IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

| | |
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| STATE OF OHIO<br><br>Plaintiff,<br><br>v.<br><br>TYRONE NOLING<br><br>Defendant. | Case No. 1995 CR 220<br><br>JUDGE ENLOW<br><br>STATE'S MOTION TO DISMISS DEFENDANT'S SUCCESSIVE PETITION FOR POSTCONVICTION RELIEF AND MOTION FOR NEW TRIAL |

Now comes plaintiff, the State of Ohio, by and through the undersigned counsel, and moves this Court to dismiss the Defendant's November 3, 2006 successive petition for postconviction relief and motion for a new trial pursuant to R.C. 2945.79(B), (F) and Crim.R. 33.

## MEMORANDUM OF LAW

### Procedural History

In early April 1990, Noling and his companions, Gary St. Clair, Butch Wolcott and Joseph Dalesandro, set out to rob elderly people. During the course of one of the robberies, Noling shot to death eighty-one year old Bearnhardt Hartig and his wife, eighty-year old Cora Hartig, in the kitchen of their Atwater, Ohio home. After noticing the Hartigs' lawn mower outside for several days, a neighbor's son discovered the Hartigs' bodies. The investigation of these crimes spanned several years.

Following a jury trial in February 1996, Noling was convicted of two counts of aggravated murder and accompanying death penalty specifications, two counts of aggravated

robbery and aggravated burglary. Noling's conviction and death sentence was subsequently affirmed on direct appeal. *State v. Noling* (2002), 98 Ohio St.3d 44, certiorari denied *Noling v. Ohio* (2003), 539 U.S. 907, 123 S.Ct. 2256, 156 L.Ed.2d 118.

On July 23, 1997, Noling filed a petition for postconviction relief pursuant to R.C. 2953.21 in this Court. He filed amendments to his petition for postconviction relief on July 31, 1997 and August 26, 1997. Noling raised the following claims in his petition for postconviction relief:

1. Actual Innocence – asserting that there was no physical evidence connecting Noling to the Hartigs' murders and that St.Clair, Wolcott and Dalesandro were intimidated into providing their trial testimony regarding Noling's involvement.
2. Prosecutorial Misconduct – alleging that St.Clair, Wolcott and Dalesandro were intimidated into providing their trial testimony regarding Noling's involvement.
3. *Brady* Violation – alleging the State withheld information regarding Wolcott and St. Clair's alibi story of being involved in a purse snatching in Alliance at the same time as the murders.
4. Ineffective Assistance of Counsel – asserting trial counsel failed to file a motion for change of venue in response to pretrial publicity; failed to present alibi defense; failed to present evidence regarding other possible suspects, failed to impeach testimony regarding the "smoking gun"; failed to cross-examine on the murder weapon, chair and gun from glove box; and failed to distinguish between the modus operandi of the Hartigs' murders and the robberies of the Hughes and Murphys.

After the State moved the trial court for summary judgment on the petition, this Court dismissed Noling's petition for postconviction relief finding that "there [were] no substantive

grounds for relief." On May 4, 1998, Noling appealed the dismissal of his petition for postconviction relief to Ohio's Eleventh District Court of Appeals.

On September 2, 2003, the Appellate Court affirmed this Court's decision. *State v. Noling* (Sept. 2, 2003), Portage App. No. 98-P-0049, 2003-Ohio-5008, at ¶74. The Supreme Court denied jurisdiction. *State v. Noling* (2004), 101 Ohio St.3d 1424, 2004-Ohio-123.

Noling instituted a federal habeas action in the Northern District of Ohio, U.S. District Court, Case No. 5:04-cv-01232-DCN on June 30, 2004. A review of the District Court docket reveals that Noling's petition for habeas corpus was filed on December 15, 2004. On August 29, 2005, Noling filed his first request for discovery in the District Case and this request was denied on November 4, 2005, holding the motion was "an effort to re-litigate his state court proceedings and require [the] Court to re-adjudicate findings of fact." A subsequent reconsideration was also denied. The District Court also denied Noling's motion for an evidentiary hearing and subsequent reconsideration of the order.

Following the publication of an article in the *Cleveland Plain Dealer*, Noling moved the District Court to stay the case and hold in abeyance pending exhaustion in the state court on August 14, 2006. The District Court denied this motion on November 6, 2006, finding, "the Petitioner has failed to explain why he did not previously fully exhaust his actual innocence and *Brady* claims in state court." (Exhibit A). Specifically, the District Court held that Noling failed to articulate how the information raising doubt about his participation in the Hartigs' murders differed among the *Plain Dealer* article and a September 10, 2003 article in the *Cleveland Scene Magazine* (Exhibit B), which predated the initiation of Noling's habeas litigation. (Exhibit A).

On November 3, 2006, Noling filed a second round of actions in this Court including a successive postconviction petition, leave to file a motion for a new trial pursuant to R.C. 2945.79(B), (F) and Crim.R. 33, a motion for a new trial pursuant to R.C. 2945.79(B), (F) and Crim.R. 33, a motion for relief from judgment pursuant to Civ.R. 60(B), motion for discovery and motion for funds for expert. These motions are currently pending in this Court.

**Trial Court Lacks Jurisdiction While Federal Habeas Action Pending**

The trial court retains all jurisdiction not inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment. *Yee v. Erie Cty. Sheriff's Dept.* (1990), 51 Ohio St.43, 44. Absent an order from the Northern District of Ohio, U.S. District Court, staying the federal habeas action and conferring jurisdiction on this Court, Noling's federal habeas action divests this Court of jurisdiction to consider the merits of any of Noling's November 3, 2006 filings in this Court.

As the Northern District Court has recently denied Noling's request for a stay and remand to state court to further exhaustion of state remedies, (Exhibit A), this Court is without jurisdiction to consider the merits of any of Noling's November 3, 2006 filings in this Court. Accordingly, this Court should dismiss all November 3, 2006 filings for lack of jurisdiction.

**Various Procedural Devices Are All Collaterally Attacking Conviction**

In the context of Noling's primary claim of newly discovered evidence which portrays his actual innocence, procedural misconduct or the ineffective assistance of trial counsel, there are no material distinctions in the standards applicable to successive postconviction petitions, motions for a new trial and motions for relief from judgment. "Where a criminal defendant, subsequent to his or her direct appeal, files a motion seeking vacation or correction of his or her sentence on the basis that his or her constitutional rights have been violated, such a motion

is a petition for postconviction relief as defined in R.C. 2953.21." *State v. Reynolds* (1997), 79 Ohio St.3d 158, syllabus. Despite the different procedural vehicles used or how the claim for relief is styled, if in substance the motion is a petition for postconviction relief, it should be treated as such. *Id.* Although Noling has used various procedural vehicles, his multiple postconviction causes of action are all in substance the same; a collateral attack on his conviction and successive petition for postconviction relief based upon a claim of newly discovered evidence of actual innocence, procedural misconduct or ineffective assistance of counsel.

This Court is without jurisdiction to entertain a successive postconviction petition unless Noling demonstrates that he was unavoidably prevented from discovery of the facts upon which he relies to present his claim for relief. R.C. 2953.23(A)(1)(a). A similar requirement is imposed for obtaining a new trial based upon newly discovered evidence. Crim.R. 33(A)(6). On that point, Noling has failed to demonstrate that he was unavoidably prevented from discovering the facts underlying his newly asserted claims of actual innocence, prosecutorial misconduct and ineffective assistance of trial counsel.

**Standard of Review-Successive Petition for Postconviction Relief**

Trial courts have greater leeway when addressing successor petitions for postconviction relief and are not required to file findings of fact and conclusions of law when declining to entertain a second or successive petition for postconviction relief which alleges the same grounds as earlier petitions. *State ex rel. Workman v. McGrath* (1988), 40 Ohio St.3d 91. The Supreme Court has held that additional filings made after a first round of direct appeals and postconviction relief are likely to be made "for purposes of delay" in an attempt to abuse the court system. *State v. Steffen* (1994), 70 Ohio St.3d 399, 412. As this is Noling's second

petition for postconviction relief, this court must construe his filing as a *successive* postconviction relief petition under R.C. 2953.23(A).

R.C. 2953.23(A)(1) provides that "a court may not entertain * * * a second petition or successive petitions " unless either of the following applies:

> (a) The petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief.
>
> (b) Subsequent to the period prescribed in division (A)(2) of section 2953.21 of the revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

R.C. 2953.23(A)(1)(a), (b).

Additionally, Noling must also satisfy R.C. 2953.23(A)(2) which provides:

> [t]he petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

R.C. 2953.23(A)(2). Clear and convincing evidence is evidence that produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford* (1954), 161 Ohio St.2d 469, paragraph three of the syllabus.

Thus, a trial court has no jurisdiction to entertain a successive petition for postconviction relief unless it meets the following conditions: (1) the petitioner must show either that he was unavoidably prevented from discovering the facts upon which he relies in the petition, or that the United States Supreme Court has, since his last petition, recognized a new federal or state right that applies retroactively to the petition; **and** (2) the petitioner must show

by clear and convincing evidence that a reasonable factfinder would not have found him guilty but for a constitutional error at trial.

Motion for New Trial per Crim.R. 33

Assuming *arguendo* that Noling follows Crim.R. 33(B) and first obtains leave to file his motion upon this Court's finding that "by clear and convincing proof that the defendant was unavoidably prevented from discovery of the evidence upon which he must rely" and this Court decides to reach the merits of his Crim.R. 33 motion, the State submits the following with respect to Noling's motion for a new trial. Crim.R. 33(A)(6) provides 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 the trial, or when the prosecutor commits misconduct, Crim.R. 33(A)(2). See also R.C. 2945.79(F) and (B).

In order to warrant a new trial based upon newly discovered evidence, Noling must show a strong probability that the new evidence will change the result of the trial, that the evidence could not have been discovered before trial in the exercise of due diligence, the evidence is material to the issues, the evidence is not cumulative of former evidence, and the evidence does not merely impeach or contradict the former evidence. *State v. Hawkins* (1993), 66 Ohio St.3d 339.

**Analysis**

In the present case, Noling has had access to Ohio's state courts since 1995 in the form of a trial, a direct appeal, a postconviction petition and appeal. Noling is also currently pursuing a federal habeas appeal in the Northern District of Ohio, U.S. District Court. The District Court has denied Noling's request to stay his federal habeas appeal to pursue further

exhaustion of state claims, i.e. the multiple motions filed in this Court on November 3, 2006. (Exhibit A).

A review of the record reveals that Noling cannot satisfy the first prong of R.C. 2953.23 or the similar threshold requirement of Crim.R. 33(B) that he was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief.

More than three years ago, the *Cleveland Scene Magazine* published an article entitled *The Unlikely Triggerman*. (Exhibit B). The article sets forth various pieces of evidence that allegedly could and/or should have been presented at Noling's trial including: Butch Wolcott's interactions with Dr. Grzegorek ("His comments to Wolcott evoke images of a sculptor molding clay" p.g. 5); and, the victims' insurance agent, Lewis Lehman, owned the same caliber gun as was used to commit the murders. (Exhibit B, p.g. 7).

Using the *Scene* article as its foundation, the 2006 *Plain Dealer* articles addressed both Dr. Grzegorek and Lewis Lehman, and then touched upon four additional areas; prior statements by witnesses Robynn Elliott, Jill Hall and Julie Mellon; and a statement by Detective Mucklo regarding a search of co-conspirator Delasandro's car. These six pieces of information are the basis for Noling's November 3, 2006 motions in this Court.

The State agrees with the Attorney General that a dangerous precedent would be set by allowing a capital case on a federal habeas appeal to come to a halt to allow a second attempt to "fully exhaust" state remedies based on an unsubstantiated and aggressive newspaper article. Further, Noling was denied discovery of the State's file in his federal habeas proceedings and is attempting to circumvent that denial by obtaining the records through the newspaper's Public

Records request and submitting them as exhibits to a successive petition for postconviction relief in state court.

In *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, the Supreme Court of Ohio addressed R.C. 149.43 and its application to criminal cases and held, "[a] defendant in a criminal case who has exhausted the direct appeals of her or his conviction may not avail herself or himself of R.C. 149.43 to support a petition for postconviciton relief." *Id.* at fourth paragraph of the syllabus. Noling's backdoor approach to obtaining information to submit in support of his successive postconviction petition is simply not permitted.

**Conclusion**

Therefore, the State respectfully moves that this Court dismiss all of Noling's November 3, 2006 filings on two separate grounds. First, as Noling's federal habeas is currently pending in the Northern District of Ohio, U.S. District Court and the district Court has denied Noling's motion to stay and remand to this Court for further proceedings, this Court lacks jurisdiction to consider any of Noling's November 3, 2006 filings. Second, as the Northern District of Ohio, U.S. District Court has already held, Noling has failed to demonstrate that he was unavoidably prevented from discovering the facts underlying his newly asserted claims of actual innocence, prosecutorial misconduct and ineffective assistance of trial counsel, Noling has failed to meet the threshold requirement for leave to file a Motion for a New Trial pursuant to Crim.R. 33 and cannot the statutory requirements regarding a subsequent petition for postconviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response has been sent to Kelly L. Culshaw at the Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215 this 16th day of November 2006.

PAMELA J. HOLDER
Assistant Prosecuting Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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|---|---|---|
| TYRONE NOLING, | ) | CASE NO. 5:04 CV 1232 |
| Petitioner, | ) | |
| vs. | ) | JUDGE DONALD C. NUGENT |
| MARGARET BRADSHAW, WARDEN, | ) | ORDER |
| Respondent. | ) | |

Before the Court is Petitioner Tyrone Noling's Motion for Preservation of Evidence, (ECF No. 67)(hereinafter "Preservation Motion") and a Motion to Stay this Case and Hold It In Abeyance Pending Exhaustion, (ECF No. 66)(hereinafter "Motion to Stay"). The Respondent opposed both Motions. (ECF Nos. 69, 70). The Petitioner filed a Reply brief for the Motion to Stay on September 20, 2006. (ECF No. 75). For the following reasons, the Court denies both Motions.

## I. Preservation Motion

Petitioner first requests that this Court order the preservation of all evidence pertaining to his case in the possession of the Stark, Portage, and Alliance Police Departments, and the Portage County Prosecutor's Office. The Respondent maintains that a court order is unnecessary because there is no



EXHIBIT "A"

indication from these law enforcement agencies that the Petitioner's file will be destroyed.

The Court finds the Respondent's reasoning to be persuasive. The Petitioner does not set forth any reasons why he believes evidence concerning his case will be destroyed. Absent any indication to the contrary, the Court expects that the above mentioned law enforcement agencies will preserve this evidence. Accordingly, the Court denies the Preservation Motion.

II. Motion to Stay

The Petitioner next asks the Court to stay this case and hold it in abeyance pending his return to state court to exhaust the actual innocence and *Brady v. Maryland*, 373 U.S. 83 (1963), claims raised in the Petition. He asserts that a recent Plain Dealer (hereinafter "PD") article revealed that the State of Ohio withheld pertinent information regarding another suspect in the murders. He also claims that a State witness, Robynn Elliot, who testified during Petitioner's trial that Petitioner had told her about the murders before they became known to the public, stated during her grand jury testimony and to a police investigator that she was unsure whether Petitioner spoke to her before or after the publication of the murders. Finally, the Petitioner notes that the article revealed the opinion of the examining psychiatrist of one of Petitioner's co-defendant's who now asserts that a police investigator coerced him into falsely accusing the Petitioner of the murder. The examining psychiatrist, who initially believed the co-defendant had repressed the memory of the murders, stated in the PD article that he remains uncertain whether the co-defendant was ever involved with them. Because he has not yet asserted a *Brady* violation or an actual innocence claim based on the information that came to light in the PD article, Petitioner contends, the Court should now permit him to return to state court and exhaust these claims.

Inherent in a federal court's ability to hear a case is its ability to stay a case and hold it in

abeyance. *Int'l Bhd. Of Elec. Workers v. AT & T Network Sys.*, 879 F.2d 864 (Table), 1989 WL 78212, at *8 (6th Cir. July 17, 1989)(citing *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)). Before granting a party's motion to stay a case and hold it in abeyance, however, a court must evaluate three facts: (1) the hardship the movant will endure if the case goes forward; (2) the injury to the opposing party; and (3) the public's interest, "including the judiciary's interest in efficiency, economy, and fairness." *Hill v. Mitchell*, 30 F.Supp.2d 997, 1000 (S.D. Ohio 1998) (citing *Landis, supra*; *Lynch v. Johns-Manville Corp.*, 710 F.2d 1194 (6th Cir. 1983); *Bedel v. Thompson*, 103 F.R.D. 78 (S.D. Ohio 1984)).

In the recent *Rhines v. Weber*, 544 U.S. 269 (2005), the United States Supreme Court provided guidance to habeas courts regarding when it is appropriate to stay a case pending a petitioner's return to state court. The *Rhines* Court cautioned that stay and abeyance, if utilized too often, would frustrate the Anti-Terrorism and Effective Death Penalty Act's, "twin purposes" of reducing delay and encouraging petitioner's to fully exhaust claims in state court prior to filing a federal habeas petition. *Id.* at 276-77. Accordingly, the Court held that habeas courts should only grant a petitioner's motion to stay the federal habeas case to exhaust a claim in state court if that court determines "there was good cause for the petitioner's failure to exhaust his claims first in state court." *Id.* at 277. Moreover, a district court should only grant a stay if it appears that there is some merit to the petitioner's unexhausted claims. *Id.*

In the instant case, the Petitioner has failed to explain why he did not previously fully exhaust his actual innocence and *Brady* claims in state court. In her opposition to the Petitioner's Motion to Stay, the Respondent asserts that all of the "new" information contained within the PD article was previously published in a Cleveland Scene Magazine article on September 10, 2003. That article

predated the Petitioner's initiation of his habeas litigation. Although the Petitioner argues in his Reply brief that the Cleveland Scene article did not "reference the significant documentary support upon which the Plain Dealer article relied," he fails to articulate how the information raising doubt about his participation in the Hartigs' murders differs among the two articles.[1] Unless the Petitioner can provide this Court with some further explanation as to why he did not fully investigate these claims after the release of the Cleveland Scene article in 1993, the Court must heed the admonitions of the *Rhines* Court and find that there is no good cause to stay this proceedings pending Petitioner's return to state court for exhaustion. The Motion to Stay is denied.

**III. Conclusion**

For the foregoing reasons, the Petitioner's Motion for Preservation of Evidence, (ECF No. 67), and Motion to Stay this Case and Hold It In Abeyance Pending Exhaustion, (ECF No. 66), is denied.

IT IS SO ORDERED.

Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: November 6, 2006

[1] A review of both articles reveals that they raise substantially similar arguments regarding Petitioner's innocence and coercion on the part of a police investigator.

# Scene

**Brother's Keeper: A murder sets two brothers on a collision course neither wanted**
BY SARAH FENSKE

**Breaking the Stranglehold: Tax the land, not the buildings, and watch greedy developers cry**
BY DAVID MARTIN

**Wild Wheels Weekend: The Gravity Games' boarders and bikers roll back into town**
BY MICHAEL GALLUCCI

**Gong Ho: Drumplay and Gongzilla join forces for two monster jam sessions**
BY JASON BRACELIN

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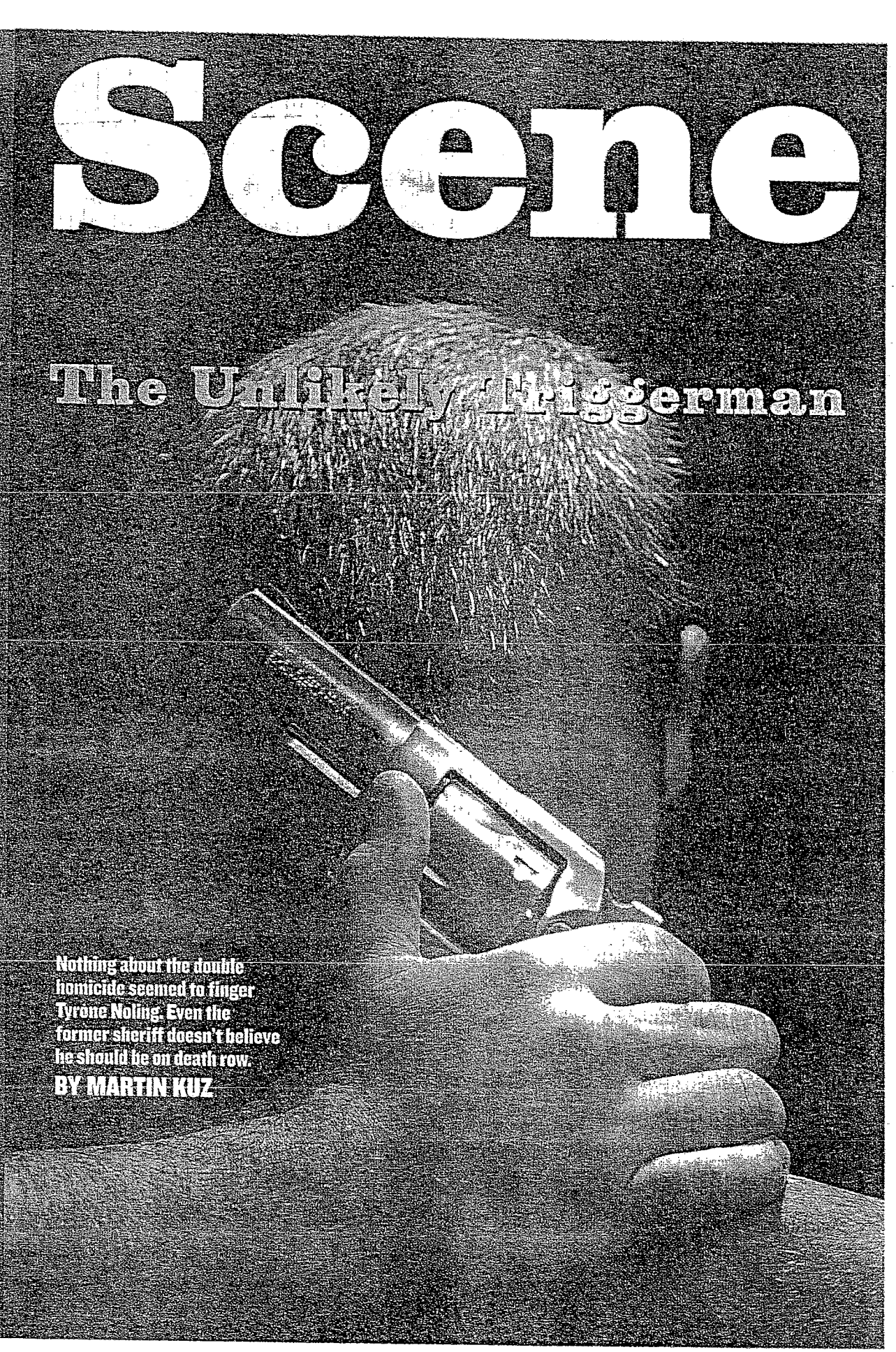
## The Unlikely Triggerman



Nothing about the double homicide seemed to finger Tyrone Noling. Even the former sheriff doesn't believe he should be on death row.
**BY MARTIN KUZ**

EXHIBIT "B"

## The Unlikely Triggerman

continued from page 13

ing room, while kitchen cabinets and dresser drawers stood open. But nothing appeared stolen. Whoever shot the Hartigs ignored the rings they wore and the wallet in Bearnhardt's pants. Watches and jewelry, cash, TVs and assorted electronics — all remained.

The only things the killer failed to leave behind, it seemed, were fingerprints and forensic clues.

Authorities pegged the time of death as late afternoon on April 5, 1990. Around noon that day, Tyrone Noling rapped on the door of Suzanne and Fred Murphy's home in Alliance. His car had broken down, and he wondered if he could call a friend.

Dressed in a denim jacket and jeans, his sandy blond hair trimmed short, the young man looked "kind of cute," Suzanne recalls. As he spoke on the phone, she returned to washing dishes. Her husband, planning to give the visitor a lift to a mechanic down the street, went to fetch his coat.

Moments later, curious about why she heard no voices coming from the living room, Suzanne walked back out of the kitchen. Noling was holding a .25 on Fred.

"You sit down in that fucking chair or I'll shoot you!" he yelled, snapping open the barrel and catching a bullet as it popped out. "I want you to know that this is real!"

Noling stuffed Fred's wallet and Suzanne's purse into a pillowcase he pulled from his pocket. Then he ordered Fred into the bathroom and told Suzanne to show him her jewelry. She remembers moving down a hallway to the couple's bedroom, the gun grazing her back.

Noling had stolen the piece a day before, when he and a friend robbed another elderly couple who lived a few blocks away. "It seemed so easy," he says. "You got a couple hundred dollars and got away. You think, 'Why not do it again?'"

Yet his nerve would prove as weak as his method. In the Murphys' bedroom, after grabbing rings worth $1,500, he began digging through a dresser — until his trigger finger slipped, sending a round into the hardwood floor. The gunshot so startled him that he "ran like a scared rabbit," says Suzanne, who at 87 can recount the robbery as if it occurred an hour ago.

Clutching the pillowcase, Noling grabbed the couple's VCR before escaping through nearby woods to a friend's house — one street over from the Murphys. He was, Suzanne says, "just a stupid kid."

Noling, weeks past his 18th birthday, had helped himself to five-finger discounts since his preteen years, stealing from cars, homes, and corner stores, juvenile records indicate. In the span of four hours on April 5, however, he attended criminal finishing school — graduating from petty theft to double homicide.

That's the scenario Portage County prosecutors laid out at his murder trial. They claimed that around 4 p.m., on the heels of the Murphy robbery, Noling cajoled three friends — Gary St. Clair, Joey Dalesandro, and Butch Wolcott — to drive from Alliance to Atwater, where they spotted Bearnhardt on his tractor. He'd gone inside by the time the foursome circled back, according to authorities, prompting Noling and St. Clair to jump out of the car.

After the pair allegedly pushed past Cora at the door, St. Clair rummaged through the house as Noling held the couple at gunpoint. When Bearnhardt stepped toward him, prosecutors asserted, Noling plugged the old man, reloaded the .25, and shot Cora before fleeing.

The county's case pivoted on the testimony of Noling's alleged accomplices. St. Clair and Dalesandro struck plea deals in exchange for ratting out their friend, while Wolcott received immunity.

But St. Clair recanted in court, denying that he and his pals were involved. Dalesandro and Wolcott, meanwhile, provided accounts that clashed with their pretrial statements. One of Noling's lawyers contended that they would have testified to seeing a pink elephant at the scene if prosecutors wanted.

None of which bothered jurors. They convicted Noling and a judge upheld their call for the death penalty.

In hindsight, the verdict makes sense — given that they were deprived of a sizable chunk of evidence. Evidence, in fact, that suggests county investigators bullied witnesses, buried reports, and smudged timelines. Evidence that Noling's lawyers inexplicably disregarded.

Attorneys Peter Cahoon and George Keith kept mum about the vast differences between Noling's two robberies and the Hartig slayings. They failed to reveal details that shredded the prosecution's murder-weapon theory. They also sat on an apparent alibi, neglecting to disclose that Noling committed a purse snatching in Alliance at about the same time as the shootings.

Perhaps most baffling, the lawyers aired nothing about possible clues linking the Hartigs' insurance agent to the killings.

"I was never confident with these boys being the suspects," says P. Ken Howe, the Portage County sheriff when the murders took place. "It just didn't fit."

Noling, 31, resides at Mansfield Correctional Institution. He realizes that his behavior in the 24 hours before the Hartig murders throws a shadow across his death-row cell.

"I'm no angel," he admits. "But I've only been a petty thief."

When Ritalin and detention centers couldn't tame young Tyrone, his mother ceded custody to her ex-husband. Noling dropped out of school in ninth grade and bolted from home, staying with friends and deciding that crime offered better hours than work. In early 1990, he and Joey Dalesandro, a childhood pal, split time between Delta and Alliance, mooching off relatives, acquaintances, and anyone else they could.

The two hung out with Gary St. Clair, 21, whose age made him their designated beer buyer. In April of that year, St. Clair was crashing at the Alliance home of his young half-brother, looking after him while his father was in the hospital. The guest list also included Butch Wolcott, a 14-year-old runaway St. Clair had befriended at a homeless shelter weeks earlier.

The house served as a rec center for punks, with the group devoting long hours to smoking blunts, drinking beer, and playing Nintendo. They spent their nights "car shopping," breaking into vehicles to filch cash, credit cards, and stereos. But their ambitions — or at least Noling's — flared higher the day he and Dalesandro bought a sawed-off shotgun.

Holding the .12-gauge in his hands, Noling recalls thinking, "People will give you money if you point this thing at them."

On April 4, he pointed it at James and Rose Hughes in their living room. Noling

# The Unlikely Triggerman

**Nothing about the double homicide seemed to finger Tyrone Noling. Even the former sheriff doesn't believe he should be on death row.**

A light snow was falling as Jim Davis eased into the driveway of his mother's house in Atwater Township. He noticed an orange garden tractor parked on the lawn of her neighbors, Bearnhardt and Cora Hartig. That's odd, Davis thought. He'd grown up next door to the couple and knew their fastidious ways, how Bearnhardt fussed over his equipment and yard, how Cora kept the ranch home neat as a church.

A short time later, Davis's mother arrived and mentioned that the tractor had sat out for two days. So he offered to check on the Hartigs, both 81.

No one answered when Davis knocked. Peering through the front door window, he saw why — Cora and Bearnhardt lay side by side on the kitchen floor.

The smell of death met police as they entered the house. Ten .25-caliber shell casings formed a crude outline of the couple's bodies. Five slugs had torn open Cora; three had pierced her husband.

The home bore signs of a search. Business papers pulled from a desk were strewn across the liv... continued on page 24

BY MARTIN KUZ

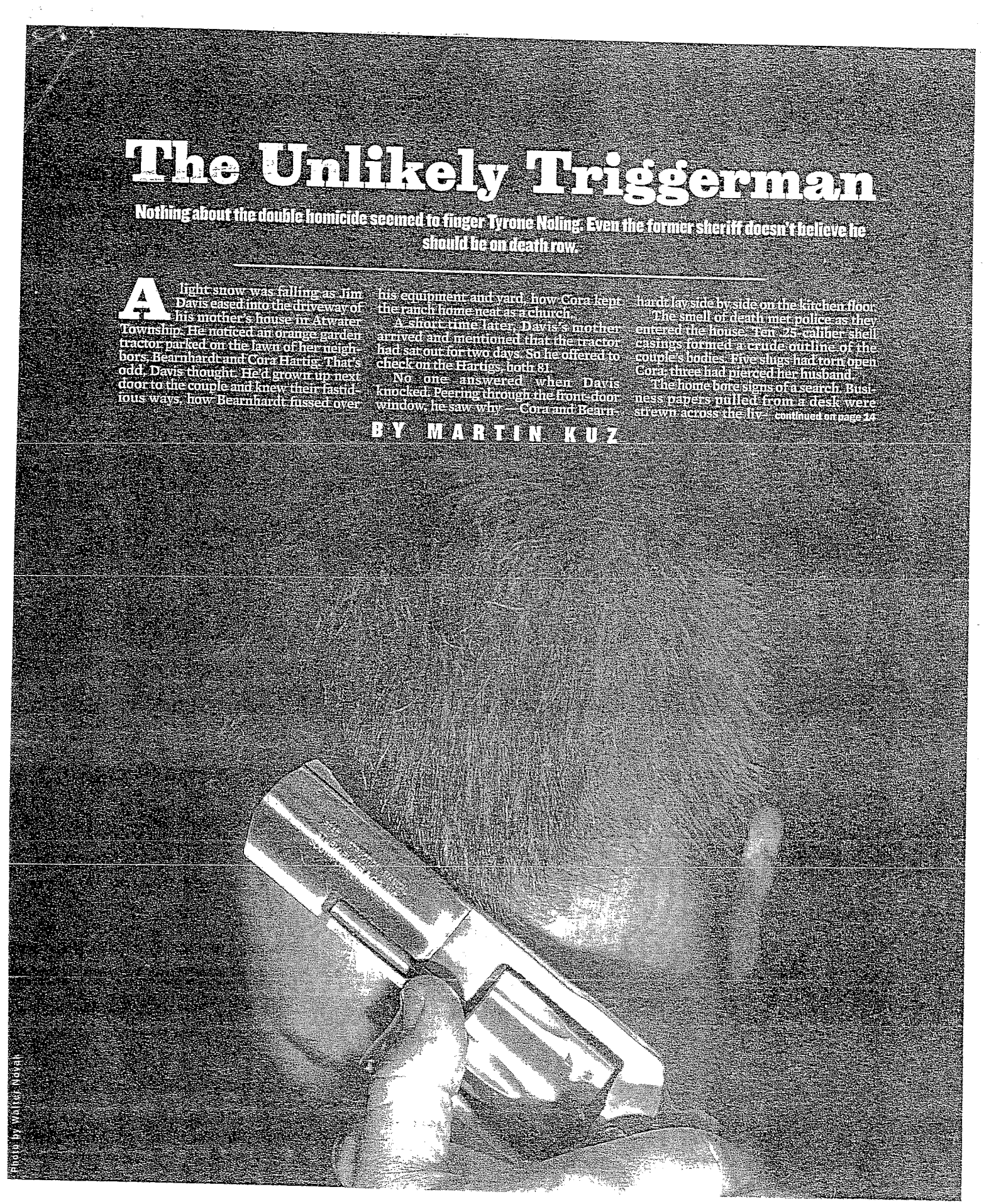


Photo by Walter Novak

id St. Clair had duped the elderly couple ith the broken-car ruse, apparently sur- ising themselves in the process. Police files iow that Noling jabbered with the Hughe- s for several minutes, even allowing James eall his son, a tow-truck driver. Only when iere was no answer did Noling draw the iotgun from beneath his trench coat.

"I'll blow your fucking brains out!" he reeched.

He handled most of the rob- ery while St. Clair sat on the ouple's couch and watched *prah*. They escaped with $375, VCR, and fistfuls of jewelry — iough Noling relented when imes begged to keep his wed- ng band. Noling also nabbed ie .25 he would brandish at the furphys the next afternoon.

But two robberies in as many ays turned the neighborhood ito a cop magnet. Acting on a p, officers raided the party ouse on April 9. St. Clair con- ssed almost as soon as he rived at the police station, cords reveal. When a detective informed oling that his pal had blabbed, he replied, "I ight as well tell you too, turn on the tape . . ."

Then the questions switched to the topic f a double homicide.

"I was freaking," he says. "I knew I was oing to jail — I knew I was in trouble. But urder? What?"

The robberies shared enough obvious arallels with the Hartig killings — the tim- g, the elderly victims, the use of a .25 — to ake him a plausible suspect. Detectives easoned that his threats of harm against the rst two couples might have escalated into iolence against the Hartigs.

Still, the premise would seem to require iat, in four hours, Noling's bravado and IQ velled as rapidly as his lust for loot shrank.

In that span, the "scared rabbit" who fled ie Murphys would need to gain the brutal oise to pump eight shots into the Hartigs — hile coolly pausing to reload. He would need to acquire a hitman's aptitude for cov- ering forensic tracks. Finally, he would need to forgo the cash, jewelry, and electronics of two corpses — swag he so eagerly took off his living victims.

"It doesn't add up," says Columbus attor- ney John Gideon, who's representing Noling in his appeals. In court documents, Gideon portrays the shootings as "professional hit style murders" carried out by a person searching for a specific item. "If it was Tyrone and his pals trying to get valuables, why would they go all that way and then leave behind all this stuff?"

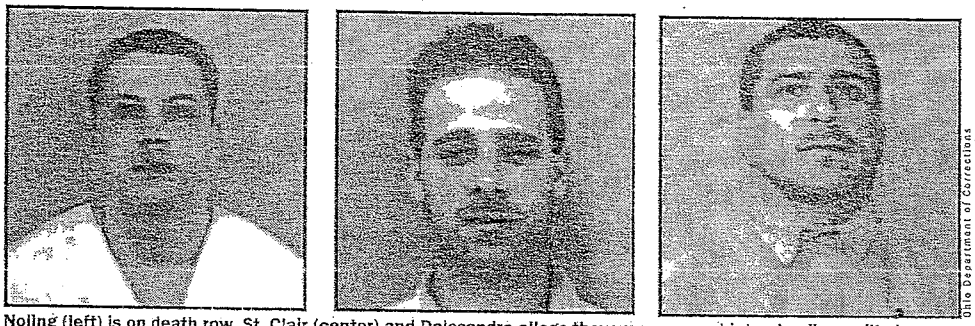
Sheriff's investigators reached a similar conclusion. Duane Kaley, now the Portage County sheriff, served as lead detective on the Hartig case. He visited Wolcott and his father a month after the slayings. Wolcott claims the conversation ended with Kaley telling them, "I don't think these boys had anything to do with it."

Kaley did not return calls for comment. But ex-sheriff Howe, his former boss, confirms that detectives discarded Noling and the oth- ers as suspects early on. In April 1991, one year after the mur- ders, *The Record-Courier* quoted him as saying leads in the probe had iced over.

The next month, a man named Daniel Wilson confessed to shoving a woman into the trunk of her car and lighting it on fire in Elyria. Police checking his poten- tial ties to other recent murders learned that he lived a mile from the Har- tigs at the time of the shootings.

Though authori- ties rejected Wilson as a suspect within days, the episode tweaked the ego of David Norris, then the Portage County prosecutor. A high-profile murder — one still snagging headlines — languished unsolved on his turf. He directed one of his investigators, Ron Craig, to crack open the Hartig file.

Precisely what convinced Craig to stalk Noling after detectives ruled him out remains unknown. He did not respond to *Scene*'s interview requests.



Noling (left) is on death row. St. Clair (center) and Dalesandro allege they were coerced into pleading guilty to a crime they now deny committing.

Ohio Department of Corrections

Regardless, Gideon argues in court papers that Craig acted as a heavy-handed tailor, stitching together a case out of unrelated events, coincidences, and naked lies. The attorney charges that Craig and prosecutors decided who was guilty, then worked backward to "prove" their thesis through a "systematic campaign of wit- ness intimidation."

Vicky Buckwalter, an investigator hired by Noling's trial lawyers, prefers more lyri- cal phrasing.

"This case is fiction," she says, "and Ron Craig wrote the story."

**"I knew I was in trouble. But murder? What?"**

Butch Wolcott remembers the drive to the Hartig residence. He rode with three men: his court- appointed attorney, a psychologist, and Craig. He was unable to provide the route of travel ostensibly taken the day of the mur- ders. Yet as the car slowed, Wolcott says, Craig looked over at the home, then locked eyes with him in the rearview mirror.

"This the one you wanted to see?" Craig asked, according to a transcript of the taped interview. "Do you know this house?"

Wolcott felt the investigator's stare burn into him. He swallowed. "It looks like it."

Some weeks before that trip in the fall of 1991, Craig had summoned Wolcott, then 15, to the prosecutor's office. Craig and assistant prosecutor Robert Durst refused to let his father sit in during a two-hour interrogation.

"When he walked out of there," Harold Wolcott says, "you could see he'd had the shit scared out of him."

In a sworn affidavit submitted as part of Noling's appeals, Butch Wolcott charges that Craig and Durst threatened to "put me in jail for life." He alleges they lied that a worker up on a utility pole spotted him and the others at the Hartigs, and that a cigarette found out- side the home matched Wolcott's DNA.

If the teen agreed to cooperate with them, however, he'd receive immunity.

"I was terrified," Wolcott says. "I did what they wanted me to do."

In separate affidavits, Dalesandro and St. Clair accuse Craig of similar tactics in coercing them to plead guilty to a crime they deny com- mitting. The deals they and Wolcott cut enabled Craig to tighten a net around Noling — whom the investigator fingered as the brains of the group — without ever interviewing him.

"We want the triggerman," Dalesandro recalls Craig saying. "We know he did it."

Wolcott likens Craig, a one- time Kent police detective, to *NYPD Blue*'s Andy Sipowicz — in body shape and interrogation style. In his affidavit, Wolcott claims the badgering began after he insisted he knew noth- ing about the murders. Craig replied that he'd repressed memories of the tragedy, Wol- cott alleges, and arranged for him to visit a psychologist. The shrink duly seconded the opin- ion, diagnosing him with post- traumatic stress disorder.

The interview transcript shows that Dr. Alfred Grzegorek rode along on the trip to the Har- tig house in late 1991. His comments to Wol- cott evoke images of a sculptor molding clay.

"People remember in different ways, Butch . . .," the doctor said. "That is one of the reasons for coming out here and trying to help your memory a bit. We were a little concerned when we were talking [earlier] that you weren't remembering everything you needed to remember."

Such apparently induced recall would bear fruit in later interviews — sort of. By June 1992, when Craig asked whether April 5 was the correct date of the murders, Wolcott stam- mered, "Like I said, I'm not totally certain, but the way the facts are pointing now . . . that's what it is. As far as you helped my memory."

He contends Craig further greased his recollection — and his fear — with perpetual reminders that his immunity would vanish unless he played along. ". . . Other times that we have talked, I've been pretty scared, to be honest with you," Wolcott said in a 1992 statement to prosecutors.

Craig prepped him for as long as two hours before flipping on a tape recorder, Wolcott asserts in his affidavit, and forced him to study written responses to questions. That may explain his comment to Craig about the alleged murder weapon: "Tyrone didn't have a gun until he got the .25. I think that's the way it read in the question, the way the question was."

Likewise, Dalesandro and St. Clair charge in their affidavits that Craig fed them answers. But St. Clair — who alleges that the investigator gave him photos and drew a diagram of the crime scene — evidently struggled with his lines. An exchange in a March 1993 interview, during which Craig presses him on what he supposedly heard in the Hartig home, resembles a director prompting an actor at rehearsal.

"Were Mr. and Mrs. Hartig screaming in the house?" Craig asked.

"I think they might have been," St. Clair replied.

"They were pleading for their life, weren't they?"

"I think."

"They were pretty scared people, weren't they? They were pleading to live, weren't they?"

"I think they were."

The interviews and statements lay bare how Noling's three alleged cohorts changed their stories as often as they told them. Hun- dreds of discrepancies continued on page 16

Walter Novak

It's hard to keep a story straight when it never happened," says Vicky Buckwalter, an investigator hired by Noling's trial lawyers.

## The Unlikely Triggerman

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litter their accounts. Each man contradicts himself and the other two on points both trivial and critical, whether discussing who sat where in the car or what happened to the purported murder weapon.

Dalesandro, the alleged driver, first denied ever traveling to Atwater. Weeks later, he recalled that Noling and St. Clair spent 10 minutes inside the Hartig home. In a third interview, his estimate ballooned to 40 minutes. St. Clair recounted that Noling shot Cora Hartig first — until Craig repeated the question minutes later.

"I think it was Mr. Hartig," St. Clair replied.

In his first interview, Wolcott said Noling stayed silent when he returned to the car. In his second, he remembered Noling saying, "I didn't want to do this." A week later, he claimed that Noling lamented, "I didn't want to tie them with the phone cord."

A coroner's report and evidence photos give no indication that the Hartigs were tied up.

That their accounts shifted like winds off Lake Erie mattered little — prosecutors withheld such nagging details from the grand jury that indicted Noling in 1992. The panel's members were unaware, for example, that Wolcott said he was too drunk to remember anything, much less specifics.

"The way I was dozing off," he told officials, "they could have driven from here to Cleveland and then back to the house [in Alliance] and I wouldn't have known."

Now 28, he provides another reason for the lapses. "Because we were never there."

Noling insists time has drained him of the bitterness he once felt toward Wolcott, Dalesandro, and St. Clair. But mention their deals with prosecutors, and his response belies a residue of bile.

"I don't think I would ever admit to something I didn't do . . . ," he says. "I guess they were all worried about their own hides."

Wolcott's witness statement in June 1992 handed prosecutors a crowbar to split open Dalesandro and St. Clair. Dalesandro copped within a month. He received 5 to 15 years, adding to the 3- to 15-year term he'd already started for an unrelated drug conviction. He contends that his public defender leaned on him as hard as prosecutors did.

"He told me if I didn't take the deal, they'd go to Gary and I'd go down with Tyrone," Dalesandro says. "I didn't want to be doing a life sentence for something I didn't do."

St. Clair, described by his father as "always a little slow," pleaded out hours after a judge declared him competent to stand trial in March 1993. Bob St. Clair and his son's attorneys urged him to accept a life sentence that carried the chance of parole in 23 years. The term was tacked on to the 5- to 25-year hitch he received for the Murphy robbery.

"I just wanted to save his life at the time," Bob St. Clair says. "I didn't believe he was guilty — ever."

Prosecutors also offered a deal to Noling, who'd netted 5 to 25 years for the Hughes and Murphy robberies. It would spare him the death penalty. Peter Cahoon, one of his trial lawyers, recalls his client's retort: "Tell the prosecutor to put on his best trial suit. We're going to trial."

Cahoon and co-counsel George Keith hired Vicky Buckwalter to investigate the case. She detected a recurring theme amid the tangled narratives of Noling's alleged accomplices. Their statements matched up until investigators asked them about going to the Hartig home — at which point the accounts splintered as though jammed into a wood chipper.

"It's hard to keep a story straight when it never happened," she says.

The disparities led Buckwalter and another investigator to visit St. Clair in prison days after he pleaded guilty. He denied any role in the killings and accused Ron Craig of coercion. He charged that his own lawyers showed him Wolcott's statement and a video of the crime scene to "help" his memory. Midway through their taped conversation, Buckwalter asked if he wanted to testify against Noling.

"Not really," St. Clair replied.

The interview acted as a rubber bullet. It stunned Norris, the Portage County prosecutor who had sicced Craig on the murder probe, but didn't stop the case.

Norris scotched Noling's indictment as his trial opened in June 1993, concerned that St. Clair's testimony would be tainted. Vowing to refile charges, Norris instead wound up forced from office the next year, after the feds busted him for cocaine possession. So his successor, Victor Vigluicci, resumed the chase.

First, authorities impressed on St. Clair that he would lose his plea deal unless he testified; he soon caved. Next, investigators scrounged up three jail snitches who claimed that Noling bragged about the killings to them. Their statements about Noling's boasts — that he herded the Hartigs into the bedroom before shooting them — contradicted the murder scene. An undaunted Vigluicci deemed his witness cupboard restocked, and prosecutors coaxed a grand jury to indict Noling again in 1995.

As a result of Buckwalter's spadework, however, his lawyers stood hip-deep in evidence and witnesses of their own. Her work unearthed three crucial findings:

• Noling maintained that, after the Murphy robbery on April 5, he, St. Clair, Dalesandro, and Wolcott went cruising around Alliance — not Atwater — later that afternoon. Spotting an elderly woman walking alone, Noling and the others recalled, he hopped out and sprinted off with her purse, scoring a single credit card and $8.

While Noling sketched a map of where the theft occurred for his lawyers, police claimed that no report of the incident existed. But in scouring court documents, Buckwalter noticed that Craig seemed fully aware of the crime, inquiring about it during his interview with St. Clair in March 1993.

"Did you rob another woman at a parking lot prior to going on your ride out in the country . . . steal a purse or something?" Craig asked.

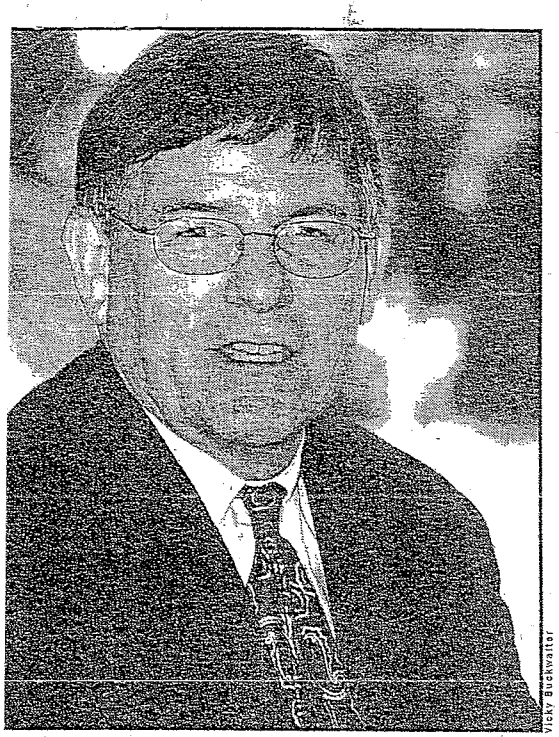
St. Clair confirmed the theft, adding that they set out from his half-brother's house after 5 p.m.

It's a vital time hook: The Hartigs — who lived 15 miles away — were killed between 4 p.m. and 5 p.m. that day.

• Investigators alleged that, when Noling shot the Hartigs in the kitchen, St. Clair stopped ransacking the bedroom, then ran from the house with his friend moments later.

Buckwalter's review of the evidence exposed a crack in that scenario. Detectives found a spent shell casing under a pile of papers dumped in the living room — a fact that suggests the killer searched the residence *after* the slayings.

• Police interviewed Dr. Daniel Cannone, the Hartigs' physician and longtime friend, as part of their probe. The doctor described how, during a phone call the night before the



Vicky Buckwalter

"If it's not politics driving this," says John Gideon, Noling's appellate lawyer, "we're all blind, deaf, and dumb."

shootings, Bearnhardt divulged that his insurance agent owed him $10,000

According to Cannone, Bearnhardt said he lent the money to Lewis Lehman to boost his insurance business, much as he once aided the doctor with his practice. But Lehman had defaulted, and before hanging up that Wednesday evening, Bearnhardt vowed to confront the agent by the weekend.

"This whole thing is starting to smell," he told Cannone.

Survivors of the Depression, the Hartigs had stashed their life savings in a heating duct in their basement until early 1990, when Cannone persuaded them to rent a safety deposit box. They always did business in cash — whether buying a car or extending loans to friends — and kept tidy financial records. Yet a police search turned up no paperwork regarding a transaction with Lehman.

"Bearnhardt would have had written documentation," Cannone says. "That's always kind of bothered me."

Something else troubled Buckwalter. Lehman admitted to police in 1992 that he used to own a .25-caliber handgun but had sold it "to [an] unknown individual." The Alliance resident explained that he'd carried it on the job because "sometimes people would act funny."

The single-page report is the lone document in the case file that pertains to Lehman, despite its reference to an earlier visit police paid him. It contains no details on whether detectives tried to track down his gun or learn about the debt he may have owed the Hartigs. Similarly, county investigators disclosed little when Buckwalter asked about him, vaguely replying that "he doesn't fit the profile."

Buckwalter and ex-sheriff Howe counter that Lehman, who died in 1998, makes a near-perfect fit. (Lehman's widow, since remarried, declined comment to *Scene*.)

Evidence suggests that the killer sat across from the Hartigs at the kitchen table when he shot them — a sign that the couple may have known their attacker.

Buckwalter and Howe also regard the condition of the couple's home — from which no valuables appeared missing — as proof that the assailant executed a careful search rather than a frenzied plundering. A careful search, they speculate, for a cache of money or a promissory note on a $10,000 loan.

Their theory rests more on circumstantial clues and guesswork than on hard evidence. Still, Buckwalter says, hearing about Lehman might have stirred reasonable doubt in jurors.

That is, if Noling's lawyers had mentioned him.

**"I'm no angel. But I've only been a petty thief."**

A judge granted the prosecution's request to declare St. Clair a hostile witness when he recanted his admission of guilt at Noling's trial in January 1996. It marked the closest that public defenders Cahoon and Keith came to calling a witness on his behalf.

Seven years later, neither attorney cares to share the logic behind that passive strategy. Keith declines to talk on the record. Cahoon favors a mantra that he repeats a half-dozen times: "All defense claims were fully investigated."

But if Buckwalter supplied pieces of the puzzle, Cahoon and Keith failed to assemble them in front of jurors.

The lawyers passed on putting Cannone and detectives on the stand to discuss Lehman. Nor did they bring up the purse snatching, which occurred around the time of the murders, or call Ron Craig to testify about how he knew of the incident despite the lack of a police report. They also neglected to describe how the Hughes and Murphy robberies differed enough from the Hartig killings for sheriff's investigators to jettison Noling as a suspect.

Noling believes their approach had its roots in the parched soil of apathy, claiming they prodded him to plead out prior to trial. "They were talking about how I'm guilty as sin."

In response, Cahoon says, "I'm not going to rehash the case." But with respect to Noling's alleged cohorts, he contends, "These guys would have been crazy not to turn state's evidence."

The comment may hint at why, in Noling's latest appeal, attorney Gideon argues that Cahoon and Keith choked their client's odds of acquittal at least as much as prosecutors. Besides ignoring what Buckwalter uncovered, Gideon asserts, the trial lawyers botched chance after chance to fillet the county's case.

Ballistics tests proved that the handgun Noling stole from the Hugheses was not used in the Hartig killings, as investigators first surmised. So prosecutors trotted out Dalesandro to testify that Noling possessed a second .25 — one authorities never recovered. Released after police cleared him in the Hughes and Murphy robberies, Dalesandro recalled, he obeyed Noling's orders to ditch the purported murder weapon.

Dalesandro took the gun to a fence named Chico Garcia, who in turn sold it to another man. But records show that the gun tracked down through Garcia was, in fact, the .25 pinched from the Hughes household. Cahoon and Keith, however, mounted no counterattack.

Similarly, Dalesandro and Wolcott testified that they saw and smelled gun smoke when Noling returned to the car. Cahoon and Keith's files included a report, prepared by a Tallmadge police sergeant, stating that the smoke would have dissipated by the time Noling reached the car. Yet the lawyers decided against putting the cop on the stand.

They also disregarded flaws in the prosecution's timeline. Wolcott testified that he and the others drove to Atwater on April 5 after St. Clair's mother, Beverly Rupp, picked up his half-brother from his home in Alliance for her birthday dinner. The memory of her visit supposedly reinforced Wolcott's account of the killings.

One problem: Rupp's birthday is April 6, and both she and St. Clair's half-brother remember her stopping by the house on that day. Neither was called to testify.

Buckwalter stayed away from the courtroom because Cahoon had declared her a witness. As she received updates on the trial from people who attended, she called Cahoon almost daily to suggest how he could deflate the prosecution's case. But her advice appeared to go no farther than the lawyer's voice mail.

Repeats Cahoon: "All defense claims were fully investigated."

Considering how much he and Keith left out, Buckwalter says, she understands why jurors found Noling guilty. "If I was sitting on the jury, I may have convicted Tyrone. I don't blame them at all."

After the guilty verdict, Cahoon and Keith finally called a handful of witnesses during the sentencing phase. Noling's mother and sister talked about how his father abused him with words and fists as a youngster. A psychologist posited that his tattered youth had saddled him with "the inner controls of a 2-year-old child."

Noling spoke last, his voice cracking, his thoughts fractured. "Life don't work out sometimes like everybody thinks it's going to . . . and I just beg from the bottom of my heart that you spare my life."

Unmoved, the jury voted for the death penalty, a sentence the judge affirmed two weeks later. As bailiffs escorted Noling from the courtroom that day, he spotted Ron Craig. Noling's fury detonated: "You're a piece of shit," he snarled. "You have no right to take my life away from me."

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## The Unlikely Triggerman

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Much as Noling's lawyers may have botched his case, he might never have faced murder charges without Craig's handiwork.

The evidence put forth in Noling's appeals shows how Craig could have manipulated the Hartig probe. Mix together Noling's robberies, the stolen .25, and his cruising around with three pals. Move their joyride from Alliance to Atwater and swap out the purse snatching for a double homicide. Browbeat Noling's alleged accomplices until they parrot that version of events.

Case closed.

Eugene Muldowney, the assistant prosecutor who tried the Noling case, sums up that theory in three words: "Grasping at straws."

Muldowney spits out tommy-gun responses to questions about the investigation. Asked if any chance exists that authorities nailed the wrong guy, he says, "In my mind, there was no doubt." He derides allegations about authorities inventing a phantom handgun as "nonsense." The purse-snatching alibi? "They're trying to come up with anything they can."

As for the affidavits of Wolcott, Dalesandro, and St. Clair accusing Craig of coercion, he snaps, "No pressure was put on these guys. None that I've seen."

For all his bluntness, Muldowney sounds downright verbose next to his boss, Prosecutor Victor Vigluicci, who refused to discuss the case with *Scene*.

"I'm not real happy with your magazine," he fumed.

Vigluicci's irritation traces back to a January article that explored a judge's decision to grant new trials to two men convicted of murder in Portage County in 1990. The ruling, which Vigluicci has appealed, stoked allegations that authorities won the cases against Robert Gondor and Randy Resh by coercing testimony and hiding reports.

The similarities between that case and Noling's cut deep, in part because two of the prime players — Craig and disgraced ex-prosecutor David Norris — were involved in both. (Norris, now with the Florida public defender's office, did not respond to interview requests.)

Buckwalter, now an investigator with the Stark County public defender's office, also probed the Gondor-Resh case while employed by a private firm. "I thought something like that could only happen once," she says. "I was wrong."

In June 1993, after Buckwalter's interview with Gary St. Clair led to the dropping of charges against Noling, Norris declared, "I'm not in the business of prosecuting innocent people." Yet she and Gideon, Noling's appellate lawyer, sense that both Norris and Vigluicci were influenced more by politics than truth.

In 1992, the year a grand jury first indicted Noling, Norris ran for reelection. Four years later, on the day the opening of Noling's trial played on the front page, newspapers carried stories of Vigluicci filing for reelection.

"If that's not politics driving this," Gideon says, "we're all blind, deaf, and dumb."

A Portage County judge will rule later this year on whether evidence raised in Noling's appeals warrants the voiding of his sentence. The pending decision weighs on his alleged accomplices as heavily as on Noling.

Wolcott now lives in Hawaii, where he works construction. Back in 1990, he and Noling shared a mutual disdain. In the few days they hung around each other, Wolcott recalls, Noling twice pressed the stolen .25 against his head and vowed to shoot him if he squealed about the robberies. He alleges that Craig pressured him to say that Noling threatened him over the murders, not the robberies — employing what Wolcott dubs "the art of fear" to wear him down.

"This is going to make me look like shit, but when the trial ended, I felt like 'It's over. It's finally over.'"

Today, he finds himself gazing at the ocean for hours, regretting his role in putting a man he feels is innocent on the path toward execution. "I seriously believe that a demon will chase me until this is over, until Tyrone gets out," he says. "Trust me — I'm in my own prison."

The state paroled Dalesandro, 32, last month, after he served 11 years. He plans to work in a relative's scrap yard and hopes one day to run a tow-truck service. But he figures that, if he had simply maintained Noling's innocence, his old friend might be on the outside with him.

"I feel stupid because I let [investigators] scare me," says Dalesandro, who alleges that prosecutors force-fed him the story about the existence of a second .25. "If I hadn't lied, none of this would have happened."

St. Clair, 34, faces at least 10 more years behind bars. Norris punished him by pushing for a longer sentence when he refused to testify against Noling. He's unrepentant: "Me, Tyrone, Butch, Joey — we didn't do this."

Meanwhile, Noling's good behavior has landed him in the "honor pod" of death row, where he's afforded more time out of his cell and other meager privileges. Given that he seldom hears from his family, save for the cash that his father mails him, he harbors a healthy sense of gallows humor.

Recounting how St. Clair watched TV at the Hughes house during the robbery, Noling cackles at the memory. "Why not get a bowl of cereal and have himself a good ol' time?"

If some interpret such a remark as cold-hearted, consider it from another angle: On death row, whether guilty or innocent, a man adapts to his fate any way he can. Noling says he's already weathered depression. Now he simply tries to balance his desire for freedom against a fatalistic view that the best he can hope for is to have his sentence commuted to life.

"All I have is my soul," he says. "That's the only thing they can't take away from me."

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