood pressure; this loss does not include that suffered from other trauma, such as the head injuries. And as will be explained, it is my opinion that the head injuries were inflicted close in time, but before, the other injuries. Extensive blood loss would have occurred from those injuries as well.
7. All of the injuries would have caused at least some external bleeding. A large amount of blood and tissue splatter would have been present in the location where these injuries occurred. Based on the amount of bleeding from the head seen in the photographs, it is my opinion that the head injuries in this case likely took place prior to the stab wounds. The wounds to the head showed profuse bleeding and brain matter protrusion. These injuries in particular would have caused a significant amount of blood and tissue splatter as they were being inflicted. The stab wounds sustained to the arm would have caused both internal and external bleeding. Although not specifically stated in the coroner's report or testimony I assume he is referring to the subclavian / axillary / brachial artery and vein when he is referring to the major vessels in the arm that were severed (the three names for the artery and vein reflect the region of the body in which they are found, but they are the same blood vessels). This injury was the source of the internal bleeding described in the autopsy report but it is likely there would also have been some external bleeding when it was inflicted because the artery is such a large blood vessel that originates directly from the aorta, which in turn originates from the heart. Had the head injuries occurred after this injury I don't think there would have been as much bleeding in the head as was documented.
8. To a reasonable degree of medical certainty, my opinion is that the injuries could not have been inflicted in the vehicle shown in the pictures. It is practically impossible that the victim was in the car when these injuries were sustained, as the physical space needed by the assailant to inflict those injuries is much greater than that (this means the space needed to swing an arm wielding a weapon). Further, in order to cause the injuries sustained by the victim here, an assailant would need a significant amount of energy, and repeated blows, to injure the soft tissues of the head and cause the comminuted, depressed skull fractures described in the autopsy report. The fractures span much of the left side of the skull and brain tissue was exposed. The fracture lines extended to the floor of the skull and

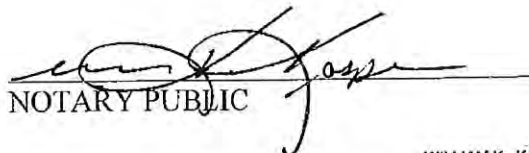
included the left orbital plate. There was also injury to the brain. The blows needed to cause them would have generated at least some spread or splatter of soft tissue and blood at the place where the injuries were inflicted. The injuries to the head were caused when the head was supported against a firm surface, such as the ground, with the right side of the head in contact with it. This is also supported by the bruising seen on the right ear and the right temple, which could have been caused when victim's head was against a hard, irregular surface such as the ground outside. These injuries could not have occurred while the victim was sitting up, such as she would have been in the front passenger seat of the car. Had she been in a sitting position the head would have swung like a pendulum moving back forth, a process which dissipates energy and would have resulted in a different pattern of injury, instead of that seen here, where there is much more severe injury to the left side of the head in comparison to the right side. Injuries are remarkably absent from the right side of the brain.


9. Also of note in the picture is the large laceration on the left temple. This wound would have resulted in a fair amount of tissue spattering and blood loss. The hair was also matted with blood, which would also have left some kind of bloody residue and, unless the head was completely covered, would also have spread blood and tissue when the body was moved. There is a picture of the face that shows a thin layer of blood on the left side before the face was cleaned; I don't believe you could move the body without some of this blood being left behind if it contacted any surface while being moved. 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 includes absorbent materials like carpeting.
10. 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. With injuries this extensive, it is usual to find blood and other tissue residue on the instrument. This is also true of the knife. There is mention of a pocket knife in original trial testimony, but, unless there is tissue present on the knife it would be difficult to match a particular knife to a stab wound other than to say that the weapon had a single edge or a double edge if the shape of the wound reflects this.
11. The body was found outdoors; it was partially frozen. This would slow decomposition and help preserve the body. It also makes estimating a postmortem interval impossible because freezing prevents the usual lividity and rigidity from developing at the rate they would at a higher temperature. Hence, in this case, my opinion, to a reasonable degree of medical certainty, is that an estimate of a postmortem interval cannot be established.

12. The multiple, mainly parallel scratches to the back, buttock and thighs were postmortem. It's not possible to say when they occurred relative to the time of death. I believe they were caused by dragging through a place like the wooded area where the body was found. The cross-hatch pattern indicates there may have been a directional change at some point while the body was being dragged.
13. There is a mention of a stab wound to the left wrist and an incised wound to the base of the left thumb. These were described as defensive injuries, i.e., sustained as the deceased was trying to defend herself. Although this is possible, these kinds of injuries tend to be more numerous and widely distributed along areas such as the back of the forearms than is seen here. It is also possible they happened as the stab wounds to the chest were being inflicted and the hand was in the way (interposed between the knife and the chest wall as when the hand is resting on the chest). If the latter happened after the head injuries, my opinion to a reasonable degree of medical certainty is that the deceased would have been unconscious because of the injuries to the brain.
14. In conclusion, my opinion to a reasonable degree of medical certainty is that the victim in this case was killed outside of the car seen in the pictures that I reviewed. The injuries were likely inflicted while the body, and the head, were lying on an irregular surface, such as the ground outside, with the right side of the head in contact with it. Due to the amount of bleeding and blood loss, my opinion to a reasonable degree of medical certainty, is that the injuries to the head were sustained first, rendering the victim unconscious within seconds to minutes, while the stab wounds were inflicted. If the victim had not been alive when the head injuries occurred, I don't think you would have seen bleeding as extensive as was documented within and outside of the head. Death would have occurred quickly, perhaps within minutes of the injury to the blood vessels of the chest wall because of the large caliber of those blood vessels and their direct connection to the aorta.


Carl J. Schmidt, M.D., M.P.H.

Sworn to and subscribed before me on this 13th day of February, 2015.


NOTARY PUBLIC


WILLIAM K. KASPER
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Nov 7, 2016
ACTING IN COUNTY OF Wayne.

REPORT

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State of Ohio vs. Jeffrey A. Wogenstahl



PREPARED BY:

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March 1

EXHIBIT

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REPORT OF FINDINGS

STATE OF OHIO VS. JEFFREY A. WOGENSTAHL

INTRODUCTION

Please find a current copy of my curriculum vitae and a list of my courtroom and deposition testimony attached to this report in accordance with Rule 26 of Federal Rules of Civil Procedure pertinent to general provisions regarding discovery and duty of disclosure.

QUALIFICATIONS

I, Gary A. Rini, am an independent police procedures and forensic science consultant, based in the Cleveland, Ohio area. I provide a critical case review and evaluation of police procedures in homicide and shooting incident cases which includes: critical events analysis and physical evidence correlation; shooting incident reconstruction; crime scene evidence evaluation; bloodstain pattern analysis; crime scene reconstruction; crime scene investigation and police officer performance audits and expert witness testimony for both prosecution and defense attorneys in criminal cases and plaintiff and defense attorneys in civil cases, as well as providing those services to Government and Trial Defense Service JAG Officers (Military Attorneys) in UCMJ (Uniformed Code of Military Justice) cases.

I began my professional career in 1975, serving in small, mid-size and large police agencies. During the course of my career, I served as a Patrol Officer, a police department SWAT team member, a multi-agency police SWAT team member, Police Agent, Crime Scene Investigator, Crime Laboratory Detective, PEER Support Counselor, Patrol Sergeant, Assistant Tactical Firearms Instructor, Forensic Services Manager and Police Commander of Criminal Investigations. I also served as lead forensic consultant on two Chicago-area major crime task forces. I received my graduate education from **The George Washington University** in Washington, D.C., and from **DePaul University** in Chicago, Illinois. I am a graduate of the **Police School of Staff and Command** from **Northwestern University's Public Safety Institute**.

I am a graduate of the **Ohio State Highway Patrol Basic Police Academy** (serving as class leader), **The Lakewood (CO) Police Academy** (class leadership award and commencement speaker) and the **Denver (CO) Police Department Police Academy** (commencement speaker). I received advanced specialized training from the Federal Bureau of Investigation, United States Secret Service, Smithsonian Institution, the Armed Forces Institute of Pathology, Saint Louis University Medical School, University of New Mexico Medical School, Case-Western Reserve University's Law-Medicine Center, Northwestern University's Public Safety Institute, Henry C. Lee Institute of Forensic Science, the Institute of Police Technology and Management and other nationally recognized professional organizations.

I have designed and taught college police science courses, as well as police science training courses for judges, attorneys, law enforcement officers, nursing and allied health specialists, first responders and other police agency professionals. I am a member of a number of scientific professional organizations, including the American Academy of Forensic Sciences, the International Association for Identification, the International Association of Bloodstain Pattern Analysts, the Association for Crime Scene Reconstruction, the International Homicide Investigator's Association and other professional organizations, where I have held leadership positions as Board Member, Vice-President, President, Chairman-of-the-Board, Training Conference Chairman and Regional Representative for a number of those organizations.

I served on the **National Institute of Justice's Technical Working Group** that established the national **Guidelines for Crime Scene Investigators**, and have been bestowed the designation of **Visiting Professor of Law** by the Francisco Marroquin University School of Law, Guatemala City, Guatemala. I am a **Vietnam-era Veteran** of the **United States Air Force** and **Ohio Air National Guard**, where I served as an emergency room (trauma) medical corpsman. I am a **NRA Certified Firearms Instructor** and a **NRA Certified Range Safety Officer**. I have in excess of 500 hours of dedicated firearms training, in addition to quarterly, semi-annual and/or annual range qualifications with police service firearms.

PUBLICATIONS

A list of my previous publications is contained in my attached CV.

COMPENSATION

The hourly rate charged for my services is three-hundred dollars (\$300.00) per hour, plus expenses. The total number of hours spent on this project to date is 10 hours. Compensation as of the date of this report is \$3000.00.

TESTIMONY

As of this date, I have provided expert testimony in a deposition or trial on 124 occasions. (See attachment)

ASSIGNMENT

I was tasked with rendering an opinion on the following issues:

- Procedures used by investigators in gathering and preserving evidence in this case,
- An evaluation of the validity of the presumptive blood tests used in this case, and what conclusions could be drawn from the results of those presumptive blood tests,
- Whether bleach, as the state argued, would have cleaned-up the blood evidence preventing forensic scientists from finding blood,
- The effect bleach would have on blood and luminol testing,
- Whether cat urine would cause a reaction with luminol,
- The likelihood that the victim was killed or transported in the car,
- The likelihood the victim was killed in Wogenstahl apartment,
- The significance of the pubic hair evidence,
- The potential value of the use of other forensic experts at the scene,
- The State's explanation of the way the victim was killed.

MATERIALS EVALUATED

In order to perform this task, I evaluated the following materials:

I.) Witness Testimony

- William Dean
- Douglas Deedrick
- Dr. Robert Webster
- Dr. Michael Kenny
- Charles Lindsey
- Steve Mathews
- Edward Bettinger
- Norman Koopman
- Jeffrey Schaefer
- Donald Stone
- Brian Wraxall

II.) Documents

- Analysis, testing records
- Blood testing notes (Exhibit C)
- Blood testing notes (Exhibit D)
- Blood testing notes (Exhibit E)
- Canine records
- Crime lab report
- Fingerprint testing records
- Investigation records
- Luminol testing
- Autopsy report from Hamilton County Coroner's Office
- Autopsy photos
- Crime scene photos
- Crime scene video
- Affidavit of Carl J. Schmidt, M.D., M.P.H.
- Hamilton County Laboratory Reports and Bench Notes (157 pages)

REFERENCE MATERIAL CONSULTED

I referred to the following material to support my observations and/or conclusions:

- Scientific Working Group on Bloodstain Pattern Analysis (Terminology)
- Gross AM, Karas, KA, Kaldun, GI. **The effect of luminol on presumptive tests and DNA analysis using the polymerase chain reaction**, J. of Forensic Sci 1999; 444 (4): 837-840
- Harris KA, Thacker CR, Ballard D, Syndercombe Court D. **The effects of cleaning agents on the DNA analysis of blood stains deposited on different substrates**, International Congress Series 1288 (2006) 589-591.
- Jakovich Cathy J. **STR analysis following blood detection by luminol, fluorescein and bluestar**, Journal of Forensic Identification 57 (2), 2007 \ 193.
- Gimeno Fred E, Rini Gary Alan. **Fill flash photo luminescence to photograph luminol blood stain patterns**, Journal of Forensic Identification 39 (3), 1989 \ 149.
- Gebreth, Vernon J., *Practical Homicide Investigation*, 3rd ed. Boca Raton: CRC Press, Inc., 1996.
- Gebreth, Vernon J., *Sex-Related Homicide and Death Investigation*, 2nd ed. Boca Raton: CRC Press. Inc. 2010.
- James, Stuart H, Kish, Paul E, Sutton, T. Paulette, *Principles of Bloodstain Pattern Analysis*, Boca Raton: CRC Press, Inc. 2005.
- Fisher, Barry A.J., *Techniques of Crime Scene Investigation*, 5th Ed. New York: Elsevier, 1991.
- Spitz, Werner U and Spitz, Daniel J., *Medicolegal Investigation of Death*, 4th ed. Springfield: Charles C. Thomas Publishers, 2006.

OPINION/CONCLUSION

Based on a review and evaluation of the above-cited materials, I offer the following opinions/conclusions:

- The procedures used by crime scene investigators did not meet the standards reflected in contemporary crime scene-related texts (see Fisher) regarding the planning, searching, documentation, protection and evidence collection of homicide-related scenes. Among these deficiencies, one finds that there was not a demonstrated plan to search the scene in a structured manner which may have resulted in the failure to

discover evidence at the scene; Failure to limit and control access to the scene to only those needed to process the scene increased the possibility of the loss, destruction or contamination of potential evidence by curious on-lookers; Failure to employ the services, or seek the advice of, forensic specialists (e.g. bloodstain pattern analysts, forensic botanists, forensic geologists or forensic entomologists) at the time of the crime, could have contributed to the potential loss of associated forensic evidence which could have been discovered through the use or consultation with those specialists; Failure to provide sufficient scene photographs in number and context (long-range, mid-range and close-up photographs) and the ground underneath the body (once the body was removed) could have resulted in the lost opportunity to discover additional evidence, or limit an objective crime scene analysis by an independent third-party expert.

- No photographic documentation of the luminol test or other presumptive tests was presented for evaluation. Therefore, one needs to rely on the written documentation of the individuals involved in the application of these testing methodologies for accuracy of test results. Many results were reported as “negative” in the documentation reviewed by this analyst. That indicates no blood was present. However, some results were presented as positive, but when tested further, no blood was found. In addition, it is not uncommon for inexperienced investigators to misinterpret the results of certain presumptive tests for blood.

For instance, when applying luminol to an area suspected of containing occult blood, the inexperienced investigator may note a “glowing” of the area once the *luminol* is applied. However, in many instances, the uninformed and inexperienced investigator will misinterpret the appearance of the luminol when exposed to air (the “glowing” of the chemical) as a positive reaction to the presence of blood.

In the case of the use of *phenolphthalein* as a presumptive test for blood, a positive reaction is indicated by an immediate appearance of a “pink” color on the filter paper used to collect a sample from a suspected bloodstain once the phenolphthalein chemicals are applied to the filter paper. However, if the filter paper is exposed to air, even on filter papers without immediate pink (negative for blood) reactions will eventually turn pink over time. The inexperienced investigator may interpret this as a positive test for the presence of blood when, in fact, it is not.

In both of these examples, these errors in the interpretation of test results can be avoided by the utilization of pre-testing control samples in which the investigator applies luminol and phenolphthalein to known blood samples to observe the actual appearance of positive reactions of these tests to known blood samples.

It should be noted that any positive test results obtained from these presumptive tests only indicate the presence of blood. These tests do not discriminate between human and non-human blood, nor are they able to identify to whom the blood belongs.

- Bleach will not prevent the scientists from locating blood. The luminol-bleach reaction is very specific, and to an experienced analyst, blood is easily recognizable. The luminol-bleach-blood reaction will

appear “wiped-up” but the luminol chemical reaction will have a unique “flash” characteristic to its appearance. Subsequent presumptive tests such as the use of phenolphthalein will still test positive in the presence of blood, after applying bleach to the blood in an attempt to “wipe the blood away.

- The application of bleach to blood as a masking agent will not necessarily preclude subsequent detection of blood through the use of luminol detection techniques, nor will it absolutely preclude the detection of DNA from a collected blood sample.
- Cat urine will not cause a reaction to the application of luminol, as the luminol reacts to a specific component contained in blood (hemoglobin) which is not present in cat urine.
- Due to the lack of the volume of blood one would expect inside a closed space (such as a vehicle) that would have been generated from the victim’s injuries, and due to the lack of any transfer evidence of the murder weapon onto the interior of the vehicle, it is highly unlikely that the victim was killed or transported in the suspect’s vehicle.
- The lack of detection of blood, or indications of blood clean-up, within Wogenstahl’s apartment make it highly unlikely that the victim was murdered inside Wogenstahl’s apartment. It appears that crime scene investigators removed the plumbing from Wogenstahl’s bathroom to examine the contents of the drain pipes for evidence of blood. If blood had been present, it would have been found in the drain pipes. The lack of blood in the drain pipes indicates that no blood was present, nor was there any evidence of the use of any cleansing agents that would have removed any traces of blood.
- Hair that cannot be linked to a victim or suspect is irrelevant if a link between suspect and victim cannot be established. Any hair that may have been found may very well have been deposited as a result of cross-contamination during the handling of the evidence by the various individuals who had custody of the material during the course of the examination and/or testing of the clothing evidence. Testimonial evidence revealed that there was no accounting of the actual number of hairs collected as evidence.
- The scene investigators could have benefited from the expertise offered by forensic geologists, forensic entomologists and bloodstain pattern experts at the scene. There were not enough photographs taken of the scene around and underneath the victim’s body to adequately assess the degree and expanse of the bloodstain patterns present around the body. Had these photographs been taken, it would have enabled an independent third party bloodstain pattern analyst an opportunity to assess the degree of blood loss and distribution patterns of the blood in order to support or refute the determination of the outdoor scene as the location of the physical assault that lead to the victim’s death.
- The State’s contention that the victim was murdered elsewhere, or in Wogenstahl’s car, which was then used to transport the victim to the scene, is not supported by the physical evidence in the car, at the scene or on the victim. As was previously mentioned, there was no evidence of bloodstains and weapon transfer evidence detected in the vehicle that would support the determination of a violent confrontation inside the vehicle; there was no documentation of bloodstain transfers along the path from the roadway

to the body dump site that would support the determination that the body was transferred (dead) from another location and “dumped” at the site at which the victim was found. Other than the lack of the amount of blood that one would expect to be present after a violent confrontation,, there were no fingerprints, hairs, fibers or any other physical evidence recovered which would connect the victim to Wogenstahl’s apartment or car (in which they specifically vacuumed for trace evidence that resulted in their failure to discover any trace evidence linking the victim to the car). In addition, to this lack of evidence, there was semen found on the comforter upon the bed on which the victim slept that was never identified (linked) as to its source.

- My informed opinion is that the victim was killed very close to the dump site, then dragged (as indicated by Dr. Schmidt’s description of the drag marks present on the victim), and placed where she was discovered. However, due to the lack of a thorough crime scene investigation, the exact location where the victim was murdered is impossible to determine after the passage of twenty years.
- 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.

BASIS FOR OPINION/CONCLUSION

These opinions and conclusions are based on knowledge drawn from nearly 40 years of investigative and practical law enforcement experience, police and forensic science training and practical research, actual case evaluations and published standards. They are consistent with the standards and practices currently employed in the review and evaluation of death scene investigations.

Submitted this 13th day of March, 2015

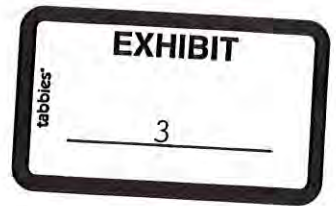


Gary A. Rini, M.F.S.
Forensic Science Consultant
North Olmsted, Ohio 44070

State of Ohio)

SS:

County of Franklin)



AFFIDAVIT OF Bruce M. Wheeler

I, Bruce Wheeler, being duly sworn according to law, state the following:

1. Even though I did not want to, I testified in Jeffrey Wogenstahl's Capital trial. I was called by the State of Ohio as a witness against Mr. Wogenstahl.
2. I contacted the prosecutor's office in Mr. Wogenstahl's case before Mr. Wogenstahl went to trial and before I entered a plea in my case.
3. I met with prosecutors in the case a total of approximately four times to prepare my testimony. Each time I met with them it was for about forty-five minutes. I met with Prosecutor Deters the last time. He is an intimidating person.
4. The other three times I met assistant Prosecutor Gibson.
5. I felt that the prosecutors were going to help me with my case I testified. It was implied that I would do less time in prison if I testified.
6. I asked the prosecutors to get me to Ross Correctional as opposed to one of the institutions that was considered more dangerous, if I helped them in Wogenstahl's case. I ended up at Ross Correctional and I believe it was because of my testimony.

7. The prosecutors promised if I testified they would write a letter to the Parole Board on my behalf.

8.
9. B.M.W.
10.

Further Affiant sayeth naught.

Bruce M. Wheeler

Sworn to and subscribed in my presence this 3rd day of
September 2014.



MARTHA J. PHILLIPS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 5/25/16

Martha Phillips
NOTARY PUBLIC

State of Ohio)
) SS:
County of Franklin)

AFFIDAVIT OF Bruce Wheeler

1. Bruce Wheeler, being duly sworn according to law, state the following:

1. My attorney may have been present the first time I met with the prosecutors in Wagenstahl's case following me entering a plea on my case.
2. My attorney was not present at the following meetings with the prosecutors.
3. I did not disclose this earlier because I was locked up and I was in a different place in my life.
4. I was not promised anything or coerced or threatened or given anything for either this statement or the statement I provided on September 3, 2014.

5.

6.

~~B.M.W.~~

7.

8.

9.

10.

Bmw

Further Affiant sayeth naught.

Bruce M. Wheeler

Sworn to and subscribed in my presence this 13 day of

November, 2014.



MARTHA J. PHILLIPS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 5/25/16

Martha Phillips

NOTARY PUBLIC