In The Court Of Common Pleas
Portage County, Ohio

State Of Ohio,

Plaintiff-Respondent, Case No. 95-CR-220

- vs -

Tyrone Noling,

Defendant-Petitioner. **This is a capital case**

Instanter Motion For New Trial

Tyrone Noling moves this Court for a new trial under O.R.C. §§ 2945.79(B), (F), and Ohio R. Crim. P. 33(A)(2), (A)(6). The reasons for this motion are stated in the attached memorandum in support.

Respectfully submitted,

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PRELIMINARY STATEMENT

Tyrone Noling should be granted a new trial based on newly discovered evidence and prosecutorial misconduct. Noling was convicted and sentenced to death for the brutal murders of Bernhardt and Cora Hartig; murders that Noling did not commit.

Evidence was recently discovered that requires a new trial for Noling. This new evidence, discovered since trial, strongly indicates that there are viable, alternative suspects responsible for the Hartig murders. Through a diligent and protracted investigation, Noling's attorneys have secured new evidence indicating that Dan Wilson, a convicted and executed murderer, was a viable suspect in the Hartigs' murders. The new evidence shows that DNA tests from a cigarette butt, the only piece of physical evidence discovered at the crime scene, did not exclude Dan Wilson as a possible DNA match. Although known to the prosecution and withheld from Noling, this evidence was not available to Noling, and could not have been procured by Noling's counsel, at trial. This same type of testing did, however, exclude Noling and his three co-defendants. Moreover, Noling's attorneys, only after filing a public records request, discovered notes from a police interview with Wilson's foster brother, Nathan Chesley before Noling's trial. Noling's counsel contacted Chesley who swears that it is likely Wilson, not Noling, who committed the Hartig murders. This new evidence goes to the very heart of Noling's case and requires that a new trial be granted. It would undoubtedly have aided Noling in proving his innocence at trial—or at a minimum, in establishing reasonable doubt.

In addition to this new evidence connecting Wilson to the Hartig murders, other newly discovered evidence further supports granting a new trial. In a material statement withheld by the State, one witness details the extremely suspicious activity of another possible suspect in the Hartig murders, Raymond VanSteenberg. In her statement, VanSteenberg's sister-in-law

recounts activities surrounding the disappearance of VanSteenberg's .25 caliber automatic gun. This was the same type of weapon used in the Hartig murders and was the same gun police requested that he produce for testing and comparison against the bullets used in the Hartigs' murder. This new evidence, withheld by the State, was undoubtedly material to Noling's defense at trial and only further supports Noling's request for a new trial.

For the reasons stated above, the Court must grant Noling's request for a new trial.

FACTUAL BACKGROUND

In May 2009, counsel for Noling sent public records requests to the Portage County Sheriff's Department. Noling's counsel requested records related to the investigation and prosecution of Noling's co-defendants, Gary St. Clair in case number 1992 CR 00210 and Joseph Dalesandro in case number 1992 CR 00208. Counsel received a phone call from Portage County authorities indicating a response to the request was forthcoming. On July 28, 2009, Noling's counsel sent a second request for these records as no records were ultimately produced in response to the May 2009 request. Noling then received a response to his request and records were produced by the Portage County Sheriff's Department in August 2009. On December 15, 2009, Noling a follow up request regarding the records he received requesting additional information related to Daniel Wilson and Nathan Chesley. Noling was informed that no records were located.

ARGUMENT

Under O.R.C. § 2945.79 a defendant may obtain a new trial "[w]hen new evidence is discovered material to the defendant, which he could not with reasonable diligence have discovered and produced at the trial." O.R.C. § 2945.79(F); see also Ohio R. Crim. P. 33(A)(6). The Ohio Supreme Court delineated the standard for granting a new trial based on newly

discovered evidence in State v. Petro, 148 Ohio St. 505, 76 N.E.2d 370 (1947). The Court reiterated that standard in State v. Hawkins, 66 Ohio St. 3d 339, 612 N.E.2d 1227 (1993):

> To warrant the granting of a motion for a new trial in a criminal case, based on the ground of newly discovered evidence, it must be shown that the new evidence (1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is material to the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence.

Id. at 350, 612 N.E.2d at 1235 (citation omitted).

Noling easily meets this standard, though he is not required to, since a defendant is also entitled to a new trial where misconduct by the prosecution materially affects his substantial rights. O.R.C. § 2945.79(B); see also Ohio R. Crim. P. 33(A)(2). In cases where the State suppresses evidence favorable to the defense, the Ohio Supreme Court held that "the usual standards for new trial are not controlling because the fact that such evidence was available to the prosecution and not submitted to the defense places it in a different category than if it had simply been discovered from a neutral source after trial." State v. Johnston, 39 Ohio St. 3d 48, 60, 529 N.E.2d 898, 911 (1988) (internal citations omitted.) And though Noling maintains his innocence, he "does not have to satisfy the severe burden of demonstrating that newly discovered evidence probably would have resulted in acquittal, the standard generally used to evaluate motions filed under Crim. R. 33." Id.; see also United States v. Agurs, 427 U.S. 97, 111 (1976) ("If the standard applied to the usual motion for a new trial based on newly discovered evidence were the same when the evidence was in the State's possession as when it was found in a neutral source, there would be no special significance to the prosecutor's obligation to serve the cause of justice."). Noling merely needs to show that the evidence is material. Id. ("[T]he key issue in a

case where exculpatory evidence is alleged to have been withheld is whether the evidence is material.").

This evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Johnston, 39 Ohio St. 3d at 61, 529 N.E.2d at 911 (citing United States v. Bagley, 473 U.S. 667, 682 (1984)). And a "reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

I. NEWLY DISCOVERED EVIDENCE REQUIRES GRANTING A NEW TRIAL

The newly discovered evidence requires that this Court grant Noling a new trial, so that he may defend himself in a court of law with a complete record of all of the evidence available in this case; an opportunity he was not given during his first trial. This new evidence, discovered since trial, will result in a not-guilty verdict for Noling, finally showing that he is actually innocent of the Hartig murders. Even after due diligence, this evidence could not have been discovered before the trial. The State had this evidence and did not produce it. Noling and his attorneys relied on the State's representations that all relevant evidence in the State's possession was produced. There can be little doubt that evidence relating to viable alternative suspects was material to the issues of this trial—Noling's guilt or innocence. The record shows that this evidence is not cumulative of former evidence produced at trial and does not merely impeach or contradict former evidence. It is new evidence that lends further support to Noling's original, and on-going defense, that he is innocent of the Hartig murders.

A. The New Evidence Will Change the Result in a New Trial

The new evidence will change the result in a new trial because it provides new support for Noling's innocence defense. Specifically, new DNA evidence and an affidavit shows that

another man could be responsible for the Hartig murders (1); and new details provided in an affidavit detail questionable activity by another suspect with regard to a .25 caliber automatic gun (2).

1. *Brady violation*

Where evidence is material to either guilt or sentencing, the prosecution's failure to disclose favorable evidence to an accused in a criminal proceeding violates the Due Process Clause, regardless of the prosecutor's good or bad faith. Brady v. Maryland, 373 U.S. 83, 87 (1963). The Court has expanded the duty to disclose to include impeachment evidence as well as exculpatory evidence. Bagley, 473 U.S. at 676.

In order to comply with Brady, "the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in this case, including the police." Kyles v. Whitley, 514 U.S. 419, 437 (1995). Evidence is material "if there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different." Id. at 433-34.

"[W]hen the defendant asserts that the new evidence at issue is exculpatory evidence which the government failed to turn over in violation of Brady he should not have to satisfy the severe burden of demonstrating that newly discovered evidence probably would have resulted in acquittal. Rather, the defendant must show only that the favorable evidence at issue was 'material,' with 'materiality' defined according to opinions interpreting the Brady doctrine." United States v. Frost, 125 F.3d 346, 382 (6th Cir. 1997) (internal citations and quotations omitted).

New evidence, discovered since trial and conviction, supports Tyrone Noling's claims of innocence. While the prosecution's actions lessen the burden imposed on Noling, he easily

meets the more stringent requirements of Petro and Hawkins. The evidence Noling presents will change the result if this Court grants him a new trial. The suppressed evidence includes:

DNA evidence and affidavits suggest Dan Wilson as an alternate suspect

The prosecution failed to disclose evidence that Tyrone Noling's counsel could have used to support an alternative-suspect defense. The prosecution withheld results from a DNA test of cigarette butts found at the scene. (Ex. A). While this DNA evidence did not match samples taken from Tyrone Noling and his co-conspirators, it also did not exclude Daniel Wilson (Tr. 721; Ex. A). Wilson was convicted of a 1991 murder, sentenced to death, and died by lethal injection on June 3, 2009.

The prosecution did not provide defense counsel with a statement taken from Nathan Chesley which inculpated his foster brother, Daniel Wilson, as a possible suspect in the Hartig murders. (Ex. B). Nathan Chesley lived as a foster child in the home of Shirley Spinney. (Ex. E). Spinney also fostered Daniel Wilson, who visited the Spinney home while Chesley was a resident. (Id.). Not long after the Hartig murders, Portage county authorities interviewed Chesley. (Ex. B). In his statement to the police, Chesley described not only how he thought the Hartig murders were cool, but also that his brother committed them. (Id.).

Over a year later, Portage County authorities were still looking at Wilson as a potential suspect. On June 19, 1991, the Ohio Bureau of Criminal Identification and Investigation conducted a DNA analysis on cigarette butts found outside of the Hartigs' home—the only physical evidence found at the scene. (Ex. A). The cigarette butts were tested against a saliva sample taken from Daniel Wilson, and the test did not exclude Wilson as a possible DNA match. Id. Authorities conducted similar analyses using saliva samples from Noling and his co-conspirators. (Tr. 721). Neither Noling nor his co-conspirators matched the DNA found on the

cigarettes. Id. While the prosecution disclosed Noling's results to counsel, the prosecution withheld both the fact that they tested Wilson and the results of Wilson's test.[1] (Exs. F, G).

The evidence described above is Brady material that, if provided to Noling's defense counsel, would have strongly contributed to an alternative suspect defense. Nathan Chesley implicated Wilson in the Hartig murders. Moreover, a DNA test does not exclude Wilson as a suspect. (Exs. A, B). If provided with Nathan Chesley's statement and the DNA test results, counsel would have pursued Wilson and sought corroborating evidence. After locating Chesley's statement, Noling's current counsel obtained an affidavit from Chesley confirming that he made the statement on April 24, 1990 in reference to his foster brother Daniel Wilson and that he "believe[s] the Hartig murders were crimes that Wilson was capable of and likely committed." (Ex. E).

Chesley's affidavit not only implicated Wilson in the Hartig murders, it also lends further credence to Wilson being an alternative suspect by providing particular and intimate insight into Wilson's character. See id. In his affidavit, Chesley stated that Wilson was a heavy drinker and a violent person who frequently made threats and once tried to stab his foster mother. Id. Furthermore, Chesley stated that Wilson was committing thefts and breaking into homes at the time of the Hartig murders, that he may have had guns, and that he drove a blue Dodge Omni. Id. Another foster brother, Kenneth Amick, also recently located by current counsel provided Noling's counsel with an affidavit regarding Wilson, attesting to the fact that he drove a blue car.

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[1] In a separate motion to the state trial court, Noling requested DNA testing of the cigarette butt, but was denied. State v. Noling, Portage C.P. No. 1995 CR 220, March 11, 2009 Entry. Noling appealed that decision, which is currently before the Ohio Supreme Court. State v. Noling, Case No. 2009-0773. Based on that court's recent decision in State v. Prade, 2010 Ohio LEXIS 1038, unreported, 2010-Ohio-1142 (Ohio May 4, 2010), counsel fully expects a reversal of the trial court's decision. Noling also intends to file a second DNA test request, seeking testing of the DNA against Wilson's DNA, on file with CODIS.

(Ex. H). In notes from an interview with Jim Geib—also withheld by the prosecution and addressed in Noling's previous motion for new trial—Geib told authorities that on the day of the Hartig murders, he saw a dark blue, midsize car leaving "that general location [of the Hartig home]" at around 4:30 p.m. (Ex. I). In addition, Wilson had a history of home invasion and victimizing the elderly:

> When he was fourteen years old, Wilson broke into an elderly neighbor's home. When the neighbor surprised him, Wilson struck the elderly man, causing him to fall and break his hip. Wilson then ripped the phone cord out of the wall and left. The neighbor was not found for two days and died as a result of his injuries and the lack of medical attention.

Wilson v. Mitchell, 498 F.3d 491, 496 (6th Cir. 2007).

If provided the opportunity to review the evidence against Wilson, Noling's trial counsel would have followed-up with Nathan Chesley and other foster brothers, including Kenneth Amick. Counsel would have discovered that Daniel Wilson was a violent person whom others believed was capable of committing murders and who was breaking into homes at the time of the murders. Counsel could have obtained the details about Wilson's blue car, material evidence when combined with Jim Geib's undisclosed statement that he saw a blue car near the Hartig home. All of this evidence would have been utilized by counsel, in conjunction with the DNA test result, as further support for an alternative suspect defense. However, Noling did not get an opportunity to build such a defense because the prosecution withheld the Brady material that would have supported such a theory.

Additional new evidence details another suspect's suspicious activity

Not only did the State withhold material evidence related to an alternative suspect, but prosecutors also failed to disclose a material statement about suspicious gun activity. The .25 caliber automatic weapon used to kill the Hartigs was never recovered. Just days after the Hartig

murders, Detectives Doak and Kaley interviewed Larry Clementson; Raymond VanSteenberg; and Dennis VanSteenberg, Raymond's son. (Ex. J). Each of the interview reports includes details about a missing .25 caliber automatic gun, the same type of gun that was used to shoot and kill the Hartigs. (Id.) The prosecution disclosed these interview reports to defense counsel, but the prosecution did not disclose a statement provided by Marlene Van Steenberg, Raymond VanSteenberg's sister-in-law. In her statement, Ms. VanSteenberg provides significant details regarding both the disappearance of a .25 caliber automatic gun owned by Raymond VanSteenberg and attempts by Raymond VanSteenberg to hide the details surrounding the gun's disappearance from Portage County authorities. (See Exs. C, D). Without Ms. VanSteenberg's statement, Noling's counsel was left with conflicting stories and incomplete details provided by Clemetson and Dennis and Raymond VanSteenberg. (See Ex. J). This Brady material could have been used by trial counsel to solidify an alternative-suspect defense.

On April 1, 1991, Marlene VanSteenberg visited the Portage County Sheriff's Office to retrieve a .25 caliber gun that belonged to her and her husband, Richard VanSteenberg. (Exs. C, D). Their gun was at the Sheriff's Office because Raymond VanSteenberg, Richard's brother, had turned the gun into the police the day after the Hartigs' bodies were discovered. Portage County conducted ballistic tests on the gun, and eventually determined that it was not the murder weapon. (Id.) However, while at the Sheriff's Office, Marlene VanSteenberg provided a statement regarding events that took place in the days following the Hartig murders, before the gun was turned over for testing. (Id.) This statement was not disclosed to Noling's trial counsel. (Exs. F-G)

In her statement, Ms. VanSteenberg described that when she returned home from work on April 8, 1990, her husband informed her that his brother had stopped by that day and taken

their gun. (Id.) Ms. Van Steenberg also stated that on that same evening, she received a call from Raymond. (Id.) He was at the Portage County Sheriff's Department, and he told her that he had turned in the gun belonging to her and her husband. (Id.) He asked Ms. VanSteenberg to tell the detectives that he had their gun in his possession for at least three to four months prior, but Marlene declined to do so. (Id.) Ms. VanSteenberg stated that when she asked Raymond about his own gun, he told her that he threw it away because he "just had to do it," and he was upset that she would not lie for him. (Id.)

Furthermore, Ms. Van Steenberg stated that the very next day, April 9, 1990, after hearing about the double murder on the radio, she contacted Detective Don Doak and told him about her phone call with Raymond and about the gun he turned in. (Id.) In her statement, she also mentioned a conversation that she had with Shelton Morris, her husband's boss, about a month after Raymond's mysterious April 8, 1990 phone call. (Id.) Ms. Van Steenberg described what Morris relayed: that someone he knew was riding in Raymond VanSteenberg's truck near a skating rink when Raymond's son, Dennis VanSteenberg, picked up a gun that was kept in the truck and threw it out the window. (Id.) Neither the handwritten notes nor the typed copy of Ms. Van Steenberg's statement were provided to trial counsel. (Exs. F-G)

Taken alone, Marlene VanSteenberg's statement is material. However, this statement when combined with statements taken from Larry Clemetson, Raymond VanSteenberg, and Dennis VanSteenberg, would have provided counsel with details necessary to turn conflicting and incomplete evidence into an alternative suspect defense. The day after the Hartig murders, detectives began investigating Clemetson and the VanSteenbergs. (Ex. J). Notes from Clemetson's interview state that at around 10:00 p.m. on Friday, April 6, 1990, Clemetson and Dennis VanSteenberg drove to a skating rink in a truck belonging to Dennis's father, Raymond

VanSteenberg. (Exs. J). On the way to the rink, Dennis showed Clemetson a .25 automatic gun that was kept in the truck. (Id.) When Detectives Kaley and Doak asked Dennis for the gun during his interview on Sunday April 8, 1990, the gun was missing. (Ex. J). Neither Dennis nor Raymond VanSteenberg could produce the gun. (Id.)

Dennis VanSteenberg and Larry Clemetson provided authorities with conflicting details about the missing gun, but neither one ever produced the gun that police sought. Clemetson claimed that sometime after he and Dennis visited the skating rink that Friday, Dennis called asking about the gun's whereabouts. (Ex. J). Clemetson further stated that he then went to the skating rink, could not find the gun and reported it. Id. In contrast, Dennis stated that Raymond VanSteenberg removed the gun from the truck that Friday, at 5:30 p.m. (Id.) Notes from Dennis's interview on April 8 report that Dennis told police that he would come up with the gun and that the next day Kaley picked up a .25 automatic. (Ex. J). The notes also report that Doak received a phone call advising that the police had the wrong gun, but there is no mention of Marlene or Raymond VanSteenberg in that report. Id. A separate page of handwritten notes mentions only that Raymond picked up the gun from Marlene's house on Sunday and that he called Marlene to ask that she tell the police he had the gun for three to four months. (Ex. J). In an interview conducted about one month after the murders, Clemetson stated that he knew that police had the wrong gun and that Dennis told him that the gun the Sheriff's Office wanted had been used to kill three other people. (Ex. J).

If provided Marlene VanSteenberg's statement, trial counsel could have pieced together the disjointed evidence linking the VanSteenbergs, the missing gun, and the murder. Ms. VanSteenberg's statement provides possible explanations for the suspicious disappearance of Raymond VanSteenberg's gun. (Exs. C, D). Detectives investigating this murder without a

murder weapon immediately sought out Raymond VanSteenberg's gun, and Marlene's statement describes how Raymond kept them from getting it. (Id.) Raymond admits to throwing his gun away because "he just had to do it." (Id.) Furthermore, the statement describes how upset Raymond became when Marlene refused to participate in his deception. (Id.) In fact, according to Marlene, to this day, Raymond, formerly a regular visitor, had not visited or spoken with his sister-in-law since their conversation on April 8, 1990. (Id.) These details point directly to Raymond VanSteenberg as an alternative suspect, one that counsel surely would have pursued.

The statement also provides an alternative scenario in which Dennis may have disposed of the gun used in the murder, which matches details in Clemetson's statement. According to Marlene, Dennis threw the gun out the truck window on the way to the skating rink, and another man witnessed him doing it. (Id.) Counsel would have at least pursued Morris and this potential witness.

Both scenarios are ones that trial counsel would have further explored had the prosecution merely disclosed Marlene VanSteenberg's statement. The gun that was used to kill the Hartigs was never found, and the only witness at trial to place the murder weapon in Noling's possession was Joseph Dalesandro, an incredible witness who made conflicting testimony at trial. (See Tr. 1234). Ms. VanSteenberg's statement, as well as Nathan Chesley's statement, would have been used to combat the prosecution's weak case. Noling was undoubtedly entitled to that evidence, as required by Brady.

The new evidence illustrates the weakness of the original case

Even without this new evidence, the original case against Noling was weak. There was no physical evidence linking Noling to the crime, and only the inconsistent and unreliable testimony of Noling's alleged co-conspirators. This Brady material provides alternative suspects

that Noling's counsel would have pursued at trial, given the opportunity: Daniel Wilson, who was linked to the only physical evidence at the crime scene; and Raymond and Dennis VanSteenberg, both of whom were involved in suspicious gun activity just days after the Hartig murders, with the same type of gun used to commit the crime.

Brady requires a cumulative review of the evidence suppressed. Kyles, 514 U.S. at 436. The jury would not have believed, or at least had reasonable doubt about, the prosecution's case had defense counsel been provided with the suppressed evidence. Perhaps more importantly, this Court cannot have faith in the reliability of Noling's convictions with the suppression of material evidence.

This evidence becomes more compelling when coupled with other evidence of Noling's innocence offered in prior litigation, including:

- Evidence of insurance agents as alternative suspects (T.d. 258, 261-64, Ex. L), including that one agent owned a .25 Titan handgun (Id. at Ex. AA), one of only 4 models that could have been the murder weapon. (T.p. 1243); and that agent refused to take a polygraph examination. (Id. at Ex. Y).

- A witness, Jim Geib placed a dark haired man in his thirties, in a dark blue vehicle leaving the area of the Hartigs' home at a high rate of speed around the time of the murders. (Id. at Ex. K) Exhibit K notes that LeFever matches this description.

- Evidence of coercion and lies from the State's witnesses (Id. at Exs. D-F, N-P, JJ, KK, U, V), including, for example, the failure to mention the murder by witnesses as well as claims that Ron Craig threatened to frame witnesses.

- Inconsistencies among and between the State's witnesses, including psychological evidence casting doubt on Wolcott's testimony (Id. at Ex. HH) (Id. at Ex. GG, p. 2) II.

- The lack of a murder weapon, even after a search of Dalesandro's car. (Id. at Ex. SS).

- Evidence that the perpetrator knew the Hartigs (Id. at Exs. CC & DD). The Hartigs were shot sitting at their kitchen table (Id. at Exs. CC, DD). Tne subject was sitting at the table facing the door. (Id. at Exs. CC, DD). There was no sign of struggle and or alarm. (Id). Mr. Hartig's wallet was undisturbed. (Id. at Ex. CC). And a desk was ransacked with papers on the floor. (Id). This evidence suggested the Hartigs knew the perpetrator.

The evidence described above is even more important when evaluated in light of the material presented at trial and the evidence presented in Noling's first postconviction petition (T.d. 205-06, 212, 219), which included recantations by co-defendants Dalesandro and Wolcott, both of whom independently claimed to have been coerced and manipulated into falsely inculpating Noling in the Hartigs' murders. (T.d. 205, Exs. F, Y); and the evidence of Noling's innocence apparent from the trial record, including:

Noling's prior crimes were nonviolent and inept

Noling was a bumbling and inept criminal. In early April 1990, he robbed two elderly couples—the Hugheses and Murphys. Noling admitted to the robberies. He also admitted to having stolen a .25 caliber handgun during the Hughes robbery. (Tr. 1043.) Noling took that same gun with him to the Murphy robbery, where he accidentally fired it into the floor. (Tr. 839, 1376.) He immediately checked on Mrs. Murphy's well-being. (Tr. 1370.) When questioned about the event, Mrs. Murphy described Noling as being as scared as she was. (Id.) The prosecution then went on to argue that Noling, that same scared teen, went on to commit two calculated, execution-style murders a mere four hours later. The facts simply do not fit. Other than the coincidence that the Hartigs were elderly like the victims in Noling's two robberies, there are significant differences between the prior robberies and the Hartig murders that clearly distinguish them.

First, there was no violence associated with the Hughes and Murphy robberies. Noling admits to firing his weapon during the Murphy robbery; however, it was accidental and he immediately checked on Mrs. Murphy's well being. (Tr. 1370.) Mr. Murphy's testimony supports this version of events. He testified that Noling "evidently tripped or something. Anyhow the gun went off[.]" (Tr. 1376.) So even though Noling carried a weapon during both

robberies, he showed no inclination to harm anyone.

Second, Noling committed both the Hughes and Murphy robberies in close proximity to the Trandifer home. The four youths did not drive to the crime scenes. They robbed in their own neighborhood and ran through the woods to return home. (Tr. 835, 954.) Meanwhile, the Hartig murders would have required the youths to drive some distance to Atwater, Ohio. Noling never demonstrated any proclivity to venture out of his own neighborhood to commit crimes.

Third, nothing of value was stolen from the Hartigs' home. Mr. Hartig's wallet remained in his pocket. Mrs. Hartig still wore her rings. (Id. at 425.) Easily accessible cash was found in the house. (Id. at 429.) No small electronics were listed missing from the home. These were exactly the types of items Noling stole from both the Hughes and Murphy homes, yet they were left inexplicably undisturbed at the Hartig home. (See e.g., Tr. 831, 837, 953, 958, 1375-76.)

Numerous other details signal that Noling did not commit these murders. The Hartigs were found in their kitchen while the other robbery victims were placed in closets, bathrooms, or bedrooms. (Tr. 1044, 1375.) The phone wires were cut during the robberies (Tr. 1044), but no testimony indicated that the Hartigs' phone line was cut.

The only similarity between the Hartig murders and the Hughes and Murphy robberies is that all of the victims were elderly. That fact alone proves nothing. Cf. State v. Lowe, 69 Ohio St. 3d 527, 634 N.E.2d 616, 620 (1994) (other acts evidence offered for identity must tend to show by substantial proof that the crime charged and the other act are impressed with the defendant's 'behavioral fingerprint.'). If Noling's attorneys had the newly discovered evidence at the time of the trial, these inconsistencies, which the State used to convict Noling, could have been rebutted and explained. Instead, the defense was left only with Noling's adamant stance that he was innocent.

A lack of physical evidence linking Noling to the crime scene

Noling's fingerprints were not found at the scene, even though the perpetrator clearly touched many items in the Hartigs' home. Cigarette butts found at the crime scene were not linked to Noling, or any of his alleged accomplices. **On the contrary, as noted above, the recently discovered DNA analysis of Daniel Wilson does not exclude him as a suspect.** (Ex. B). Further, the bullets used to kill the Hartigs did not match the only .25 caliber handgun tied to Noling.

There was no murder weapon introduced at trial. Testimony established that Noling and St. Clair committed the Hughes robbery with a sawed off shotgun and a BB gun. (Tr. 842.) During that robbery, Noling stole a .25 caliber automatic handgun. (Tr. 953.) Noling then carried, and accidentally fired, that .25 during the Murphy robbery. (Tr. 1376.) Investigators recovered the .25 stolen from the Hugheses' home and fired during the Murphy robbery; which was the same type of weapon used to kill the Hartigs. (Tr. 1242, 1366.) However, this was not the weapon used to kill the Hartigs. (Tr. 1243.) Portage County Authorities actively pursued a missing .25 caliber automatic handgun owned by Raymond VanSteenberg, but this weapon was never located. (Exs. C, D).

Instead, Noling's alleged accomplices' testimony consistently referenced their possession of only three guns: a BB gun, a shotgun, and the .25 stolen during the Hughes robbery. (Tr. 832, 842, 949, 953, 1033-34, 1040, 1048.) When Wolcott described the guns Noling and St. Clair carried into the Hartig home, he indicated that Noling carried the small gun that he stole at the previous robbery. (Tr. 909.) Similarly, Dalesandro's inventory of the weapons carried on April 5, 1990 only accounted for three weapons. (Tr. 1048.)

Subsequently, Dalesandro's testimony diverged from Wolcott's and St. Clair's.

Dalesandro asserted that the boys possessed two small automatic guns. (Tr. 1066.) Dalesandro claimed that he sold one of the small guns to Chico after the Hartig murders. (Tr. 1059.) However, Dalesandro testified that Noling had placed the gun he used inside the Hartigs' home in the glove box, (Tr. 1064) and that Noling asked him to sell that gun after the police released Dalesandro from jail. (Tr. 1064.) Dalesandro implied that it was this second gun that Noling used in the Hartig murders.

However, there was substantial evidence that demonstrated that there was only one .25. Wolcott does not mention a second .25. St. Clair does not mention a second .25. Moreover, prior to the prosecution eliciting a statement from Dalesandro that there was a fourth gun, Dalesandro had consistently maintained that they only had possession of three guns—a .25 automatic, a BB gun, and a sawed off shotgun. (Tr. 1040, 1048.) And, Dalesandro did not mention that second .25 automatic until February 24, 1993, years after the crime and his earlier inculpatory statements. (Tr. 1115.) Dalesandro's belated claims demonstrate that there was only one .25, the one the police recovered—and that weapon was not used to kill the Hartigs.

If defense counsel had the evidence related to the alternate suspects, and especially the evidence showing that Wilson, already a convicted murderer at the time of trial, was not excluded by the DNA test, there would at least have been reasonable doubt that Noling committed the murders, let alone a possible finding of not-guilty. Moreover, the suspicious activities surrounding the disappearance of the VanSteenberg gun was undoubtedly material to the subsequent search effort, and a failure to find, the .25 caliber gun used in the Hartig murder. In fact, all of the new evidence goes to the very heart of the issues in this case.

Co-defendants receiving favorable plea-bargains in exchange for their testimony

At trial, Wolcott and Dalesandro maintained that they went to Atwater, that Noling and

St. Clair entered the Hartigs' home, and that Noling killed Mr. and Mrs. Hartig. Both youths gave detailed testimony about a plan, Noling's actions, incriminating statements, and even testimony about the smell and appearance of Noling's gun. (See e.g., Tr. 827, 847-48, 850-51, 1035-36, 1041-42, 1050, 1053, 1054-55, 1057.) In exchange for this testimony, neither Wolcott nor Dalesandro spent a single day in prison for the Hartig murders..

Wolcott received complete immunity in exchange for his testimony. (Tr. 886-87.) He will never be prosecuted for his alleged participation in the crimes for which Noling now sits on death row. (Tr. 886-87.) Even though Dalesandro was supposed to receve a prison term for his alleged involvement in the Hartig murders, the proseucotr agreed to recommend that Dalesandro's plea bargain be reinstituted if he cooperated at Noling's trial. (Tr. 1138.) Reinstitution of Dalesandro's plea bargain meant that his participation in the Hartigs' deaths cost him no prison time, as that sentence ran concurrently with his aggravated trafficking sentence.

These youths had nothing to lose and everything to gain by implicating Noling in these murders, which makes their credibility highly questionable.

Co-defendants giving inconsistent testimony

During Wolcott and Dalesandro's initial questioning in 1990, immediately following the Hartig murders, both claimed to know nothing about the Hartig murders. (Tr. 875, 1100.) They continued to assert that lack of knowledge for years. Of course, both later gave statements inculpating Noling in the Hartig murders.

However, even as they changed their stories, the stories they did tell repeatedly demonstrated that they knew nothing about the Hartig murders.

- Wolcott could not take investigators to the Hartigs' home on Moff Road. (Tr. 895.)
- Wolcott asked prosecutor Durst, during his statement, if he was "finally on his side." (Tr. 905.)

- Wolcott told investigators that he had been drinking on the day of the murders. Wolcott described himself as "toasted," in the back of the car "dozing off," as "pretty drunk," and as "wobbling and weaving." (Tr. 910.)

- Wolcott admitted that he did not know what he was telling investigators:

> For some reason I'm not sure. Like I said, I can remember a garage but I can't explain it to you. Just seems like for some reason it's another house and another dream. I don't know if what I'm telling you is in my mind, I mean, I'm not sure if it's mixed with other things or not about details of the house and road and so on and so forth. I mean, it could be some other house, some other road I have seen. Do you know what I mean. Just what you told me. (Tr. 917.)

- The prosecutor determined that Dalesandro's statement contained major omissions, was not truthful in part, and minimized his participation in the Hartig murders. (Tr. 1008.)

- Dalesandro could not identify the Hartigs' home. (Tr. 1098.)

- Dalesandro could not pronounce Atwater. (Tr. 1104.)

- Dalesandro could not name the road where the Hartigs lived. (Tr. 1109.)

Even as they confessed to their crimes, Wolcott and Dalesandro made it clear that they did not know what they were talking about.

Six days after the prosecutor revoked Dalesandro's plea bargain, and the trial court sentenced him to the maximum consecutive sentences for his participation in the Hartig murders, Dalesandro's memory became fresher and clearer than ever before. Prior to the revocation of Dalesandro's plea deal, Dalesandro never mentioned seeing an old man outside of the Hartigs' home, he never mentioned seeing blood on Noling's clothes, he never mentioned seeing smoke come from Noling's gun, and he never mentioned the gun-dealer, Chico. (Tr. 1111-15, 1123.) Dalesandro asserted that he kept this information from the prosecution because he did not want to get Noling into too much trouble. (Tr. 1113, 1119.) Dalesandro's claim was unbelievable—having inculpated Noling in a capital murder, Dalesandro's statements already placed Noling in

serious trouble. The more likely scenario: Dalesandro made up even more phony information in an effort to get the prosecutor to modify his sentence. (Tr. 1010 .)

The prosecutor called Dalesandro a liar. (Tr. 1008-09.) Resultantly, the prosecutor revoked his plea bargain and Dalesandro received the maximum sentence available consecutive to his current sentence for aggravated trafficking. (Tr. 1009.) Rather than looking at five to fifteen years running concurrently with his three to fifteen years for drug trafficking, Dalesandro faced eight to thirty years. It was only after the State sentenced Dalesandro that his memory was suddenly fine-tuned. He made up more incriminating facts to ensure that he would regain his original deal with the prosecutor.

All of this mounting evidence only underscores the unreliability and weakness of the State's case.

2. Ineffective assistance of counsel

It is Noling's position that this information was not provided to the defense at the time of trial. (Exs. F-G) If the State is able to demonstrate this material was provided to defense counsel, then counsel rendered ineffective assistance of counsel in failing to investigate and pursue the evidence related to Wilson and to VanSteenberg. The information, if it were in trial counsel's possession, similarly would change the result if this Court remands for a new trial.

Trial counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 668, 691 (1984)). In addition to investigation, counsel has a duty to present evidence "that demonstrates his client's factual innocence, or that raises sufficient doubts as to that question to undermine confidence in the verdict . . . ." Reynoso v. Giurbino, 462 F.3d 1099, 1112 (9th Cir. 2006); see also Avila v. Galaza, 297 F.3d 911, 919 (9th Cir. 2002); Hart v. Gomez, 174 F.3d

1067, 1070 (9th Cir. 1999); Lord v. Wood, 184 F.3d 1083, 1093 (9th Cir. 1999). Failure to present exculpatory evidence "is ordinarily deficient, 'unless some cogent tactical or other consideration justified it.'" Griffin v. Warden, Maryland Correctional Adjustment Center, 970 F.2d 1355, 1358 (4th Cir. 1992) (internal citations omitted).

House v. Bell, 547 U.S. 518 (2006), is relevant to this Court's consideration. In House, the petitioner presented evidence of an alternative suspect. Despite the fact that the evidence was "by no means conclusive," the Supreme Court found that, coupled with other evidence the alternative suspect evidence "would reinforce other doubts as to House's guilt." Id. at 2085. The evidence related to both Wilson and VanSteenberg would likewise reinforce doubts about Noling's guilt. Resultantly, if counsel is proved to have possessed this information, then their deficient performance prejudiced Noling.

3. Actual innocence

The information presented in this motion provides strong support for the position Noling has maintained for twenty years—he did not kill Bearnhardt and Cora Hartig. Each of Noling's co-defendants recanted their testimony and confessed their lies years ago. Review of the above information further strengthens Noling's claims.

Noling is actually innocent of these crimes. His convictions and death sentence violate the Eighth Amendment. See Herrera v. Collins, 506 U.S. 390, 419 (1993) (O'Connor, J., joined by Kennedy, J., concurring) ("executing the innocent is inconsistent with the Constitution"); id. (O'Connor, J., joined by Kennedy, J., concurring) ("the execution of a legally and factually innocent person would be a constitutionally intolerable event."); id. at 429 (White, J., concurring) ("I assume that a persuasive showing of 'actual innocence' made after trial, even though made after the expiration of the time provided by law for the presentation of newly

discovered evidence, would render unconstitutional the execution of petitioner in this case."); id. at 430 (Blackmun, J., joined by JJ. Stevens and Souter, dissenting) ("Nothing could be more contrary to contemporary standards of decency ... than to execute a person who is actually innocent."); Schlup v. Delo, 513 U.S. 298, 316 (1995); see also House v. Bell, 311 F.3d 767, 768 (6th Cir. 2002); Wilson v. Greene, 155 F.3d 396, 404 (4th Cir. 1998); Milone v. Camp, 22 F.3d 693, 699-700 (7th Cir. 1994) (internal citations omitted); Cornell v. Nix, 119 F.3d 1329, 1333 (8th Cir. 1997); Carriger v. Stewart, 132 F.3d 463, 476 (9th Cir. 1997) (internal citations omitted); Lopez v. Mondragon, No. 93-2148, 28 F.3d 113 (10th Cir. June 20, 1994); Jackson v. Calderon, 211 F.3d 1148, 1165 (9th Cir. 2000); Felker v. Turpin, 83 F.3d 1303, 1312 (11thCir. 1996).

Noling incorporates section 1 herein as if fully rewritten. The materials suppressed by the prosecution would have proved his actual innocence of the Hartig murders. At a minimum, the jury would have had real and serious doubts about Noling's guilt that would have resulted in an acquittal. This Court cannot have confidence in the trial jury's verdict, and it must be overturned and a new trial ordered.

B. This evidence has been discovered since trial

Prior to trial, Noling filed six motions to access all of the information to which he was entitled under the Fourteenth Amendment and Ohio R. Crim. P. 16. (See Motions filed 11/15/92, 11/16/92, 11/22/95 (3 motions), and 12/5/95.) Those motions included requests for information regarding: others who may have perpetrated the crime, names and addresses of other suspects and what led them to be considered suspects, and any statements that suggest doubt as to Noling's identity as the perpetrator of these offenses, among numerous others. The prosecution

opposed some of these requests. (See, e.g., Motion filed 11/30/95.) By doing so, the State suppressed material evidence that went to the very heart of Noling's case.

The Supreme Court has confirmed the defendant's right to rely on the prosecution's representation that all Brady material was provided. Banks v. Dretke, 540 U.S. 668, 693 (2004) (finding that defendant rightfully relied on prosecution's representations that all Brady material was provided). The prosecution in Banks "asserted, on the eve of trial, that it would disclose all Brady material." Id. The Court found no fault in Banks's reliance on this representation. Id. (citing Strickler v. Greene, 527 U.S. 263, 283-84 (1999)); see also Dobbs v. Zant, 506 U.S. 357, 359 (1993) (per curiam) (affirming defendant's right to rely on prosecution's representations with respect to the record).

In state post-conviction, Noling again requested development of the facts upon which he now relies to support his misconduct and innocence claims. (See Postconviction petition and amendments filed 7/23/97, 7/31/97, 8/26/97, 9/5/97.) In his First Claim for Relief, Noling alleged he was actually innocent of the Hartigs' murders. (PCP filed 7/23/97.) In his Second Claim for Relief, Noling asserted that the prosecution knowingly used false evidence to obtain his conviction. (Id.) In his Third Claim for Relief, Noling argued that the prosecution suppressed material exculpatory evidence. (Id.) Noling requested an evidentiary hearing to establish the existence of the facts to support these claims. (PCP and amendments filed 7/23/97, 731/97, 8/26/97.) This Court dismissed Noling's post-conviction petition after a truncated hearing that denied his requests for full fact development. (State v. Noling, Case No. 03-1950, MISJ filed 11/6/03.)

In his appeal to the Portage County Court of Appeals from the dismissal of his post-conviction petition, Noling raised the failure of the trial court to award him a complete

evidentiary hearing. The Court of Appeals overruled the claim. In the Ohio Supreme Court Noling again raised the issue of the trial court's failure to grant him a full evidentiary hearing. The Ohio Supreme Court refused to exercise its discretional jurisdiction to hear his appeal. After having done all of the above, and being summarily denied each time, Noling made a public records request in his co-defendant's cases and obtained the Wilson and VanSteenberg material.

D. The new evidence could not have been discovered before trial with due diligence

This evidence could not have been discovered through due diligence because the prosecution, the only source for this evidence, never disclosed it. In fact, the prosecution failed to disclose this evidence even after repeated requests from Noling to provide this very type of evidence.

E. The new evidence is material to the events at issue in this case

Noling was convicted of killing the Hartigs, even though he claimed (and to this day continues to claim) that he was innocent. His earlier crimes, which Noling readily admitted to, were nonviolent and rather inept. There was no physical evidence linking Noling to the crime. Instead, his conviction rested upon the word of two co-defendants who received extremely favorable plea bargains in exchange for their testimony. Further, the prosecution's witnesses' testimony was plagued with inconsistencies and misstatements.

The prosecution's trial case was weak at best. Compelling evidence such as this, directly on point to the central issue at trial—who committed the Hartig murders—would have been material to the issue.

F. The new evidence is not merely cumulative of former evidence

No evidence was introduced at trial identical to that outlined above. Review of the trial record reveals this motion is not cumulative of trial efforts.

G. The new evidence does not merely impeach or contradict former evidence

The evidence presented in this motion does not merely impeach or contradict. It presents to viable alternative suspects that defense counsel could have investigated and pursued in their defense of Noling.

II. A NEW TRIAL MUST BE GRANTED BECAUSE THE PROSECUTION'S MISCONDUCT MATERIALLY AFFECTED NOLING'S RIGHTS.

The Court is empowered with the authority to grant Noling a new trial under these particular circumstances, where it is shown that the prosecution withheld material evidence in violation of a defendant's substantive rights. O.R.C. § 2945.70(B). Such is the case here. The evidence delineated above is material under Brady. Moreover, Noling has also shown that the State knew about his evidence and failed to provide it. Given that this material evidence was withheld by the State, in violation of the prosecutor's legal and ethical duties, the Court must grant Noling a new trial.

III. CONCLUSION

Noling has discovered "new evidence" material to his defense, "which he could not with reasonable diligence have discovered and produced at the trial." See O.R.C. § 2945.79(F). See also O.R.C. § 2945.79(B). The prosecution withheld material exculpatory evidence. Under O.R.C. §§ 2945.79(B) and (F) and Ohio R. Crim. P. 33(A)(2) and (6), Noling requests that this Court grant his Motion for a New Trial.

Respectfully submitted,

Office of the
Ohio Public Defender

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Supervisor, Death Penalty Division
Counsel of Record

Jennifer A. Prillo - 0073744
Assistant State Public Defender

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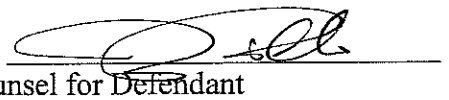
and

James A. Jenkins - 0005819
1370 Ontario, Suite 2000
Cleveland, Ohio 44113
(216)363-6003
(216)363-6013 (Fax)
Counsel For Petitioner

By: 
Counsel for Defendant

Certificate Of Service

I hereby certify that a true copy of the foregoing **Instanter Motion For New Trial** was forwarded via regular mail to Prosecutor Victor Vigluicci, 241 South Chestnut St. Ravenna, Ohio 44266 on this 15 day of June, 2010.

Jennifer A. Prillo
Assistant State Public Defender

320256

Attorney General
Lee Fisher

BCI-30 (Rev. 3-91)

Bureau of Criminal Identification and Investigation

Laboratory Report

To: Sheriff P.K. Howe
Portage County Sheriff's Office
213 W. Main Street
Ravenna, Ohio 44266
ATTN: Det. John Ristity

BCI Lab Number: 90-31768

Analysis Date: June 19, 1991

Agency No: 90-2674

Re: Double Homicide
Victims: Bearnhardt Hartig
Cora Hartig

FINDINGS:

Analysis of an extract made from the cigarette butt in item #1 revealed elevated levels of amylase which is indicative of the presence of saliva. Typing of the extract failed to reveal detectable levels of secreted blood group substances. The cigarette may have been smoked by a non-secretor.

Typing of the blood from Daniel E. Wilson, BCI & I case number 91-31692-D, revealed him to be a type A non-secretor.

Dale L. Laux
Forensic Scientist

DLL/cn
T061991

EXHIBIT
A

PENGAD 800-631-6989

000517

Please address inquiries to the office indicated, using the BCI lab number.

[ ] BCI & I - Fremont Office
405 Pine Street
Fremont, Ohio 43420
Phone: (419) 334-3851

[ ] BCI & I - London Office
P.O. Box 365
London, Ohio 43140
Phone: (614) 466-8204

[ ] BCI & I - Richfield Office
P.O. Box 336
3333 Brecksville Road
Richfield, Ohio 44286
Phone: (216) 659-4600

[ ] BCI & I - Cambridge Office
60788 Southgate Road
Byesville, Ohio 43723
Phone: (614) 439-3655

4-24-90
2:00 pm

NATHEN CHESLEY
[redacted] - 12 YRS
DOB 11-3-77
SHIRLEY SPINNEY 7236 CLARK Rd
WORKS for College MEDICINE
7236 CLARK Rd
ATWATER, Ohio
PHONE 947-3535

NATHEN MADE THE STATEMENT HE THOUGHT IT WAS cool WHAT HAPPEND TO THE HARRIS'S.
NATHEN MADE THE STATEMENT HIS BROTHER Did it.
SHIRLEY SPINNEY - FOSTER PARENT - 3 CHILDREN
CANTON TIMPKEN School
ATENDS MAPLE Wood School. IN Feb-90
WORKED ARBYS RESTAURANT.
CRUSHED RUBBER.
GETS ALONG FAIR IN School, MISSED DAYS LAST TWO WKS.
Kids WALK THE DOGS OUT IN THE Country.
NATHEN MADE THE STATEMENT TO ME COOPER THAT HE OWED SOME MONEY.
NATHEN IS OUT OF PATH WAY OUT OF CANTON, Oh
REFERED FROM PATH WAY CANTON, Ohio
NATHEN WAS INVOLVED PATH WAY APROX 2-YRS
STEVE CASE WARRANTY 84-1358

000593

EXHIBIT
B

90-2674 90-2674

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

PC-0847

I, Marlene M. VanSteenberg, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Det. Tom Rusty. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

DOB. 02-07-46 SSN. [redacted] 358-7288

I am 45 years of age, and I live at 9492 Minyard Rd., Ravenna, OH. 44266

On April 8, 1990 I was at work when I got home, Richard L. VanSteenberg told me that his brother Raymond VanSteenberg was at the house and got the gun, we only have one pistol. Raymond wanted to show the gun to somebody. My husband took the clip out because Raymond had just been charged for Dom. domestic violence on Friday, April 6th, 1990.

On April 8, 1990 at about 5:00 p.m. when I got home from work Raymond called me the phone. He was calling from the Sheriff's Dept. and said the detective's wanted him to turn in a gun. Raymond didn't say why. He told me he turned in our gun and I was to tell the detectives that we had our gun for at least 3-4 months. I told him I would not do that and asked where the gun was at. He told me he threw it away. I asked why he threw the gun away and he said he just had to do it. He was upset that I wouldn't lie for him.

On April 9, 1990 while I was on my way to work, I heard on the radio about the double murder. When I got to work Portage County Main Court I contacted a detective at the Sheriff's Dept. and talked to Detective Det. Rusty. I told him everything about Raymond getting the gun from my husband and turning it in to the Sheriff's office.

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

000141

Dated at 203 N. Main ST. Ravenna Ohio this 01 day of April 19 91.

WITNESS: Det. Rusty Marlene VanSteenberg

WITNESS: [illegible]

EXHIBIT C

90-2674

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

90-2674
Page

PC-0847

I, Marlene M. VanSteenberg, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Lt. John Petty. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 45 years of age, and I live at 9492 Minyoung Rd, Ravenna, OH. 44266

Sunday, April 8, 1990 was the last day he was at my house, he used to come at least once a week, for the last 2-3 years. He doesn't call on the phone.

Within a month after April 8, 1990 I heard from Shelton Morris (my husband's boss) that he was told from a guy that was in the truck (I think it was Jeff) with Dennis VanSteenberg (who is Raymonds son) when they stopped a guy slid out from under the seat, Dennis threw the gun out the window near the abatin sink which is located at S.R. 224 and Allions Rd - Deerfield, Ohio. I do not know why Dennis threw the gun out.

On today date - April 1, 1991 Lt John Petty showed a Raven 25 - Cal. Semi Auto pistol Model MP25, Serial # 1441154 - no clip and one shell. Mr. Petty showed me an ATF form 4473 dated 12-11-88 for the purchase gun. Presently they have because I filled it out for my husband and my husband signed it.

MVS

On Sunday March 24 1990 my husband's sister Cleo called and asked my husband to call Raymond because he was there. I was in the shower. He did call him and talked for a short time. MVS

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at RCSO. Detective Bureau this 01 day of April 19 91.

WITNESS: [signature]

WITNESS: [signature]

Marlene VanSteenberg
Signature of person giving voluntary statement.

000142

TRANSCRIPT OF MARLENE M. VAN STEENBERG
Voluntary Statement 04-01-91
J.R.

Age: 45
Address: 9492 Minyoung Road
Ravenna, Ohio 44266

Sunday, April 8, 1990 was the last day he was at my house. He used to come at least once a week for the last two or three years. He doesn't call on the phone.

Within a month after April 8, 1990 I heard from Shelton Morris (My husband's boss) that he was was told from a guy that was in the truck (I think it was Jeff) with Dennis Van Steenberg(who is Raymond's son) when they stopped a gun slid out from under the seat. Dennis threw the gun out the window near the skating rink which is located at S.R. 224 and Alliance Road, Deerfield, Ohio. I do not know why Dennis threw the gun out.

On today's date, April 1, 1991 Lt. John Ristity released a Raven 25 cal. Semi Auto pistol , Model #MP25, Serial #1446154, no clip, and one Uncle Mike's holster to me. Lt. Ristity showed me an ATF form 4473 dated 12-11-88 for the mentioned gun. I remember this form because I filled it out for my husband and my husband signed it.

On Sunday, March 24, 1990 my husband's sister Clar called and asked my husband to call Raymond because he was threatening suicide. He did call him and talked a short time.

On April 8, 1990 I was at work, when I got home Richard L. Van Steenberg told me that his brother Raymond Van Steenberg was at the house and got the gun. We only have one pistol. Raymond wanted to show the gun to somebody. My husband took the clip out because Raymond had just been charged for domestic violence on Friday, April 6th, 1990.

On April 8, 1990 at about 5:00 p.m. when I got home from work, Raymond called on the phone. He was calling from the Sheriff's Department and said the detectives wanted him to turn in a gun. Raymond didn't say why. He told me he turned in our gun, and I'm to tell the detectives that he had our gun for at least three or four months. I told him I would not do that and asked where his gun was at. He told me he threw it away. I asked why he threw the gun away and he said he just had to do it. He was upset that I wouldn't lie for him.

On April 9, 1990 while I was on my way to work I heard on the radio about the double murder. When I got to work (Portage County Muni Court) I contacted a detective at the Sheriff's Department and talked to Detective Don Doak. I told him everything about Raymond getting the gun from my husband and turning it into the Sheriff's Office.

EXHIBIT
D

PENGAD 800-631-6989

In the Court of Common Pleas
Portage County, Ohio

State of Ohio, Case No. 95-CR-220

Plaintiff-Respondent,

vs.

Tyrone Noling,

Defendant-Petitioner.

Affidavit of Nathan Chesley

County of Summit

State of Ohio

I, Nathan Chesley, being duly sworn state the following:

1. I do not know Tyrone Noling. I do not recall hearing about the Hartig murders in 1990.

2. In 1990, I was a foster child living at Shirley Spinney's home in Atwater, Ohio. I was in high school at the time.

3. Dan Wilson was just moving out of Ms. Spinney's home when I moved in. Wilson continued to visit the home after he moved out.

4. Wilson was a heavy drinker. Wilson was the type of guy who turned into a different person when he was drinking. WILSON OFTEN DION'T HAVE MEMORIES OF WHAT HAPPENED AFTER A NIGHT OF DRINKING. NC

5. Wilson scared the other boys who lived with Ms. Spinney, including me. Wilson got drunk and beat up people. Wilson was always saying he was going to kill people.

6. I recall Wilson waking me up in the middle of the night and saying "let's go" when I was around sixteen years old. Wilson would tell me how he had just gotten into a fight at a bar and how I needed to go back with him to the bar to clear the place out.

7. Wilson was violent in Ms. Spinney's house and once tried to stab Ms. Spinney.

EXHIBIT
E

PENGAD 800-631-6989

8. Ms. Spinney's foster home was not a good setting for me, or for Wilson. Ms. Spinney would hand pick the boys she wanted from Pathways in Canton, Ohio. I believe she did this because she was having sex with some of the boys she fostered.

9. I am sure Wilson was breaking into places, including private homes, and stealing money in 1990.

10. I also believe Wilson could have committed the Hartig murders; it sounds like something Wilson would do. In fact, I think it's likely that he did it.

11. I believe that Wilson had guns in 1990.

12. I recall Wilson driving a blue Dodge Omni for a long time before the engine blew up.

13. I have reviewed what is attached to this affidavit as Exhibit A. Exhibit A is a handwritten document bearing the number 000593 at the bottom. This document appears to be a set of notes that relate to me and, in particular, a statement I made on or about April 1990 indicating that I thought that what happened to the Hartigs was cool and that my brother committed the murders. While I do not have a specific recollection of making this statement, I do not deny that I made it and am sure that the "brother" that I referred to was my foster-brother, Dan Wilson. As I stated above, I believe that the Hartig murders were crimes that Wilson was capable of and likely committed. AFTER REVIEWING THIS EXHIBIT I HAVE MORE RECOLLECTION NOW OF MAKING THIS STATEMENT. NC

Further Affiant sayeth naught.

Nathan Chesley

Sworn to and subscribed before me this 13th day of January, 2010.

NOTARIAL SEAL STATE OF OHIO

KELLY HEIBY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 11-5-2013

Notary Public

4-24-90
2:00 PM

NATHEN CHESLEY [redacted]
DOB 11-3-79 — 10 YRS
SHIRLEY SPINNEY 7236 CLARK Rd
WORKS for College medicine
7236 CLARK Rd
ATWATER, Ohio
PHONE 947-3535

NATHEN MADE THE STATEMENT HE THOUGHT IT WAS COOL WHAT HAPPENED TO THE HARRYS.
NATHEN MADE THE STATEMENT HIS BROTHER DID IT.
SHIRLEY SPINNEY - FOSTER PARENTS - 3 CHILDREN
CANTON TEMPLETON SCHOOL
ATTENDS MAPLE WOOD SCHOOL. IN Feb-90
WORKED ABBYS PANTRY.
CRUSHED RUBBER.
GETS ALONG FAIR IN SCHOOL, MISSED DAYS LAST TWO WKS.
KIDS WALK THE DOGS OUT IN THE COUNTRY.
NATHEN MADE THE STATEMENT TO ME COOPER THAT HE OWED SOME MONEY.
NATHEN IS OUT OF PATH WAY OUT OF CANTON, OH
REFERED FROM PATH WAY CANTON, OHIO
NATHEN WAS INVOLVED PATH WAY APROX 2-YRS
STEVE CASE Wheeling 54-1358

EXHIBIT
A

000593

In The Court Of Common Pleas
Portage County, Ohio

State Of Ohio,

Plaintiff,

vs. Case No. 1995 CR 00220

Tyrone Noling,

Defendant.

Affidavit of George Keith

County of Summit :

State of Ohio :

I, George Keith, being duly sworn state the following:

1. I am an attorney licensed to practice law in the State of Ohio. I represented Tyrone Noling during his capital trial, along with attorney Pete Cahoon.

2. I reviewed several documents provided to me by Mr. Noling's attorney Jennifer Prillo. These exhibits are identified as Exhibits A through D.

3. I do not recall receiving these exhibits during the discovery process at Mr. Noling's trial. I also do not recall learning the substantive information contained in those exhibits.

Further Affiant sayeth naught.

George Keith

Sworn to and subscribed before me this 31 day of April, 2010.

Notary Public

317894

ROSE FORSYTH, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires Jan. 18, 2011

EXHIBIT
F

NOAD 800-631-6989

Attorney General
Lee Fisher

BCI-30 (Rev. 3-91)

Bureau of Criminal Identification and Investigation

Laboratory Report

To: Sheriff P.K. Howe
Portage County Sheriff's Office
213 W. Main Street
Ravenna, Ohio 44266
ATTN: Det. John Ristity

BCI Lab Number: 90-31768

Analysis Date: June 19, 1991

Agency No: 90-2674

Re: Double Homicide
Victims: Bearnhardt Hartig
Cora Hartig

FINDINGS:

Analysis of an extract made from the cigarette butt in item #1 revealed elevated levels of amylase which is indicative of the presence of saliva. Typing of the extract failed to reveal detectable levels of secreted blood group substances. The cigarette may have been smoked by a non-secretor.

Typing of the blood from Daniel E. Wilson, BCI & I case number 91-31692-D, revealed him to be a type A non-secretor.

Dale L. Laux
Forensic Scientist

DLL/cn
T061991

000517

Please address inquiries to the office indicated, using the BCI lab number.

[ ] BCI & I - Fremont Office
405 Pine Street
Fremont, Ohio 43420
Phone: (419) 334-3851

[ ] BCI & I - London Office
P.O. Box 365
London, Ohio 43140
Phone: (614) 466-8204

[X] BCI & I - Richfield Office
P.O. Box 336
3333 Brecksville Road
Richfield, Ohio 44286
Phone: (216) 659-4600

[ ] BCI & I - Cambridge Office
60788 Southgate Road
Byesville, Ohio 43723
Phone: (614) 439-3655

4-24-90
2:00 pm

NATHEN CHESLEY [redacted]
DOB 11-3-79 - 10 YRS
SHIRLEY SPINNEY 7236 CLARK Rd
WORKS for College MEDICINE
7236 CLARK Rd
ATWATER, Ohio
PHONE 947-3535

NATHEN MADE THE STATEMENT HE THOUGHT IT WAS COOL WHAT HAPPENED TO THE HARRIS'S.
NATHEN MADE THE STATEMENT HIS BROTHER Did it.
SHIRLEY SPINNEY - FOSTER PARENTS - 3 CHILDREN
CANTON TIMPKEN SCHOOL
ATENDS MAPLE WOOD SCHOOL. 14 Feb-90
WORKED ARBYS RAVENNA.
CRUSHED RUBBER.
GETS ALONG FAIR IN SCHOOL, MISSED DAYS LAST TWO WKS.
KIDS WALK THE DOGS OUT IN THE COUNTRY.
NATHEN MADE THE STATEMENT TO ME COOPER THAT HE OWED SOME MONEY.
NATHEN IS OUT OF PATH WAY OUT OF CANTON, OH
REFERED FROM PATH WAY CANTON, OHIO
NATHEN WAS INVOLVED PATH WAY APROX 2-YRS
STEVE CASE WHOLESY-1358

000593

90-2674 90-2674

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

PC-0847

I, Marlene M. VanSteenberg, am not under arrest for, nor am I being detained for any crimin
DOB, 02-07-46 S.S.N. [redacted]
offenses concerning the events I am about to make known to Lt. John Ritity
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the fol
lowing information of my own free will, for whatever purposes it may serve. 358-2288

I am 45 years of age, and I live at 9492 Minyard Rd, Ravenna, OH. 44266

On April 8, 1990 I was at work, when I got home, Richard L. VanSteenberg told me that his brother Raymond VanSteenberg was at the house and got the gun, we only have one pistol. Raymond wanted to show the gun to somebody, my husband took the clip out because Raymond had just been charged for ~~DV~~ domestic violence on Friday, April 6th 1990.

On April 8, 1990 at about 5:00 p.m. when I got home from work Raymond called on the phone. He was calling from the Sheriff's Dept. and said the detectives wanted him to turn in a gun. Raymo didn't say why. He told me he turned in our gun, and I was to tell the detectives that he had our gun for at least 3-4 months. I told him I would not do that and asked where the gun was at. He told me he threw it away, I asked why he threw the gun away and he said he just had to do it. He was upset that I wouldn't lie for him.

On April 9, 1990 while I was on my way to work, I heard on the radio about the double murder. When I got to work (Portage County Mun Court) I contacted a detective at the Sheriff's Dept. and talked to Detective Jon Dark. I told him everything about Raymond getting the gun from my husband and turning it in to the Sheriff's Office.

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. 000141

Dated at Portage County Sheriff's D.T. Bureau 203 W. Main St. Ravenna OH. this 01 day of April 19 91.

WITNESS: [signature] Marlene VanSteenberg

WITNESS: [signature]

...tary statement

90-2674

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

90-2674 Page

PC-0847

I, Marlene M. VanSteenberg, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Lt. John Bixler. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 45 years of age, and I live at 9492 Minyoung Rd, Ravenna, OH. 44266

Sunday, April 8, 1990 was the last day he was at my house, he used to come at least once a week, for the last 2-3 years. He doesn't call on the phone.

Within a month after April 8, 1990 I heard from Shelton Morris (my husband's boss) that he was told from a guy that was in the truck (I think it was Jeff) with Dennis VanSteenberg (who is Raymonds son) when they stopped a gun slid out from under the seat, Dennis threw the gun out the window near the skating rink which is located at S.R. 224 and Alliance Rd - Deerfield, Ohio. I do not know why Dennis threw the gun out.

On today's date - April 1, 1991 Lt. John Bixler showed a Raven 25 - Cal. Semi Auto pistol Model #MP25, Serial # 1446154 - no clip and one thumb screws both to me. Lt. Bixler showed me an ATF form 4473 dated 12-11-88 for the mentioned gun. Dennis the form because I filled it out for my husband and my husband signed it.

MVS

On Sunday March 24 1990 my husband's sister, Clara called and asked my husband to call Raymond because he was thinking of suicide. He did call him and talked for a short time. MVS

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at RCSO. Detective Bureau. This 01 day of April 19 91.

WITNESS: Lt. John Bixler

WITNESS: Linda Cook

Marlene VanSteenberg
Signature of person giving voluntary statement.

000142

TRANSCRIPT OF MARLENE M. VAN STEENBERG
Voluntary Statement 04-01-91
J.R.

Age: 45
Address: 9492 Minyoung Road
Ravenna, Ohio 44266

Sunday, April 8, 1990 was the last day he was at my house. He used to come at least once a week for the last two or three years. He doesn't call on the phone.

Within a month after April 8, 1990 I heard from Shelton Morris (My husband's boss) that he was was told from a guy that was in the truck (I think it was Jeff) with Dennis Van Steenberg(who is Raymond's son) when they stopped a gun slid out from under the seat. Dennis threw the gun out the window near the skating rink which is located at S.R. 224 and Alliance Road, Deerfield, Ohio. I do not know why Dennis threw the gun out.

On today's date, April 1, 1991 Lt. John Ristity released a Raven 25 cal. Semi Auto pistol , Model #MP25, Serial #1446154, no clip, and one Uncle Mike's holster to me. Lt. Ristity showed me an ATF form 4473 dated 12-11-88 for the mentioned gun. I remember this form because I filled it out for my husband and my husband signed it.

On Sunday, March 24, 1990 my husband's sister Clar called and asked my husband to call Raymond because he was threatening suicide. He did call him and talked a short time.

On April 8, 1990 I was at work, when I got home Richard L. Van Steenberg told me that his brother Raymond Van Steenberg was at the house and got the gun. We only have one pistol. Raymond wanted to show the gun to somebody. My husband took the clip out because Raymond had just been charged for domestic violence on Friday, April 6th, 1990.

On April 8, 1990 at about 5:00 p.m. when I got home from work, Raymond called on the phone. He was calling from the Sheriff's Department and said the detectives wanted him to turn in a gun. Raymond didn't say why. He told me he turned in our gun, and I'm to tell the detectives that he had our gun for at least three or four months. I told him I would not do that and asked where his gun was at. He told me he threw it away. I asked why he threw the gun away and he said he just had to do it. He was upset that I wouldn't lie for him.

On April 9, 1990 while I was on my way to work I heard on the radio about the double murder. When I got to work (Portage County Muni Court) I contacted a detective at the Sheriff's Department and talked to Detective Don Doak. I told him everything about Raymond getting the gun from my husband and turning it into the Sheriff's Office.

In The Court Of Common Pleas
Portage County, Ohio

State Of Ohio,
Plaintiff,

vs. Case No. 1995 CR 00220

Tyrone Noling,
Defendant.

Affidavit of Peter T. Cahoon

County of Summit :

State of Ohio :

I, Peter T. Cahoon, being duly sworn state the following:

1. I am an attorney licensed to practice law in the State of Ohio. I represented Tyrone Noling during his capital trial, along with attorney George Keith.

2. I reviewed several documents provided to me by Mr. Noling's attorney Jennifer Prillo. These exhibits are identified as Exhibits A through D.

3. I do not recall receiving these exhibits during the discovery process at Mr. Noling's trial. I also do not recall learning the substantive information contained in those exhibits. However, because it has been many years since the time of Mr. Noling's trial, I am unable to say with certainty that I have not seen these documents.

Further Affiant sayeth naught.

Peter T. Cahoon

Sworn to and subscribed before me this 5th day of May, 2010.

Notary Public

319236

EXHIBIT
G

NGAD 800-631-6989

MARIETTA M. PAVLIDIS, Attorney-At-Law
Notary Public - State of Ohio
My Commission has no expiration date
Sec. 147.03 R.C.

EXHIBIT A

Attorney General
Lee Fisher

BCI-30 (Rev. 3-91)

Bureau of Criminal Identification and Investigation — **Laboratory Report**

To: Sheriff P.K. Howe
Portage County Sheriff's Office
213 W. Main Street
Ravenna, Ohio 44266
ATTN: Det. John Ristity

Re: Double Homicide
Victims: Bearnhardt Hartig
Cora Hartig

BCI Lab Number: 90-31768

Analysis Date: June 19, 1991

Agency No: 90-2674

FINDINGS:

Analysis of an extract made from the cigarette butt in item #1 revealed elevated levels of amylase which is indicative of the presence of saliva. Typing of the extract failed to reveal detectable levels of secreted blood group substances. The cigarette may have been smoked by a non-secretor.

Typing of the blood from Daniel E. Wilson, BCI & I case number 91-31692-D, revealed him to be a type A non-secretor.

Dale L. Laux
Forensic Scientist

DLL/cn
T061991

000517

Please address inquiries to the office indicated, using the BCI lab number.

[ ] BCI & I - Fremont Office
405 Pine Street
Fremont, Ohio 43420
Phone: (419) 334-3851

[ ] BCI & I - London Office
P.O. Box 365
London, Ohio 43140
Phone: (614) 466-8204

[X] BCI & I - Richfield Office
P.O. Box 336
3333 Brecksville Road
Richfield, Ohio 44286
Phone: (216) 659-4600

[ ] BCI & I - Cambridge Office
60788 Southgate Road
Byesville, Ohio 43723
Phone: (614) 439-3655

EXHIBIT B

4-24-90
2:00 Pm

NATHEN CHESLEY
[redacted] - 10 YRS
DOB 11-3-79
SHIRLEY SPINNEY 7236 CLARK RD
WORKS FOR College medicine
7236 CLARK Rd
ATWATER, Ohio
PHONE 947-3535

NATHEN MADE THE STATEMENT HE THOUGHT IT WAS COOL WHAT HAPPENED TO THE HARRIS'S.
NATHEN MADE THE STATEMENT HIS BROTHER Did it.
SHIRLEY SPINNEY - FOSTER PARENTS - 3 CHILDREN
CANTON TIMPKEN School
ATENDS MAPLE Wood School. 14 Feb-90
WORKED ARBYS PREVIOUS.
CRUSHED RUBBER.
GETS ALONG FAIR IN School, MISSED DAYS LAST TWO WKS.
Kids WALK THE DOGS OUT IN THE Country.
NATHEN MADE THE STATEMENT TO HIS COUNSELOR THAT HE OWED SOME MONEY.
NATHEN IS OUT OF PATH WAY OUT OF CANTON, Oh
REFERED FROM PATH WAY CANTON, Ohio
NATHEN WAS INVOLVED PATH WAY APROX 2-4 YRS
STEVE CASE 456-1354

000593

EXHIBIT C

90-2674

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

90-2674

PC-0847

I, Marlene M. VanSteenberg, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Lt. John Ritity
DOB. 02-07-46 S.S.N. [redacted]
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve. 358-7288

I am 45 years of age, and I live at 9492 Minyoung Rd., Ravenna, OH. 44266

On April 8, 1990 I was at work when I got home, Richard L. VanSteenberg told me that his brother Raymond VanSteenberg was at the house and got the gun, we only have one pistol. Raymond wanted to show the gun to somebody, my husband took the clip out because Raymond had just been charged for Aggr. domestic violence on Friday, April 6th, 1990.

On April 8, 1990 at about 5:00 p.m. when I got home from work Raymond called on the phone. He was calling from the Sheriff's Dept. and said the detectives wanted him to turn in a gun. Raymond didn't say why. He told me he turned in one gun, and I'm to tell the detectives that we had our gun for at least 3-4 months. I told him I would not do that and asked where the gun was at. He told me he threw it away, I asked why he threw the gun away and he said he just had to do it. He was upset that I wouldn't lie for him.

On April 9, 1990 while I was on my way to work I heard on the radio about the double murders. When I got to work (Portage County Main Court) I contacted a detective at the Sheriff's Dept. and talked to Detective Jay Rook. I told him everything about Raymond getting the gun from my husband and turning it in to the Sheriff's office.

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

000141

Dated at Portage County Sheriff's Dept. Bureau 203 W. Main St. Ravenna, OH. this 01 day of April 19 91.

WITNESS: [signature] Marlene VanSteenberg

WITNESS: [signature]

[illegible] statement

90-2674

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

90-2674 Page

PC-0847

I, Marlene M. Van Steenberg, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Lt. John Reilly. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 45 years of age, and I live at 9492 Minerva Rd, Ravenna, OH. 44266

Sunday, April 8, 1990 was the last day he was at my house, he used to come at least once a week, for the last 2-3 years. He doesn't call on the phone.

Within a month after April 8, 1990 I heard from Shelton Morris (my husband's boss) that he had been told from a guy that was on the truck (I think it was Jeff) with Dennis VanStryky (who is Raymonds son) when they stopped a guy slid out from under the seat, Dennis threw the gun out the window near the abatis sink which is located at S.R. 224 and Alliance Rd - Deerfield, Ohio. I do not know why Dennis threw the gun out.

On today's date - April 1, 1991 Lt John Reilly showed a Raven 25 - Cal. Semi Auto pistol Model #P25, Serial # 1446154 - no clip and one shell. He also showed me an ATF form 4473 dated 12-11-88 for the same gun. I remember the form because I filled it out for my husband and my husband signed it.

MVS

On Sunday March 24 1990 my husband's sister Clara called and asked my husband to call Raymond because he was there. I suppose he did call him and talked for a short time. MVS

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at R.C.S.O. Detective Bureau. This 01 day of April 19 91.

WITNESS: Lt. John Reilly

WITNESS: [illegible]

Marlene Van Steenberg
Signature of person giving voluntary statement.

000142

EXHIBIT D

TRANSCRIPT OF MARLENE M. VAN STEENBERG
Voluntary Statement 04-01-91
J.R.

Age: 45
Address: 9492 Minyoung Road
Ravenna, Ohio 44266

Sunday, April 8, 1990 was the last day he was at my house. He used to come at least once a week for the last two or three years. He doesn't call on the phone.

Within a month after April 8, 1990 I heard from Shelton Morris (My husband's boss) that he was was told from a guy that was in the truck (I think it was Jeff) with Dennis Van Steenberg(who is Raymond's son) when they stopped a gun slid out from under the seat. Dennis threw the gun out the window near the skating rink which is located at S.R. 224 and Alliance Road, Deerfield, Ohio. I do not know why Dennis threw the gun out.

On today's date, April 1, 1991 Lt. John Ristity released a Raven 25 cal. Semi Auto pistol , Model #MP25, Serial #1446154, no clip, and one Uncle Mike's holster to me. Lt. Ristity showed me an ATF form 4473 dated 12-11-88 for the mentioned gun. I remember this form because I filled it out for my husband and my husband signed it.

On Sunday, March 24, 1990 my husband's sister Clar called and asked my husband to call Raymond because he was threatening suicide. He did call him and talked a short time.

On April 8, 1990 I was at work, when I got home Richard L. Van Steenberg told me that his brother Raymond Van Steenberg was at the house and got the gun. We only have one pistol. Raymond wanted to show the gun to somebody. My husband took the clip out because Raymond had just been charged for domestic violence on Friday, April 6th, 1990.

On April 8, 1990 at about 5:00 p.m. when I got home from work, Raymond called on the phone. He was calling from the Sheriff's Department and said the detectives wanted him to turn in a gun. Raymond didn't say why. He told me he turned in our gun, and I'm to tell the detectives that he had our gun for at least three or four months. I told him I would not do that and asked where his gun was at. He told me he threw it away. I asked why he threw the gun away and he said he just had to do it. He was upset that I wouldn't lie for him.

On April 9, 1990 while I was on my way to work I heard on the radio about the double murder. When I got to work (Portage County Muni Court) I contacted a detective at the Sheriff's Department and talked to Detective Don Doak. I told him everything about Raymond getting the gun from my husband and turning it into the Sheriff's Office.

In the Court of Common Pleas
Portage County, Ohio

State of Ohio, Case No. 95-CR-220

Plaintiff-Respondent,

vs.

Tyrone Noling,

Defendant-Petitioner.

Affidavit of Kenneth Amick

County of RICHLAND

State of Ohio

I, Kenneth Amick, being duly sworn state the following:

1. I do not know Tyrone Noling. I do not recall hearing about the Hartig murders in 1990.

2. I was a foster child at Shirley Spinney's house from 1989 to July 1990. There were two other foster children at Spinney's house while I was there, Nathan Chesley was one. I do not remember the other child's name.

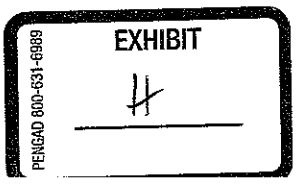
3. Dan Wilson, who had been one of Ms. Spinney's foster children, visited often, but didn't live at Ms. Spinney's home while I was there. I recall Dan spending the night in the basement on a few occasions.

4. Wilson drove a blue car that may have been 2-door hatchback. It was a nice car for that time. It could have been a Camaro because I remember a hatchback.

Further Affiant sayeth naught.

Kenneth amick
Kenneth Amick

Sworn to and subscribed before me this 13th day of January, 2010.



KELLY HEIBY
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 11-5-2013

Kelly Heiby
Notary Public

04-12-90 1657 hours

Dave M. Dawson Phone 947-2720
SSN. 253-36-2837
D.O.B. 8-20-29
1901 SR-183
Atwater OH. 44201
Self Empl'd: Dawson's Tac Shop
Phone & address see os residence

Debbie Pettit was in the shop when Joe the U.P.S. Driver was in or about Tu. (04-10-90) the U.P.S. Driver said he was on Muff Rd. Wed. & Thr. (Twice a day - Forgot a package had to go back) - saw a vehicle;
see Card For Debbie Pettit
see Card For Joseph Villiers U.P.S. Driver
Det. J. Kuntz

4-10-90

Jim Geib
881 Rt-14 A
Deerfield Ohio
Phone-584-7961

Jim Geib called PCSO talked to Lt Doak advised on th. 4-5-90 Aprox 4:30 h Subject Driving Dark Blue Mid Size Car Leaving Tart General Location Subject was going A High Rate of Speed.
Subject Driving, looked to be 30's Male Blk Hair.

EXHIBIT
I

INTERVIEW

LARRY CLEMETSON

4-08-90 9:45 a.m. Case #90-2674

Interview by Kaley and Doak
Larry Clemetson
1329 Rt. # 14, Deerfield, Ohio
SSN: [redacted]
DOB: 12-25-66
Phone: 584-2632

Larry Clemetson said he and Dennis VanSteenberg took Dennis' father's truck to the skating rink at 224 and 225. This was Friday night, April 6. Larry said on the way or while they were in the truck Dennis showed Larry a 25 automatic that was kept in the air vent in the truck.

Larry said that he and Branden Rosa who lives on Rt #225 in Atwater went to Lake Milton, came home around 1:00 a.m. Saturday Morning.

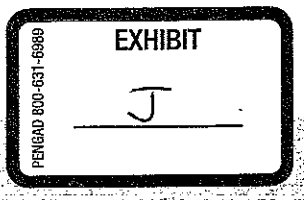
Dennis called Larry and asked him what happened to his gun.

Larry said that he and Rosa went to the skating rink and reported it to the manager.

While Kaley and Doak were talking to Larry, Kaley had Larry call Dennis VanSteenberg to see if Dennis found the gun, (4-08-90 11:20 a.m.). Dennis said his brother Ray took the gun out of the truck on Friday, 5:30 p.m. This checked out not to be true. Larry said Dennis showed him the gun on the way to the skating rink.

05-01-90 6:45 p.m.

Kaley and Doak returned to Larry Clemetson's residence to talk with Larry regarding the 25 automatic that we were talking with him about on 04-08-90. We had received information that the Vanstenbergs turned another gun in to Kaley on 04-08-90.



Larry said that was true. Dennis Vanstenburg told him the gun the Sheriff's Office wanted had been used to kill three other people.

Larry stated he knew Todd Legg since 2nd grade in school. Larry said he did not know Bill Dunkin very well.

INTERVIEW

DENNIS VANSTEENBERG

04-08-90 11:50 a.m. Case #90-2674

Dennis VanSteenberg
2296 Porter Road, Atwater, Ohio
SSN: [redacted]
DOB: 08-22-70
Phone: 947-1006

Kaley and Doak talked with Dennis regarding the 25 automatic that was in the truck that came up missing. Dennis could not come up with the gun. While we were there Ray VanSteenberg drove up and he could not produce the gun.

Dennis told Kaley he would come up with the gun. The next day Kaley stopped by and picked up a 25 automatic. Lt Doak received a phone call advising we had had the wrong gun.

04-09-90 2:00 p.m.

Kaley turned two 25 cal. casings over to Det. Anderson, Alliance P.D. to have them checked against a 25 Cal. casing recovered at one of their crime scenes.

Pouch two and three, Winchester cal. casings.

Test made at Stark County Lab.

CC# 90-2674

4-8-90
9:45 Am

INTERVIEW - By Haley & Doak.
LARRY CLEMETSON
1329 RT# 14 DEERFIELD, Ohio
SSN- [redacted]
Dob- 12-25-66
PHONE- 584-2632
LARRY CLEMETSON SAID HE & DENNIS VANSTEENBERG TOOK DENNIS BROTHERS TRUCK TO THE SKATING RINK AT 224 & 225 THIS WAS Friday night, 6th or 7th LARRY SAID ON THE WAY OR WHILE THEY WERE IN THE TRUCK DENNIS showed LARRY A 16 GA SHOTGUN THAT WAS KEPT IN THE BIG VENT IN THE TRUCK.

LARRY SAID THAT HE & Brenden Rose Who lives ON RT # 225 ATWATER WENT TO LAKE MILTON, CAME HOME AROUND 1:00 Am SATURDAY.
DENNIS CALLED LARRY ASKED WHAT HAPPENED TO HIS GUN.
LARRY SAID THAT HE & ROSE WENT TO THE SKATING RINK & REPORTED IT TO THE MANAGER.
WHILE HALEY & DOAK WERE TALKING TO LARRY HALEY HAD LARRY CALL DENNIS VANSTEENBERG TO SEE IF DENNIS FOUND THE GUN. 4-8-90 11:20 Am
DENNIS SAID HIS BROTHER RAY TOOK THE GUN OUT OF THE TRUCK ON FRIDAY 5:30 Pm, THIS CHECKED OUT NOT TO BE TRUE, LARRY SAID DENNIS SHOWED HIM THE GUN ON THE WAY TO THE SKATING RINK.

4-8-90

CC# 90-2694
11:50 AM
DENNIS VANSTEENBERG
2296 PORTER RD NTOWNSHIP
SSN-[redacted]
DOB-8-22-70 PHONE-947-1006
KIRLEY & DONK TALKED WITH DENNIS REGARDS THE 25 AUTOMATIC THAT WAS IN THE TRUCK THAT CRASH UP MISSING DENNIS COULD NOT COME UP WITH THE GUN, WHILE WE WERE THERE BOY VANSTEENBERG DRIVE UP & HE COULD NOT PRODUCE THE GUN.
DENNIS TOLD KIRLEY HE WOULD COME UP WITH THE GUN, NEXT DAY KIRLEY STOPPED BY AND PICKED UP A 25 AUTOMATIC, LT DONK RECEIVED A PHONE CALL ADVISING WE HAD THE WRONG GUN.

4-9-90
2:00 PM

KIRLEY TURNED TWO 25 CAL CASINGS OVER TO DET ANDERSON ALLIANCE RD. TO HAVE THEM CHECKED AGAINST A 25 CAL CASING RECOVERED AT ONE OF THERE CRIME SCENES.
POUCH 2 AND 3 WINCHESTER CAL CASINGS.
TEST MADE STARK County Lab.

4-9-90

RAY UNKSTEENBERG
CAME OVER TO MARLENE HOUSE. Phone 358-2258
BETWEEN NOON & 4:00 PM PICKED THE GUN UP
SUNDAY.
RAY CALLED MARLENE TOLD HER TO TELL POLICE
THAT HE HAD THE GUN FOR 6-4 MONTHS
MARLENE PURCHASED THE GUN FROM GUN SHOP
LEVITTSBURG GUN SHOP.

ROBERT AND VIRGINIA BOYD 4-9-90
RT # 224 ACROSS FROM Alliance Police.
FRANKS OLD BARBER SHOP.

~~SUMMIT COUNTY SO~~ 4-9-90
BERNIE MILLER
329-2170
~~WILL TALK TO~~ KALEY BACK
~~ON~~ HIS CAR PHONE.

MONDAY EVENING 4-11-90
DR CANNONE CAME OVER MONDAY TALKED TO KENNY, HE
TALKED TO KENNY ON MONDAY THE 9TH TOLD KENNY
THAT HE TALKED TO MR HARTIG ON THE 4TH APPROX 2:30 PM.
DR CANNONE TOLD KENNY THAT MR HARTIG WAS
TO COME TO HIS OFFICE ON FRIDAY, THAT HARTIG
WAS HAVING A PROBLEM WITH HIS SIDE.

4-10-90
JIM GEIB 891 RT-14-A DEERFIELD, OH
PHONE 584-7961 000598
THURSDAY 4-5-90 4:30 PM SUBJECT IN 30's 1-PERSON
DRIVING MALE DARK HAIR VEHICLE MID SIZE