

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

STATE OF OHIO,) CASE NO. CR 2005-09-3204 (A)
)
)
Plaintiff,) JUDGE ELINORE MARSH STORMER
) JUDGE JAMES MURPHY & JUDGE
-vs-) PATRICIA COSGROVE
)
DEREK M. SHUTT,) TRANSCRIPT OF PROCEEDINGS
)
)
Defendant.) VOLUME 1 (Of 1 Volume)

APPEARANCES:

BRIAN LOPRINZI, Assistant Prosecuting Attorney,
BECKY DOHERTY, Assistant Prosecuting Attorney,
On behalf of the State of Ohio.

BRIAN PIERCE, Attorney at Law,
SCOTT RILLEY, Attorney at Law,
On behalf of the Defendant.

BE IT REMEMBERED that upon the hearing of
the above-entitled matter in the Court of Common Pleas
of Summit County, Ohio, before the HONORABLE ELINORE
MARSH STORMER, Judge Presiding, and JUDGE JAMES MURPHY
and JUDGE PATRICIA COSGROVE, and commencing January 11,
2006, the following proceedings were had, being a

Transcript of Proceedings:

PATRICIA A. KLEIN, RMR
Official Court Reporter
Summit County Courthouse
209 S. High Street - Third Floor
Akron, Ohio 44308

I N D E X

WAIVER OF RIGHTS AND PLEA -- PAGE 4

STIPULATION TO STATE'S EXHIBITS FROM KRAMER
PLEA & ADDITIONAL STATE'S EXHIBITS MARKED
IN THIS CASE -- PAGE 16

<u>STATE'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>ReD</u>	<u>ReC</u>
DETECTIVE FRANK HARRAH	18	36	--	--

MOVE TO ADMIT STATE'S EXHIBITS -- PAGE 39

COURT'S EXHIBIT 1 INTRODUCED BY THE COURT -- PAGE 40

THREE JUDGE PANEL VERDICT -- PAGE 40

MITIGATION ARGUMENT -- PAGE 41

DEREK M. SHUTT'S UNSWORN STATEMENT -- PAGE 45

THREE JUDGE PANEL DECISION ON MITIGATION AND
SENTENCING -- PAGE 47

E X H I B I T S

<u>STATE'S</u>	<u>MARKED</u>	<u>ADMITTED</u>
1 Autopsy protocol	*	40
2-3 Photographs	*	40
4 12/21/05 statement of William Kramer	*	40
5 William Kramer first statement	*	40
6A-6B Taped statement of Derek Shutt	*	40
7 1/3/06 taped statement of Derek Shutt	*	40

<u>DEFENSE</u>	<u>MARKED</u>	<u>ADMITTED</u>
A Mitigation brief	46	

<u>COURT</u>	
1 Plea of guilty form	46

*Marked by Counsel.

1 WEDNESDAY, JANUARY 11, 2006

2 MORNING SESSION

3 - - -

4 THE COURT: Calling for the record
5 2005-09-3204, Defendant A, Derek M. Shutt.
6 Mr. Shutt is present in the courtroom
7 represented by Attorneys Brian Pierce and
8 Scott Rilley. Prosecution is represented by
9 Attorney Becky Doherty and Brian LoPrinzi.

10 At this time, my understanding is that
11 pursuant to Rule 11 plea negotiations, there
12 has been a plea, that the plea has been
13 negotiated, presented to the defendant; is
14 that correct?

15 MR. LOPRINZI: That's our
16 understanding, Judge.

17 THE COURT: And the plea, the
18 victim's family has agreed to this plea; is
19 that correct?

20 MR. LOPRINZI: That's correct.
21 They're in the courtroom here today and have
22 also asked that the Court instruct all media
23 to not photograph them during the
24 proceedings.

25 THE COURT: I think I have done

1 that. For the record, the media is not to
2 photograph the family.

3 MR. LOPRINZI: Thank you, Judge.

4 MR. PIERCE: Your Honor, that is
5 correct. Pursuant to Criminal Rule 11 at
6 this time Mr. Shutt is prepared to withdraw
7 his former plea of not guilty, entering a
8 guilty plea to the Count 1 in the indictment,
9 being aggravated murder, a special felony, as
10 well as the specification that goes along
11 with that count for the death penalty as well
12 as Count 6 kidnapping, with the understanding
13 that the State would dismiss the remainder of
14 the charges in the indictment. There is a
15 recommendation that has been made by the
16 State.

17 We have gone over the plea form, and I
18 know the Court has a copy, in detail with Mr.
19 Shutt, discussed with him the various rights
20 he would waive, including the right to a
21 trial by jury, which he's already waived in
22 open court. We've also gone over with him
23 the possible penalties that the kidnapping
24 charge carries, as well as the death penalty
25 specification.

1 I believe Mr. Shutt is familiar with
2 all those penalties and the rights that he's
3 waiving and if the Court wishes to inquire
4 further of him.

5 THE COURT: If you'll come
6 forward, please.

7 Mr. Shutt, you've heard a general
8 description of the proposed agreement.
9 Before we can accept this agreement, we must
10 inquire as to whether or not you fully
11 understand the terms, fully understand the
12 rights you have, the rights that you will be
13 waiving upon a plea of guilty. Whether you
14 have confidence in your attorneys and whether
15 or not this is an act of your free will. Do
16 you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: So you do understand
19 that you were originally charged with a
20 capital case, that there were a variety of
21 charges brought against you, specifically
22 aggravated murder with a special felony death
23 specification. One count of kidnapping, one
24 count of tampering with evidence, second
25 count of tampering with evidence. Next count

1 of abuse of a corpse. That for the first
2 count, Count 1, with the death penalty
3 specification, you could be sentenced to
4 death, life in prison without parole, life in
5 prison with parole eligibility after 30 years
6 or life in prison with parole eligibility
7 after 25 years. A fine of \$25,000 and prison
8 is presumed mandatory. Also charged with a
9 firearm specification, which has the
10 mandatory three years, which would have to be
11 served concurrently. On Count 6, the
12 kidnapping -- I'm sorry, firearm
13 specification has to be served consecutively,
14 I'm sorry.

15 Count 6, the kidnapping charge, has the
16 potential for 3 to 10 years in prison, a
17 \$20,000 fine.

18 Count 7 and Count 9, each count of
19 tampering with evidence, have the potential
20 separately for 1 to 5 years in prison,
21 \$10,000 fine.

22 Count 10, abuse of a corpse, separately
23 has the potential for 6 to 12 months in
24 prison and a \$2,500 fine. Do you understand
25 that those are the charges with which you

1 were originally charged?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: The prosecution is
4 making a motion to dismiss several of those
5 counts with the understanding that you would
6 be pleading guilty; do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Do you understand that
9 if you were found guilty of this offense, you
10 previously waived your right to trial, but if
11 you went to trial, there would be a separate
12 sentencing phase at which the same jury would
13 hear evidence and at that time your attorneys
14 could present evidence in mitigation of the
15 aggravating circumstances. Do you understand
16 that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Before the process
19 they would explain to you fully what would
20 happen in that process, the jury would make a
21 recommendation at the conclusion of the
22 sentencing phase.

23 THE DEFENDANT: Yes, they have.

24 THE COURT: And you're giving that
25 up, also?

1 THE DEFENDANT: Yes.

2 THE COURT: Today you're going to
3 be entering a plea of guilty to Count 1,
4 aggravated murder, special felony. The
5 specification to Count 1, which is the death
6 penalty specification, and Count 6,
7 kidnapping. Is that correct?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: The State is making a
10 motion to dismiss Count 7, Count 9, Count 10
11 and the firearm specification; do you
12 understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: And that the
15 recommendation is going to be life with
16 parole eligibility after 25 full years. Do
17 you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: The kidnapping count
20 would be 10 years to run concurrently with
21 the life sentence. Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: It's a further
24 condition you agreed to testify truthfully if
25 called upon to do so in the trials of Lisa

1 Penix and Patrick Rafferty; is that correct?

2 THE DEFENDANT: Yes, it is.

3 THE COURT: And you understand
4 that as a result of this plea, there's going
5 to be evidence that's presented, that must be
6 presented to this Court independently. We'll
7 make a decision as to whether or not the
8 facts warrant upon the guilt beyond a
9 reasonable doubt. Do you understand that?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: By entering this plea,
12 you have previously given up the right to a
13 jury trial. You would have a right to a
14 trial phase in which guilt would be
15 determined by a jury. That this jury would
16 be specially constituted. That they would be
17 specifically questioned about their views on
18 the death penalty. Do you understand that
19 special jury would be called off. Previously
20 given that up?

21 THE DEFENDANT: Yes.

22 THE COURT: And you continue to
23 wish to waive that?

24 THE DEFENDANT: Yes.

25 THE COURT: At this time you're

1 giving up the right to a trial, which would
2 mean you have the right to call witnesses to
3 testify for you. You could subpoena them and
4 force them to testify. Do you understand
5 that?

6 THE DEFENDANT: Yes.

7 THE COURT: You also could testify
8 but you couldn't be forced to testify. Do
9 you understand that?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: You also have
12 attorneys, that they would have the right to
13 cross-examine all of the State's witnesses.
14 You are giving up that right, also?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you also understand
17 that by entering a plea at this time you're
18 giving up your right to appeal any issue
19 that's before, that's been brought before
20 this Court at any time?

21 THE DEFENDANT: Uh-huh.

22 THE COURT: That means all the
23 motion hearings that we had that day in
24 December, all those rulings. You're giving
25 up any right you have to appeal any of those

1 orders from the bench at this time?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you also understand
4 any mistake that the prosecutor made you're
5 giving up any right to appeal that?

6 THE DEFENDANT: Yes.

7 THE COURT: And any mistakes that
8 the police officers have made you're giving
9 up the right to appeal any of those mistakes,
10 also?

11 THE DEFENDANT: Yes.

12 THE COURT: And any mistakes that
13 I might make during the course of a trial,
14 you're giving up the right to appeal that,
15 also --

16 THE DEFENDANT: Yes.

17 THE COURT: -- do you understand?
18 Okay.

19 You understand the offer of the
20 prosecutor. No other promises have been made
21 to you or threats have been made to you?

22 THE DEFENDANT: No.

23 THE COURT: You understand the
24 nature of the charges and the maximum
25 penalties that are involved?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Now I want to talk to
3 you about your relationship with your
4 attorneys, and you know that I have talked to
5 you about this every time you've been here.
6 Obviously, this is very important. Have you
7 had a chance to fully discuss with them any
8 issues that you might have concerning what's
9 going on today or what has happened in the
10 past or that will be happening in the future?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Do you have any
13 concerns or questions about any of the things
14 that they've talked to you about?

15 THE DEFENDANT: No.

16 THE COURT: Okay. You have
17 confidence in Mr. Pierce's representation of
18 you?

19 THE DEFENDANT: Yes.

20 THE COURT: He's been certified by
21 the State of Ohio to handle this type of
22 case.

23 THE DEFENDANT: Uh-huh.

24 THE COURT: Do you have any reason
25 to think he doesn't understand something that

1 you want him to understand from any aspect of
2 this case at this time?

3 THE DEFENDANT: No.

4 THE COURT: As for Mr. Rilley, you
5 understand he's also been certified. Do you
6 have any concerns about his ability to
7 represent you or any of the advice that he's
8 given you?

9 THE DEFENDANT: No, I don't.

10 THE COURT: Do you believe that
11 they have your best interest in mind with
12 regard to your decision to accept this plea?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: At this time do you
15 have any desire to speak with them or anyone
16 else before we proceed to enter the plea?

17 THE DEFENDANT: No.

18 THE COURT: Okay. Do you have
19 the form?

20 MR. LOPRINZI: Judge, one minor
21 change in regards to the statement of the
22 plea agreement. You had indicated that he
23 has agreed to testify against Mr. Rafferty or
24 Miss Penix, and that is true, those are the
25 only two defendants that would be left to be

1 tried. However, in the event one of the
2 other defendants obtains new counsel and
3 appeals, it's in the agreement that he would
4 testify against any co-defendants regardless,
5 if they should happen to get overturned for
6 whatever reason. Not just those two.

7 That was the only change, Judge.

8 THE COURT: All right. Perhaps
9 that was, it does say all co-defendants,
10 perhaps anticipating, indicating another
11 scenario, you would understand that binds you
12 to testify?

13 THE DEFENDANT: Yes.

14 THE COURT: We're concerned that I
15 may have left out one aspect of the rights
16 and if I did it, I'm sorry. I'm going to
17 repeat it. We want to make sure.

18 You understand that you have the right
19 to have your case tried, to have the State
20 prove you guilty of each and every element
21 and separately beyond a reasonable doubt on
22 the specifications. You have the right to
23 have them prove you guilty beyond a
24 reasonable doubt, correct?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: By waiving, entering
2 this plea at this time you are giving up that
3 right?

4 THE DEFENDANT: Yes, I am.

5 THE COURT: I thought I had done
6 that, but just in case, now I'm sure I've
7 done it. Okay.

8 Do you have the plea form in front of
9 you? Let the record reflect, then, the plea
10 agreement has been signed by the defendant,
11 witnessed by the attorneys and the court
12 reporter. Now being signed by the Court.

13 At this time, is the State prepared to
14 go forward?

15 MR. LOPRINZI: Yes, Judge. And as
16 in the previous plea of the co-defendant, we
17 have agreed to stipulate to certain
18 evidentiary matters. I have asked the court
19 reporter to, and the court, to have the court
20 reporter return the exhibits which were
21 State's Exhibit 1, which was the autopsy
22 protocol. State's Exhibits 2 and 3, which
23 were photographs.

24 THE COURT: These were the
25 exhibits that were previously introduced in

1 Defendant B?

2 MR. LOPRINZI: That's correct. We're
3 just going to use them in the same hearing so
4 we're not duplicative.

5 State's Exhibit Numbers 4 and 5 are
6 previously admitted at the prior pleading,
7 it's my understanding that the defendant --
8 defense is going to stipulate to those also
9 which is the taped statement of co-defendant
10 William Kramer.

11 Also today we will be adding to the
12 first five exhibits that were previously
13 admitted in the other hearing and are
14 stipulated today by defense counsel, State's
15 Exhibits 6A and 6B, which are the, which is
16 the taped statement of Defendant Shutt, which
17 had taken place -- I forget the exact date.

18 Detective Harrah, do you recall?

19 DET. HARRAH: January the 3rd.

20 MR. LOPRINZI: The first one.

21 MRS. DOHERTY: September 1st.

22 MR. LOPRINZI: September 1st and then
23 State's Exhibit Number 7, which is a
24 statement of Defendant Shutt, which was taken
25 on January 3rd of '06.

1 It's my understanding we have a
2 stipulation to those. We won't play those
3 for the Court now, we would enter them in
4 case the Court should want to listen to those
5 statements. Other than that, we will just
6 call Detective Harrah to the stand to present
7 the evidence at this time, Judge.

8 MR. PIERCE: I would indicate for
9 the record Attorney Rilley and myself have
10 had a chance to review all seven of those
11 exhibits and we would, in fact, stipulate to
12 those.

13 THE COURT: You all can have a
14 seat.

15 MR. RILLEY: Your Honor.

16 - - -

17 (A discussion was held at side bar.)

18 - - -

19 THE COURT: Mr. Shutt, come back
20 up here, please. The rules are the rules
21 and if I have forgotten something, I don't
22 want to forget anything. It's too important,
23 and if I'm repeating myself, I apologize.

24 The offenses that remain are one count
25 of aggravated murder. The death penalty

1 specification, which is the kidnapping
2 charge. One count of kidnapping. I
3 previously told you what the maximum
4 potential penalties are and you indicated you
5 understand them. I believe I asked you to
6 plead guilty but if I have not, do you
7 understand these charges at this time?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: How do you wish to
10 plead to those charges?

11 THE DEFENDANT: Guilty.

12 THE COURT: Do you wish me to go
13 back through the rights? I think I've done
14 that.

15 MR. PIERCE: You did, Judge.

16 THE DEFENDANT: No, ma'am, you've
17 covered about everything else.

18 THE COURT: Did you think you
19 previously pled guilty?

20 THE DEFENDANT: No, I haven't.

21 THE COURT: My fault, I apologize.
22 You do understand you're pleading guilty and
23 it's now on the record?

24 Thank you.

25 MR. LOPRINZI: Thank you, Judge.

1 At this time State would call Detective
2 Harrah to the stand.

3 DETECTIVE FRANK HARRAH

4 a witness herein called on behalf of
5 the State, having been first duly sworn as
6 provided by law, was examined and testified
7 as follows:

8 THE COURT: Please be seated.

9 THE WITNESS: Thank you.

10 DIRECT EXAMINATION

11 BY MR. LOPRINZI:

12 Q. Sir, if you would, please, state your name,
13 spell your last name for the record.

14 A. My name is Detective Frank Harrah.
15 H-A-R-R-A-H.

16 Q. And how are you employed?

17 A. By the City of Akron Police Department.

18 Q. How long have you been employed by the police
19 department?

20 A. A little over 11 years, sir.

21 Q. And what is your current title?

22 A. I'm detective in the major crimes unit.
23 Crimes against persons.

24 Q. How long have you been a detective in that
25 unit?

1 A. Somewhere over four years, sir.

2 Q. Okay. Prior to that, what did you do?

3 A. I was patrol officer.

4 Q. Okay. In the major crimes unit or crimes
5 against persons unit, you have the
6 opportunity to investigate violent offenses
7 such as murder, felonious assault, things of
8 that nature?

9 A. That is correct, sir.

10 Q. And let me just ask you briefly, your
11 training and experience, just to give the
12 Court a brief background about your training
13 and experience.

14 A. I've been to several different schools
15 involving criminal investigation, death
16 investigation, investigation of homicides,
17 sexual assaults, physical assaults. Patrol
18 officer in the normal duties that that would
19 encompass. Detective, as I said before in
20 the major crime unit investigating in
21 homicides, felonious assault, robbery, sexual
22 assaults.

23 Q. Okay. Now, Detective, at some point, do you
24 recognize the name Steven Spade?

25 A. Yes, sir.

1 Q. At some point did you become aware that
2 Steven Spade had been murdered?

3 A. Yes, sir.

4 Q. All right. First of all, when was your
5 first -- and did you investigate that murder?

6 A. Yes, sir.

7 Q. When did you first become involved in the
8 murder of -- in the investigation of the
9 murder of Steven Spade?

10 A. Initially on May 25th of 2005.

11 Q. Why don't you tell the Court how you became
12 involved.

13 A. At that time we received a call from a Mr.
14 Robert Rafferty, who wished to make some
15 statements to explain his concerns about a
16 homicide he'd been told about that had
17 occurred. I ultimately found out in
18 responding to that call that occurred some
19 time in February of 2004. At that time Mr.
20 Rafferty, who to clarify possible questions,
21 a cousin of one of the defendants.

22 Q. Detective, let me interrupt you a second.
23 You said February 2004.

24 A. I'm sorry, 2005, excuse me.

25 Q. Okay. Thank you.

1 A. He indicated that his cousin had called him
2 over to a house on Voris Street. At the time
3 he wasn't quite certain of the street or the
4 address and had told him during a discussion
5 about supplying him with a toilet that was
6 broken and so on and led to the fact that a
7 young man had been murdered and the body had
8 been decapitated and disposed of in West
9 Virginia.

10 Q. At that point did you have a name?

11 A. No, sir.

12 Q. Did Mr. Rafferty know the name of the victim?

13 A. No, sir, Mr. Rafferty did not know.

14 Q. So once you received that information, what
15 did you do in regards to that information?

16 A. We tried to document as much as we could and
17 find out what information was available.
18 Unfortunately, we didn't have anything
19 further then. So it was, you know, put back
20 to be investigated as more facts developed.

21 The next stage in the progression in on
22 August 7th, actually, of 2005, we received a
23 call from Mogadore Police Department,
24 specifically an Officer Eric Burkheimer, that
25 contact had been made with him by a cousin of

1 his, Lisa Penix, who was stating to him that
2 a homicide had taken place in February of
3 2005. The victim was one Steven Spade, her
4 cousin.

5 Q. All right. So that's the first time you
6 received a name to put a name to this victim
7 that Mr. Rafferty was talking about?

8 A. Yes, sir.

9 Q. All right. Did you learn-- well, what did
10 you do then once you heard this information?

11 A. What I did at that time, I went to the
12 Mogadore Police Department. I interviewed
13 Miss Penix with Mogadore police officers and
14 victim assistance and so on. Talked to them
15 and to gain as much information as I could.
16 Miss Penix described the circumstances that
17 had occurred. At that point, I later went
18 with --

19 Q. Let me ask you, from the information were you
20 able to obtain the information as to other
21 individuals that were involved?

22 A. Yes. At that time I was given the names of
23 the parties involved.

24 Q. What were their names?

25 A. Their names would be 1, Mr. Patrick Shane

1 Rafferty. 2, Mr. William Kramer. William
2 Sheldon Kramer. 3, Mr. Derek M. Shutt. 4,
3 Mr. Jason M. Keenan. And 5, Miss Lisa R.
4 Penix.

5 Q. Okay. After you received the names of the
6 individuals and the name of the victim, what
7 did you do to confirm this?

8 A. Initially, I went with Mogadore police
9 officer to Mr. Spade's family and attempted
10 to get as much physical evidence or what
11 physical evidence might be able to and to
12 determine if, in fact, the person, Mr. Spade,
13 that we suspected was the victim, that he was
14 in, fact, the victim.

15 Q. And what did you learn -- well, let me ask
16 you this. Was a missing person's report
17 filed?

18 A. Yes, sir. The Spades had filed a missing
19 person's report on their son. I believe it
20 was dated February the 15th of 2005.

21 Q. All right. And it's my understanding that
22 Mr. Steven Spade was not living at home at
23 the time that he disappeared; is that
24 correct?

25 A. That is correct.

1 Q. All right. And I should say at his parents
2 home?

3 A. That's correct, sir.

4 Q. Did you contact anybody? And you said
5 earlier that he was taken to West Virginia,
6 Steven Spade's body was taken to West
7 Virginia; is that correct?

8 A. Yes, sir.

9 Q. What did you do to confirm that?

10 A. We were in touch with the Wood County
11 Sheriff's Office in West Virginia. The
12 specific contact I had there was a Captain
13 Michael Shook from that sheriff's office and
14 ultimately, through an exchange of evidence,
15 the medical examiner's office in West
16 Virginia was able to confirm that the victim
17 that had been found in West Virginia by -- it
18 had been found and reported to the Wood
19 County Sheriff's Office. We were able to
20 confirm that that was, in fact, Mr. Spade.

21 Q. And was that done through DNA?

22 A. That was actually done through dental
23 records, sir.

24 Q. Dental records. Okay. And what was the
25 date that Mr. Spade's body was discovered in

1 West Virginia?

2 A. His body was discovered on February the 5th,
3 2005.

4 Q. All right. In talking to Miss Penix, were
5 you able to learn the date that the -- that
6 Mr. Spade was killed?

7 A. Yes, sir.

8 Q. What was that date?

9 A. That was February the 4th, 2005.

10 Q. And what was the address or location of the
11 murder?

12 A. 447 East Voris Street, Akron, Ohio, County of
13 Summit.

14 Q. After you confirmed the death and did the
15 things you just told us about, did you then
16 interview the other individuals that were
17 named to have been involved?

18 A. Yes, sir.

19 Q. All right. Who did you interview -- did you
20 interview them all?

21 A. Yes, sir.

22 Q. All right. Let's talk about Mr. William
23 Kramer.

24 A. Yes, sir.

25 Q. You interviewed him; is that correct?

1 A. That is correct.

2 Q. And you interviewed him how many times?

3 A. I believe three.

4 Q. Okay. Ultimately, based on, I guess, a
5 compilation of the three interviews, were you
6 able to learn from him what had occurred that
7 night?

8 A. Yes, sir.

9 Q. Please tell the Court what you were able to
10 learn from those interviews?

11 A. Mr. Kramer indicated that Steven Spade was
12 invited to a party, ostensibly to go to
13 Cleveland, but it was determined that the
14 party was, in fact, a ruse to lure him over
15 to the 447 East Voris Street address because
16 Mr. Rafferty had decided that he wanted to
17 kill Mr. Spade because he felt that he had
18 been offended by Mr. Spade's paying attention
19 to a girl is that Mr. Rafferty believed was
20 his property.

21 Mr. Kramer went to the address not too
22 distant from Voris Street where he picked up
23 Steven and brought him to 447 East Voris
24 Street. Initially, at the party, there at
25 the party were the victim, Mr. Steven Spade,

1 Mr. William Kramer, Mr., or Patrick Rafferty,
2 I will refer to periodically as Shane, that's
3 the name he normally goes by. Miss Lisa
4 Penix, Mr. Derek Shutt and a later arrival
5 was Mr. Jason Keenan.

6 When they were all there, Mr. Rafferty
7 said that they were going to go to the
8 basement and use some methamphetamine.
9 Ultimately they all were in the basement.
10 The victim was made to sit in a chair in one
11 of the rooms in the basement. He was duct
12 taped, beaten, drowned, shot and beheaded.

13 Q. All right. Let me just interrupt you for a
14 moment. When he's taken down the steps, you
15 said everybody was down there and taken into
16 a room; is that correct?

17 A. Yes, sir.

18 Q. Who was in the room with Mr. Spade?

19 A. It was my understanding the people actually
20 in the room with Mr. Spade were Mr. Kramer,
21 Mr. Rafferty, and, I believe, Miss Penix.
22 And just outside the room were Mr. Shutt and
23 Mr. Keenan.

24 Q. And how did Mr. Kramer describe Mr. Shutt
25 outside that room?

- 1 A. Mr. Kramer said that he believed Mr. Shutt's
2 function was to stand guard.
- 3 Q. Okay. After Mr. Spade was in that room, he
4 was duct tape. Was he duct taped in that
5 initial room?
- 6 A. Yes, sir. He was duct taped in that room
7 initially.
- 8 Q. Do you know -- were you able to determine
9 where that duct tape came from?
- 10 A. Yes, sir. From Mr. Derek Shutt.
- 11 Q. Okay. Tell us what Mr. Shutt told you.
- 12 A. Mr. Shutt indicated that he was asked for
13 some duct tape by Shane Rafferty. Told him
14 the duct tape, where the duct tape was.
- 15 Q. Where did Mr. Rafferty get the duct tape?
- 16 A. For Mr. Rafferty.
- 17 Q. You also had an interview to interview Mr.
18 Shutt?
- 19 A. That's correct.
- 20 Q. That's on two separate occasions?
- 21 A. Yes, sir. Prior to that interview, there
22 were two separate occasions.
- 23 Q. Those are the tapes that we have talked about
24 before, State's Exhibits 6A and B and State's
25 Exhibit 7; is that correct?

- 1 A. That is correct.
- 2 Q. And so Mr. Spade then was duct taped in this
3 room. What happened next?
- 4 A. He was punched and actually punched
5 repeatedly and then dragged from that room
6 down a hallway to a bathroom area.
- 7 Q. Okay. Now, in order to have dragged Mr.
8 Spade from the one room where he was duct
9 taped to the other room, would he have been
10 taken past Mr. Shutt?
- 11 A. That is correct, sir.
- 12 Q. Once he is taken to this bathroom area, who
13 is in the bathroom?
- 14 A. The people in the bathroom at that time were
15 the victim, Mr. Rafferty and Mr. Kramer.
- 16 Q. All right. And at that point, Mr. Kramer
17 indicated to you that what happened?
- 18 A. They attempted to drown the victim in the
19 toilet.
- 20 Q. All right. And what happened after that?
- 21 A. After that Rafferty asked Shutt for a gun,
22 took the gun from him, shot the victim.
23 Gave the gun back to Mr. Shutt.
- 24 Q. And now, let me talk about Mr. Shutt's
25 statement.

1 A. Yes.

2 Q. In talking to Mr. Shutt, did he indicate to
3 you where that gun came from?

4 A. Yes, he did.

5 Q. Where did he tell you, whose gun was it?

6 A. He indicated that the gun had been Shane
7 Rafferty's and Rafferty had given it to him
8 to settle a debt.

9 Q. Okay. Let me take you a little bit further
10 back earlier in the evening. In your
11 discussion with Mr. Shutt, Mr. Shutt indicate
12 to you when it was the first time that he
13 became aware that Mr. Rafferty was angry and
14 upset with Mr. Spade?

15 A. Prior to Mr. Spade's arrival.

16 Q. Okay. And at what time did Mr. Shutt tell
17 you at what point he became aware that Mr.
18 Rafferty had indicated he wanted to kill
19 Steven Spade?

20 A. Also prior to his arrival.

21 Q. All right. Prior to Mr. Spade's arrival?

22 A. That is correct.

23 Q. All right. In talking to Mr. Shutt, prior
24 to everyone going to the basement, where was
25 the gun located?

- 1 A. Mr. Shutt stated the gun was located in an
2 outer pocket in a jean jacket of his.
- 3 Q. Okay. And was he wearing that jean jacket
4 initially?
- 5 A. He was not wearing it initially.
- 6 Q. All right. So when they went downstairs,
7 did Mr. Shutt put the jean jacket on?
- 8 A. That is correct.
- 9 Q. And that's according to Mr. Shutt?
- 10 A. That's correct, sir.
- 11 Q. And then he goes downstairs and transfers the
12 gun at some point to Mr. Rafferty, who then
13 shoots Mr. Spade; is that correct?
- 14 A. Yes, sir.
- 15 Q. Now, let's talk about Mr. Shutt's statement.
16 According to Mr. Shutt's statement, after Mr.
17 Spade has been shot and killed, what happens
18 next?
- 19 A. Mr. Rafferty goes out to his car, gets a
20 hacksaw, comes back in and starts to attempt
21 to cut off the victim's head with a hacksaw.
- 22 Q. Mr. Rafferty starts that?
- 23 A. Mr. Rafferty starts that. Mr. Kramer takes
24 a turn at it. Then Mr. Shutt, then Mr.
25 Shutt gives the hacksaw back to Mr. Rafferty.

- 1 Q. Okay. At that point, obviously, Mr. Spade
2 is beheaded at that point?
- 3 A. That is correct, sir.
- 4 Q. What do they do next, again, according to Mr.
5 Shutt's statement?
- 6 A. I believe that Mr. Shutt indicated they -- my
7 chronology may be a little bit off, but they
8 took plastic from the windows and other
9 plastic they had around in the house and I
10 believe Mr. Shutt said he and Kramer wrapped
11 up the victim's body and taped it up.
- 12 Q. And what did the group then do with Mr.
13 Spade's body?
- 14 A. They ultimately put it in the trunk of
15 Rafferty's Chevy Lumina and they drove the
16 body down to West Virginia.
- 17 Q. Who drove the body down to West Virginia?
- 18 A. The individuals in the car were Mr. Shutt,
19 Mr. Rafferty, Mr. Kramer and Miss Penix.
- 20 Q. Now, the only one that sounds like is missing
21 is Mr. Keenan; is that correct?
- 22 A. Mr. Keenan left. He told the people there
23 that he had to leave and he was allowed to
24 leave.
- 25 Q. Okay. So they drive Mr. Spade's body to

1 West Virginia in Mr. Rafferty's car. Where
2 did he they go in West Virginia?

3 A. They went to Mineral Wells, West Virginia.

4 Q. Approximately how far is that from Akron,
5 Ohio?

6 A. I would speculate about 150 miles.

7 Q. All right. And what did they do once they
8 got there?

9 A. Initially, they stopped at a BP Station where
10 they filled up a gas can. They had a gas can
11 card with them. They then drove what turned
12 out not to be particularly distant from that
13 gas station to a road called Butcher's Bend
14 Road. They went down that road. They saw
15 a driveway, which they thought to be a road.
16 Went down the road until it pretty much dead
17 ended in a field where they dumped Mr.
18 Spade's body. "They," being the four,
19 dumped clothing that they had changed from
20 the time that the homicide occurred, along
21 with the body. Poured gasoline on it, lit
22 the gasoline, got in the car and left.
23 Returned to Akron.

24 Q. All right. And the items that were also
25 left there, did that include the hacksaw?

1 A. Yes, sir.

2 Q. Okay. And you said the clothing that they
3 were wearing?

4 A. Yes, sir. There were remnants that would
5 suggest clothing.

6 Q. All right. When they got -- then they
7 returned back to Akron, you said?

8 A. Yes, sir.

9 Q. What then did they do additionally in regards
10 to, if anything, to cover up this crime?

11 A. They performed a fairly extensive clean up in
12 the basement area. They scrubbed and sanded
13 and ground down walls, floors, ceiling.
14 Removed some ceiling tile, cut up and removed
15 carpeting, broke up and removed the toilet
16 and some area of the concrete floor
17 surrounding the toilet. Apparently used
18 bleach and/or ammonia to clean.

19 Q. Okay. Whose house was this that the murder
20 took place?

21 A. The house was, which was being rented by Mr.
22 Derek Shutt.

23 Q. Okay. And was Mr. Shutt present during this
24 clean up?

25 A. Yes, sir.

1 Q. All right. First, of the gun, first of all,
2 were you able to learn from Mr. Shutt what
3 happened to the gun?

4 A. Yes, sir, I was.

5 Q. What did he tell you?

6 A. Mr. Shutt indicated that he had the gun,
7 which had been wrapped in plastic bags, and
8 gave it to Mr. Jason Keenan to dispose of.

9 Q. All right. Also, there was a shell casing
10 that was, I guess, recovered from them after
11 the shooting; is that correct?

12 A. That is correct, sir.

13 Q. Did Mr. Shutt indicate to you what he did
14 with the shell casing?

15 A. Mr. Shutt indicated he threw it in the trash
16 can in Medina County Court.

17 MR. LOPRINZI: Judges, if I could
18 just have a moment.

19 - - -

20 (There was a pause in the proceedings.)

21 - - -

22 BY MR. LOPRINZI:

23 Q. Detective Harrah, the individual that we have
24 been talking to and referring to as Mr. Shutt
25 that you had taken two taped statements,

1 which we've admitted into evidence or move to
2 be admitted into evidence, do you see him in
3 the courtroom today?

4 A. Yes, sir, I do.

5 Q. Could you point him out and describe what
6 he's wearing?

7 A. He's seated behind Attorney Pierce. He's
8 wearing an orange jump suit.

9 MR. LOPRINZI: Thank you. Your
10 Honors, I have no further questions.

11 THE COURT: From the defense.

12 CROSS-EXAMINATION

13 BY MR. PIERCE:

14 Q. Good morning, Detective Harrah.

15 A. Good morning, sir.

16 Q. I have a few questions for you.

17 Detective, during the course of your
18 investigation, which my understanding it
19 lasted about eight months, you became
20 involved in this case in May of 2005.

21 A. Yes, sir.

22 Q. Okay. During the course of your
23 investigation, you at sometime or another
24 interviewed all five defendants in this case;
25 is that correct?

- 1 A. That is correct, sir.
- 2 Q. Most of those interviews were taped?
- 3 A. Yes, sir.
- 4 Q. Okay. Detective, is it fair to say that,
5 I'm not talking about Mr. Shutt at this time,
6 but the other co-defendants involved, in
7 particular, Miss Penix, Mr. Kramer, and Mr.
8 Keenan, had expressed some fear of Mr.
9 Rafferty?
- 10 A. Yes, sir.
- 11 Q. Okay. In fact, they had told you during
12 those interviews that Mr. Rafferty had issued
13 some threats to them on the night of this
14 murder?
- 15 A. Yes, sir.
- 16 Q. Mr. Shutt, you have also spoken with him, he
17 expressed similar statements about threats
18 made by Mr. Rafferty; is that fair to say?
- 19 A. That is correct.
- 20 Q. Detective, you've had a chance to review the
21 autopsy protocol, correct?
- 22 A. Yes, sir.
- 23 Q. Would you agree with me that was done in the
24 state of West Virginia, where the body was
25 located?

- 1 A. That is correct, sir.
- 2 Q. You would agree with me that the cause of
3 death in this case would be a gunshot wound
4 to the head?
- 5 A. To be honest, you know, I believe that was a
6 listed cause of death on the autopsy, yes,
7 sir.
- 8 Q. Would you agree with me? I can show it to
9 you.
- 10 A. I would agree.
- 11 Q. Based on your investigation, it's fair to say
12 that your opinion is that Mr. Rafferty is the
13 shooter or the principal offender in this
14 case; is that correct?
- 15 A. I would agree with that, sir.
- 16 Q. Regarding Mr. Shutt, fair to say that he had
17 spoken to you on at least three occasions?
- 18 A. Yes, sir.
- 19 Q. Okay. He had a brief conversation with you
20 and Detective Pasheilich and the prosecutors
21 this morning?
- 22 A. Yes, sir.
- 23 Q. First talked to you in September and
24 consented to a taped statement?
- 25 A. That is correct.

1 Q. And then I believe on January 3rd was present
2 with myself and Attorney Rilley at the Akron
3 Police Department and gave a second taped
4 statement, correct?

5 A. That is also correct.

6 Q. And also sat down with you this morning with
7 the other detectives and the prosecutors?

8 A. Yes, sir.

9 Q. Fair to say that he answered the questions
10 and was cooperative?

11 A. Yes, sir.

12 MR. PIERCE: Thank you, Detective.

13 THE COURT: You're welcome, sir.

14 THE COURT: Anything additional
15 from this witness?

16 MR. LOPRINZI: No, Your Honor.

17 Thank you.

18 THE COURT: Thank you. You may
19 step down.

20 - - -

21 THE COURT: Anything additional
22 from the prosecution?

23 MR. LOPRINZI: No, Your Honor. Just
24 we ask to admit the evidence.

25 THE COURT: Anything for the

1 defense?

2 MR. PIERCE: No objection to
3 State's Exhibits 1 through 7, Your Honor.

4 THE COURT: At this time, we're
5 going to take a recess for about 10 minutes
6 and we'll be back.

7 MS. CORDER: All rise, please.

8 - - -

9 (The Three Judge Panel recessed at 9:50
10 AM.)

11 - - -

12 (The Three Judge Panel reconvened at
13 10:00 AM and the following proceedings were
14 had:)

15 - - -

16 THE COURT: At this time for the
17 record, the Court is introducing the plea
18 form as Court's Exhibit 1 so it can be
19 admitted into evidence.

20 And at this time, Mr. Shutt, we, the
21 Three Judge Panel, do unanimously find you
22 guilty beyond a reasonable doubt of Count 1,
23 aggravated murder, Specification to Count 1
24 and Count 6, kidnapping, as contained in
25 Counts 1 and 6 of the indictment and

1 specification to Count 1.

2 Does the State wish to present evidence
3 in mitigation or the defense wish to present
4 evidence in mitigation?

5 MR. RILLEY: Yes, Your Honor, on
6 behalf of Mr. Shutt, we would prepare to
7 offer this in mitigation.

8 I provided the Three Judge Panel
9 previously with a mitigation brief that Mr.
10 Pierce and I have prepared on behalf of Mr.
11 Shutt. I provided a copy to the prosecution
12 and I guess I would mark the brief for
13 purposes of this hearing as Defense Exhibit A
14 for purposes of the hearing.

15 Essentially, Your Honors, I think what
16 the brief contains and the evidence that
17 we've seen in terms of mitigation is Mr.
18 Shutt was not the principal offender in this
19 matter.

20 Clearly, I think all the facts and
21 circumstances that the Akron Police
22 Department has been able to uncover through
23 the course of their investigation, the
24 principal offender in this matter was Shane
25 Rafferty. That he, along with Lisa Penix,

1 planned this homicide and that Mr. Rafferty
2 was, indeed, the shooter, the trigger man who
3 committed this murder.

4 Additionally, the second point in terms
5 of mitigation is as defined by the code is
6 Mr. Shutt has cooperated at length with the
7 Akron Police Department through the course of
8 its investigation and he's continued to
9 cooperate with the City of Akron Police with
10 both Detective Pasheilich and Detective
11 Harrah. He's indicated a willingness and
12 agreed to testify against the remaining
13 co-defendants that may come to trial in this
14 matter.

15 Mr. Shutt, as the Court may be aware
16 from reading the brief, has a prior criminal
17 record although it is a minimal criminal
18 record. He has two prior offenses that are
19 felonies. I think his most recent time
20 felony occurred 15 years ago. Prior to that
21 I think the felony before that was perhaps
22 six years before that. So he has a very
23 minimal record. Although, the one felony
24 was a burglary charge. I think if you look
25 at the underlying facts and circumstances of

1 that case, all of his criminal charges did
2 not deal with any injuries. Although
3 burglary may be considered an offense of
4 violence, that particular incident was not a
5 violent offense.

6 He has a small history of criminal
7 activity and I believe that is nonviolent in
8 nature.

9 Through our mitigation expert and Mr.
10 Hrды, who did a social history, which has
11 been provided to the Court, we were able to
12 discern a little bit about Mr. Shutt's
13 background. What we were able to learn that
14 Mr. Shutt comes from a background which has a
15 long history of drug and/or alcohol abuse.

16 In addition to that, Mr. Shutt has a
17 medical history of several incidents which in
18 his past he suffered from head trauma. Mr.
19 Hrды believes that combination of the drug
20 and alcohol abuse, as well the earlier head
21 trauma, may have an affect on Mr. Shutt's
22 ability and his mental capacity and his
23 cognitive ability which I think we offer in
24 mitigation.

25 And I believe the last point in terms

1 of the mitigation, is that duress and
2 coercion, which I think is provided by the
3 code, I think it is clear from everything we
4 have learned from the detectives in this
5 case, as well as all the other co-defendants,
6 that Mr. Shane Rafferty did exert a
7 tremendous amount of fear and coercion upon
8 the other folks that were involved in this
9 case. If not direct threats to the people
10 that were involved the night that this
11 happened and also I think going back where at
12 least Mr. Shutt has, he has told the Akron
13 Police Department.

14 Mr. Rafferty has bragged about in times
15 past of killing people and committing murder
16 and robbing people for money and showing
17 absolutely no signs of remorse and actually
18 bragging about that.

19 So I think when you look at that and
20 you look at the threats that he had made upon
21 those folks there that night and everything
22 that had happened, that there's a tremendous
23 amount of duress and coercion that was placed
24 upon all the individuals that were involved
25 in this matter and on behalf of Mr. Shutt we

1 ask the Court to take those matters into
2 consideration when considering the sentence
3 and adopt the recommendation by the
4 prosecution.

5 Thank you.

6 THE COURT: Does the defendant
7 wish to make a statement, sworn or unsworn?

8 MR. RILLEY: At this time I think
9 he would like to make a brief unsworn
10 statement, Your Honor.

11 THE DEFENDANT: I just want to say
12 that I regret and very sorry for what had
13 happened.

14 Thank you.

15 THE COURT: Anything additional?

16 MR. LOPRINZI: Nothing on behalf of
17 the State, Judge.

18 We did agree to stipulate to the
19 admission of these documents that the defense
20 has done and, Judge, we would just ask you to
21 consider for purposes of the plea, obviously
22 this is an egregious offense, which in some
23 minds would require a more severe penalty
24 than the one that we have recommended here
25 today, but based on the clean up and

1 inability of the State to obtain physical
2 evidence in this case, it was somewhat
3 necessary. It was necessary to offer lesser
4 amounts of time to get cooperation from the
5 co-defendants in this case and that's why we
6 ask that the Court accept the recommendation
7 of the State and the Defense's agreement to
8 the life with parole eligibility after 25
9 years.

10 Thank you.

11 THE COURT: We'll take a brief
12 recess.

13 MS. CORDER: All rise, please.

14 - - -

15 (Recess had.)

16 - - -

17 (Defendant's Exhibit A and Court
18 Exhibit 1 marked for identification.)

19 - - -

20 (The Three Judge Panel reconvened and
21 the following proceedings were had:)

22 - - -

23 THE COURT: At this time the Court
24 has had an opportunity to review the evidence
25 in mitigation pursuant to the plea agreement.

1 The State recommended the defendant receive
2 life imprisonment with parole eligibility
3 after 25 full years and 10 years concurrent
4 on the kidnapping. The panel has considered
5 the evidence, the exhibits previously
6 introduced, stipulation in the trial phase
7 proceedings, we found in the exhibits and the
8 evidence the following mitigating
9 circumstances exist:

10 1. That the defendant was not a
11 principal offender in the death of the
12 victim.

13 2. That the defendant was candid with
14 the authorities in the investigation of these
15 events and has agreed to testify truthfully
16 about his and others involvement if called
17 upon to do so.

18 3. That the defendant has a lack of
19 significant history prior criminal
20 convictions.

21 The panel has compared these factors to
22 the aggravating circumstances committed by
23 the defendant in violation of Revised Code
24 2903.01(B), aggravated murder with a
25 specification in that the defendant committed

1 the murder while committing a kidnapping with
2 prior calculation and design.

3 The Three Judge Panel unanimously
4 agreed, based upon the plea agreement and the
5 factors set forth above, that the aggravating
6 circumstances did not outweigh the mitigating
7 factors. Therefore, the panel now sentences
8 the defendant to life imprisonment with
9 parole eligibility after 25 full years on the
10 aggravated murder charge with one
11 specification and 10 years concurrent on the
12 kidnapping charge.

13 THE COURT: Do you have anything
14 to say before sentence is final and
15 journalized?

16 THE DEFENDANT: No, I don't.

17 MR. LOPRINZI: Judge, in regard to
18 the exhibits in this case, I believe at this
19 point the final three judge plea that we
20 would have scheduled. We would ask that the
21 exhibits, at least the State's Exhibits, be
22 sealed because we still have a pending case
23 and we would ask they not be released at this
24 time and returned to the Prosecutor's Office
25 for further prosecution of the remaining

1 defendants.

2 Thank you, Judge.

3 THE COURT: Miss Klein, you will
4 retain the exhibits but they will be made
5 available to the prosecution.

6 MR. LOPRINZI: That's fine. But we
7 want them sealed and not made available to
8 anyone further.

9 MS. CORDER: All rise, please.
10 Court is adjourned.

11 - - -

12 (The Court adjourned.)

13 - - -

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Patricia A. Klein, Official
Shorthand Reporter, Court of Common Pleas,
Summit County, Ohio, do hereby certify that I
reported in Stenotypy the proceedings had and
testimony taken in the foregoing-entitled
matter, and I do further certify that the
foregoing-entitled TRANSCRIPT OF PROCEEDINGS,
consisting of 52 typewritten pages, is a
complete, true, and accurate record of said
matter and TRANSCRIPT OF PROCEEDINGS.

Patricia A. Klein
PATRICIA A. KLEIN, RMR
Official Court Reporter

Dated: AKRON, OHIO

February 23, 2006