

IN THE SUPREME COURT OF MISSOURI

NO. SC 90618

STATE OF MISSOURI,

Respondent,

vs.

GREGORY BOWMAN,

Appellant.

**APPEAL FROM THE CIRCUIT COURT
TWENTY FIRST JUDICIAL CIRCUIT
THE HONORABLE DAVID VINCENT**

APPELLANT'S STATEMENT, BRIEF & ARGUMENT

ORAL ARGUMENT REQUESTED

Stephen B. Evans, No. 40305
Attorney for the Appellant
2245 S. Kingshighway Blvd., Ste. 100
St. Louis, Missouri 63110
Telephone: 314-721-1024
Facsimile: 314-721-1741
steve@evanslaw-stl.com

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JURISDICTIONAL STATEMENT

Gregory Bowman, Appellant, was charged by the State of Missouri with capital murder. The case against Mr. Bowman was brought by the St. Louis County Prosecutor’s Office and was tried in the Circuit Court of St. Louis County. Mr. Bowman entered a plea of Not Guilty, and his trial commenced October 14, 2009 before the Honorable David Lee Vincent III. On October 22, 2009, the jury rendered a guilty verdict. On October 23, 2009, the jury assessed a penalty of death. The Trial Court sentenced Mr. Bowman to death on December 11, 2009, and granted him leave to appeal. Because the death penalty was imposed, this Court has exclusive appellate jurisdiction pursuant to Mo. Const., Art. V, §3 (as amended 1982) and R. S. Mo. §565.035(1).

STATEMENT OF FACTS¹

On October 22, 2009, Mr. Bowman was found guilty of capital murder for the homicide of Velda Rumfelt. LF 122. On June 6, 1977, Ms. Rumfelt's body was found at approximately 8:30 p.m. in a grassy area just off of Melrose Road, approximately three tenths of a mile south of its intersection with Manchester Road in western St. Louis County. ROP 99. Ms. Rumfelt was last seen alive around 11 a.m. on Monday, June 6, 1977 by one of her friends, Mary Hamilton (*at trial known as Mary Hamilton Rindahl*), near the intersection of Brentwood Boulevard and Manchester Road in Brentwood, Missouri. ROP 376. Ms. Rumfelt was by herself when she was seen by Ms. Rindahl. *Id.*

When her body was discovered, Ms. Rumfelt was wearing a blue and white shirt, blue jeans, and white/light colored underwear with brown lace trim. ROP 99, 105. Ms. Rumfelt was lying on her back, barefoot, with a bra stuffed in her mouth. ROP 100, 122. The medical examiner, along with

¹ All references to the Record on Appeal are as follows: LF refers to the Legal File; ROP to the Report of Proceedings; SR refers to the Supplemental Record. All references to the Report of Proceedings are to Volume II of the Report of Proceedings unless otherwise noted.

other investigators present at the scene, discovered a ligature wrapped around her neck and a laceration across her throat. ROP 103. When her body was turned over, they discovered a bra label stuck to the skin of her back. ROP 105. There also appeared to be a recent burn mark on her right arm. *Id.*

Ms. Rumpfelt's body was thereafter taken to the morgue where an autopsy was conducted by Dr. William Drake. Dr. Drake observed the ligature around her throat and concluded that Ms. Rumpfelt's death was caused by strangulation. ROP 309, 311. Dr. Drake also took vaginal smears during the autopsy from which he discovered a large number of sperm present in the vagina. ROP 37. Based on the presence of sperm, Dr. Drake determined that Ms. Rumpfelt had engaged in recent sexual intercourse. *Id.* Dr. Drake concluded that there was no sign of sexual assault, as there were no tears or physical injuries to her vaginal area. ROP 307.

The clothing Ms. Rumpfelt was wearing when her body was found was removed as part of the autopsy. ROP 318-19. The clothing that was removed included a pair of underwear, a bra, her blue and white shirt, and her blue jeans. ROP 316-19. This clothing was photographed on her body when it was found, during the autopsy, and after the autopsy. *Id.*; ROP 105-10.

Kevin Kiger was a prime suspect in the murder of Velda Rumfelt based upon his known relationship with her, and his involvement in two other homicides that were similar to Ms. Rumfelt's murder. SR 14. Mary Katherine LaForest, age seventeen, was found strangled to death in Blackburn Park on July 19, 1977. SR 3; 30-36. Eve Arrons, age seventeen, was found lying dead in her bathtub in her St. Louis City apartment on January 28, 1977. *Id.*

In a police report dated January 2, 1980, Det. Gregory Moore, lead investigator in Ms. Rumfelt's homicide, stated: "It is the opinion of the undersigned [that] all leads provided up to this point have been thoroughly investigated, with Kiger being a prime suspect in this offense." SR 14.

Kevin Kiger was fired from his job on the morning of June 6, 1977, the same day that Ms. Rumfelt went missing. App. 61-62; ROP 406; SR 12. Nancy Dearing Parker, a girlfriend of Mr. Kiger's who had been living with him at the time, testified that after being fired from work that morning, Mr. Kiger would have been traveling down Brentwood Boulevard sometime late morning to early afternoon on June 6, 1977. App. 62-63; ROP 406-07; SR 13.

Mary Hamilton, a classmate of Ms. Rumfelt's, was the last person to have seen Ms. Rumfelt alive. ROP 376-77. Ms. Hamilton testified that she

saw Ms. Rumfelt at the intersection of Manchester and Brentwood at approximately 11:30 a.m. on June 6, 1977. *Id.* According to Ms. Parker, Mr. Kiger would have been traveling down Brentwood Boulevard around the same time that Ms. Rumfelt was last seen there. App. 62-63; ROP 407.

Ms. Rumfelt's body was found less than one-fourth of a mile from Greenfelder Park. SR 12. During the investigation of Ms. Rumfelt's murder, Ms. Parker told police that, not only was Mr. Kiger familiar with the area around Greenfelder Park, but that she and Mr. Kiger had been together at Greenfelder Park around the time that Ms. Rumfelt was murdered. App. 51-52; SR 12; ROP 397/14-25. In her 1977 interview, Ms. Parker told police that she realized that every time one of Mr. Kiger's alleged victims had been killed, she and Mr. Kiger had been in the immediate area around the time they were killed or that they had been talking about it.² SR 8. Ms. Parker testified further at trial that she and Mr. Kiger been to the park where Ms. Rumfelt was found around the time that she was murdered. App. 51-52; ROP 403/14-18.

² At the time of Ms. Parker's interview in 1977, Kiger was considered a suspect in the murder of Ms. Rumfelt Rumfelt, Mary Katherine LaForest, and Eve Arrons. See *SR generally*.

Ms. Parker and Mr. Kiger began living together in June, 1977, around the time that Ms. Rumfelt was murdered. App. 501-51; SR 34. Ms. Parker informed police that some time after they began living together, Mr. Kiger would talk to her about his plans for the future, and indicated that he was “worried about what he had done” and that “there was no one to whom he could talk about it.” SR 35-36. Ms. Parker further testified at trial that during the summer of 1977, Mr. Kiger had told her that he had “done something terrible.” App. 58; ROP 402/19-22.

During the investigation of Ms. Rumfelt’s murder, it was also learned that Mr. Kiger had a “fondness” for knives and had, on occasion, carried one in his possession. SR 10; ROP 132/16-25. When Ms. Parker was interviewed in 1977 concerning her relationship with Mr. Kiger, police learned that Ms. Parker was missing one of her kitchen knives. App. 59; SR 11; ROP 132/16-25. This information was considered relevant due to the fact that Ms. Rumfelt had a four inch laceration on her neck that was caused by a knife wound. ROP 304/23-25; 305/1-15.³ Ms. Parker testified at trial that

³ Kiger’s fascination with knives was also relevant to the murder of Agnes Greenwell, who died from a large laceration across her throat caused by a

the knife from her kitchen had gone missing *before* June 6, 1977. App. 59; ROP 404/6-8.

On the evening of June 5, 1977, the day before Ms. Rumfelt's body was discovered, Elizabeth Geissler (*Elizabeth Geissler Conkin*), a classmate of Ms. Rumfelt's, reported seeing Ms. Rumfelt with a young man near the intersection of Brentwood Boulevard and White Avenue at approximately 10:30 p.m. ROP 70, 72, 85. Ms. Conkin was interviewed by police a few days after Ms. Rumfelt's death. ROP 84. She described the young man she saw with Ms. Rumfelt that evening as being approximately twenty years old, with should length blond hair, approximately six feet tall, with a slender build, wearing blue jeans and a white t-shirt. *Id.*

Kiger's physical appearance at the time of Ms. Rumfelt's death was described as a slim build, 150 to 170 pounds, approximately six feet tall, with blonde, wavy, should-length hair. App. 55; ROP 400/7-12.

Investigators in Ms. Rumfelt's murder soon discovered that Mr. Kiger had actually known Ms. Rumfelt. ROP 134/24-25; 135/1-17. Det. Moore interviewed Ms. Rumfelt's classmates and learned that, on more than one

knife or similar object. Kiger was arrested and convicted of Agnes Greenwell's murder. SR 13.

occasion, Mr. Kiger had come to the Velvet Freeze store in Brentwood where he would see Ms. Rumfelt and ask her out on dates. ROP 135/18-25. According to her classmates, Ms. Rumfelt would refuse to go out with Kiger, and told her friends that she was afraid of him. ROP 130.

On February 28, 1979, Det. Moore contacted Mr. Kiger at the Missouri State Prison to advise him that he was a suspect in Ms. Rumfelt's murder. SR 14. Mr. Kiger denied knowing Ms. Rumfelt. SR 14; ROP 134/24-25; 135/1-17. Thereafter, Det. Moore filed his January 2, 1980 police report naming Mr. Kiger a "prime suspect" in Ms. Rumfelt's murder. *Id.*

Mary Katherine LaForest was found dead on July 19, 1977 in Blackburn Park in Webster Groves, Missouri. SR 2. She was seventeen years old at the time of her death. *Id.* Subsequent investigation revealed that Mary Katherine had been strangled to death with a thirty-two inch piece of rope resembling a Venetian blind cord. *Id.* Her body had been found fully clothed. ROP 132/1-4. An autopsy later revealed that Mary Katherine had recently engaged in sexual intercourse, however no sign of rape had been determined from autopsy. ROP 132/5-10.

The police reports concerning the investigation, as well as Det. Moore's testimony at trial, revealed that Kevin Kiger was also a suspect in

Mary Katherine's murder. SR 3; ROP 128/23-25. Like Ms. Rumfelt's murder, during the investigation of Mary Katherine's murder, Ms. Parker had told police that not only was Mr. Kiger familiar with the area around Blackburn Park (the area where Mary Katherine's body was discovered), but that she and Mr. Kiger had been together at Blackburn Park around the time that Mary Katherine was murdered. App. 58-59; SR 8; ROP 397/14-25. Ms. Parker gave further testimony to this effect at trial. App. 58-59; ROP 403/14-18.

During the investigation of Mary Katherine's murder, police interviewed a man named David Carl Mueller. SR 42. Mr. Mueller informed detectives that on the evening of July 18, 1977, the day Mary Katherine was murdered, he saw a brown station wagon like the one owned by Mary Katherine being driven by a man matching Mr. Kiger's description. *Id.* Mr. Mueller was then shown a photograph of Mr. Kiger and gave a positive identification of Mr. Kiger as the person driving Mary Katherine's vehicle that evening. *Id.*

On January 28, 1977, Eve Arrons, seventeen years old, was found dead in the bathtub of her apartment in the City of St. Louis, Missouri. SR 16. Labeled a "sudden suspicious death," homicide investigators began questioning known acquaintances of Eve's. SR 20. Investigators learned

that Kevin Kiger was Eve's former boyfriend and had lived with Eve for approximately three months during the course of their relationship. SR 24.

Investigators also learned that on the evening before Eve's body was discovered, Mr. Kiger had stopped by Ms. Emerson's house with his new girlfriend. SR 26. According to Ms. Emerson, during his visit, Mr. Kiger had been acting "totally different from any other time she had ever seen him." *Id.* Ms. Emerson stated that Mr. Kiger was acting subdued, quiet, and that "he seemed to be very nervous." *Id.* Mr. Kiger and his girlfriend only stayed for a short period of time and then left. *Id.* The next day, Mr. Kiger called Ms. Emerson's home and spoke with her boyfriend, Bob. *Id.* Bob told Mr. Kiger that Eve had been found dead earlier that day. *Id.* Mr. Kiger stated that he thought he was going to be sick and had to hang up the phone. *Id.*

In a report dated October 26, 1977, Sergeant Robert Green of the St. Louis City Police Department, lead investigator in the Eve Arrons case, noted that Mr. Kiger was also being investigated for the murders of Mary Katherine LaForest and Ms. Rumpfelt. SR 30. After noting this in the report, Sgt. Green began his supplemental report into the investigation of Eve Arrons' death with the following statement: "With the theory that Kevin Kiger may have more knowledge of the death of Eve Arrons than he had

indicated during previous interviews, Sgt. Green conducted further inquiries, and reports the following information...” *Id.* The report then went on to discuss the information that was learned during the interview of Nancy Dearing Parker on October 20, 1977.

On March 31, 1989, Ms. Parker was contacted once again regarding information she had concerning Kevin Kiger’s involvement in the unsolved murders of Ms. Rumfelt, Mary Katherine LaForest and Eve Arrons. App. 60; ROP 404/12-25; 405/1-21. At Mr. Bowman’s trial, during an Offer of Proof, Ms. Parker testified that a detective from the St. Louis City Metropolitan Police Department and a Texas State Ranger visited her in her home in Texas in 1988. App. 60; ROP 404/12-25; 405/1-21. The detective told her that Kevin Kiger was in the Missouri State Penitentiary Department and wanted to “deal” with regard to one or more unsolved murders. App. 60; ROP 404/12-25; 405/1-21. Kevin Kiger told the detective that Ms. Parker had information that she didn’t know that she had regarding these homicides. App. 60; ROP 404/12-25; 405/1-21. Mrs. Parker then told the detective what she knew about Kevin Kiger. App. 60; ROP 404/12-25; 405/1-21.

Mr. Bowman was never a suspect in the Rumfelt murder investigation. Mr. Moore testified that dozens of people were interviewed in

the weeks following Ms. Rumfelt's death, and no knew or even mentioned Mr. Bowman. ROP 121. None of the people interviewed in the initial investigation into Ms. Rumfelt's death in 1977 knew or had heard of Mr. Bowman. ROP 40 (Dewey Rumfelt). Additionally, when shown State's Exhibit No. 9, which was a photograph of Mr. Bowman taken in the late 1970's, no one could identify him as being someone they knew or that Velda had known. ROP 41(Dewey Rumfelt).

The only physical evidence connecting Mr. Bowman to Ms. Rumfelt's murder was DNA taken in 2006 from a pair of woman's underwear. The underwear were stored with Ms. Rumfelt's personal belongings as part of the 1977 murder investigation. Her clothing was tested for DNA in 2006 as part of a federal grant to St. Louis County for the review of unsolved homicides for DNA evidence. ROP 141-47. Male DNA was located in a pair of woman's underwear tested by the St. Louis County Crime lab in 2006. There was no connection to Mr. Bowman until late January of 2007, when a DNA profile obtained from Mr. Bowman was compared to the DNA profile obtained from the woman's underwear.

On or about June 27, 2001, Mr. Bowman consented to provide a DNA sample to the Illinois State Police to be tested against physical evidence believed to be connected to the 1978 St. Clair County, Illinois homicides of

Ruth Ann Jany and Elizabeth West. LF 27. Mr. Bowman was convicted of those homicides in 1979 (LF 22-26), but in 2001 the convictions were vacated and he was granted new trials based upon newly discovered evidence. *Id.* The 2001 DNA sample that he provided remained in the custody of the Illinois State Police Crime Lab in Fairview Heights, Illinois until late January of 2007. *Id.* It was not placed in any state or federal DNA data base. He did not consent for his DNA profile or sample to be released by the Illinois State Police. *Id.* at 27.

From 2001 to January of 2007, Mr. Bowman remained in custody waiting his retrial for the West and Jany homicides. LF 23. In late January of 2007, Mr. Bowman posted bail and was released from custody pending his retrial. LF 23. Within a few days after his release on bail, James Rokita contacted the cold case unit of the St. Louis County Police Department to see if there were any unsolved homicides that occurred in St. Louis County that occurred in 1977 or 1978. LF 35. Mr. Rokita was an investigator for the Belleville, Illinois Police Department. LF 35. He was informed of the Rumfelt murder and learned that there was DNA evidence available in that case. LF 36. Mr. Rokita then arranged for Mr. Bowman's 2001 DNA profile to be forwarded from the Illinois State Police Crime Lab to the St. Louis County Crime Lab. LF 29.

The St. Louis Crime Lab determined that Mr. Bowman's DNA profile could not be excluded from the DNA profile obtained from the underwear that were tested in 2006 for the Rumfelt case. On February 2, 2007, Mr. Bowman was charged with the murder of Ms. Velda Rumfelt. LF 1.

Ms. Rumfelt attended Brentwood High School. ROP 33. In late May of 1977, she and her brother Dewey moved to Kansas City to live with her mother for the summer. ROP 31. Ms. Rumfelt returned to St. Louis in the early morning of June 5, 1977 with Bobby Keener, who was a family friend working in Kansas City and who was traveling back to St. Louis to visit his mother. ROP 45. Mr. Keener and Ms. Rumfelt drove through the night and arrived at Mr. Keener's mother's home sometime in the early morning hours. ROP 56. He and Ms. Rumfelt took naps in separate rooms, and then went to Six Flags. ROP 46. Mr. Keener and Ms. Rumfelt returned to the Brentwood area that evening, and remained together until Ms. Rumfelt saw Mr. Dover in the parking lot of Al Baker's restaurant. ROP 47, 62. Mr. Keener testified that Ms. Rumfelt told him that she was going to go with Mr. Dover, and that she would meet Mr. Keener back at his mother's house. ROP 48. Mr. Keener returned to his mother's home, and he never saw Ms. Rumfelt again. ROP 50.

Later in the evening of June 5, 1977, Ms. Rumfelt was seen with a young man near the intersection of Brentwood Boulevard and White Avenue. ROP 72. Elizabeth Geissler (*Elizabeth Geissler Conkin*) attended Brentwood High School with Ms. Rumfelt (ROP 70) and saw her with a young man around 10 30 p.m. on Sunday, June 5, 1977. ROP 85. Ms. Conkin was interviewed by police a few days after Ms. Rumfelt's death. ROP 84. She described the young man that she saw with Ms. Rumfelt as being approximately twenty years old, with should length blond hair, wearing blue jeans and a white t-shirt, who was approximately six feet tall with a slender build. ROP 84. She told police in 1977 that Ms. Rumfelt was wearing a blue and white shirt when she saw her that evening. ROP 86.

Ms. Rumfelt's whereabouts on Sunday, June 5, 1977 from the time she left Mr. Keener to the time that she was seen by Elizabeth Geissler Conkin are unknown. (See *ROP generally*). Likewise, her whereabouts from 10:30 p.m. Sunday, June 5, 1977 to 11 a.m. Monday, June 6, 1977, when she was seen by Mary Hamilton Rindahl, are also unknown. (See *ROP generally*).

THE PENALTY PHASE

The penalty phase of the trial began with the State's first witness, Cynthia Allhands Suchaczewski. ROP 478. Ms. Suchaczewski testified about her experience on March 20, 1972, when she was eighteen years old

and living in Danville, Illinois. ROP 479. She was walking home from Sears, where she worked, when a man approached her as she was walking toward an alley. ROP 479. The man came up from behind her and put a knife to her throat. ROP 479/1-25. In the courtroom, she identified that man as Gregory Bowman.

Ms. Suchaczewski stated that Mr. Bowman told her to keep walking and to not make any noise. ROP 480. She told him not to hurt her because she was pregnant. ROP 481. He told her to shut up and keep walking. ROP 480/1-25. They walked about fourteen blocks together. ROP 480. Mr. Bowman took Ms. Suchaczewski into someone's backyard by a large bush. ROP 481. Mr. Bowman put her under the bush, took her clothes off, and touched her. ROP 481. He told her that if she made any noise that he would kill her and her baby. ROP 481/1-25. When he discovered she had a tampon in, he called her a liar for saying she was pregnant. ROP 481. Mr. Bowman then grabbed Ms. Suchaczewski's purse, dumped it out, grabbed her money, and took off running. ROP 481.

Ms. Suchaczewski stated that she was not actually pregnant during this incident; she only told Mr. Bowman that so he would let her go. OP 482. Once Mr. Bowman left, Ms. Suchaczewski put her clothes on and went home. ROP 482. Ms. Suchaczewski informed the police of this incident,

and she later testified in court against Mr. Bowman. ROP 482. Mr. Bowman was subsequently convicted. ROP 482-483. The State then introduced Exhibit 27, which was a copy of the conviction of Mr. Bowman for his above actions, and read to the jury that on February 27, 1973, Mr. Bowman was found guilty by a jury of armed robbery, aggravated battery, unlawful restraint, and that he was sentenced on April 19, 1973, to ten to thirty years in the Illinois Department of Corrections. ROP 483.

The next witness called by the State was Pamela Pourchot Matthies, who testified that on the night of November 8, 1972, she had been at the skating rink with her friends. ROP 485. At that time she was 15 years old and lived in Flora, Illinois. ROP 484-485. When she left the skating rink, she waited outside for a train to take her home. ROP 485. While she was waiting, she was grabbed from behind by a man who put a knife to her throat. ROP 485. At trial, she identified Mr. Bowman as the man who grabbed her. ROP 484-485/19-25. Mr. Bowman told her to walk down Railroad Street, and they walked approximately six blocks together to a place where few houses were located. ROP 486/1-25.

Mr. Bowman told Ms. Matthies to cover up her head with her coat and to undo her pants. ROP 487. She does not remember whether Mr. Bowman took her pants off. ROP 487. Mr. Bowman removed her shirt, her bra, and

her panties, and then he got on top of her. ROP 487. Ms. Matthies asked him not to hurt her because she had just given birth to her son. ROP 487. Ms. Matthies stated that she could feel him, but he did not penetrate her. ROP 487. Mr. Bowman then stepped away and told Ms. Matthies to get dressed. ROP 487/3-25.

After Ms. Matthies got dressed, she walked with Mr. Bowman. Mr. Bowman no longer had a knife to her throat at this point. ROP 488. He asked her which direction she needed to go, told her not to tell anybody or else he would find her and kill her, and then let her leave. ROP 488. Ms. Matthies told the police what happened. ROP 488/1-25. When Ms. Matthies and her father met with a police officer the next day, the officer asked her father if he wanted to press charges, and her father said that he did not. ROP 488. Mr. Bowman was never charged with any crime against Ms. Matthies. ROP 489.

The State then called Jeanne Taylor Feurer. ROP 490. Ms. Feurer testified that on July 20, 1978, she was at a Laundromat in Belleville, Illinois. ROP 490. Around 10:00 p.m., Mr. Bowman came in the laundromat, fiddled with the coin machine, and then asked her for a dollar because his would not fit into the coin machine. ROP 490-491/13-2. When she went to put her dollar in the machine, Mr. Bowman grabbed her and put

a knife to her throat. ROP 491. Mr. Bowman then took her into the parking lot and told her that the police were after him and that he needed someone else in the car. ROP 491. Ms. Feurer started fighting him and tried to get away, but he grabbed her and threw her in his car. ROP 491/3-25.

Ms. Feurer tried to get out of the passenger side but Mr. Bowman pulled her into the car by her hair. ROP 492. At that point, another car pulled into the parking lot, so Mr. Bowman started driving while the car door was open. ROP 492. Ms. Feurer realized that he had dropped his knife and she stuck it in the seat so he couldn't get to it. ROP 492. Mr. Bowman then drove into a subdivision, where he choked Ms. Feurer and told her that if she did that again he would kill her. ROP 492. Mr. Bowman then placed Ms. Feurer in a headlock and continued to drive. ROP 492. After some time, he told her he was lost, and needed to get back to the laundromat area. ROP 492-493. Ms. Feurer offered to help him if he released her from the headlock. ROP 492-493. She recognized that they were near where her boyfriend worked, so when they passed by her boyfriend's work, she grabbed the wheel and began fighting with Mr. Bowman again. ROP 492-493. While they were fighting with the steering wheel, he almost collided with a motorcycle. ROP 492-493/1-5. The motorcyclist began to pursue their car. When they were stopped at a red light, Mr. Bowman looked out the side

view mirror to check if the motorcyclist was still following them. ROP 493.

At that point, Ms. Feurer jumped out of his car. ROP 493/5-23.

Ms. Feurer talked to the police about what happened and ultimately testified against Mr. Bowman in court and Mr. Bowman was subsequently convicted. ROP 494/1-25.

At trial, the State introduced Exhibit 28, a copy of the conviction for the above events. ROP 495. The State read to the jury that Mr. Bowman was found guilty on February 7, 1979, of kidnapping and unlawful restraint. ROP 495. On February 23, 1979, he was sentenced to 14 years in the Illinois Department of Corrections. ROP 495.

The next witness called by the State was James Rokita. ROP 495. Mr. Rokita worked on the investigations for the Elizabeth West and the Ruth Ann Jany murders. ROP 496. Ms. West was fourteen years old when she disappeared in April 1978 from Belleville West High School. ROP 496/1-24. Her body was found approximately seventeen miles south of Belleville in a remote wooded area. ROP 497. Mr. Rokita identified photos of Ms. West's body as Exhibits 30 and 31. ROP 497/1-25. Ms. West was found laying face-down in a creek, and it was later revealed that she was raped and strangled to death. ROP 489/14-25.

Ruth Ann Jany disappeared on July 7, 1978. Her skeletal remains were found July 24, 1979, approximately seventeen miles away from her last known location. ROP 499/4-22. Her remains, along with a few articles of clothing and a class ring, were found in Monroe County in a wooded, secluded area. Ms. Jany was identified using dental records. ROP 500/1-25.

The next witness for the State was Robert Miller. ROP 501. In 1979, Mr. Miller was a detective with the St. Louis County Sheriff's Department. ROP 502.⁴ On March 20, 1979, while in jail, Mr. Bowman requested to see an officer to talk about the West and Jany murders.

Mr. Miller talked to Bowman about the West and Jany murders on March 21st and 22nd, 1979. ROP 504. Mr. Bowman told Mr. Miller that he had been driving around in the early evening looking for someone to pick up, and he spotted a small young girl. ROP 504. Mr. Bowman stated that he was near a high school where a play was going on, when he saw a girl, held a knife to her throat, and put her in his car. ROP 504. Mr. Bowman stated that he drove her to a rural area south of Millstadt, Illinois, and raped her. ROP 506. After he raped her, he stated that she got dressed, and then he

⁴ At the time of trial, Mr. Miller was being treated for Alzheimer's Disease. ROP 502.

strangled her to death using his hands and then a shoestring or cord. ROP 504-505/3-24.

Mr. Bowman described a similar story to Mr. Miller regarding the murder of Ms. Jany. ROP 506. Mr. Bowman stated that he was driving around Belleville, saw a woman near an ATM, grabbed her, and put her in his car. ROP 506. Mr. Bowman stated that he put a knife to Ms. Jany's throat, drove her south of the city of Belleville, and raped her. ROP 506. Mr. Bowman stated that he had her put her clothes back on, and then he strangled her, first with his hands, and then with a shoestring or cord, the same way as with the West murder. ROP 506-507/2-10. Mr. Miller stated that at a later time, Mr. Bowman recanted all of the above statements regarding his involvement in the West and Jany murders. ROP 513/4-13.

The State's next witness was Ethel West, Elizabeth West's mother. ROP 510. Ethel West testified that her family still talks about Elizabeth to this day. ROP 510. Elizabeth had a sister and brother, both of whom were older than Elizabeth. ROP 511. Ms. West testified that when she had to tell her husband that his daughter didn't come home, he cried more than she had ever heard him cry. ROP 511-512/4-7.

Finally, the State called Dewey Rumpfelt, Ms. Rumpfelt's brother. ROP 515. When Ms. Rumpfelt left to go to St. Louis with Mr. Keener, that was the

last time Mr. Rumfelt saw her. ROP 521-522/17-17. Nine months after Velda died, Mr. Rumfelt got married to his wife. ROP 522-523.

Later, Mr. Rumfelt and his wife left St. Louis because they were told that they may never know the person who had killed Velda, so they made a home in a small town north of Springfield. ROP 522-523 /18-20. Mr. Rumfelt told the jury that Ms. Rumfelt had won an art contest, lettered in gymnastics, and was a 4.0 student. ROP 517-518/2-6. He stated that Ms. Rumfelt was an exceptional person and was very talented. ROP 518.

At the conclusion of the penalty phase, the jury recommended a death sentence for Mr. Bowman. ROP 594. Judge Vincent then sentenced Mr. Bowman to death on December 11, 2009. LF 1, ROP 623.

POINTS RELIED ON

- I. **THE TRIAL COURT ERRED IN DENYING MR. BOWMAN'S MOTION TO SUPPRESS THE ADMISSION OF HIS DNA PROFILE BECAUSE HE DID NOT CONSENT TO THE RELEASE OF HIS DNA PROFILE BY THE ILLINOIS STATE POLICE CRIME LAB IN THAT THE CONSENT GIVEN TO THE ILLINOIS STATE POLICE CRIME LAB WAS LIMITED TO THE USE OF HIS DNA PROFILE IN THE INVESTIGATION INTO THE WEST AND JANY HOMICIDES AND BECAUSE THE RELEASE OF MR. BOWMAN'S DNA PROFILE BY THE ILLINOIS STATE POLICE CRIME LAB VIOLATED THE ILLINOIS GENETIC PRIVACY ACT IN THAT THE GENETIC PRIVACY ACT PROHIBITS DISCLOSURE OF SUCH GENETIC INFORMATION TO ANYONE OUTSIDE OF THE CRIMINAL INVESTIGATION OR PROSECUTION FOR WHICH SUCH GENETIC INFORMATION WAS OBTAINED**

State v. Cromer, 186 S.W.3d 333, 343 (Mo. App. W.D. 2005)

Wong Sun v. United States, 371 U.S. 471 (1963)

Illinois Genetic Privacy Act (GIPA) 410 ILCS 513

II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN SUSTAINING THE STATE'S OBJECTION AND REFUSING TO ALLOW THE DEFENSE TO PRESENT EVIDENCE THAT KEVIN KIGER WAS A VIABLE SUSPECT IN THE HOMICIDE OF MS. RUMFELT BECAUSE THE RULING VIOLATED MR. BOWMAN'S RIGHTS TO DUE PROCESS OF LAW, TO A FAIR TRIAL, AND HIS RIGHT TO PRESENT A DEFENSE UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMEDNMENTS TO THE U.S. CONSTITUTION AND ART. I, SECTIONS 10 AND 18(a) OF THE MISSOURI CONSTITUTION IN THAT MR. BOWMAN PRESENTED A SUFFICIENT FOUNDATION FOR THE EVIDENCE WHICH ESTABLISHED THE LOGICAL AND LEGAL RELEVANCE OF MR. KIGER'S INVOLVEMENT WITH THE MURDER OF MS. RUMFELT.

State v. Barriner, 111 S.W. 3d 396 (Mo. banc 2003)

Chambers v. Mississippi, 410 U.S. 284, 294 (1973)

Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, 1731, 164 L. Ed. 2d 503 (2006).

State v. Woodworth, 941 S.W.2d 679, 690 (Mo.App.W.D.1997).

5th Amendment United States Constitution

6th Amendment United States Constitution

14th Amendment United States Constitution

Article I § 10 Missouri Constitution

Article I § 18(a) Missouri Constitution

**III. THE TRIAL COURT ERRED IN DENYING DEFENDANT'S
MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE
THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN MR.
BOWMAN'S CONVICTION FOR FIRST DEGREE MURDER
IN THAT BASED ON THE EVIDENCE PRESENTED AT
TRIAL NO REASONABLE JURY COULD HAVE
CONCLUDED BEYOND A REASONABLE DOUBT THAT
THE DEFENDANT MURDERED MS. RUMFELT**

State v. Chaney, 967 S.W.2d 47 (Mo. banc 1998)

State v. Freeman, 269 S.W.3d 422 (Mo. banc 2008)

State v. Kinder, 942 S.W.2d 313 (Mo. banc 1996)

**IV. THE TRIAL COURT ERRED IN ALLOWING THE STATE TO
PRESENT VICTIM IMPACT TESTIMONY DURING THE
PENALTY PHASE OF TRIAL OR IN THE ALTERNATIVE, IN**

FAILING TO LIMIT SUCH VICTIM IMPACT TESTIMONY
BECAUSE IT PREJUDICED MR. BOWMAN IN THAT THE
MAJORITY OF THE EVIDENCE PRESENTED BY THE
STATE CONCERNED CRIMES FOR WHICH MR. BOWMAN
HAS ALREADY BEEN PUNISHED, CRIMES FOR WHICH HE
AWAITS A NEW TRIAL, AND DID NOT CONCERN
EVIDENCE OF THE IMPACT OF THE VICTIM'S DEATH.

Booth v. Maryland, 482 U.S. 496 (1987)

Payne v. Tennessee, 501 U.S. 808 (1991)

South Carolina v. Gathers, 490 U.S. 805 (1989)

Mo. Rev. Stat. §565.030.4

V. **THE TRIAL COURT ERRED IN DENYING THE**
DEFENDANT'S MOTION TO PRECLUDE THE DEATH
PENALTY BECAUSE IT WAS DISPROPORTIONATE AS
COMPARED TO OTHER CASES IN THAT THE CRIME
DOES NOT FALL INTO THE CATEGORY OF THOSE
WHICH AUTOMATICALLY SUPPORT A DEATH
SENTENCE, THE EVIDENCE AGAINST THE DEFENDANT
IS NOT STRONG, AND THE DEFENDANT'S PREVIOUS
CRIMES OCCURRED ALMOST 30 YEARS AGO

State v. Black, 50 S.W.3d 778 (Mo. banc 2001)

State v. Chaney, 967 S.W.2d 47 (Mo. banc 1998)

Gregg v. Georgia, 428 U.S. 153 (1976)

Mo. Rev. Stat. § 560.035.3(3).

VI. THE TRIAL COURT ERRED IN ALLOWING DR. MARGARET WALSH TO TESTIFY AS TO THE DNA EVIDENCE RECOVERED FROM THE SCENE OF THE CRIME BECAUSE THE STATE COULD NOT PROVIDE REASONABLE ASSURANCES THAT THE PHYSICAL EVIDENCE WAS IN THE SAME CONDITION AS IT WAS IN THE PAST IN THAT EVIDENCE OF THOSE ITEMS WERE DAMAGED AND MISSING

State v. Burnfin, 771 S.W.2d 908 (Mo. App. W.D. 1989)

VII. THE TRIAL COURT ERRED IN NOT ALLOWING MR. BOWMAN TO PRESENT EVIDENCE OF THE TWO SLIDES THAT DR. DRAKE COLLECTED DURING THE AUTOPSY BECAUSE THAT EVIDENCE WAS LEGALLY AND LOGICALLY RELEVANT IN THAT IT SHOWED THE PROBLEMS WITH THE PRESERVATION OF THE EVIDENCE IN THIS CASE

State v. Anderson, 76 S.W.3d 275 (Mo. banc 2002)

State v. Sladek, 835 S.W.2d 308 (Mo. banc 1992)

State v. Smith, 32 S.W.3d 532 (Mo. banc 2000)

**VIII. THE TRIAL COURT ERRED IN OVERRULING THE
DEFENDANT’S MOTION TO PRECLUDE DR. MARY CASE
FROM TESTIFYING AS TO HER OPINIONS OF THE
EXISTENCE OF A PROBABLE SEXUAL ASSAULT BECAUSE
HER TESTIMONY WAS NOT HELPFUL TO THE JURY IN
THAT IT WAS OVERLY SPECULATIVE AND NOT BASED
ON A REASONABLE DEGREE OF MEDICAL CERTAINTY**

State v. Jordan, 751 S.W.2d 68 (Mo. App. E.D. 1988)

State v. Marks, 721 S.W.2d 51 (Mo. App. W.D. 1986)

State v. Storey, 40 S.W.3d 898 (Mo. banc 2001)

ARGUMENT

- I. THE TRIAL COURT ERRED IN DENYING MR. BOWMAN'S MOTION TO SUPPRESS THE ADMISSION OF HIS DNA PROFILE BECAUSE HE DID NOT CONSENT TO THE RELEASE OF HIS DNA PROFILE BY THE ILLINOIS STATE POLICE CRIME LAB IN THAT THE CONSENT GIVEN TO THE ILLINOIS STATE POLICE CRIME LAB WAS LIMITED TO THE USE OF HIS DNA PROFILE IN THE INVESTIGATION INTO THE WEST AND JANY HOMICIDES AND BECAUSE THE RELEASE OF MR. BOWMAN'S DNA PROFILE BY THE ILLINOIS STATE POLICE CRIME LAB VIOLATED THE ILLINOIS GENETIC PRIVACY ACT IN THAT THE GENETIC PRIVACY ACT PROHIBITS DISCLOSURE OF SUCH GENETIC INFORMATION TO ANYONE OUTSIDE OF THE CRIMINAL INVESTIGATION OR PROSECUTION FOR WHICH SUCH GENETIC INFORMATION WAS OBTAINED
 - A. STANDARD OF REVIEW
 1. The Use of Mr. Bowman's DNA in the Crime at Issue Exceeded the Consent He Gave When Providing his DNA Sample for the West and Jany Investigations

On direct appeal, the Missouri Supreme Court reviews a death penalty conviction for prejudice, not mere error, and will reverse the trial court's decision only when the error was so prejudicial that the defendant was deprived of a fair trial. *State v. Taylor*, 298 S.W.3d 482, 491 (Mo. banc 2009), citing, *State v. Reed*, 282 S.W.3d 835, 837 (Mo. banc 2008).

When the ultimate issue is whether or not the defendant's Fourth Amendment rights have been violated, the appropriate standard of review is *de novo* because it is an issue of law. *State v. Sullivan*, 49 S.W.3d 800, 806 (Mo. banc 2001).

2. **The Use of Mr. Bowman's DNA in the Crime at Issue Violated the Illinois Genetic Privacy Act**

Whether the Illinois Genetic Privacy Act has been violated is a question of statutory interpretation. Questions of statutory interpretation are questions of law and are reviewed *de novo*. *State v. Simmons*, 270 S.W.3d 523, 531 (Mo. App. W.D. 2008).

B. **MR. BOWMAN'S CONSENT TO PROVIDE A DNA SAMPLE TO THE ILLINOIS STATE POLICE WAS LIMITED TO THE USE OF HIS DNA SAMPLE IN THE WEST AND JANY INVESTIGATIONS**

1. **The Protections Afforded by the Federal and State Constitutions**

Both the Fourth Amendment to the United States Constitution and Article I § 15 of the Missouri State Constitution guarantee the rights of the all persons to be secure in their person, house, papers, and effects against unreasonable searches and seizures. The Fourth Amendment is applicable to the States through the Fourteenth Amendment of the United States Constitution. *State v. Cromer*, 186 S.W.3d 333, 343 (Mo. App. W.D. 2005). The purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. *Id.*

The Supreme Court has ruled that the intrusion into the body for the purpose of taking blood, as well as the ensuing chemical analysis of the blood sample, constitutes a search under the Fourth Amendment. *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602, 616 (1989). Except in certain well-defined circumstances, a search is not reasonable unless it is accomplished pursuant to a judicial warrant issued on probable cause. *Id.* at 619. A search or seizure conducted without a warrant is *per se* unreasonable unless it falls within certain established and well-delineated exceptions, and the burden falls on the State to justify a warrantless search or seizure. *State v. Cox*, 248 S.W.3d 1, 5 (Mo.App. W.D. 2008).

2. The Consent Exception

Consent is an exception to the general rule. A consensual search conducted without a warrant does not violate the Fourth Amendment, even though the search is not otherwise supported by probable cause or a reasonable suspicion of criminal activity. *State v. Cook*, 854 S.W.2d 579, 582 (Mo. App. 1993); *State v. Garcia*, 930 S.W.2d 469, 472 (Mo. App. 1996). For consent to be valid, the consent must be freely and voluntarily given by a person with the authority to consent, and the search must not exceed the scope of the consent given. *State v. Hyland*, 840 S.W.2d 219, 221-22 (Mo. banc 1992); *State v. Garcia*, 930 S.W.2d 469, 472 (Mo. App. 1996).

The standard for the measuring the scope of one's consent is one of objective reasonableness. That is what the typical reasonable person would have understood. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991); *State v. Engel*, 859 S.W.2d 822, 827 (Mo. App. W.D. 1993). Federal and state courts limit the time period allowed for consent searches. See generally: *U.S. v. Patrick*, 959 F.2d 991(D.C. Cir. 1992); *State v. Green*, 826 A.2d 486 (2003); *State v. Hendrickson*, 917 P.2d 563, 569 (1996); *U.S. v. Rosborough*, 366 F.3d 1145 (10th Cir. 2004). At most, the duration of a consensual search has been extended to no more than a few days beyond the time period for which the consent was given. *Patrick*, 959 F.2d at 996. The scope of the

search is generally defined by its express object. *United States v. Ross*, 456 U.S. 798, 820-21 (1982).

In *State v. Cromer*, the Court found an illegal search where the search exceeded the scope of consent. *State v. Cromer*, 186 S.W.3d 333, 337 (Mo. App. W.D. 2005). In *Cromer*, police officers received a tip that the defendant was producing methamphetamines in his ex-wife's home. *Id.* The officers arrived at the ex-wife's home and asked for the consent of the ex-wife's daughter to enter the home's living room. *Id.* at 339. The daughter then called her mother who informed the officers that she would consent to a search of her home, but only when she was present therein. *Id.* While awaiting the ex-wife's return, one of the officers entered the ex-wife's bedroom where he observed the defendant and another man, through a window, in a vehicle. *Id.* The officer did not know that one of the men in the vehicle was the defendant. *Id.* The officer who had observed the vehicle then notified his fellow officers. *Id.* The officers then watched the two occupants of the car enter a garage adjacent to the house carrying buckets. *Id.* The officers then arrested the two occupants, one of which was the defendant. *Id.* at 340. The contents of the buckets were later determined to be substances used in the production of methamphetamines. *Id.* Upon her return home, the ex-wife consented to a search of her home. *Id.* The

officers then found substances used in the production of methamphetamines.
Id.

The Court held that the scope of the defendant's ex-wife's initial consent was limited to the officers waiting for her arrival, and did not include searching the home or entering any room except the general living area where the officers had entered. *Cromer*, 186 S.W.3d at 342-43. The officer's entry into the ex-wife's bedroom and subsequently, into the garage constituted an illegal search as it exceeded the scope of the ex-wife's initial consent. *Id.*

3. The Exclusionary Rule

The exclusionary rule prevents the admission of all evidence obtained through an unconstitutional search and seizure. *Mapp v. Ohio*, 367 U.S. 643, 654 (1961). All evidence obtained by searches and seizures in violation of the United States Constitution is, by that same authority, inadmissible in state courts. *Id.* The exclusionary rule also applies to evidence that has come about by exploitation of an unconstitutional search and seizure. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963).

4. The Scope of Mr. Bowman's Consent

On or about June 27, 2001, Mr. Bowman consented to providing a DNA sample to the Illinois State Police to be tested against physical

evidence believed to be connected to the 1978 St. Clair County, Illinois homicides of Ruth Ann Jany and Elizabeth West. LF 27. Mr. Bowman was convicted of those homicides in 1979 (LF 22), but in 2001 the convictions were vacated and he was granted new trials based upon newly discovered evidence. LF 22. The 2001 DNA sample that he provided remained in the custody of the Illinois State Police Crime Lab in Fairview Heights, Illinois until late January of 2007. LF 22-23. It was not placed in any state or federal DNA data base. He did not consent for his DNA profile or sample to be released by the Illinois State Police. LF 27. After conducting DNA analysis of Mr. Bowman's DNA and that of Ms. West, and running Mr. Bowman's DNA through its own DNA indexing system, the Illinois State Police Crime Lab discovered no viable connection between Mr. Bowman's DNA and that of Ms. West. LF 23.

5. The Violation of Mr. Bowman's Consent

From 2001 to January of 2007, Mr. Bowman remained in the custody of the St. Clair County, Illinois Sheriff awaiting his retrial for the West and Jany homicides. LF 23. In late January of 2007 he posted bail and was released from custody. LF 23. Shortly after his release on bail, James Rokita, an investigator for the Belleville, Illinois police department, contacted the St. Louis County Police Department to see if there were any

unsolved homicides that occurred in St. Louis County in 1977 or 1978. LF 35. Mr. Rokita was informed of the Rumfelt case and he was informed that there was DNA evidence in that case. LF 36. Mr. Rokita then arranged for Mr. Bowman's DNA profile that had been obtained in 2001 for the West and Jany investigations in Illinois to be forwarded from the Illinois State Police Crime Lab in Fairview Heights, Illinois to the St. Louis County Crime Lab. LF 29.

At this time, Mr. Bowman was not a suspect in the Rumfelt case, and he had never been a suspect in the Rumfelt case. (ROP 121). There was no probable cause for the Missouri authorities to support a warrant to obtain Mr. Bowman's DNA profile for the Rumfelt case. And Mr. Rokita had no authority to obtain Mr. Bowman's DNA profile from the Illinois State Police Crime Lab.

The St. Louis County Crime Lab compared the DNA profile of Mr. Bowman to the male DNA profile obtained in the Rumfelt case and determined that Mr. Bowman's profile could not be excluded from the profile in the Rumfelt case. ROP 203.

When Mr. Rokita contacted the Illinois State Police Crime Lab in order to obtain a copy of Mr. Bowman's DNA profile to transmit to the St. Louis County Crime Lab, his actions constituted a new search. Pursuant to

the *Skinner* doctrine defined by the United States Supreme Court, the release of Mr. Bowman's DNA profile and subsequent DNA analysis constituted a search for Fourth Amendment purposes. That search required a warrant based on probable cause. Therefore, the release of Mr. Bowman's DNA profile to Mr. Rokita by the Illinois State Police Crime Lab constituted an illegal search and seizure as it was done without a warrant and without Mr. Bowman's consent.

Finally, no reasonable person would believe that his consent to a search, of his home, or his person would extend for years beyond the initial consent. Nor would they believe that their consent for a specific purpose would allow the release of information such as their DNA profile for another, unrelated purpose. To allow such an interpretation of the law of consent renders the Fourth Amendment protections against unreasonable searches and seizures meaningless.

6. **Because Mr. Bowman's DNA Profile was Obtained from an Illegal Search and Seizure, Both the Original DNA Profile and All Subsequent DNA Profiles Obtained and Produced Should be Excluded**

In *State v. Cromer*, discussed in detail above, the defendant sought to exclude as evidence the buckets that he and his companions had brought into

the garage. *State v. Cromer*, 186 S.W.3d 333, 341-42. The defendant argued that buckets were seized as a result of the officers' illegal search of the defendant's ex-wife's home. *Id.* The prosecution argued that the buckets should not be excluded as they were found after the defendant's ex-wife had consented to the search of the home. *Id.* The Court ruled that the ex-wife's consent did not cure the primary illegal search and seizure. *Id.* at 348. The officers found the items on the garage floor when they were conducting the consent search because that is where the officers ensured the items would be when they illegally entered the garage and seized the defendant and his companion. *Id.* at 348-49. The Court stated that if the guarantees of the Fourth Amendment are to have any meaning, the items that were carried into the garage and subsequently seized by the police must be suppressed and excluded. *Id.* at 487.

In *Wong Sun v. United States*, the Defendant sought to exclude evidence of narcotics found as a result of a statement made by his co-defendant. *Wong Sun v. United States*, 371 U.S. 471, 487. The statement was made as a direct result of federal narcotics agents' illegal search of the co-defendant's home. *Id.* The issue was whether the narcotics, seized as a direct result of the information obtained from the co-defendant's statement, should be excluded along with the statement. *Id.* at 487. The Supreme

Court ruled to exclude the narcotics as evidence. *Id.* at 488. The Court stated that the narcotics evidence was obtained by exploitation of the federal agents' primary illegal search and seizure and therefore must be excluded.

Id.

Like both *Cromer* and *Wong Sun*, this Court should find that the trial court committed reversible error when it allowed evidence to be presented at trial of Mr. Bowman's DNA profile based on the fact that it was an illegal search and seizure. The transmission of Mr. Bowman's DNA profile by the Illinois State Police Crime Lab to Mr. Rokita constituted an illegal search and seizure as it was beyond the scope of Mr. Bowman's original consent. As a direct result of those findings from the Illinois State Police Crime Lab, the Saint Louis County Police Department obtained a search warrant to take buccal swabs from Mr. Bowman for further DNA analysis. The DNA evidence obtained from Mr. Bowman's buccal swab became the basis of the State's indictment of Mr. Bowman for the murder of Velda Rumfelt.

Like both *Cromer* and *Wong Sun*, the Saint Louis County Police Department only was able to obtain DNA evidence from Mr. Bowman's buccal swabs by the exploitation of an illegal search and seizure of Mr. Bowman's DNA profile from the Illinois State Police Crime Lab. The

exclusionary rule requires the suppression of Mr. Bowman's original DNA profile, and the DNA profiles produced from Mr. Bowman's buccal swab.

C. THE TRIAL COURT ERRED IN DENYING MR. BOWMAN'S MOTION TO SUPPRESS THE ADMISSION OF HIS DNA PROFILE BECAUSE THE RELEASE OF HIS PROFILE WAS IN VIOLATION OF THE ILLINOIS GENETIC PRIVACY ACT

Under the Illinois Genetic Privacy Act (GPA) *410 ILCS 513*, (App. 26) any genetic information derived from Mr. Bowman for testing in the Elizabeth West murder investigation was only admissible in the Elizabeth West case. Mr. Bowman's genetic information obtained by his consent in the West and Jany investigations was obtained by the police for use in those specific investigations.

The GPA states in pertinent part:

513/15 Confidentiality of Genetic Information

§ 15. Confidentiality of genetic information.

- (b) When a biological sample is legally obtained by a peace officer for use in a criminal investigation or prosecution, information derived from genetic testing of that sample may be disclosed for identification purposes to appropriate law enforcement authorities conducting the investigation or prosecution and may

be used in accordance with Section 5-4-3 of the Unified Code of Corrections. The information may be used for identification purposes during the course of the investigation or prosecution with respect to the individual tested without the consent of the individual and shall be admissible as evidence in court.

The information shall be confidential and may be disclosed only for purposes of criminal investigation or prosecution.

P.A. 90-25, § 15, eff. Jan. 1, 1998. Text of section effective until January 1, 2009. See also, section effective January 1, 2009; 410 I.L.C.S. 513/15, IL ST CH 410 § 513/15

513/30 Disclosure of Person Tested and Test Results

§ 30. Disclosure of person tested and test results.

- (7) All information and records held by a State agency or local health authority pertaining to genetic information shall be strictly confidential and exempt from copying and inspection under the Freedom of Information Act. The information and records shall not be released or made public by the State agency or local health authority and shall not be admissible as evidence nor discoverable in any action of any kind in any court or before any tribunal, board, agency, or person and shall be

treated in the same manner as the information and those records subject to the provisions of Part 21 of Article VIII of the Code of Civil Procedure except under the following circumstances:

- (A) when made with the written consent of all persons to whom the information pertains;
- (B) when authorized by Section 5-4-3 of the Unified Code of Corrections;

410 I.L.C.S. 513/30, IL ST CH 410 § 513/30

The GPA extends the right of privacy and protections afforded by the Fourth and Fourteenth Amendments by further restricting when one's genetic information can be released. Mr. Bowman's genetic information was legally obtained in 2001 because he consented to provide a blood sample in the West and Jany investigations. But Mr. Bowman's genetic information was specifically obtained only for the West and Jany investigations. The GPA specifically limits disclosure of the genetic information that was legally obtained to appropriate law enforcement officials in the course of the investigation for which the genetic information was obtained.

Additionally, there is no other basis under Illinois law that would provide the Illinois State Police authority to release Mr. Bowman's genetic

information. In Illinois, any person convicted of, found guilty under the Juvenile Court Act of 1987 for, or who received disposition of court supervision for, a qualifying offense or attempt of a qualifying offense, convicted or found guilty of any offense classified as a felony under Illinois law, convicted of or found guilty of any offense requiring registration under the Sex Offender Registration Act, found guilty or given supervision for any offense classified as a felony under the Juvenile Court Act of 1987, convicted or found guilty of, under the Juvenile Court Act of 1987, an offense requiring registration under the Sex Offender Registration Act, or institutionalized as a sexually dangerous person under the Sexually Dangerous Persons Act, or committed as a sexually violent person under the Sexually Violent Persons Commitment Act shall, regardless of the sentence or disposition imposed, submit specimens of blood, saliva, or tissue to the Illinois Department of State Police.

Mr. Bowman was never convicted of or found guilty of an offense in Illinois (or any other state for that matter) that required him to submit a biological sample, or that would allow the release of his genetic information. Mr. Bowman's DNA profile has never been part of a State or national DNA database. Had he been required to submit biological material to the State or National database, and a DNA match was obtained that way, it would have

been proper. However, the DNA sample that Mr. Bowman provided to the Illinois police for the purpose of exonerating himself of the Elizabeth West murder. Therefore, when the Illinois State Police Crime Lab released Mr. Bowman's DNA profile to Mr. Rokita, same was a direct violation of the GPA.

It is abundantly clear that when Mr. Bowman consented to submitting a biological sample for DNA testing to the Illinois State Police, it was for the purpose of exonerating himself of the Elizabeth West murder. Illinois law is clear that Mr. Bowman's genetic material cannot be released to any authority for any other purpose other than the investigation of the murder of Elizabeth West. Therefore, the Trial Court should have granted Mr. Bowman's Motion to Suppress his DNA evidence.

II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN SUSTAINING THE STATE'S OBJECTION AND REFUSING TO ALLOW THE DEFENSE TO PRESENT EVIDENCE THAT KEVIN KIGER WAS A VIABLE SUSPECT IN THE HOMICIDE OF MS. RUMFELT BECAUSE THE RULING VIOLATED MR. BOWMAN'S RIGHTS TO DUE PROCESS OF LAW, TO A FAIR TRIAL, AND HIS RIGHT TO PRESENT A DEFENSE UNDER THE FIFTH, SIXTH, AND

FOURTEENTH AMEDNMENTS TO THE U.S.
CONSTITUTION AND ART. I, SECTIONS 10 AND 18(a) OF
THE MISSOURI CONSTITUTION IN THAT MR. BOWMAN
PRESENTED A SUFFICIENT FOUNDATION FOR THE
EVIDENCE WHICH ESTABLISHED THE LOGICAL AND
LEGAL RELEVANCE OF MR. KIGER’S INVOLVEMENT
WITH THE MURDER OF MS. RUMFELT.

A. STANDARD OF REVIEW

The trial court is afforded broad discretion in assessing the relevance and admissibility of evidence. *State v. Hatch*, 54 S.W.3d 623, 631 (Mo. App. W.D. 2001). A decision by the trial court on the admissibility of evidence will only be reversed if it is an abuse of discretion. *State v. Reed*, 282, S.W.3d 835, 837 (Mo. banc 2009). A trial court abuses its discretion when its decision to exclude evidence is “clearly against the logic of the circumstances then before the court, and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration.” *State v. Irby*, 254 S.W.3d 181, 187 (Mo. App. E.D. 2008).

Error committed in a criminal case generally is presumed to be prejudicial, and error that might be deemed harmless when the evidence of guilt is strong will nonetheless require reversal in a close case. *State v.*

Degraffenreid, 477 S.W.2d 57, 65 (Mo. 1972); *State v. Caudill*, 789 S.W.2d 213, 216-17 (Mo. App. W.D. 1990).

B. EVIDENCE THAT IS LOGICALLY AND LEGALLY RELEVANT IS ADMISSIBLE

Every criminal defendant has a right to a fair and impartial trial and depriving a defendant of relevant and material testimony of a defense witness violates a defendant's constitutional rights. *State v. Hill*, 817 S.W.2d 584, 587 (Mo. App. E.D. 1991). The defendant's right to call witnesses in defense to the State's accusations is essential to due process. *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973); see also *State v. Bashe*, 657 S.W.2d 321, 324 (Mo. App. S.D. 1983). Thus, the due process standard of fundamental fairness has long been interpreted to require that criminal defendants be afforded a meaningful opportunity to present a complete defense. *California v. Trombetta*, 467 U.S. 479, 485 (1984).

Evidence is admissible if it is logically and legally relevant. *State v. Crow*, 63 S.W.3d 270, 274 (Mo. App. W.D. 2001). Evidence is logically relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence, or if it tends to corroborate evidence which itself is relevant and bears on the principal issue of the case. *State v. Tisius*, 92

S.W.3d 751, 760 (Mo. banc 2002). Evidence is legally relevant if its probative value outweighs its prejudicial effect. *State v. Cole*, 887 S.W.2d 712, 714 (Mo. App. E.D. 1994).

C. EVIDENCE THAT ONE OTHER THAN THE ACCUSED COMMITTED THE CRIME CHARGED IS ADMISSIBLE IF IT IS LOGICALLY AND LEGALLY RELEVANT

The United States Supreme Court in *Holmes v. South Carolina* reiterated the principle that third party guilt evidence is admissible if it raises “a reasonable inference or presumption as to [the defendant’s] own innocence.” *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 1731, 164 L. Ed. 2d 503 (2006). The exclusion of evidence of a third persons guilt violates the defendant’s right to present a complete defense in some circumstances. *Id.*

In *Holmes*, the United States Supreme Court considered whether the South Carolina Supreme Court violated a petitioner's constitutional rights by affirming a trial court's ruling excluding evidence of third-party guilt. *Holmes*, 547 U.S. at 323. The petitioner sought to present evidence that another man was in the victim's neighborhood on the morning of the assault and testimony of four witnesses who would have testified that the same man

had either acknowledged that the petitioner was innocent or that he had actually admitted to them that he had committed the crimes. *Id.* at 323.

On appeal, the South Carolina Supreme Court found that the trial court had not erred by excluding the evidence. Citing *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941), and a later South Carolina Supreme Court case, *State v. Gay*, 343 S.C. 543, 541 S.E.2d 541 (2001), the U.S. Supreme Court held that state rule makers have broad latitude under the constitution to establish rules excluding evidence at criminal trials. *Id.* The broad latitude is limited, however, by the Constitution which “guarantees criminal defendants ‘a meaningful opportunity to present a complete defense’” *Id.* (quoting *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2141 (1986) (citations omitted)).

The U.S. Supreme Court went on to state that “just because the prosecution’s evidence, if credited, would provide strong support for a guilty verdict, it does not follow that evidence of third-party guilt has only a weak logical connection to the central issues in the case.” *Id.* at 330. To that end, the U.S. Supreme Court held that Holmes’ rights were violated by the trial court’s decision, finding that “by evaluating the strength of only one party’s evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt.” *Id.* at 331.

Likewise, Missouri courts have consistently held that evidence directly connecting or clearly implicating the other person in the crime, and evidence from which the jury might infer that that person, rather than the defendant, is guilty, is admissible. *State v. Kelley*, 953 S.W.2d 73, 90 (Mo. App. S.D. 1997). Moreover, evidence that another person had mere opportunity or motive to commit the crime is also admissible if there is proof showing that the other person committed some act directly connecting him with the crime. *State v. Woodworth*, 941 S.W.2d 679, 690 (Mo. App. W.D. 1997).

In *State v. Barriner*, 111 S.W. 3d 396 (Mo. banc 2003), this Court held that there was no reason for the trial court to have excluded evidence consisting of hair samples that did not come from the defendant but that were found on the victim's leg and on a piece of rope used to bind one of the victim's hands, as that evidence was both logically and legally relevant. *Barriner*, 111 S.W. 3d at 400. In *Barriner*, the defendant was charged with two counts of first-degree murder case. *Id.* at 397. The police seized several strands of hair at the crime scene, two of which were found in "significant locations." *Id.* at 399. One of the strands was found on the thigh of one of the victims, and the other was found within one of the knots in the rope used to bind the other victim.

http://web2.westlaw.com/find/default.wl?vc=0&ordoc=2003886878&rp=%2ffind%2fdefault.wl&SerialNum=2003430468&FindType=Y&AP=&fn=_top&rs=WLW10.08&pbcr=F79E9DF7&ifm=NotSet&mt=208&vr=2.0&sv=Split*Id.* An expert witness called by the State had

conducted an examination of the two hairs, which showed that neither matched hair samples taken from the defendant and the victims. *Id.*

When counsel for defendant attempted to cross-examine the witness about the two strands of hair, the State objected to the testimony by making a motion in limine, arguing that ““there has been no connection of the hair in any of this to any individuals connected in this case.”” *Id.* At 399-400. The trial court granted the State's motion and directed defense counsel ““not to offer evidence that certain hair samples that were retrieved were not related to either the Defendant or the victims.”” *Id.* at 400.

This Court in *Barriner* began its legal analysis on this issue as follows:

Generally, a defendant may introduce evidence tending to show that another person committed the offense, if a proper foundation is laid, unless the probative value of the evidence is substantially outweighed by its costs (such as undue delay, prejudice or confusion). When the evidence is merely that another person had opportunity or motive to commit the offense, or the evidence is otherwise disconnected or

remote (and there is no evidence that the other person committed an act directly connected to the offense), the minimal probative value of the evidence is outweighed by its tendency to confuse or misdirect the jury. *Id.* (citations omitted).

This Court held in *Barriner* that there was no reason for the trial court to have excluded the hair evidence offered by the defendant, as it was both logically and legally relevant. The *Barriner* Court held that the hair sample evidence was logically relevant in that it “would have tended to undercut the state's theory” that the defendant removed one of the victims’ clothes and bound the other with a rope. *Barriner*, 111 S.W.3d at 400-01. The Court explained that the hair evidence the defendant sought to introduce showed more than the mere motive or opportunity of another person to have committed the charged crimes. It was not disconnected or remote, and it “could indicate another person’s interaction with the victims at the crime scene.” *Id.*

Observing that evidence is legally relevant “if its probative value outweighs its costs-- prejudice, confusion of the issues, misleading the jury, undue delay, waste of time or cumulativeness,” the *Barriner* Court also held that the hair sample evidence was legally relevant, noting that the hair sample evidence had “a high probative value,” would not have confused or

misled the jury, could have been elicited quickly from a witness who had already taken the stand, and would not have been cumulative. *Id.* at 401. The hair sample evidence should have been presented to the jury because it implicated another person's direct connection to the murders. The Court concluded its analysis by stating that in light of the hair evidence's high probative and exculpatory value, as well as the minimal costs of its admission, the trial court had clearly abused its discretion in excluding it. *Id.*

The *Barriner* decision is consistent with decisions from other jurisdictions allowing evidence of another's involvement with the crime charged. See *Washington v. Texas*, 388 U.S. 1019 (1967) (reversing a state conviction where the trial court excluded testimony of an accomplice that would have shown that the accomplice killed the victim); *Chambers v. Mississippi*, 410 U.S. 284 (1973) (holding that refusal of the trial court to permit defendant's witness to cross-examine to show that another person had confessed to committing the crime was a denial of due process).

D. THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO ALLOW MR. BOWMAN TO PRESENT EVIDENCE OF KEVIN KIGER'S INVOLVEMENT IN THE RUMFELT MURDER INVESTIGATION BECAUSE

**EVIDENCE OF SUCH IS LEGALLY AND LOGICALLY
RELEVANT**

Discovery disclosed to Mr. Bowman during pretrial proceedings established that Kevin Kiger was a prime suspect for the murder of Velda Rumfelt in 1977. SR 14. Prior to trial, the State filed a Motion in Limine seeking to bar Mr. Bowman from presenting any evidence that Kevin Kiger committed the Rumfelt murder. The Trial Court granted that motion. LF 65.

At trial, Mr. Bowman made offers of proof in an ongoing effort to establish to the Trial Court the admissibility of the Kiger evidence. The Trial Court refused to reverse its pretrial ruling, and prohibited Mr. Bowman from presenting the jury with the Kiger evidence. This decision by the Trial Court deprived Mr. Bowman of the meaningful opportunity to present legally and logically relevant and competent evidence that negated an essential element of the State's case, identity.

1. **The Kiger Evidence Is Logically Relevant
Because It Implicates Kevin Kiger in the
Murder of Velda Rumfelt and Casts Reasonable
Doubt as to Whether Mr. Bowman Committed
this Murder**

Kevin Kiger was a prime suspect in the murder of Velda Rumfelt based upon his known relationship with her, and his involvement in two other homicides that were strikingly similar to the Rumfelt murder. (*See SR, generally*).

On October 20, 1977, lead homicide investigators from three separate police divisions gathered together in the law offices of attorney James M. Martin to interview Nancy Dearing (now known as Nancy Dearing Parker). SR 3. Each investigator present that day represented a different branch of the greater St. Louis police force and each was there to investigate a separate murder. SR 1 – 11. All of the investigators present that day shared one common purpose: to interview Ms. Dearing, the former girlfriend of Kevin Kiger, regarding her knowledge of Mr. Kiger's involvement with three separate homicides.

Detective Gregory Moore of the St. Louis County Police Homicide Division was there to investigate the murder of Velda Rumfelt who was found strangled to death in a grassy area just off of Melrose Road, less than a quarter mile from Greensfelder Park. SR 3; 30-36. Lieutenant Jack Crittendon and Sergeant Gerald Loosemore of the Webster Groves Police Department were present that day as part of their investigation into the murder of Mary Katherine LaForest, age seventeen, who was found

strangled to death in Blackburn Park on July 19, 1977. *Id.* Sergeant Robert Green of the St. Louis City Police Department was there to investigate the suspicious death Eve Arrons, age seventeen, who was found lying dead in her bathtub in her St. Louis City apartment on January 28, 1977. *Id.*

a. **Kevin Kiger as a Suspect in Ms. Rumfelt's Murder**

Velda Rumfelt was found dead on June 6, 1977 in grassy area just off of Melrose Road, located three tenths of a mile south of Manchester Road and less than one fourth of a mile from Greensfelder Park. ROP 96-99. Ms. Rumfelt was sixteen years old at the time of her death. ROP 99. Ms. Rumfelt's body had been found fully clothed with a nylon cord wrapped around her neck and a four inch laceration across her throat. ROP 99-100. A subsequent autopsy revealed that Ms. Rumfelt had been strangled to death. ROP 309; 311. The autopsy also showed that Ms. Rumfelt had engaged in recent sexual intercourse, however no sign of rape or sexual assault could be determined. ROP 307.

In a police report dated January 2, 1980, Det. Gregory Moore, lead investigator in Ms. Rumfelt's homicide, submitted the following statement: "It is the opinion of the undersigned [that] all leads provided up to this point have been thoroughly investigated, *with Kiger being a prime suspect in this offense.*" SR 14 (emphasis added).

Kevin Kiger was fired from his job on the morning of June 6, 1977, the same day Ms. Rumfelt went missing. App. 51; ROP 406; SR 12. Nancy Dearinger Parker, a girlfriend of Kiger's who had been living with him at the time, testified that after being fired from work that morning, Kiger would have been traveling down Brentwood Boulevard sometime late morning to early afternoon on June 6, 1977. App. 62-63; ROP 406-07; SR 13.

Mary Hamilton, a classmate of Ms. Rumfelt's, was the last person to have seen Ms. Rumfelt alive. ROP 376-77. Ms. Hamilton testified that she saw Ms. Rumfelt at the intersection of Manchester and Brentwood at approximately 11:30 a.m. on June 6, 1977. *Id.* As stated above, Ms. Parker testified that Mr. Kiger would have been traveling down Brentwood Boulevard around the same time that Ms. Rumfelt was last seen there. ROP 407.

Ms. Rumfelt's body was found less than one-fourth of a mile from Greenfelder Park. ROP 12. During the investigation of Ms. Rumfelt's murder, Ms. Parker told police that not only was Mr. Kiger familiar with the area around Greenfelder Park, but that she and Mr. Kiger had been together at Greenfelder Park around the time that Ms. Rumfelt was murdered. App. 52; 58-59; ROP 397/12-25. In her 1977 interview, Ms. Parker told police that she realized every time one of Mr. Kiger's alleged victims had been

killed, she and Mr. Kiger had been in the immediate area around the time they were killed or that they had been talking about it.⁵ App. 58-59 SR 8. Ms. Parker testified further at trial that she and Mr. Kiger been to the park where Ms. Rumfelt was found around the time that she was murdered. App. 52; ROP 403/14-18.

Ms. Parker and Mr. Kiger began living together in June, 1977, around the time that Ms. Rumfelt was murdered. App. 53; SR 34. Ms. Parker informed police that some time after they began living together, Mr. Kiger would talk to her about his plans for the future, and indicated that he was “worried about what he had done” and that “there was no one to whom he could talk about it.” SR 35-36. Ms. Parker further testified at trial that during the summer of 1977, Mr. Kiger had told her that he had “done something terrible.” App. 58; ROP 402/19-22.

During the investigation of Ms. Rumfelt’s murder, it was also learned that Mr. Kiger had a “fondness” for knives and had, on occasion, carried one in his possession. SR 10; ROP 132/16-25. When Ms. Parker was

⁵ At the time of Ms. Parker’s interview in 1977, Kiger was considered a suspect in the murder of Ms. Rumfelt Rumfelt, Mary Katherine LaForest, and Eve Arrons. (See *SR generally*).

interviewed in 1977 concerning her relationship with Mr. Kiger, police learned that Ms. Parker was missing one of her kitchen knives. App. 59; SR 11; ROP 132/16-25. This information was especially relevant considering Ms. Rumpfelt had a four inch laceration on her neck that was caused by a knife wound. ROP 304/23-25; 305/1-15).⁶

The police report regarding this interview contained the following statement: “It was also learned by Det. Moore that she had been missing a kitchen paring knife, of poor quality, with a very rough cutting edge. That answer was in response to a question concerning Kiger’s apparent fascination with knives. It [was] also stated by Det. Moore that the cut on his victims throat had been probably made by such an instrument as described by Miss Dearinger.” SR 11; ROP 133/12-20. Ms. Parker further testified at trial that the knife from her kitchen had gone missing *before* June 6, 1977. ROP 404/6-8.

⁶ Kiger’s fascination with knives was also relevant to the murder of Agnes Greenwell, who died from a large laceration across her throat caused by a knife or similar object. Kiger was arrested and convicted of Agnes Greenwell’s murder. SR 13.

During their interview with Ms. Parker, investigators learned that Mr. Kiger kept a cigar box at Ms. Parker's apartment that contained several loose keys. SR 4; ROP 133/25; 134/1-4. Ms. Parker informed investigators that Mr. Kiger "had a thing for keys" and that "he saved them." SR 4. Ms. Parker gave further testimony at trial to this effect. ROP 399/18-24.

The items and personal belongings found at the scene of Ms. Rumfelt's murder were eventually removed and returned to her family. (*See ROP, generally*). According to Ms. Rumfelt's mother, Ms. Rumfelt should have had a clear plastic key ring with house keys on it. (*See ROP, generally*). The key ring, which had the name "Velda" inscribed on it, was the only item unaccounted for in Ms. Rumfelt's property. SR 10; 12; ROP 133/21-24.

According to Ms. Parker, Mr. Kiger smoked Camel cigarettes. App. 54; ROP 399/3-17. When Ms. Parker spoke with investigators regarding information relating to Mr. Kiger, she informed them that Mr. Kiger never used a lighter when he smoked. App. 54; ROP 399/3-17. When he smoked, he only used matches. App. 54; ROP 399/3-17. The laboratory report describing what was found at the scene of Ms. Rumfelt's murder lists, among the items found and collected, *one book of matches*. ROP 134/5-21.

On the evening of June 5, 1977, Ms. Rumfelt was seen with a young man near the intersection of Brentwood Boulevard and White Avenue. ROP 72. Elizabeth Geissler (*Elizabeth Geissler Conkin*) attended Brentwood High School with Ms. Rumfelt (ROP 70) and saw her with a young man around 10 30 p.m. on Sunday, June 5, 1977. ROP 85. Ms. Conkin was interviewed by police a few days after Ms. Rumfelt's death. ROP 84. At that time she described the young man that she saw with Ms. Rumfelt as being approximately twenty years old (ROP 84), with shoulder length blond hair (ROP 84), wearing blue jeans and a white t-shirt (ROP 84), who was approximately six feet tall (ROP 84) with a slender build. ROP 84.

Mr. Kiger's physical appearance at the time of Ms. Rumfelt's death was described as a slim build, 150 to 170 pounds, approximately six feet tall, with blonde, wavy, shoulder-length hair. ROP 400/7-12.

Once Det. Moore began focusing on Mr. Kiger as a suspect in Ms. Rumfelt's murder, he learned that Mr. Kiger had actually known Ms. Rumfelt. ROP 134/24-25; 135/1-17. Det. Moore interviewed Ms. Rumfelt's classmates and learned that Mr. Kiger would sometimes come to the Velvet Freeze store in Brentwood where he would see Ms. Rumfelt and ask her out on dates. ROP 135/18-25. According to her classmates, Ms. Rumfelt would

refuse to go out with Mr. Kiger, and told her friends that she was afraid of him.

Finally, and perhaps most importantly, on February 28, 1979, when Det. Moore contacted Mr. Kiger at the Missouri State Prison to advise him that he was a suspect in Ms. Rumfelt's murder, Mr. Kiger denied knowing Ms. Rumfelt. App. 40; SR 14; ROP 134/24-25; 135/1-17. It was after this interview with Mr. Kiger that Det. Moore filed his January 2, 1980 police report naming Mr. Kiger a "prime suspect" in Ms. Rumfelt's murder. *Id.*

b. Kevin Kiger as a Suspect in Mary Katherine LaForest's Murder

Mary Katherine LaForrest was found dead on July 19, 1977 in Blackburn Park in Webster Groves, Missouri. SR 2. She was seventeen years old at the time of her death. *Id.* Subsequent investigation revealed that Mary Katherine had been strangled to death with a thirty-two inch piece of rope resembling a Venetian blind cord. *Id.* Her body had been found fully clothed. ROP 132/1-4. An autopsy later revealed that Mary Katherine had recently engaged in sexual intercourse, however no sign of rape had been determined from the autopsy. ROP 132/5-10.

The police reports concerning the investigation listed Kevin Kiger as the suspect in Mary Katherine's murder. SR 3. At trial, Detective Moore

further testified that Kiger had been a suspect in Mary Katherine's murder. ROP 128/23-25. Mary Katherine's body was found in the Bird Sanctuary of Blackburn Park in Webster Groves, Missouri. SR 2. Like Ms. Rumfelt's murder, during the investigation of Mary Katherine's murder, Ms. Parker had told police that, not only was Mr. Kiger familiar with the area around Blackburn Park, but that she and Mr. Kiger had been together at Blackburn Park around the time that Mary Katherine was murdered. SR 8; ROP 397/14-25. Ms. Parker informed detectives that whenever she would be out looking for Mr. Kiger, she would start by driving up to Blackburn Park. SR 8. Ms. Parker testified further at trial that she and Mr. Kiger been to the park where Mary Katherine was found around the time that she was murdered. App. 58-59; ROP 403/14-18.

As stated above, during their interview with Ms. Parker, investigators learned that Mr. Kiger kept a cigar box at Ms. Parker's apartment which contained "*several loose keys.*" SR 4; ROP 133/25; 134/1-4 (emphasis added). Ms. Parker informed investigators that Mr. Kiger "had a thing for keys" and that "he saved them." SR 4. Ms. Parker gave further testimony at trial to this effect. ROP 399/18-24.

As stated above, Mr. Kiger smoked Camel cigarettes. App. 53-54; ROP 399/3-17. Of the items found in Mary Katherine's vehicle after it was

recovered, one item was found in the car that did not belong to either Mary Katherine or her family: an unopened pack of Camel cigarettes. *Id.*

c. **Kevin Kiger as a Suspect in Eve Arrons' Murder**

On January 28, 1977, Eve Arrons, 17 years old, was found dead in the bathtub of her apartment in the City of St. Louis, Missouri. SR 16. Labeled a “sudden suspicious death,” homicide investigators began questioning known acquaintances of Eve’s. SR 20. Investigators soon learned that Kevin Kiger was Eve’s former boyfriend and had lived with Eve for approximately three months during their relationship. SR 24.

During the investigation of Eve’s death, detectives spoke with two of Eve’s closest friends concerning Eve’s relationship with Mr. Kiger. During the investigation, the detectives learned that a few weeks before Eve’s death, Mr. Kiger had shown up at Eve’s friends house, Debbie Emerson, and began asking Ms. Emerson and her boyfriend questions about Eve. SR 25. Ms. Emerson informed police that Mr. Kiger had been calling Eve on the telephone recently. *Id.* Both Ms. Emerson and Kathy Kleff, Eve’s other close friend, informed police that Eve, who had been planning on moving to California, had asked both of them to never give out her phone number or address in California to Kiger. *Id.* According to Eve’s friends, Eve was frightened of Mr. Kiger because he had slapped her around a few times. *Id.*

Police further learned that, after she had broken up with Mr. Kiger, Eve had changed all of the locks on her front door because she was afraid that Mr. Kiger still had a key to her apartment and would show up sometime. *Id.*

Investigators also learned that on the evening before Eve's body was discovered, Mr. Kiger had stopped by Ms. Emerson's house with his new girlfriend. SR 26. According to Ms. Emerson, during his visit, Mr. Kiger had been acting "totally different from any other time she had ever seen him." *Id.* Ms. Emerson stated that Mr. Kiger was acting subdued, quiet, and that "he seemed to be very nervous." *Id.* Mr. Kiger and his girlfriend only stayed for a short period of time and then they left. *Id.* The next day, Mr. Kiger called Ms. Emerson's home and spoke with her boyfriend, Bob. *Id.* Bob told Mr. Kiger that Eve had been found dead earlier that day. *Id.* Mr. Kiger stated that he thought he was going to be sick and had to hang up the phone. *Id.*

Investigators further learned that Ms. Parker had been living with Mr. Kiger at the time of Eve's death in January, 1977. SR 33. During the last of week January, 1977 (the time period of Eve's death), Ms. Parker came home to the apartment that she shared with Mr. Kiger and observed "a number of keys on rings laying on the kitchen table." SR 34. Sgt. Green reported the following in his police report: "[Ms. Parker] described the keys attached to

one white metal ring approximately [one and a half inches] in diameter, this ring being attached to another ring by a small clip. The second ring contained black leather within the metal edging with a silver 'A' in the center of the leather.” *Id.* The key chain reported missing from Eve’s personal belongings was inscribed with the letter “A.” SR 35.

d. The 1989 Interview of Nancy Dearing Parker

On March 31, 1989, Ms. Parker was contacted once again regarding information she had concerning Kevin Kiger’s involvement in the unsolved murders of Ms. Rumfelt, Mary Katherine LaForest and Eve Arrons. App. 60-61; ROP . 404/12-25; 405/1-21. At Mr. Bowman’s trial, during an offer of proof, Ms. Parker testified that a detective from the St. Louis City Metropolitan Police Department and Texas State Ranger visited her in her home in Texas in 1988. *Id.* The detective told her that Kevin Kiger was in the Missouri State Penitentiary Department and wanted to “deal” with regard to one or more unsolved murders. *Id.* Mr. Kiger told the detective that Ms. Parker had information that she didn’t know that she had regarding the homicides. Mrs. Parker then told the detective what she knew about Kevin Kiger and his involvement with the Rumfelt, LaForest, and Arrons murders. *Id.* Her statement at that time provided the investigators the same

information that she had provided them during their interviews of her in 1977.

2. **Mr. Bowman Presented a Sufficient Foundation
Establishing the Logical and Legal Relevance of Mr.
Kiger's Involvement with the Murder of Ms. Rumfelt for
that Evidence to Be Admissible at Trial.**

After hearing Mrs. Parker's evidence, Judge Vincent sustained the State's objection to the testimony. App. 65-66; ROP 409/12-22. He indicated that the testimony of Mrs. Parker would only cast a bare suspicion or raise a conjectural inference, which is not allowed by Missouri Law. *Id.* He therefore ruled that Mrs. Parker's testimony was not admissible. *Id.*

Mr. Bowman's Constitutional right to present a competent defense to the State's charges was violated when the Trial Court entered its order prohibiting Mr. Bowman from presenting testimony showing that Kevin Kiger was the true killer of Ms. Rumfelt. The evidence that the Trial Court characterized as "a bare suspicion or...conjectural inference" ROP 409 was the same evidence that Det. Moore used to reach his conclusion that Kevin Kiger was a "prime suspect" in Ms. Rumfelt's murder. SR 14.

Mr. Bowman laid a proper foundation for admission of Mrs. Parker's proposed testimony, as well as other evidence of Mr. Kiger's involvement in

the Rumfelt murder. Through her testimony concerning Kevin Kiger, Mrs. Parker provided evidence that Mr. Kiger had committed an act directly connecting him to the charged crimes. Here, Mr. Bowman presented direct testimony placing Kevin Kiger within the vicinity of where Ms. Rumfelt was last seen (ROP 406-07), an eyewitnesses description of the man last seen with Ms. Rumfelt that matched Mr. Kiger's description (ROP 84), and Mr. Kiger's obvious untruthfulness to the police regarding his knowledge and relationship with Ms. Rumfelt. SR 14. Taken together, the evidence concerning Mr. Kiger directly connected Mr. Kiger with Ms. Rumfelt's murder.

Like in *Holmes*, the Kiger evidence in this case raises a reasonable inference as to Mr. Bowman's guilt. This is particularly so based upon the minimal evidence in this case connecting Mr. Bowman to Ms. Rumfelt.

The Kiger evidence is logically relevant because it tends to make it less probable that Mr. Bowman murdered Velda Rumfelt. Mr. Bowman did not know Ms. Rumfelt. (*See Record generally*). Mr. Kiger *did* know her. ROP 135/22-25. He had asked her out. *Id.* She was scared of him. SR 42. Mr. Bowman did not frequent the Brentwood, Missouri area. (*See Record generally*). Mr. Kiger did. (*See S.R. generally*). Mr. Bowman was never seen in Brentwood around the time of Ms. Rumfelt's murder. (*See Record*

generally). Mr. Kiger would have traveled through the intersection where Ms. Rumfelt was last seen alive. ROP 406-07.

There was no evidence that Mr. Bowman was familiar with the area where Ms. Rumfelt's body was found. (*See Record generally*). Mr. Kiger was known to frequent that area and had been there with Ms. Parker around the time of Ms. Rumfelt's murder. SR 12; ROP 397/14-25.

On the evening prior to her body being found, Ms. Rumfelt was seen in Brentwood with a young man who fit the description of Mr. Kiger, and whose description did not compare similarly to Mr. Bowman's appearance at that time. ROP 84.

Mr. Kiger made statements to Ms. Parker that "he was worried about what he had done" when discussing their future together, and told her that there was no one he could talk to about it. SR 35-36. During the summer of 1977, Mr. Kiger told Ms. Parker that he had "done something terrible." App. 58; ROP 402/19-22.

Mr. Kiger was known to carry a knife. SR 10; ROP 132/16-25. Ms. Parker was missing a kitchen knife. App. 59; SR 11; ROP 132/16-25. Ms. Rumfelt had a large knife wound across her neck. ROP 304/23-25; 305/1-15. Detective Moore, who personally saw the wound across Ms. Rumfelt's

neck, concluded that it had probably been made by the type of knife Ms. Parker described as missing from her apartment. SR 11; ROP 33/12-20.

Nancy Dearing-Parker's testimony concerning Kevin Kiger was logically relevant because it undercut the State's theory that Mr. Bowman was the person who committed the murder of Ms. Rumfelt on June 6, 1977, and identified Kevin Kiger as the culprit. Ms. Parker was considered a key witness by investigators in the homicides of Ms. Rumfelt, Mary Katherine LaForest, and Eve Arrons, all of which shared several common links which Ms. Parker was able to provide based upon her knowledge and relationship with Mr. Kiger. Because of the similarity of the *modus operandi* of these offenses, the admission of the proffered evidence about Mr. Kiger's involvement with each victim, together with the Ms. Parker's testimony directly implicating Mr. Kiger in each of the murders, had a highly probative value. Ms. Parker's testimony concerning her role in the investigation of Kevin Kiger in relation to Ms. Rumfelt's murder made it more probable that Mr. Bowman did not commit the charged crime. From such testimony, reasonable jurors could have inferred that Kevin Kiger committed the very crime for which Mr. Bowman was on trial.

The Kiger evidence was also legally relevant because its probative value far outweighed its prejudicial effect. The police and prosecuting

authorities knew for years that Mr. Kiger was a prime suspect in the Rumfelt murder. The facts connecting him to the Rumfelt murder far outweighed the fact connecting Mr. Bowman to the Rumfelt murder. The Kiger evidence would not likely have confused or misled the jury because it related to the crime for which Mr. Bowman was on trial and was not disconnected or remote. The Kiger evidence also would not have been cumulative, as it provided a separate and distinct factual basis showing that Mr. Kiger had motive and opportunity to commit the Rumfelt murder.

“A trial court’s exclusion of admissible evidence creates a presumption of prejudice, rebuttable by facts and circumstances of the particular case.” *State v. Barriner*, 111 .S.W3d 396, 401 (Mo. banc 2003). The evidence of Mr. Bowman’s guilt was not overwhelming. There was no confession, no eyewitnesses to the murder, and the only physical evidence linking Mr. Bowman to the crime was a DNA profile that linked him to clothing, not to the murder weapon or to the victim’s body.

Furthermore, it was the State that sought this conviction based on an inference that just because Mr. Bowman’s DNA profile may have been on clothing that may have belonged to the victim, that he must have beyond a reasonable doubt committed this murder. Weighed against the inference that could be drawn on the Kiger evidence, it is clear that the Kiger evidence fits

the requirements for admissibility as it tended to show that a person other than Mr. Bowman committed this crime.

The State cannot show that this error is harmless beyond a reasonable doubt. *State v. Watson*, 968 S.W.2d 249, 254 (Mo.App. S.D. 1998). The trial court's exclusion of this logically relevant, legally relevant, and admissible evidence denied Mr. Bowman's rights to due process of law, to present a defense, and to a fair trial as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10 and 18(a) of the Missouri Constitution. This Court must reverse Mr. Bowman's conviction and remand for a new trial.

**III. THE TRIAL COURT ERRED IN DENYING DEFENDANT'S
MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE
THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN MR.
BOWMAN'S CONVICTION FOR FIRST DEGREE MURDER
IN THAT BASED ON THE EVIDENCE PRESENTED AT
TRIAL NO REASONABLE JURY COULD HAVE
CONCLUDED BEYOND A REASONABLE DOUBT THAT
THE DEFENDANT MURDERED MS. RUMFELT**

A. STANDARD OF REVIEW

In reviewing the sufficiency of evidence supporting a criminal conviction, this Court is limited to determining whether a reasonable juror could have found guilt beyond a reasonable doubt. *State v. Freeman*, 269 S.W.3d 422, 425 (Mo. 2008). The evidence under this review must be looked at in the light most favorable to the verdict. *Id.* This includes review of all reasonable inferences derived from the evidence. *Id.* All evidence and inferences contrary to the verdict must be disregarded by the reviewing court. *Id.* The reviewing court is further limited in that it cannot weigh any evidence as the original fact finder is allowed to believe all, some, or none of the evidence presented at trial. *Id.*

- B. THE EVIDENCE ADMITTED IS NOT SUFFICIENT TO SUSTAIN MR. BOWMAN'S CONVICTION IF VIEWED IN THE LIGHT MOST FAVORABLE TO THE VERDICT**
- 1. The Only Evidence Presented that Connected Mr. Bowman to Ms. Rumfelt Was the DNA Profile**

The State's case rests upon the conclusion of Dr. Walsh that Mr. Bowman's DNA profile could not be excluded from the profile obtained from the DNA located on the piece of clothing marked as State's Exhibit No. 3c. ROP 203. Based upon this evidence, the State argued and the jury inferred that Mr. Bowman therefore committed the murder of Ms. Rumfelt.

2. It Was Not a Reasonable Inference for the Jury to Conclude that Mr. Bowman Murdered Ms. Rumfelt Based Upon the Fact that Mr. Bowman's DNA profile Could Not Be Excluded From the DNA Profile Found in State's Exhibit No. 3c.

The Due Process Clauses of the Fifth and Fourteenth amendments to the United States Constitution, and Article I, Section 10 of the Missouri Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. The conviction of a crime therefore requires objective evidence proving the charged acts and a subjective decision as to guilt beyond a reasonable doubt by the finder of fact.

Merriam-Webster's Dictionary defines an inference as "the act of passing from one proposition, statement, or judgment considered as true to another whose truth is believed to follow from that of the former."

inference. (2010). In Merriam-Webster Online Dictionary. Retrieved August 15, 2010, from <http://www.merriam-webster.com/dictionary/inference>.

Reasonable inferences may be drawn from both direct and circumstantial evidence. *State v. Salmon*, 89 S.W.3d 540, 546 (Mo. App. 2002). Such inferences must be logical, reasonable, and drawn from established facts. *Id.* However, even under the somewhat restricted review based on an

insufficiency of evidence claim, the reviewing court cannot provide the State the benefit of an unreasonable, speculative or forced inference, nor can the reviewing court provide the State missing facts. *State v. Whalen*, 49 S.W.3d 181, 184 (Mo. banc 2001) (quoting *Bauby v. Lake*, 995 S.W.2d 10, 13 (Mo.App.1999)).

The State must produce sufficient objective evidence from which any reasonable, rational, and logical jury could conclude beyond a reasonable doubt that a defendant committed the acts charged. *Jackson v. Virginia*, 443 U.S. 307, 317-19, 99 S.Ct. 2781, 2788-89, 61 L.Ed.2d 560 (1979). This requires the jury as the fact finder to reach a subjective level of near certitude that the defendant committed the charged acts. *Id.* at 315. A criminal conviction cannot be sustained absent objective evidence of guilt being presented at trial and subjective knowledge of guilt being determined by the jury. *Id.*

In assessing the sufficiency of the evidence where the State relies upon an inference or inferences drawn from the direct evidence to support any element of the charged offense, due process requires that an inference must rise above the level of conjecture and speculation and that the inferred fact must be more likely than not to flow from the proved fact for the inferred fact to be considered rational, reasonable, and logical. *Leary v.*

U.S., 395 U.S. 6, 36, 89 S.Ct. 1532, 1548, 23 L.Ed.2d 57 (1969). This is a determination as to whether the evidence supports the conclusion that the inferred fact upon which the conviction rests, at least more likely than not, flows from the direct evidence produced at trial. *Id.* at 36. Mr. Bowman's due process rights were violated, in that the State, which produced evidence of the presence of miniscule amounts of his DNA at the crime scene, failed to produce sufficient objective evidence from which a reasonable, rational, and logical juror could have found that he committed the crime of murder beyond a reasonable doubt, even though a jury subjectively found him guilty of that crime.

The State carries the burden of proving that Mr. Bowman caused Ms. Rumfelt's death. *R. S. Mo. § 565.020*. Ms. Rumfelt died by strangulation. ROP 309. This requires proof that Mr. Bowman was present in person at the time and at the location where Ms. Rumfelt was strangled. However, no direct evidence was presented that Mr. Bowman was present at the time of and location of Ms. Rumfelt's death. (See *ROP, generally*). Ms. Rumfelt was last seen alive around 11 a.m. on Monday, June 6, 1977, by herself. ROP 377-378. The State presented no evidence placing Ms. Rumfelt and Mr. Bowman together on June 6, 1977 from when Ms. Rumfelt

was last seen alive at 11 a.m. to that evening when Ms. Rumfelt's body was found. (See *ROP*, generally).

The State argued at trial that the young man seen walking along Brentwood Boulevard with Ms. Rumfelt on the evening of June 5, 1977 was Mr. Bowman. ROP 418. However, a reasonable jury could not draw this inference based upon the testimony used to support it. The witnesses described this young man as having blond hair and being approximately twenty years of age. ROP 73. When shown a line up photo in 2007 which included Mr. Bowman, one witness identified a man other than Mr. Bowman as appearing similar to the man she saw with Ms. Rumfelt on the evening of June 5, 1977. ROP 82.

In *State v. Freeman*, 269 S.W.3d 422 (Mo. 2008), this Court determined that the verdict of guilt was supported by sufficient evidence. In distinguishing Mr. Bowman's case from *Freeman*, one only has to review the facts this Court found sufficient in *Freeman* and the correlating lack of such facts in Mr. Bowman's case to see the paucity of evidence used to obtain Mr. Bowman's conviction. In *Freeman*, this Court determined that the DNA analysis was reliable and untainted. The DNA evidence was located on a piece of toilet paper found underneath the victim's body in her apartment. That toilet paper was of the same design as the toilet paper found

elsewhere in the victim's apartment. This gave rise to the inference that Mr. Freeman was physically present where the toilet paper with the DNA was located, i.e. under the victim's body. This Court, to support its conclusion that Mr. Freeman had to be physically present near the victim's dead body, discussed the improbability of his DNA finding its way to that piece of toilet paper in any other way: the victim taking that piece of toilet paper with her to the VFW Hall where the two were seen on the evening of the murder; exposing the toilet paper in some way to Mr. Freeman so as to have his DNA on it; and then for this piece of toilet paper to end up underneath the victim's dead body. This Court noted that there was no evidence to support that Mr. Freeman's DNA could have found its way to this toilet paper in any other way because there was no evidence that this piece of toilet paper was ever at the VFW, and no witness saw Mr. Freeman make physical contact with the victim while the two were at the VFW. Therefore, this Court concluded that nothing but speculation supported the opposite inference sought by Mr. Freeman on appeal. *Id.* This Court went on to note the additional corroborating evidence: that Mr. Freeman's DNA was found on the victim's stockings, one of which was wrapped around her neck, and the lack of any evidence of innocent transfer of his DNA to clothing of the victim. *Id.* The Court went on to note that Mr. Freeman met the description

of the likely murderer that was given the day after the victim was killed, and that Mr. Freeman had argued and flirted with the victim, and then left the VFW shortly before she did. *Id.* at 426. Furthermore, Mr. Freeman left the VFW with a bottle that was determined to be similar to the weapon used to assault the victim. *Id.*

All of the foregoing evidence, viewed in the light most favorable to the jury's verdict in Mr. Freeman's case, supported this Court's conclusion that the inferences drawn were reasonable and that sufficient evidence was presented for Mr. Freeman's conviction to be affirmed.

Such facts are not present in Mr. Bowman's case to provide support for the inference argued by the State and drawn by the jury. That inference required Mr. Bowman's jury to conclude beyond a reasonable doubt that he strangled Ms. Rumfelt simply because his DNA profile could not be excluded from the DNA profile obtained from State's Exhibit No. 3c. Unlike *Freeman*, no evidence placed Mr. Bowman with Ms. Rumfelt at any time, much less at or near the time of her death. (See *ROP, generally*). Unlike *Freeman*, no evidence placed Mr. Bowman with Ms. Rumfelt at the location where she was murdered and where her body was discovered. See *ROP, generally*. Unlike *Freeman*, Mr. Bowman did not meet the description of the young man seen with Ms. Rumfelt on the night before she

disappeared. ROP 82, 154-155. Unlike *Freeman*, neither the murder weapon nor the knife used to cut Ms. Rumfelt's neck were connected to Mr. Bowman in any way. (See *ROP*, generally). Unlike *Freeman*, there was no other DNA evidence on Ms. Rumfelt from which Mr. Bowman's DNA profile could not be excluded. ROP 241. And finally, unlike *Freeman*, there was no evidence that Mr. Bowman and Ms. Rumfelt had ever met each other, had common friends, or frequented the same areas. See *ROP*, generally.

In *State v. Chaney*, the defendant was found guilty of first degree murder and sentenced to death. *State v. Chaney*, 967 S.W.2d 47, 49 (Mo. banc 1998). The State presented evidence during trial of physical evidence found in the back of the defendant's van. *Id.* at 51-52. Materials found in the back of the defendant's van matched materials found on the victim's body. *Id.* Two hairs also found in the back of the defendant's van were consistent to the genetic profile of the victim. *Id.* Furthermore, two hairs found on the victim's body matched samples of the defendant's hair. *Id.* The State also produced evidence of that the defendant's whereabouts were unknown during the time of the murder and the defendant made several inconsistent statements during questioning and to neighbors. *Id.* Furthermore, the State presented evidence that the defendant made unusual

statements and acted unusually after the murder. Lastly, the defendant made attempts to conceal the murder. *Id.*

From the underlying facts, this Court found that not one piece of evidence standing alone was sufficient for a reasonable jury to find guilt beyond a reasonable doubt. *Id.* at 53. However, this Court did find that the totality of the evidence, if believed, pointed to the defendant's guilt. *Id.*

The case here is easily distinguishable from *Chaney*. Unlike *Chaney*, the only piece of physical evidence that the State introduced against Mr. Bowman was his DNA profile in the victim's underwear. There was no blood evidence, fingerprints, or hair recovered from the crime scene that connected Mr. Bowman to the crime. The State also was unable to provide the jury with the exact time of death. Therefore, Mr. Bowman was unable to provide an alibi for the time of death. Mr. Bowman never made any inconsistent statements. He asserted his innocence from the beginning of the investigation. Also, there was no attempt by Mr. Bowman to conceal any evidence of the crime.

No direct evidence was presented of Mr. Bowman's presence at the time and location of Ms. Rumfelt's death. The circumstantial evidence from which the inference that Mr. Bowman killed Ms. Rumfelt must be drawn consists only of the inability to exclude Mr. Bowman's DNA profile from

that of the profile of the DNA found in State's Exhibit No. 3c.⁷ ROP 203. This requires an inference to be drawn that Mr. Bowman was likely physically present at some time with State's Exhibit No. 3c so that his DNA could be transferred to that underwear. However, to convict Mr. Bowman of murder, the jury also must have inferred: (1) that Mr. Bowman was present with State's Exhibit No. 3c at or near the time and location where Ms. Rumfelt was killed; and (2) that Mr. Bowman was present at the same location and time when Ms. Rumfelt was killed, and that he caused her death.

⁷ No direct evidence was presented identifying the DNA stains in State's Exhibit No. 3c as belonging to Mr. Bowman. Circumstantial evidence was before the jury in the form of the nature of the population frequency of the major contributor to the one stain on the underwear. The jury could have inferred that, as a result of the probability supported by the population frequency on the one stain from the underpants that the DNA from the major contributor to that stain more likely than not belonged to Mr. Bowman. Such an inference could be supported by the evidence, as reasonable and logical.

There was no evidence presented at trial to support the above two inferences. The State presented no evidence of when or where Mr. Bowman's DNA was transferred to the victim's underwear, or that Mr. Bowman was seen with Ms. Rumfelt or known to be with Ms. Rumfelt at any time prior to her death. (See *ROP, generally*). Further, DNA can be transferred from one person to another, from an object to another object or person, or from object to object. Mr. Bowman's DNA was not found on Ms. Rumfelt, or inside her body. (See *ROP, generally*). Therefore, it is neither reasonable nor logical for one to infer that because Mr. Bowman's DNA was on the underwear in State's Exhibit No. 3c that he caused the victim's death. The presence of DNA on a piece of clothing connected to the victim, without any additional evidence in support, does not provide sufficient evidence to support Mr. Bowman's conviction for murder.

In *State v. Kinder*, 942 S.W.2d 313 (Mo. 1996), this Court also found sufficient evidence to support a conviction for murder. In *Kinder*, the defendant was observed around midnight in the parking lot of a bar about forty yards from the female victim's home, holding a pipe with black tape on one end. *Id.* at 320. At about 1:00 a.m., the defendant was observed exiting the victim's home. *Id.* Early the next morning, victim's unclothed body was found lying on the bed of her home in a pool of blood. *Id.* The pathologist

testified that her injuries were consistent with being beaten with a pipe. *Id.* Semen was recovered from the victim's body, and DNA testing of the genetic material in that semen matched the defendant's profile. *Id.* Based upon the above facts, the resulting inference that defendant caused the death of the victim was reasonable and logical and, therefore, provided sufficient evidence to support the defendant's conviction for her murder. *Id.*

In *Kinder*, the defendant's semen was found on the victim's body. Here, Mr. Bowman's DNA was found not on the victim, but only on the victim's underwear. Without evidence that his DNA was on the victim, it is not clear that Mr. Bowman had sexual contact with the victim because Mr. Bowman's DNA could have been transferred to victim's underwear for many reasons other than sexual contact with the victim. For example, the victim could have borrowed another woman's underwear and worn that underwear on the day she was killed. A logical inference cannot be drawn that Mr. Bowman had sexual contact with the victim based only on the presence of his DNA on her clothing, and not on her body. Additionally, in *Kinder*, there was direct and circumstantial evidence that the defendant was in the victim's home. Here, there was no direct evidence that Mr. Bowman was ever anywhere near the victim at any time prior to her death. There is no evidence, either direct or circumstantial, that Mr. Bowman knew the

victim or anyone she associated with. In fact, Mr. Bowman lived in Illinois and did not frequently visit St. Louis. In *Kinder*, the Defendant was in possession of a pipe at a bar, just forty yards from the victim's home, and the pathologist testified that the victim's injuries were consistent with being inflicted with a pipe. Here, Mr. Bowman was never seen by anyone with anything that connects him to the victim's murder.

The presence of DNA on clothing, with no other supporting or corroborating evidence, is not sufficient evidence from which a reasonable jury could infer that the accused caused the victim's death. It is simply too great a leap, and one that is not allowed for by due process principles.

IV. THE TRIAL COURT ERRED IN ALLOWING THE STATE TO PRESENT VICTIM IMPACT TESTIMONY DURING THE PENALTY PHASE OF TRIAL OR, IN THE ALTERNATIVE, IN FAILING TO LIMIT SUCH VICTIM IMPACT TESTIMONY BECAUSE IT PREJUDICED MR. BOWMAN IN THAT THE MAJORITY OF THE EVIDENCE PRESENTED BY THE STATE CONCERNED CRIMES FOR WHICH MR. BOWMAN HAS ALREADY BEEN PUNISHED, CRIMES FOR WHICH HE AWAITS A NEW TRIAL, AND DID NOT

**CONCERN EVIDENCE OF THE IMPACT OF THE VICTIM'S
DEATH.**

A. STANDARD OF REVIEW

To preserve a claim of error regarding the trial court's exclusion of evidence, the proponent of the evidence must attempt to present the evidence at trial. *State v. Speaks*, 298 S.W.3d 70, 85 (Mo. App. E.D. 2009). When a claim of error is preserved, the reviewing court applies an abuse of discretion standard of review. A trial Court abuses its discretion when its ruling is clearly against the logic of the circumstances and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *State v. Steger*, 209 S.W.3d 11, 20 (Mo. App. E.D. 2006).

**B. THE VICTIM IMPACT TESTIMONY PRESENTED WAS
PREJUDICIAL TO MR. BOWMAN**

Prior to his trial, Mr. Bowman filed three motions regarding the presentation of victim impact testimony during the penalty phase of Mr. Bowman's trial. LF 49-58. The first was to preclude the use of victim impact testimony during the penalty phase of Mr. Bowman's trial. LF 56-58. The second was to limit victim impact testimony during the penalty phase, and finally, the third was to require pretrial judicial review and videotaping of any victim impact testimony to ensure it was non-prejudicial

in content. LF 49-52, 53-55. Judge Vincent denied all three of the above motions and allowed the State to present extensive victim impact testimony during the penalty phase of Mr. Bowman's trial. LF 87; ROP 479-495, 510-512, 523.

In *Payne v. Tennessee*, the United States Supreme Court held that victim impact testimony was not a per se violation of the Eighth Amendment. *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). However, in its opinion, the Supreme Court did impose limitations on what is appropriate victim impact testimony. *Id.* Specifically, victim impact testimony can violate the Constitution if it is unduly prejudicial and renders the trial fundamentally unfair. *Id.* The fundamental rationale announced by the Court in *Payne* looked to the fairness of the sentencing phase proceedings. The majority opinion noted that, just as the defendant is entitled to present evidence in mitigation designed to show that the defendant is a “uniquely individual human being,” the State should also be allowed to present evidence showing each victim's “uniqueness as an individual human being.” *Id.* at 823-824. Specifically, “the State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in by reminding the jury that just as the murderer should be considered as an individual, so

too the victim is an individual whose death represents a unique loss to society and in particular to his family.” *Id.* at 825.

In her concurring opinion, Justice O'Connor recognized that this type of evidence has the potential to be unduly inflammatory. *Payne v. Tennessee*, 501 U.S. 808, 831 (1991) (O'Connor, concurring). “The issue,” she stated, is not whether the victim impact evidence presented was more or less than a brief glimpse of the victim's life, but rather whether “in a particular case, a witness’ testimony or a prosecutor's remark so infects the sentencing proceeding as to render it fundamentally unfair,” and, therefore, a due process violation. *Id.*

When victim impact testimony is unduly prejudicial, rendering the sentencing proceeding fundamentally unfair, the 14th Amendment of the United States Constitution will provide protection to the aggrieved party. *Payne*, 501 U.S. 808 at 831. In *Payne*, the petitioner was found guilty of two counts of first degree murder and sentenced to death. *Id.* at 811. During the penalty phase of the appellant’s trial, the State presented evidence of the impact that the crimes had on the victim’s three year old son. *Id.* at 814-15. On appeal, the petitioner argued that the presentation of the victim impact testimony clearly violated the holdings in both *Booth v. Maryland*, 482 U.S. 496 (1987) and *South Carolina v. Gathers*, 490 U.S. 805 (1989). (holding

that the Eighth Amendment prohibits a capital sentencing jury from considering “victim impact” evidence relating to the personal characteristics of the victim and the emotional impact of the crimes on the victim’s family).

In holding that victim impact evidence does not per se violate the Eighth Amendment to the United States Constitution, the Court in *Payne* did not establish a system of admittance of victim impact evidence. Rather, the Court merely held that if the State chooses to introduce victim impact evidence, the Constitution does not prohibit it. See generally *Payne v. Tennessee*, 501 U.S. 808 (1991).

The victim impact evidence that was presented at Mr. Bowman’s trial was clearly excessive to what the Court had in mind when it issued its opinion in *Payne*. In stark contrast to *Payne*, where there was only one witness who gave victim impact evidence, here, the State produced seven witnesses to testify regarding the impact of crimes for which Mr. Bowman either had already served time for, or had not been convicted of. ROP 479-495, 510-512, 523. At the time of trial, Mr. Bowman had already served his required jail time for the crimes that he was convicted of over thirty years ago and was awaiting a new trial for the Ruth Ann Jany and Elizabeth West homicides after his convictions were reversed on the basis that his confessions were coerced by the police. Convictions from over thirty years

ago, and evidence of crimes for which Mr. Bowman's convictions have been reversed were not relevant to the jury's decision making process in considering the death penalty as punishment. The highly emotional and prejudicial nature of the testimony has no immediate relevance to punishment and only served to inflame and prejudice the jury. By allowing the jury to hear evidence regarding crimes for which Mr. Bowman has already been punished, and crimes for which Mr. Bowman's convictions have been overturned due to coerced confessions, the State irreparably prejudiced the jury.

Moreover, in *Payne*, the Supreme Court articulated that the purpose for allowing victim impact testimony is to counteract the mitigating evidence presented by the defendant to remind the jury that just as the murderer is an individual, so too was the victim whose death represents a unique loss to society and in particular to the victim's family. *Payne*, 501 U.S. 808 at 825.

During the penalty phase of Mr. Bowman's trial, the State first called Cynthia Allhands Suchaczewski. ROP 478. Ms. Suchaczewski testified that as she left work on March 20, 1972, Mr. Bowman came up behind her with a knife and instructed her to walk. ROP 479-480. She testified that Mr. Bowman then took her into someone's yard in the bushes, and assaulted and

robbed her. ROP 481. She further testified that due to the above conduct, Mr. Bowman was convicted of armed robbery, aggravated battery, and unlawful restraint and was sentenced to ten to thirty years in the Illinois state prison. ROP 482-484. Prior to trial, Mr. Bowman had already served his required time in the Illinois state prison for this offense.

The State next called Pam Pourchot Matthies. ROP 484. Mrs. Matthies testified that on November 8, 1972 in Flora, Illinois, Mr. Bowman approached her with a knife as she walking home and then assaulted her. ROP 485-487. However, Ms. Matthies stated that when she reported the incident to the police, her father declined to press charges against Mr. Bowman. ROP 488-489. Mr. Bowman was never charged with the above offense. ROP 489.

The State next called Jeanne Taylor Feurer who testified that on July 20, 1978, Mr. Bowman kidnapped her at knifepoint in a laundromat in Belleville, Illinois. ROP 490-492. She further testified that Mr. Bowman was convicted of her kidnapping and unlawful restraint. ROP 494-495. The State then introduced a certified copy of Mr. Bowman's conviction on February 7, 1979 of the kidnapping and unlawful restraint of Mrs. Feurer. ROP 495. On February 23, 1979, Mr. Bowman was sentenced to fourteen years in the Illinois Department of Corrections. ROP 495. At the time of

trial, Mr. Bowman had already served his required time in the Illinois Department of Corrections for this offense

The State next called Mr. Rokita who testified to his involvement in the Elizabeth West murder investigation. ROP 495-501. In connection with Mr. Rokita's testimony, the State introduced photographs of Ms. West's body as it was found following her murder. ROP 497-498. Mr. Rokita further testified as to his involvement in the investigation of the Ruth Ann Jany homicide. ROP 499-501.

The State next called Robert Miller, who testified that he was a detective with the St. Clair County Sheriff's Department in 1979. ROP 501-502. Mr. Miller testified that in 1979, when Mr. Bowman was in prison for the kidnapping and unlawful restraint of Jeanne Taylor Feurer, he requested to see a detective regarding murder investigations in the St. Clair County area. ROP 503. Upon talking with Mr. Bowman, Mr. Miller learned that Mr. Bowman wanted to confess to two murders in the St. Clair County area, those of Elizabeth West and Ruth Ann Jany. ROP 504-507. On cross examination, Mr. Miller conceded that Mr. Bowman recanted the

confessions he made in both the Elizabeth West and Ruth Ann Jany homicides.⁸ ROP 513.

The State next called Ethel West, Elizabeth West's mother. ROP 510. Upon introducing herself to the jury, Mrs. West stated, "I'm Ethel West. My daughter Elizabeth was killed by Bowman." ROP 510. She further testified to the impact that the death of her daughter had on she and her family. ROP 510-512. When asked about the effect of Elizabeth's death on her late husband, Elizabeth's father, she stated: "He adored her, and it really killed him." ROP 512.

Lastly, the State called Dewey Rumfelt. ROP 515. Mr. Rumfelt was the only witness called by the State to testify regarding the impact Velda Rumfelt's homicide. Mr. Rumfelt testified as to how Velda's death impacted him as her brother and their lives together growing up. ROP 515-523.

The extensive victim impact testimony was presented in order to inflame the jurors' negative feelings towards Mr. Bowman, and not to highlight the individual characteristics of Ms. Rumfelt. The State called

⁸ It was these coerced confessions that formed the basis of the reversal of Mr. Bowman's convictions for the Elizabeth West and Ruth Ann Jany homicides.

only one witness, Dewey Rumfelt, to testify regarding the individualities of Ms. Rumfelt and the impact of her death on her family. The remainder of the victim impact testimony was wholly unrelated to the crime at issue. The purpose for which such testimony was presented was not the purpose allowed by the Court in *Payne*, and therefore should not have been allowed into evidence.

Trial courts have both the power and the responsibility to ensure that this type of evidence does not infringe on a defendant's right to due process in sentencing. Under Mo. Rev. Stat. §565.030.4, the trial court has discretion to exclude victim impact evidence altogether. Additionally, such evidence must be presented consistent with the normal rules of evidence, meaning that traditional evidentiary rules, including those related to cumulative evidence and to the weighing of probative value against prejudicial impact, apply with equal force in a capital sentencing proceeding.

The Trial Court had a duty to protect Mr. Bowman's Constitutional Rights by disallowing any evidence which might prejudice the jury. To protect Mr. Bowman's constitutional rights, the trial judge should have limited the scope of the victim impact evidence presented during the penalty phase or required pretrial judicial review of that testimony. At the very least, the trial judge should have required the victim impact testimony to be

videotaped in order to ensure Mr. Bowman's Constitutionally guaranteed right to a fair trial within the limits delineated in *Payne*. However, the Trial Court failed to protect Mr. Bowman's rights when it allowed the above irrelevant and inflammatory victim impact testimony to be presented to the jury before it made its decision regarding punishment. Such emotionally charged evidence undoubtedly prejudiced the jury. The admission of the above testimony violated Mr. Bowman's rights to due process, an impartial jury, and proportionate sentencing under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

V. **THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO PRECLUDE THE DEATH PENALTY BECAUSE IT WAS DISPROPORTIONATE AS COMPARED TO OTHER CASES IN WHICH IT WAS ASSESSED IN THAT THE CRIME DOES NOT FALL INTO THE CATEGORY OF THOSE WHICH AUTOMATICALLY SUPPORT A DEATH SENTENCE, THE EVIDENCE AGAINST THE DEFENDANT IS NOT STRONG, AND THE DEFENDANT'S PREVIOUS CRIMES OCCURRED ALMOST 30 YEARS AGO.**

A. STANDARD OF REVIEW

Mo. Rev. Stat. Section 565.035 provides that “whenever the death penalty is imposed in any case, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of Missouri.” As a part of this review, this Court must determine “whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime, the strength of the evidence, and the defendant.” Mo. Rev. Stat. § 560.035.3(3). When conducting such proportionality review, “this Court” makes a review of the whole record, independent of the findings and conclusions of the judge and jury.” *State v. Chaney*, 967 S.W.2d 47, 59 (Mo. banc 1998).

In *Chaney*, this Court stated that the inclusion of the “strength of the evidence” factor of this Court’s proportionality review is “uncommon among states having statutes mandating proportionality review. It is clear from this mandate that the legislature intended for this Court, when reviewing the imposition of the death penalty, to go beyond a mere inquiry into whether the evidence is sufficient to support a conviction.” *Id.* at 60.

B. THE DEFENDANT’S SENTENCE OF DEATH IS EXCESSIVE AND DISPROPORTIONATE TO THE PENALTY IMPOSED IN SIMILAR CASES,

**CONSIDERING BOTH THE CRIME, THE STRENGTH
OF THE EVIDENCE, AND THE DEFENDANT.**

In *State v. Chaney*, the Missouri Supreme Court affirmed a murder conviction, but overturned the defendant's sentence of death, finding that the case fell "within a narrow band where the evidence is sufficient to support a conviction, but not of the compelling nature usually found in cases where the sentence is death." *State v. Chaney*, 967 S.W.2d 47, 60 (Mo. banc 1998), citing *State v. Watson*, 61 Ohio St.3d 1 (1991) (finding the evidence sufficient to convict, but setting aside the sentence of death based on a statutorily mandated independent review of the evidence). See also *State v. Barton*, 240 S.W.3d 693, 714-718 (Mo. 2007) (dissenting opinion arguing against assessment of the death penalty because the evidence does not rise to the level of direct evidence discussed in *Chaney* even though defendant found with victim's blood stain on his shirt, and defendant found to have disposed of evidence following the crime).

The defendant in *Chaney* was convicted of murdering his stepdaughter's twelve year old friend, and was sentenced to death. *Chaney*, 967 S.W.2d at 49. In *Chaney*, evidence against the defendant included hairs and fibers found on the back of the victim's shirt which matched particles in the back of defendant's van so closely that the state's expert testified that

“the likelihood that this collection of particles could come from anywhere other than defendant’s van was astronomical.” *Id.* at 53. The state’s expert testified that the above evidence indicated that the victim had been laying in the back of the defendant’s van on the day she was murdered. *Id.* An “awl-like tool consistent with wounds” of the victim, was located by police in a tire repair kit in the defendant’s van, which the defendant attempted to remove before it could be seized by the police. *Id.* The victim was last seen at 5:00 p.m. on the day of her murder and the defendant admitted to driving his van from 5:00 p.m. to 8:30 p.m. that day. *Id.* at 53. Furthermore, the defendant made inconsistent statements during questioning and to neighbors regarding his whereabouts during this time. *Id.* at 51-52. Two hairs found in the back of the defendant’s van were consistent with the genetic profile of the victim. *Id.* Two hairs found on the victim’s body matched samples of the defendant’s hair. *Id.* The State presented evidence that the defendant made unusual statements and acted unusually after the murder. *Id.* Finally, the victim’s body was found in a wooded area with which the defendant was familiar due to his hunting and fishing there. *Id.*

On mandatory review by the Supreme Court pursuant to *Mo. Rev. Stat. § 565.035.3(3)*, the Supreme Court noted that the legislature’s intent behind the statute was to ensure that the Supreme Court would go beyond

the mere inquiry into whether evidence was sufficient to support a conviction. *Chaney*, 967 S.W.2d at 59. The legislature intended the Supreme Court to compare the weight of the evidence in other cases where the death penalty was given. *Id.* The Supreme Court cited to a number of cases in which the death penalty was imposed. The Supreme Court noted that in other similar cases, the death penalty was imposed as the result of firm evidence in the form of eyewitness, confession, admission, document, fingerprint or blood evidence which directly pointed to the defendant. *Id.* Because the evidence in *Chaney* was merely “trace and pathological”, the Supreme Court found that though the evidence was sufficient to support a conviction, it was insufficient to impose the death penalty. *Id.*

1. The Crime Itself

Although tragic, the manner of Ms Rumfelt’s death does not fall into any of the categories declared by the Missouri Supreme Court to be particularly warranting of the death penalty, such as the murder of a child or other helpless individuals such as the elderly. *Chaney*, 967 S.W.2d at 59. Also see *State v. Brown*, 902 S.W.2d 278 (Mo. banc 1995) (defendant sentenced to death after being convicted of binding and strangling nine year old girl); *State v. Lingar*, 726 S.W.2d 728 (Mo. banc 1987) (defendant sentenced to death after being convicted of stabbing twelve year old girl);

State v. Murray, 744 S.W.2d 762 (Mo. banc 1988) (victims were shot while tied up); *State v. Walls*, 744 S.W.2d 791 (Mo. banc 1988) (elderly victim).

Ms. Rumfelt was almost seventeen years old when she died, not a child as were the victims in the above cases cited by the Court in *Chaney*. Nor was Ms. Rumfelt helpless in the way the victims were described by the Court above. Therefore, Ms. Rumfelt's murder is not one which automatically qualifies the perpetrator for a death sentence.

2. The Strength of the Evidence of Defendant's Guilt

In *Chaney*, the Court overturned the defendant's death sentence because the evidence of the defendant's guilt was not "of the compelling nature usually found in cases where the sentence is death." *Chaney*, 967 S.W.2d at 60. This ruling was made despite the substantial physical evidence against the defendant, including the hair and fiber samples found on the victim as well as the probable murder weapon found in the defendant's van. *See Chaney generally*. The evidence in *Chaney* was clearly more damning than that against Mr. Bowman, and still the Court found that evidence insufficient to warrant imposition of the death penalty.

As in *Chaney*, the State did not present any evidence of a confession by Mr. Bowman. (See *ROP, generally*). The State did not introduce into evidence any blood or fingerprint evidence that connected Mr. Bowman to

the crime. (See *ROP, generally*). The only piece of physical evidence that the state introduced to connect Mr. Bowman to the crime was the questionable DNA found not inside of the victim, but in a pair of underwear that the State claims belonged to Ms. Rumfelt. ROP 184, 192-203; State's Exhibit 3c. Though Mr. Bowman's DNA profile could not be excluded from the DNA profile located in the underwear at issue, that fact standing alone certainly does not by itself indicate that Mr. Bowman killed the victim. The State presented absolutely no evidence, circumstantial or otherwise, to connect Mr. Bowman to Ms. Rumfelt on the night of her murder. (See *ROP, generally*). The DNA profile was the State's only piece of evidence connecting Mr. Bowman to Ms. Rumfelt at all. If the evidence in *Chaney* was insufficient to sustain a sentence of death, then certainly the one piece of physical evidence here cannot possibly support imposition of the death penalty against Mr. Bowman.

Additionally, the evidence presented at trial against Mr. Bowman was insufficient due to the State's inability to prove deliberation as required by RSMo § 565.020.1. In *State v. Black*, the Missouri Supreme Court once more considered the strength of the evidence as part of its statutory review pursuant to RSMo § 565.035. *State v. Black*, 50 S.W.3d 778 (Mo. banc 2001). In *Black*, the defendant was convicted of first degree murder and

sentenced to death. *Id.* at 784. On appeal, the defendant argued that the prosecution had failed to prove deliberation, and accordingly, the evidence was not sufficient to support a first degree murder conviction. *Id.* at 788. In finding that the prosecution did present sufficient evidence of deliberation, the Supreme Court noted that the defendant followed the decedent in his car for over a mile, nearly ten minutes, before the defendant exited his vehicle, walked over to the victim, and stabbed him in the neck. *Id.* The Supreme Court reasoned that the evidence submitted by the prosecution to show deliberation was sufficient to allow a reasonable jury to convict. *Id.* Accordingly, the Supreme Court held that the jury finding of deliberation, and ultimately first degree murder and a death sentence, was reasonable in light of the strength of the evidence presented. *Id.*

In *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (plurality opinion), the decision of the three-judge plurality limited its approval of a death penalty assessment to cases in which “ a life has been taken deliberately by the offender.” Because an elevated *mens rea* is critical to a finding of deliberation, and therefore the constitutionality of any death sentence, it is highly appropriate that the Missouri Supreme Court extends *Chaney* analysis to this element.

In contrast to *Black* and *Gregg*, the State here did not prove any deliberation on the part of the perpetrator. Unlike *Black*, there are no eyewitnesses that described what happened before Ms. Rumfelt's death. (See *ROP*, generally). There is no evidence that Mr. Bowman followed the victim or planned her murder. (See *ROP*, generally). There is no evidence of anything that happened prior to Ms. Rumfelt's death. (See *ROP*, generally). Therefore, the State cannot possibly prove deliberation on the part of the perpetrator. Because of the lack of evidence sufficient to support a finding of deliberation, pursuant to their review of the strength of the evidence of guilty under § 565.035(3), this Court should overturn Mr. Bowman's sentence of death.

The State did not produce any evidence to suggest deliberation on the part of the perpetrator. In order to avoid *Chaney* relief, the prosecution must have not only proven that Mr. Bowman could have deliberated on causing the death of the Ms. Rumfelt, but that he did in fact deliberate on it. The State must have proven this premise well enough that the Missouri Supreme Court would not only find it admissible, but also satisfactory under the different lens of statutory review in a capital case. The State here failed to produce satisfactory evidence of deliberation and Mr. Bowman's sentence of death should therefore be overturned.

3. The Defendant

In *Chaney*, as part of its proportionality review, the Court examined the defendant himself as well as his history of violent behavior and sexual abuse. *Chaney*, 967 S.W.2d 47 at 60. During the penalty phase, the state called five witnesses who testified about prior bad acts of Chaney, including instances of physical and sexual assault on Chaney's former teenage wife and her minor sisters and illegal drug dealing and use. *Id.* at 58. However, the Court found the above testimony to have very limited probative value to its analysis due to the fact that the acts were said to have occurred ten (10) to twenty-six (26) years before the trial. *Id.* at 60. The Court stated that "the combination of the strength of the evidence and the defendant's background makes this case unlike other cases involving similar crimes in which the death penalty was imposed." *Id.* Thus, the Court concluded the death penalty was a disproportionate sentence for the defendant. *Id.*

The testimony during the penalty phase of this case was also concerning acts committed by Mr. Bowman in the distant past. ROP 479-495. In fact, every act of Mr. Bowman testified to by the witnesses were said to have occurred during the 1970's. ROP 479-495. Just as in *Chaney*, these prior bad acts were allegedly committed almost thirty (30) years ago. Therefore, pursuant to *Chaney*, the fact that these bad acts occurred three

decades ago, combined with the insufficiency of the evidence as discussed above, should result in this Court's determination that the death penalty is disproportionate in this case as well.

VI. THE TRIAL COURT ERRED IN ALLOWING DR.

MARGARET WALSH TO TESTIFY AS TO THE DNA

EVIDENCE RECOVERED FROM THE SCENE OF THE

CRIME BECAUSE THE STATE COULD NOT PROVIDE

REASONABLE ASSURANCES THAT THE PHYSICAL

EVIDENCE WAS IN THE SAME CONDITION AS IT WAS IN

THE PAST IN THAT EVIDENCE OF THOSE ITEMS WERE

DAMAGED AND MISSING.

A. STANDARD OF REVIEW

To preserve a claim of error regarding the trial court's exclusion of evidence, the proponent of the evidence must attempt to present the evidence at trial. *State v. Speaks*, 298 S.W.3d 70, 85 (Mo. App. E.D. 2009). When a claim of error is preserved, the reviewing court applies an abuse of discretion standard of review. A trial Court abuses its discretion when its ruling is clearly against the logic of the circumstances and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *State v. Steger*, 209 S.W.3d 11, 20 (Mo. App. E.D. 2006).

B. ARGUMENT

The trial Court erred in allowing Dr. Margaret Walsh to testify to the DNA evidence because it was inherently unreliable. The State failed to establish a reliable chain of custody, leaving the possibility open of contamination.

Reasonable assurance must be provided to show that the evidence sought to be introduced is the same and in like condition when received. *State v. Scott*, 647 S.W.2d 601, 607 (Mo. App. 1983). Though not every person who ever handled a piece of evidence is required to testify as to the validity of said evidence, the State is required to show by competent evidence that the item proffered is in the same condition as it was in the past and that the possibility of contamination is slight. *State v. Mahan*, 971 S.W.2d 307, 317 (Mo. banc 1998); *State v. Link*, 25 S.W.3d 136, 146 (Mo. banc 2000).

In *State v. Burnfin*, the Defendant was convicted of the second degree murder of Eddie Robinson. *State v. Burnfin*, 771 S.W.2d 908, 910 (Mo. App. W.D. 1989). During his trial, the defendant objected to testimony of a medical expert for the state. *Id.* at 913. The trial judge overruled the objection and allowed the testimony. *Id.* The objection was based on the absence of any evidence showing that the blood sample tested was taken

from the victim. *Id.* On appeal, the Court found the defendant's objection to the evidence well founded and accurate. *Id.* After the murder, an autopsy was conducted. *Id.* Neither the medical examiner nor the Coroner testified to extracting any blood from the victim. *Id.* A police officer testified that he sent blood to the crime lab for testing but failed to say whose blood it was. *Id.* Further, a chemist testified that he examined a blood sample from the victim, but he did not indicate from whom or how he received the sample. *Id.* Because of the absence of evidence to show how or when the blood sample reached the lab for examination, the Court found that there was no proof that the blood sample even came from the victim's body. *Id.* Accordingly, the Court found that the trial judge erred when it failed to exclude the expert's testimony regarding the blood sample. *Id.* at 913-14.

As in *Burnfin*, the trial Court here erred in allowing Dr. Margaret Walsh to testify to the DNA profile that she collected from within the underwear. However, in this case, the reliability of the evidence is grossly less than *Burnfin*. The underwear from which the DNA sample was extracted by Dr. Walsh was contained within a cardboard box with the other physical evidence collected at autopsy. ROP 177. The box of evidence was later stored at the Murphy Health Center in Pine Lawn. ROP 163-164. At some point in the 1980's the Murphy Health Center was flooded. ROP 163-

164. The State failed to provide any assurance that the box of evidence from the Rumfelt investigation was not damaged during the flood in any way.

Furthermore, when Dr. Walsh received the box from Detective Burgoon in 2007, she inventoried the contents of the box. ROP 178. She noted in her report that a vial of blood that was taken from Ms. Rumfelt at the time of autopsy, had been stored in an icebox, and had been destroyed as it could not be typed. App. 86; ROP 180. She further noted that hair samples taken from Ms. Rumfelt's body at the time of autopsy were not contained within the box as the evidence receipt listed. App. 86; ROP 180.

The missing hair samples indicate that at some point during the thirty years that the evidence was stored within the box, the box was opened and evidence was removed without documentation. This alone is enough to raise questions about the reliability of the evidence. There is clear evidence that the box of evidence was tampered with in the thirty years that it was in storage before testing. Therefore, any DNA evidence obtained from the items in the box should be excluded because of the inherent unreliability of the evidence.

Like *Burnfin*, here, the trial court erred in admitting evidence and allowing testimony regarding the DNA profile obtained from the underwear. The nature of the storage and the time period in which there was possibility

for contamination renders the evidence completely unreliable. As in *Burnfin*, this Court should find that the evidence was unlawfully admitted at trial and should have been excluded due to the lack of indicia of reliability.

VII. THE TRIAL COURT ERRED IN NOT ALLOWING THE DEFENDANT TO PRESENT EVIDENCE OF THE TWO SLIDES THAT DR. DRAKE COLLECTED DURING THE AUTOPSY BECAUSE THE EVIDENCE WAS LEGALLY AND LOGICALLY RELEVANT IN THAT IT SHOWED THE PROBLEMS WITH THE PRESERVATION OF THE EVIDENCE IN THIS CASE

A. STANDARD OF REVIEW

To preserve a claim of error regarding the trial court's exclusion of evidence, the proponent of the evidence must attempt to present the evidence at trial. *State v. Speaks*, 298 S.W.3d 70, 85 (Mo. App. E.D. 2009). When a claim of error is preserved, the reviewing court applies an abuse of discretion standard of review. A trial Court abuses its discretion when its ruling is clearly against the logic of the circumstances and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *State v. Steger*, 209 S.W.3d 11, 20 (Mo. App. E.D. 2006).

B. EVIDENCE MUST BE RELEVANT

Evidence must be relevant in order to be admissible. *State v. Anderson*, 76 S.W.3d 275, 276 (Mo. banc 2002). In Missouri, the general rule is that relevance requires both logical relevance and legal relevance. *State v. Smith*, 32 S.W.3d 532, 546 (Mo. banc 2000). Evidence is logically relevant if tends to make the existence of a material fact more or less probable. *Id.* at 546. However, logically relevant evidence is admissible only if it is legally relevant. Logical relevance weighs the probative value of the evidence against its costs. These costs include: unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or cumulativeness. *State v. Sladek*, 835 S.W.2d 308, 314 (Mo. banc 1992). Thus, logically relevant evidence is excluded if its costs outweigh its benefits. *Anderson*, 76 S.W.3d at 276.

Here, Judge Vincent should have allowed Defense to cross examine Dr. Walsh regarding the slides at issue, because they are both logically and legally relevant. The slides are logically relevant because they tend to show that there were serious problems regarding the storage, quality, and chain of custody of preservation of the evidence in this case. The two slides were allegedly taken from the body of Ms. Rumfelt at autopsy and then given by Detective Burgoon to Dr. Walsh to test for DNA. App. 67, 71-72; ROP 253-254. Only after Dr. Walsh discovered that neither Ms. Rumfelt nor Mr.

Bowman were contributors to the DNA profiles obtained from the slides did the State decide to omit the slides from its evidence and prevent the Defendant from presenting evidence regarding the slides. App. 68; ROP 257. The Defendant sought to introduce evidence of the slides in order to show that the way in which the evidence was marked and maintained was unreliable. ROP 253-263.

The slides are also legally relevant. The probative value of the slides outweighs any costs, especially here because this is a capital case in which the death penalty was imposed. Because the slides went to the character of the physical evidence at issue, the Defense should have been allowed to fully cross-examine Dr. Walsh about them. The fact that Judge Vincent disallowed full cross-examination as to the slides was highly prejudicial to Mr. Bowman.

C. RELEVANT FACTS

At trial, Dr. William Drake testified that he had taken a swab from the vagina of Ms. Rumpfelt's body. ROP 307-308, 324. Dr. Drake testified that he placed the material obtained from the swab on two slides, and examined them under a microscope where he noted a large number of sperm present. ROP 307-308, 324. Dr. Drake had no recollection of where he placed the

slide after the observation or who he could have possibly transferred it to.

ROP 308, 324-325.

During cross-examination of Dr. Margaret Walsh at trial, the Defense attempted to question Dr. Walsh about her involvement in the testing of the two slides, but Judge Vincent would not allow cross-examination on the subject. ROP 252, 262. The Defendant then made an offer of proof, wherein Dr. Walsh testified that Detective Burgoon located the two slides allegedly taken by Dr. Drake from Ms. Rumfelt's body at autopsy. App. 72; ROP 254. Detective Burgoon then delivered the slides to Dr. Walsh, and she tested them on December 17, 2008. ROP 254. One slide was labeled with the number P77-181 and the second was labeled P77-1574. App. 72-73; ROP 254-255. Dr. Walsh then testified that she identified the slides as Item Number Five (Slide P77-181) and Item Number Six (Slide P77-1574). App. 72-73; ROP 254-255. Dr. Walsh testified that both slides were located at the Saint Louis County Hospital Pathology department before they were in her possession. App. 73; ROP 254-255. Dr. Walsh testified that Defendant's Exhibit FF was a toxicology report with the numbers P77-181 and 1574 written across the top. App. 73-74; ROP 255-256. The toxicology report also contained both Ms. Rumfelt's name and Dr. Drake's name. App. 74; ROP 255-256. Dr. Walsh testified that she was unable to obtain a DNA

profile from the sperm fraction on slide P77-181 because there was insufficient material on that slide. App. 75; ROP 256-257. She then testified that she was able to obtain a partial DNA profile from the non-sperm fraction of the material contained in slide P77-181 which was consistent with a female. App. 76; ROP 257. For slide P77-1574, Dr. Walsh testified that she was able to obtain a partial DNA profile from the non-sperm fraction of the material contained on that slide which was also consistent with a female. App. 76; ROP 257. Dr. Walsh then testified that the DNA profiles which were taken from slides P77-181 and P77-1574 were sent to a paternity testing company. App. 76; ROP 258. The paternity testing corporation compared the DNA profiles with those of Velda Rumfelt's parents and found that there was a 0% probability that the DNA profile contained on each of the slides came from a child of Velda's parents. App. 76-77; ROP 258. Additionally, Dr. Walsh testified that she was able to exclude Mr. Bowman from being a donor to the DNA material extracted from Slide Number 6 (Slide numbered P77-1574). App. 76; ROP 257.

Additionally, Dr. Walsh testified that one slide was labeled with the name "Ethel Lawson." App. 78; ROP 259. Judge Vincent then acknowledged that the other slide was labeled with the name "Jo Williams." App. 78; ROP 259. Dr. Walsh stated that Detective Burgoon could not

determine who those two women were or why their names were on slides located with the rest of the evidence for Ms. Rumpfelt's case. App. 78; ROP 259.

At the conclusion of the offer of proof, Judge Vincent acknowledged that there had been a mix up of the evidence in this case. App. 84; ROP 264. However, he held that because Dr. Drake and the collecting nurses were absent and therefore unable to lay the foundation for the admission of the slides, the Defendant's offer of proof was denied. App. 84; ROP 264.

Judge Vincent abused his discretion when he sustained the State's Objection to the Defendant's Offer of Proof. The Defendant should have been able to present evidence that tended to show serious problems with the chain of custody and mix-up of the evidence in this case.

**VIII. THE TRIAL COURT ERRED IN OVERRULING THE
DEFENDANT'S MOTION TO PRECLUDE DR. MARY CASE
FROM TESTIFYING AS TO HER OPINIONS OF THE
EXISTENCE OF A PROBABLE SEXUAL ASSAULT BECAUSE
HER TESTIMONY WAS NOT HELPFUL TO THE JURY IN
THAT HER TESTIMONY WAS OVERLY SPECULATIVE
AND NOT BASED ON A REASONABLE DEGREE OF
MEDICAL CERTAINTY**

A. STANDARD OF REVIEW

To preserve a claim of error regarding the trial court's exclusion of evidence, the proponent of the evidence must attempt to present the evidence at trial. *State v. Speaks*, 298 S.W.3d 70, 85 (Mo. App. E.D. 2009). When a claim of error is preserved, the reviewing court applies an abuse of discretion standard of review. A trial Court abuses its discretion when its ruling is clearly against the logic of the circumstances and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *State v. Steger*, 209 S.W.3d 11, 20 (Mo. App. E.D. 2006).

B. ARGUMENT

The expert testimony elicited by the State of Dr. Mary Case during Mr. Bowman's trial was inadmissible because the testimony was not helpful to the jury.

In general, a person qualifies as an expert witness when, by reason or special experience, he/she possesses superior knowledge respecting a subject about which persons who have no particular training are incapable of forming an accurate opinion or drawing correct conclusions. *State v. Jordan*, 751 S.W.2d 68, 77-78 (Mo. App. E.D. 1988) citing *State v. Garrett*, 682 S.W.2d 153, 155 (Mo. App. 1984). The test of the admissibility of expert testimony is whether such testimony will be helpful to the jury. *State*

v. Marks, 721 S.W.2d 51, 55 (Mo. App. W.D. 1986). That is, the expert testimony is proper if the subject is one with which lay jurors are not likely conversant. *Id.* at 55-56. However, if the subject is one of everyday experience, then the testimony can be properly rejected. *Id.*

In *State v. Storey*, the Defendant was tried and convicted of first degree murder and sentenced to death. *State v. Storey*, 40 S.W.3d 898, 902 (Mo. banc 2001). On appeal, the Defendant argued that a defense expert should have been allowed to testify during the penalty phase as to the effect of being maximum security inmate. *Id.* at 910. Specifically, the expert testified in an offer of proof that the classification of a “maximum security inmate” would remain with the Defendant for the rest of his life because “the sentence and the crime he committed will never change.” *Id.* The trial judge excluded the testimony and this Court affirmed that exclusion because of the speculative nature of the testimony. *Id.* This Court found that whether the Department of Corrections will ever change their classification scheme is a matter of pure speculation. *Id.* Further, this Court found that the Missouri Governor does have the power to grant clemency or commute the Defendant’s sentence should he wish to do so. *Id.* Accordingly, this Court found that the expert’s proposed testimony was properly excluded. *Id.*

As in *Storey*, here, Judge Vincent should have excluded Dr. Mary Case's testimony because it was purely speculative and in no way aided the jury in determining any issue in the case. Prior to trial, the Defense made a motion to exclude Dr. Mary Case based upon the State's late disclosure of her and the fact that she was unable to testify that a "probable sexual assault" had occurred to a reasonable degree of medical certainty. LF 68-70, 81-86. Judge Vincent denied the motion and allowed the testimony of Dr. Case at trial. LF 88. Dr. Case testified that the Rumfelt homicide was most likely the result of or part of a "probable sexual assault." ROP 359-360, 362. However, Dr. Case testified also that she was unable to make that opinion with a reasonable degree of medical certainty. ROP 357. Dr. Case also stated that she formed her opinion that a "probable sexual assault" had occurred as a result of her review of police reports and autopsy reports. ROP 358. Dr. Case was not involved with the autopsy of Ms. Rumfelt nor did she ever physically examine the body of Ms. Rumfelt. Dr. Case's opinion regarding the occurrence of a "probable sexual assault" was based on mere conjecture and speculation. Her opinion is not one that would tend to aid a jury in coming to any determinations, rather her opinion was prejudicial to Mr. Bowman. She was unable to testify to a reasonable degree of medical certainty that in fact a sexual assault had occurred, rather she

simply looked at police records and autopsy reports and opined that more than likely, one occurred. This is not specialized information that the jury needed to be aided in their understanding of. The jury was exposed to photos of the homicide scene and Ms. Rumfelt's body. Further, they heard testimony of police officers directly involved in the case. This information was more than sufficient for the jurors to come to a decision regarding the probability of a sexual assault. Like *Storey*, Judge Vincent should have excluded the expert testimony of Dr. Case because it did not aid the jury in coming to any decision and it was speculative and conjectural in nature.

CONCLUSION

For the reasons set forth in Points I and III, Mr. Bowman prays that this Court granting him any relief deemed necessary and just, or that this Court remand this action with instruction to vacate the judgment of guilty and to enter a judgment dismissing this charge against Mr. Bowman. In the alternative, for the reasons set forth in Points II, VI, VII, and VIII, Mr. Bowman prays that this cause be remanded with an Order granting him a new trial. In the alternative, Mr. Bowman prays that if the aforerequested relief is denied, that this cause be remanded with an Order requiring a new sentencing hearing based on the arguments set forth in Points IV and V.

ORAL ARGUMENT REQUESTED

Respectfully Submitted,

EVANS PARTNERSHIP

By: _____

Stephen B. Evans, No. 40305

Attorney for Defendant/Appellant

2245 S. Kingshighway Blvd., Ste. 100

St. Louis, MO 63110

Telephone: (314) 721-1024

Facsimile: (314) 721-1741

CERTIFICATION PURSUANT TO RULE 84.06(c)

I, Stephen B. Evans, hereby certify that Appellant's Brief complies with the limitations contained in Rule 84.06(b), and contains 26, 986 words and 2,596 lines of monospaced type, exclusive of the cover, certificate of service, certificate required by Rule 84.06(c), signature block and appendix.

By: _____

Stephen B. Evans, MBE No. 40305

Attorney for Defendant/Appellant

2245 S. Kingshighway Blvd., Ste. 100

St. Louis, MO 63110

Telephone: (314) 721-1024

Facsimile: (314) 721-1741

steve@evanslaw-stl.com

CERTIFICATION PURSUANT TO RULE 84.06(g)

I, Stephen B. Evans, hereby certify that the electronic copy of Appellant's Brief filed herewith has been scanned for viruses and has been found to be virus-free.

By: _____

Stephen B. Evans, No. 40305

Attorney for Appellant

2245 S. Kingshighway Blvd., Ste. 100

St. Louis, MO 63110

Telephone: (314) 721-1024

Facsimile: (314) 721-1741

steve@evanslaw-stl.com

IN THE SUPREME COURT OF MISSOURI
No. SC 90618

STATE OF MISSOURI,)	
)	21 st Judicial Circuit, Division 9
Respondent,)	The Hon. David Vincent III, Judge
)	
vs.)	No. 07 CR 532
)	
GREGORY BOWMAN,)	
)	
Appellant.)	

CERTIFICATE OF SERVICE

This is to certify that the foregoing pleadings were served via U.S. Mail and in an envelope securely secured, legibly addressed, and postage prepaid to the following counsel of record:

Shaun Mackelprang
Attorney for Respondent
Missouri Attorney General's Office
207 W. High St., P.O. Box 899
Jefferson City, MO 65102

This 17th day of August, 2010.
