

IN THE DISTRICT COURT OF SALINE COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

v.

BAILEY M. BOSWELL,

Defendant.

Case No. CR 18-41

ORDER OF SENTENCE

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OF DISTRICT COURT
SALINE COUNTY NEBRASKA

I. CASE HISTORY

Bailey M. Boswell (the "Defendant") was originally charged with Murder in the First Degree, in violation of Neb. Rev. Stat. §28-303(1), a Class I Felony, and Improper Disposal of Human Skeletal Remains, a violation of Neb. Rev. Stat. §28-1301(4), a Class IV Felony, on August 1, 2018, for offenses allegedly occurring on or about November 15 and 16, 2017. The State charged one aggravating circumstance, making the Defendant eligible for the death penalty. It alleged that "the murder manifested exceptional depravity by ordinary standards of morality and intelligence." An order was entered by this Court on June 11, 2018, appointing the Nebraska Attorney General and his designated Assistant Attorneys General as Special Deputy County Attorneys. The Commission on Public Advocacy was appointed counsel to represent the Defendant on June 12, 2018. An Amended Information was filed on August 12, 2019, adding a charge of Criminal Conspiracy to Commit First Degree Murder, in violation of Neb. Rev. Stat. §28-202, a Class II Felony. This crime was alleged to have occurred between the dates of July 1, 2017 and November 30, 2017. Subsequent amendments to the Information made minor changes to the charges.

Counsel for the State were Tad Eickman, Saline County Attorney; and Assistant Attorneys General Michael Guinan, Sandra Allen, and Doug Warner.

Due to extensive pretrial publicity, the matter was transferred to the District Court of Dawson County for trial purposes only by order dated September 6, 2019.

Jury selection commenced on September 23, 2020. A jury with alternates was selected by September 25, 2019.

The State began presentation of its evidence on September 28, 2019, and continued in the usual course. The State rested. Evidence was adduced by the Defendant. The Defendant rested,



and the State adduced rebuttal evidence. The case was submitted to the jury on October 14, which reached a decision that day.

A verdict of guilty on all three counts was announced.

Previous to trial, the Defendant waived her right to a jury determination of the aggravating circumstance. The jury was released. A Presentence Investigation Report was ordered.

Pursuant to Neb. Rev. Stat. §29-2521(1)(a), a request was made to Michael G. Heavican, Chief Justice of the Nebraska Supreme Court, to appoint a panel for a sentence determination hearing. By Order of Chief Justice Heavican, the Honorable Peter Bataillon and the Honorable Darla Ideus were appointed to sit with the Trial Judge, the Honorable Vicky L. Johnson, who presided over the sentencing panel (the "Panel"). A sentencing determination hearing was scheduled.

The sentencing determination proceeding was held on June 30, July 1-2, 2021. All three of the Panel members were in attendance. Previously identified counsel were present.

The sentencing determination hearing procedure for a three-judge panel is codified in Neb. Rev. Stat. §29-2521(2). The three-judge panel is to take evidence concerning aggravating factors, mitigating factors and hear arguments. Concerning aggravating factors, the Nebraska Rules of Evidence apply. The Presiding Judge makes determinations of relevant evidence regarding mitigating factors. After the sentencing determination hearing, written findings of fact are required based upon a Defendant's finding of guilty and the sentencing determination proceeding, identifying which, if any, of the alleged aggravating circumstances have been proven to exist beyond a reasonable doubt.

The State alleged only one aggravating circumstance: that the murder manifested exceptional depravity by ordinary standards of morality and intelligence. Neb. Rev. Stat. §29-2523(1)(d). The Panel has limited consideration to the single aggravating circumstance alleged.

The Presentence Investigation Report was received by the Panel subject to the limitations described in this Court's Order of January 21, 2021. The Supreme Court of Nebraska has made it clear that considering victim impact statements in Presentence Investigation Reports in capital cases is limited. Victim impact statements may be made by the nearest surviving relative of the victim; in the case of Sydney Loofe, her parents. See Neb. Rev. Stat. §81-1848(a)(d), Neb. Rev. Stat. §29-119 and Neb. Rev. Stat. §30-2303 and *State v. Vela*, 279 Neb. 94 (2010), 162-163.

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The Court ordered that any such statements other than those of Mr. and Mrs. Loofe, and any statements including the parents' characterizations and opinions about the crime, the Defendant, or the appropriate sentence to be imposed will not be considered by the Panel.

At the sentencing determination hearing, the State offered into evidence all exhibits received at the trial, as well as the prepared Transcript of Proceedings. The State called FBI Agents Eli McBride and Michael Maseth, Dr. Michelle Elieff, and Lincoln Police Investigator Matthew Franken as witnesses. Additional exhibits were offered by the State and received. The Defendant's exhibits were offered and received. The State offered evidence on the issue of sentence proportionality, which was received. After presentation of evidence, the parties requested time to present written arguments. A schedule was announced.

The parties' briefs have been received by the Panel and are in the exhibit file.

II. FACTS

Sydney Loofe was employed as a store clerk at the Menards hardware store on North 27th Street in Lincoln, Nebraska. She was 24 years old on November 15, 2017, when she left work at the end of her shift. She did not report to work the next day. She was reported missing to law enforcement by her mother, Susie Loofe, that evening. Susie Loofe supplied Sydney Loofe's cell phone number to investigators.

Ms. Loofe had told a friend that she had met a young female named "Audrey" a few days prior on the social media dating site Tinder. They drove around Lincoln for a date on the evening of November 14, 2017. She had another date with Audrey the night of the 15th. She posted a selfie on social media, indicating that she was ready for her date.

Family and friends of Ms. Loofe actively assisted in attempts to locate her. One friend, Brooklyn McCrystal, was in possession of a photo of "Audrey" from Ms. Loofe. She set up a Tinder account in an effort to locate "Audrey." She identified her from the picture and notified law enforcement. In the meantime, efforts to find Ms. Loofe by law enforcement tracked the last known location of her phone to Wilber, Nebraska.

Bailey Boswell had been living with a man named Aubrey Trail in a basement apartment in Wilber since June, 2017.

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Trail admits to being a thief and a con man. He also dealt in antiques. Boswell and he frequented the Aardvark Antique Mall on the edge of Lincoln, selling items in a booth, after buying or stealing them from other places.

Investigation of Trail and Boswell revealed that during the summer of 2017, the two began relationships with three women, Ashley Hills, Ana Golyakova, and Katie Brandle. These three women were introduced to Boswell through Tinder accounts in a similar manner as described above.

Hills met Trail in a Lincoln restaurant in June, 2017. Trail offered to support Hills by paying bills and a weekly allowance. She was brought to Wilber by Trail and met Boswell. Trail and Boswell began to groom Hills by feeding into Hills' wish to gain revenge on her abusive step-father, by engaging in sex, and by giving her money. Trail spun a tall tale for Hills, stolen from a Stephen King novel, of his ability to gain power from breathing in the last breath of a murdered person. He talked of his (imaginary) group of 12 women, inviting her to become the 13th. Hills bought into this fiction. A few days later, Hills, Boswell and Trail identified a young woman at the Beatrice Walmart store as a potential victim, but nothing came of it.

At trial, Hills identified Trail and Boswell as being involved in discussions of murder, and that sexual arousal of Boswell was a part of the plan. Hills provided graphic testimony of the nature of torture that enhanced Boswell's pleasure.

Ana Golyakova began a relationship with the group in August, 2017. She was 18 years old. Trail and Boswell hooked Golyakova with the promise of making money through the buying and selling of antiques. She was provided a booth at the Aardvark Antique Mall by Boswell and Trail. The group discussed Trail's imaginary powers, the murder of pedophiles and how videos of these murders could be used to make money. Golyakova's interest in the pair was primarily for money, and secondarily, a sexual one. She was skeptical of the talk of murder and magical powers.

In August, Hills and Golyakova met. The foursome traveled to Branson, Missouri, on a vacation. Trail feigned supernatural powers. A plot to murder Golyakova on a later trip was discussed by Boswell and Hills. Shortly thereafter, Hills left the group. Golyakova stayed.

A third recruit, Katie Brandle, was found through Tinder in late October. The hook for Brandle appeared to be a three-way sexual arrangement between her, Trail and Boswell. Boswell was to be her dominant. The first meeting was November 1, 2017, and the parties stayed together

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until November 6. During sex, Brandle was punished and there were discussions of elevating Boswell's excitement through torture. On November 8, Brandle rejoined Trail and Boswell.

Ms. Loofe and Boswell made contact through Tinder beginning on November 11, 2017. They continued to have text message contact through November 14. Brandle was taken back to Omaha sometime prior to the 14th. Boswell and Ms. Loofe met for the first time during the evening of November 14; they drove around Lincoln talking and smoking marijuana. They continued to text on November 15 as they set up a second date. In the meantime, Boswell and Trail traveled around Lincoln buying various items. See later discussion.

Boswell picked up Ms. Loofe on the evening of November 15, and they drove to Wilber. Late that night, a resident of the home in which the Trail/Boswell apartment was located smelled bleach. The smell of bleach was so strong the next day that another resident became ill.

On November 17, 2017, Trail and Boswell picked up Brandle in Omaha to travel to the Ameristar Hotel in Council Bluffs, Iowa. Torturing and murdering a victim was discussed, and Brandle agreed to do so after Trail threatened her family. Two days later, the trio drove to Grand Island and rented a motel room. They were there purportedly to consummate a drug deal. It never happened. They checked out of the motel on November 22, purchased items for disguises and agreed to find a foreign exchange student to murder in Kearney. They drove to Kearney. No victim was identified and no other steps were taken to harm anyone. They checked into a Kearney hotel for a short period of time on November 22.

During the meantime, Ms. McCrystal's Tinder account led law enforcement to the identification of Boswell as most likely being "Audrey." Through Boswell's Tinder account, other young women were identified, including Brandle. A phone call made to Brandle's phone by law enforcement while the three (Boswell, Trail and Brandle) were in Kearney on November 22 panicked them. Trail, Boswell and Brandle left the motel shortly after they checked in. Brandle was dropped off in Omaha; Trail and Boswell went on the run. Boswell's phone number had been identified. She received calls from law enforcement, and denied any involvement in Ms. Loofe's disappearance. Trail and Boswell were eventually tracked to several motels in Iowa and Missouri. During their escape, Boswell posted videos to Facebook, acknowledging that she had contact with Ms. Loofe, but denying any part in her disappearance. These videos helped to lead law enforcement to the location of Trail and Boswell. On November 30, 2017, they were arrested in Branson.

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While searching for Trail and Boswell, law enforcement obtained several search warrants. Their Wilber apartment was searched more than once. The resources of the Lincoln Police Department, Saline County Sheriff's Department, the Nebraska State Patrol, and FBI were brought in to assist in the crime investigation.

When Lincoln Police Investigator Robert Hurley reported to work on November 19, he learned that Ms. Loofe's phone's final "ping," (contact) was with a cell phone tower located in Wilber, Nebraska. Trail's cell phone number had been identified. Boswell had two numbers. This gave Inv. Hurley four cell phone numbers to investigate. Search warrants were issued to Verizon Cellular, which provided cell phone data to Inv. Hurley. The warrants requested subscriber call logs, location position of cell phone towers (both towers and faces/sectors) and RTT data. "RTT" data is "Return to Tower" or "Round Trip Time."

Inv. Hurley used a proprietary computer program (PenLink) to analyze the data.

The Verizon data indicated that Ms. Loofe was in Wilber (and likely at the Trail/Boswell apartment with them) on November 15, 2017, because all of the phones were connecting to the Wilber cell towers. Obviously, this assumes that each individual was with his or her phone.

On November 16, 2017, the Boswell/Trail phones began to move west from the apartment around 2:24 p.m. Using the PenLink system, Inv. Hurley created a map of the towers that the three phones pinged from during the next approximately three hours, when the phones began to communicate solely with the Wilber towers again. The maps for the phones show a nearly identical direction of travel due to the phones hitting, pinging or "shaking hands" with the towers at approximately the same time. Boswell's phones, being more sophisticated than Trail's, communicated much more often with the towers. In fact, her phones communicated about 389 times in that three hour time period.

The PenLink system also allowed Inv. Hurley to determine the times that the phones hit the tower. It also allowed the sector, and latitude and longitude, to be determined. By continuing to review these data points, Inv. Hurley was able to construct a map of where these phones traveled.

Inv. Hurley then utilized Google Earth to look at maps of the area and to determine where the towers were located.

On December 3, 2017, Inv. Hurley traveled to points in Clay County where he believed that Trail and Boswell had traveled based on the PenLink data. When he returned to his office the next

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day, he further refined his analysis and determined that the data revealed a somewhat different route. He narrowed his search to an area in Clay County where he believed that the vehicle had stopped and started. He used the RTT mapping analysis to determine this area. A search warrant was obtained and a search party went out. A portion of Ms. Loofe's body was found about 30 to 45 minutes later on December 4, 2017, late in the day. The area was secured. Inv. Hurley continued to refine his search through the evening and into the next day. He identified other areas on the maps where data indicated that the cell phones had slowed or stopped. When directed to these areas identified by Inv. Hurley, law enforcement located significant other items of evidence on December 5, 2017. Such items included additional body parts, clothing, torn trash bag boxes, and a sauna suit.

After the body was located, Inv. Hurley was able to track the Boswell and Trail phones at four business locations in Lincoln on November 14, 2017, using RTT data.

The data also showed Boswell's phone at the location of Ms. Loofe's home twice; once at the beginning of the first date on November 14, and once at the end. The arrangements were verified by Tinder records.

Even more importantly, Boswell and Trail's movements on November 14 and 15 were plotted. Stops at a motel in north Lincoln for an overnight stay on November 14, at the Aardvark Antique Mall, at the Menards store, and at Home Depot were documented. This allowed law enforcement to obtain security footage showing Boswell and Trail at the locations. It also allowed access to receipts showing items that Trail and Boswell purchased that day. Such items included hacksaw blades, tin snips, cutting tools, and Drano. Video evidence shows Trail going into the Menards store, watching Ms. Loofe walk out of the store, and then purchasing items believed to be used in her murder.

Video and receipt evidence show that Boswell made a stop at the Dollar Store in Wilber on November 15, purchasing bleach, aluminum roaster pans and trash bags.

Ms. Loofe's body was autopsied by Dr. Michelle Elieff, a forensic pathologist. She identified the manner of death as "homicidal violence that included an element of strangulation." The analysis is made more difficult by the absence of portions of Ms. Loofe's jaw and neck, as well as organs of the torso and abdomen. Dr. Elieff testified that animal predation was an unlikely explanation for the loss of all of the tissue. Further testimony identified striations on the body consistent with a sharp blade used to make superficial cuts, as well as outlining the tattoo that was

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prominent on Ms. Loofe's upper right arm. Dr. Elieff explained why she believed these cuts to be postmortem. While some of the body parts evidenced animal predation, a number did not.

The wrists of Ms. Loofe revealed evidence of restraint, and one thigh had a large, perimortem bruise.

Dr. Elieff testified at trial that her analysis of the cuts made to Ms. Loofe indicated that a fine-toothed serrated cutting instrument, such as a hacksaw blade, was used on the body to create areas of striation. Such were visible around several cuts on Ms. Loofe's body.

At his trial, Trail testified. He admitted to causing the death of Ms. Loofe. He said it was done accidentally during sexual activity. Of his relationship with the three women, he said that he was in it for the money, and Boswell was in it for the sex. However, Trail admitted at his sentencing that the story that he told the jury was not entirely factual. He was consistent, however, in his statements that Boswell was not involved in the killing.

The Panel deems that Trail's statements are not particularly reliable.

Among items recovered at the Clay County locations were a sauna suit with a missing crotch, and a sex toy. The suit is sized to fit Boswell but is too small for Trail. A similar suit, sized to fit Trail, was found in an unopened package at their apartment.

Trail was convicted of Murder in the First Degree, and Conspiracy to Commit First Degree Murder, the same charges as Boswell by a jury ~~pt~~ He pled guilty to the Unlawful Disposal of a body charge. See Case No. CR18-37 in the District Court of Saline County, Nebraska. He was sentenced to death by a separate Panel.

III. EVIDENCE CONSIDERED

The evidence adduced in support of the Defendant's guilt and the evidence adduced at the sentencing hearing must be considered. Neb. Rev. Stat. §29-2921(2). Prior to the sentencing hearing, the Panel reviewed the Transcript of Proceedings and the exhibits received at the Defendant's trial. The Panel also considered the additional testimony of witnesses and exhibits received at the sentencing hearing held on June 30, July 1, and July 2, 2021.

IV. SENTENCING DETERMINATIONS

The procedure for sentencing a defendant convicted of first degree murder for which the State seeks the death penalty is set forth at Neb. Rev. Stat. § 29-2519 et. seq. (Cum. Supp. 2020). The first inquiry is whether the State has proven the existence of an aggravating circumstance beyond a reasonable doubt. The three-judge panel is required to make written findings of fact identifying which, if any, alleged aggravating circumstance has been proven to exist beyond a reasonable doubt. Neb. Rev. Stat. § 29-2521 (Cum. Supp. 2020). “Each finding of fact with respect to each alleged aggravating circumstance shall be unanimous.” *Id.* If the panel unanimously agrees the State has proven the existence of an aggravating circumstance beyond a reasonable doubt, the panel must then decide whether “sufficient mitigating circumstances exist which approach or exceed the weight given to the aggravating circumstances.” Neb. Rev. Stat. § 29-2522 (Cum. Supp. 2020). The final step for the three judge panel is to consider whether “the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.” *Id.* If the panel is unable to reach a unanimous finding of fact with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding. Neb. Rev. Stat. § 29-2521.

A. Aggravating Circumstance

Aggravating circumstances must be proven beyond a reasonable doubt. *State v. Victor*, 235 Neb. 770, 457 N.W.2d 431 (1990); Neb. Rev. Stat. §29-2521(2). In the Second Amended Information upon which the Defendant was ultimately tried, the State alleges one aggravating factor: the murder manifested exceptional depravity by ordinary standards of morality and intelligence. The Panel has limited the review of aggravating factors to the single aggravating factor charged.

1. The murder manifested exceptional depravity by ordinary standards of morality and intelligence.

The State alleges the murder of Sydney Loofe manifested exceptional depravity by ordinary standards of morality and intelligence within the meaning of Neb. Rev. Stat. §29-2523(1)(d). This aggravating circumstance focuses on “the state of mind of the actor” and “may be proved by or inferred from the defendant’s conduct at or near the time of the offense.” *State v. Palmer*, 224 Neb. 282, 319, 399 N.W.2d 706 (1986), *cert. denied*, 484 U.S. 872 (1987). Whether defendant is a aider or abettor is not an issue in determining whether an aggravating circumstance exists. *See e.g., State*

v. Bjorklund, 258 Neb. 432, 604 N.W.2d 169 (2000). By statute, whether “[t]he offender was an accomplice in the crime committed by another person and his or her participation was relatively minor” is a mitigating circumstance.” *Id.*, Neb. Rev. Stat. § 29-2523(2)(e).

The Nebraska Supreme Court has stated the “exceptional depravity” circumstance pertains to a situation “where depravity is apparent to such an extent as to obviously offend all standards of morality and intelligence” and to “indicate a state of mind totally and senselessly bereft of regard for human life.” *State v. Moore*, 210 Neb. 457, 470, 316 N.W.2d 33 (1982) (citations omitted). In *Moore*, the Court found that this circumstance was present where the murders were coldly planned, intended to be repetitive, and the victims were selected based on certain characteristics. *Id.* at 471.

Later in *Palmer*, at 320, the Nebraska Supreme Court held that “exceptional depravity” in a murder exists when it is shown, beyond a reasonable doubt, that the following circumstances, either separately or collectively, are present: 1) apparent relishing of the murder by the killer; 2) infliction of gratuitous violence on the victim; 3) needless mutilation of the victim; 4) senselessness of the crime; or 5) helplessness of the victim. Where one or more of these five factors are present, there may be a finding of “exceptional depravity” concerning a first-degree murder. *Id.* In *State v. Joubert*, 224 Neb. 411, 432, 399 N.W.2d 237 (1986), *cert. denied*, 484 U.S. 905 (1987), decided on the same day as *Palmer*, these factors were applied in conjunction with the “coldly calculated” element of exceptional depravity. In affirming the resentencing panel, the Court in *State v. Moore*, 250 Neb. 805, 553 N.W.2d 120 (1996), *cert. denied*, 520 U.S. 1176 (1997), explained:

The exceptional depravity component of aggravating circumstance §29-2523(1)(d) may be proved either by demonstrating the existence of one or more of the factors identified in [*Palmer*] or by demonstrating ‘the killer’s cold, calculated planning of the victim’s death,’ as exemplified by experimentation with the method of causing the death or by the purposeful selection of a particular victim on the basis of specific characteristics. *Id.* at 821.

a. *The murder of Sydney Loofe manifests exceptional depravity -- it was coldly planned and Loofe was selected based on certain characteristics.*

Like in the *Joubert* and *Moore* cases, the “cold, calculated planning” of Ms. Loofe’s murder required “more than merely the premeditation necessary to support a conviction for first-degree murder.” *Moore*, at 820. In *Moore*, the resentencing panel found that the “cold, calculated planning of each victim’s death, as manifested by the purposeful selection of a particular victim on the basis

of the specific characteristic of age, establishes the existence of exceptional depravity beyond a reasonable doubt." *Id.* at 838.

Carey Dean Moore purchased a handgun on August 20, 1979, planning to rob and kill taxi drivers. *Moore*, at 461. The night before the first murder, Moore called several cabs from a telephone booth in downtown Omaha and hid in the vicinity to determine whether the driver would be a suitable victim. *Id.* He explained that he was looking for an older man who would be easier to kill. *Id.* On August 22, 1979, Moore robbed and killed his first victim because he "wasn't too young." *Id.* Four days later, Moore selected and killed his second murder victim, another older cab driver. *Id.* at 462. Both of the *Moore* sentencing panels considered this evidence sufficient to constitute an aggravating circumstance because Moore planned and purposefully selected his victims based on specific characteristics, namely their age. *Id.* at 465; 250 Neb. at 821.

In *Joubert*, the Court upheld a panel's finding of "exceptional depravity" finding "the murders were coldly planned as part of a program of self-gratification involving immature victims selected on the basis of their availability at a time when the likelihood of detection was slight." 224 Neb. at 432. John Joubert planned his abductions and killings in advance by hunting for a victim based on his fantasized standards -- defenseless and young prepubescent boys or women. *Id.* In the fall of 1983, he killed two boys, ages 13 and 12, within four months. *Id.* at 412-13. Their bodies were later found in secluded areas, unclothed with numerous antemortem and postmortem stab wounds. *Id.* In January of 1984, the third potential victim, a young female teacher, escaped and called the police. *Id.* at 414. Psychiatrists later explained that Joubert was motivated by an urge for self-gratification. *Id.* at 432. He wanted to know "what it was like to see someone die." *Id.* These circumstances led the *Joubert* panel and the Supreme Court to conclude: "the evidence is overwhelming that each of these murders were [sic] 'totally and senselessly bereft of any regard for human life'." *Id.* at 430.

Like the murders in *Joubert* and *Moore*, the murder of Ms. Loofe was planned in advance with only the victim's identity unknown. In July 2017, Trail and Boswell recruited Ashley Hills to participate in a murder for their own curiosity or sexual gratification. Hills testified that Trail and Boswell enjoyed talking about their desire to torture and kill someone.

The cold, calculated planning is exemplified by the selection of Ms. Loofe based on certain characteristics. Boswell, posing as "Audrey" on Tinder, was advertising for characteristics of her

and Trail's ideal victim--a young attractive female who would be attracted to Boswell. Ms. Loofe fit the description. When Ms. Loofe "swiped right" on the Tinder app, she signaled she was physically attracted to Boswell and interested enough to communicate with Audrey. When they began messaging on November 11, 2017, Boswell learned that Ms. Loofe was a stranger to them and lived alone in Lincoln, hours away from her family in Neligh. It is reasonable to conclude that Boswell believed no one would immediately miss Ms. Loofe. On November 14th, Boswell and Ms. Loofe had their first date. When Ms. Loofe accepted a second date on November 15th, final preparation for the murder began. Boswell coldly and deliberately chose Sydney Loofe for these characteristics.

Any reasonable doubt as to whether Ms. Loofe's murder was the product of cold calculated planning is removed when one gives adequate weight and consideration to the differences between Boswell's interactions with Ms. Loofe verses the other women Boswell met on Tinder during this same time period. Hills met Boswell on Tinder in June or July 2017. Before meeting Boswell in person, Hills was aware Boswell had a "Sugar Daddy type person". In fact, Hills met Trail in person before she met Boswell in person. It was Trail who picked Hills up from her work and took her to the Wilber apartment. On their way, they stopped at a Casey's to purchase food. Hills was at the Wilber apartment for approximately two hours with Trail before Boswell arrived. Once Boswell arrived, Hills spent another 5-6 hours at the Wilber apartment. During this visit, Trail gave Hills \$200.00 and Ashley was told to think about whether she wanted to be a part of Trail and Bailey's world. Within a day or two, Boswell picked Hills up and the two got their nails done, ate at a restaurant, and went to Victoria's Secret where they purchased lingerie. Boswell paid for everything.

During this same time frame, Ana Golyakova met Boswell via Tinder. For their first date, Boswell picked Golyakova up and took her to a restaurant in Lincoln. During this first date, Boswell told Golyakova about her living situation with Trail and their financial arrangement. Shortly thereafter, Golyakova met Trail when Trail picked her up and took her to a restaurant in Lincoln. At the end of their meal, Trail gave Golyakova \$100.00 and took her home. When Golyakova saw Boswell again, Boswell took her shopping and bought Golyakova dresses and shoes. After shopping, Golyakova went to the Wilber apartment.

On October 31, 2017, Katie Brandle met Boswell on Tinder. Prior to meeting in person, Boswell introduced the topic of a dominant and submissive relationship. Boswell described the relationship as one wherein Boswell would be the dominant and Brandle would be the submissive. Boswell advised Brandle of her living arrangement with Trail. For their first date, Boswell picked Brandle up and took her to Ameristar where Brandle immediately met Trail. From the outset, Brandle knew Boswell and Trail were a “package deal”. It was after this that Brandle was taken to Wilber apartment.

Before meeting Boswell, Hills, Golyakova, and Brandle were all told about Trail and the nature of Boswell’s relationship with Trail. Boswell told Hills about her sugar daddy. She told Golyakova about her living arrangements and financial relationship with Trail, and she told Katie about Trail and discussed with her a dominant and submissive relationship. All three of these young women were aware of Trail’s involvement with Boswell. All three of these young women met Trail in person before going to the Wilber apartment. All three of these young women were in public places with Trail and/or Boswell before going to the Wilber apartment.

In sharp contrast, not only did Ms. Loofe not know anything about Trail or Boswell’s living arrangements, Boswell affirmatively lied to Ms. Loofe. Ms. Loofe was not interested in a relationship involving a man and she made this clear. Boswell assured her it would just be her and Ms. Loofe on their date. Whereas Boswell and/or Trail went to public places with the other three women, Boswell was careful to ensure no one could place her in public with Ms. Loofe before her disappearance. Whereas Trail and Boswell were generous with their spending on the first three women, such was not the case with Ms. Loofe. Whereas all three other women knew what they were walking into when they went to the Wilber apartment, Boswell was careful to make sure Ms. Loofe had no idea.

The cold calculated planning is further evident by Trail and Boswell’s purchases made immediately before they murdered Ms. Loofe. On November 15, 2017, Trail and Boswell spent the morning at Home Depot, purchasing tools they could later use for the murder and mutilation. Trail then went into Menards shortly after Ms. Loofe began her shift at noon, to personally view the selected victim. Boswell waited in the car to avoid detection.

Additionally, after Ms. Loofe’s murder, there is evidence that Boswell developed plans to identify another murder victim and kill again. According to Brandle, she traveled with Trail and

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Boswell to Kearney on November 22nd for the purpose of identifying a murder victim--a foreign exchange student who would not be immediately missed. The plan was abandoned when Brandle received a call from law enforcement. This conduct is similar to the cold, calculated planning of both *Joubert* and *Moore*. The murder in this case required far more than the premeditation necessary to support a conviction for first-degree murder. *See Moore*, 250 Neb. at 820. The cold, calculated planning of Ms. Loofe's death and the purposeful selection of her on the basis of specific characteristics establishes the existence of exceptional depravity beyond a reasonable doubt. *See Id.* at 838.

b. The circumstances of Sydney Loofe's murder manifest exceptional depravity under the factors identified in State v. Palmer.

In *Palmer*, 224 Neb. at 287, the sentencing panel found that while the murder was not "especially heinous, atrocious, [or] cruel,"¹ it "manifested exceptional depravity by ordinary standards of morality and intelligence." The Nebraska Supreme Court held that exceptional depravity exists when one or more of the following five factors are present and proven beyond a reasonable doubt: 1) apparent relishing of the murder by the killer; 2) infliction of gratuitous violence on the victim; 3) needless mutilation of the victim; 4) senselessness of the crime; or 5) helplessness of the victim. *Id.* at 320. All but one of these factors are proven by Defendant's statements and actions at or near the time of the murder. *See id.* at 319.

(1) Apparent Relishing of the Murder by the Defendant.

"Relishing the murder refers to the defendant's actions or words, apart from the murder itself, that show the defendant savored or took pleasure in a killing." *State v. Torres*, 283 Neb. 142, 201, 812 N.W.2d 213 (2012) (Connolly, J., concurring & dissenting in part).

Dr. Elieff testified that during Ms. Loofe's autopsy she documented numerous superficial postmortem cuts on both the front and back of Ms. Loofe's body. They appear on several areas of her chest, on her back, on the front and back of the narrow belly section, on her hips, on her inner left thigh and her upper right arm. The shallow cuts on the torso and belly are linear, parallel, reddish-tan in color with narrow spacing between each line. They are consistent with cuts made by

¹

The victim in *Palmer* was bound, physically beaten (causing bruises, cuts, and scratches), and strangled to death with an electrical cord during a robbery. 224 Neb. at 321. Although the murder was not especially heinous, atrocious, or cruel, *Palmer* was found to have inflicted gratuitous violence upon a helpless victim. *Id.*

raking a hacksaw blade over the skin. The cuts on the inner thigh and hips appear to have more distance between them and vary in length. They appear to be caused by a sharp blade or knife. The pattern of these marks on the body indicate they were deliberately made. In particular, the tattoo on Ms. Loofe's upper arm reading "Everything will be wonderful someday" is framed with a series of postmortem shallow cuts. The cuts were caused by a thin bladed sharp object consistent with a razor blade or utility knife. The tattoo is distinctly underlined with horizontal cuts and at least ten shallow cuts extending vertically on the left side of the tattoo. The cutting appears to be intentional and strategically placed.

In *Joubert*, the victims' antemortem and postmortem stab wounds, including a postmortem carving resembling a large plant on one victim's torso, were found to be proof of relishing the murder and needless mutilation. 224 Neb. at 413, 429-30. The mutilation of Ms. Loofe's body is far more extreme than the stab wounds to the *Joubert* victims. However, the carving cuts placed by Joubert on his victim and the series of shallow cuts inflicted on Loofe's body evidence the same state of mind. They are not there as a cause of the murder. These cuts evidence an exceptionally depraved mind.

Relishing a murder is evidence of a state of mind that is totally and senselessly bereft of any regard for human life. Boswell's actions and words demonstrate she had no regard for the life of Sydney Loofe beyond her own personal pleasure. For these reasons, this factor has been proven beyond a reasonable doubt and weighs heavily against the Defendant.

(2) Infliction of gratuitous violence on the victim.

The body of Sydney Loofe was mutilated to such an extent that it is impossible to conclusively determine whether Boswell "inflicted gratuitous violence on the victim beyond that necessary to inflict death." See *Joubert*, 224 Neb. at 432; *State v. Palmer*, 257 Neb. 702, 731, 600 N.W.2d 756 (1999) (gratuitous violence found where pathologist testified that the strangled victim's injuries of cuts, bruises, broken voice box and windpipe preceded death).

Dr. Elieff testified that Sydney Loofe died of "homicidal violence that included an element of strangulation." The element of strangulation was determined by scleral hemorrhage and hemorrhaging in the neck area. The throat and upper neck, including the tongue, voice box, carotid arteries, floor of the mouth, muscles and tissues are gone. Ms. Loofe's head was cut off preventing Dr. Elieff from determining whether she had her throat slit, died of stab wounds, or whether she was

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strangled manually or by ligature. Almost all of her organs, including the heart, diaphragm, liver, kidneys, spleen, pancreas, and stomach are missing, such that Dr. Elieff cannot determine when or how Sydney Loofe actually died. Accordingly, this factor cannot be proven beyond a reasonable doubt.

(3) Needless mutilation of the victim.

The murder of Sydney Loofe was intended to include mutilation of her body. The jury found that Trail and Boswell conspired to murder Sydney Loofe intentionally and with premeditated malice. Evidence of the premeditated and intended mutilation include the purchase of a hacksaw, blades, tools, garbage bags, roasting pans, duct tape, rope, Drano and Clorox on November 15, 2017.

The evidence overwhelmingly suggests that Boswell specifically planned for mutilation before Ms. Loofe was picked up on November 15th. A kill bag with a sauna suit and other tools had been prepared far in advance. Neither the sauna suit (to protect the wearer from blood) nor the tools would be needed in a strangulation death. The tools and accessories purchased on November 15th at Home Depot (drop cloths, a Stanley 12-inch hacksaw and blades, utility knife blades and tin snips), Menards (Drano and a long cord), and Dollar General (30-gallon trash bags, roasting pans and Clorox bleach) were purchased with the intent to mutilate the body of Sydney Loofe; the items were not purchased to engage in a sexual encounter.

Trail and Boswell segmented Sydney Loofe's body into 14 parts. Ms. Loofe's head was cut off at the C4 vertebrae. Her arms were cut off at both shoulders and elbows. A narrow belly strip was cut from the lower torso and upper hips. Ms. Loofe's thighs were cut from the hips to above the knees; her lower legs were cut from above the knees to the ankles; and her feet were cut off. A hacksaw was used to cut through bone and a sharp blade used to cut soft tissue. There is evidence that tin snips were used to cut through some of the ribs. The dismemberment and mutilation were premeditated.

Ms. Loofe's neck and throat were extensively mutilated. In addition to the tongue missing, Dr. Elieff testified "the bottom of the jaw was missing, all of the tissue in there. The part where the tongue attaches to the bottom of the jaw, the upper part of the trachea and windpipe [was gone.] So, the larynx where the vocal cords are, where the Adam's apple is, all of that was gone. The blood vessels, the carotid artery, jugular vein, all of those were gone." According to Dr. Elieff, a mal

predators prefer soft tissues around the eyelids and nose—none of those were disturbed. In her opinion, the missing organs of the neck and throat are not explained by animal feeding.

Animal predation also does not explain the absence of the entire heart or diaphragm from the chest cavity. The plastic trash bag protected the entrance into the distal end of the torso, where an animal could access the chest. Dr. Elieff observed that no part of either the heart or diaphragm was left in the chest, and the bottom of the aorta has a sharp demarcated appearance. All of the organs except for part of the lungs and a portion of the intestines are missing from Sydney Loofe's body. It is reasonable to conclude that these missing organs were cut out and removed by her killers.

Ms. Loofe was needlessly mutilated by Trail and Boswell as part of the plan to satisfy her sexual desire. The mutilation was not done as an afterthought to hide the body. An anatomy textbook with detailed diagrams of the body was found in the Wilber apartment. The evidence supports the inference that this was a murder and mutilation that was carefully planned and carried out. The needless mutilation of Sydney Loofe's body demonstrates the mental state of Boswell at the time of the murder--a mind totally and senselessly bereft of any regard for human life. This factor has been proven beyond a reasonable doubt and weighs heavily against the Defendant.

(4) Senselessness of the crime.

Sydney Loofe posed no threat to Trail or Boswell. Ms. Loofe had no connection or interaction with either Trail or Boswell prior to the Tinder connection. It is clear from the Tinder messaging that Ms. Loofe enjoyed Boswell's company and believed she was going on a date. According to one of her friends, Ms. Loofe did not know about Trail. Ms. Loofe was completely harmless and her murder was completely unnecessary. This factor has been proven beyond a reasonable doubt.

(5) Helplessness of the victim.

The phrase "helpless victim" is defined in *State v. Ellis*, 281 Neb. 571, 597, 799 N.W.2d 267 (2011): "A 'helpless' victim is readily understood to be one who is unable to defend oneself, or to act without help." Ms. Loofe left Lincoln on November 15th believing she was going out on a date with someone who was interested in a romantic relationship. She had no idea she was being taken to Wilber to encounter Trail. Shortly after arriving in Wilber, Ms. Loofe's phone went silent. She had no other means to call for help. Ms. Loofe was a slender 24-year-old vulnerable woman who found herself in an apartment with Boswell and a man twice her size and age. The evidence shows that her wrists were bound. She was not able to defend herself or act without help. Sydney Loofe

was a helpless victim. Accord, *Torres*, 283 Neb. at 178 (victim was helpless and murder senseless where bound and gagged victim posed no threat). This factor has been proven beyond a reasonable doubt.

- c. *The murder of Sydney Loofe manifests exceptional depravity by ordinary standards of morality and intelligence.*

Judges Ideus and Johnson find that the evidence supports the aggravating factor alleged by the State. They further find that the murder of Sydney Loofe meets the definition of exceptional depravity in that it was coldly planned as exemplified by her purposeful selection based on certain characteristics and contains four out of the five factors outlined in *Palmer*. The murder was coldly calculated, Boswell relished the murder, there was needless mutilation of the body, the murder was senseless, and Sydney Loofe was a helpless victim. They further find that there is no reasonable doubt that this aggravating circumstance “justif[ies] the imposition of a sentence of death.” *Neb. Rev. Stat. §29-2522(1)*.

Judge Bataillon does not join this finding. He writes separately as follows:

After receiving and reviewing the evidence of the State and the Defendant as to the sole aggravating circumstance as alleged by the State, that “the murder manifested exceptional depravity by ordinary standards of morality and intelligence”, I could not find beyond a reasonable doubt that the State of Nebraska met its burden of proof as to this aggravating circumstance. Nothing in this dissent should be understood to diminish the senselessness of the murder of Sydney Loofe and the great pain this has caused her family and friends. However, because I could not find that the State met its burden of proof as to the aggravating circumstance, I hereby dissent from the other two Judges on this Panel.

VI. CONCLUSION

As the Panel does not unanimously find that the aggravating circumstances exist, it is unnecessary to discuss mitigators or sentence proportionality.

VII. SENTENCE

1. On Count I, Murder–First Degree, *Neb. Rev. Stat. §28-303(1)*, a Class I Felony, the Defendant is sentenced to life in prison.

2. Imposed by the Presiding Judge: On Count II, Improper Disposal of Human Remains, *Neb. Rev. Stat. §28-1301(2)(b)*, a Class IV Felony, the Defendant is sentenced to no less

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than two years in prison, and no more than two years, consecutive to count 1. Defendant is not eligible for post release supervision.

A. Pursuant to Neb. Rev. Stat. §29-2260, the Court finds the following substantial and compelling reasons, why the defendant cannot effectively and safely be supervised in the community on probation:

- i. A lesser sentence would depreciate the seriousness of the crime;
- ii. A lesser sentence would promote disrespect for the law;
- iii. Incarceration is necessary to protect the security of the public;
- iv. The risk is substantial that during a period of probation the offender will engage in additional criminal conduct;
- v. Defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional facility;
- vi. The crime caused or threatened serious harm;
- vii. The circumstances indicate that the Defendant understood the consequences of her actions and the potential harm to others;
- viii. Defendant's actions were not provoked by the victim;
- ix. There is no reason to excuse or justify the offense;
- x. The victim did not induce or facilitate the crime.

3. Imposed by the Presiding Judge: On Count III, Criminal Conspiracy to Commit First Degree Murder, Neb. Rev. Stat. §28-202, a Class II Felony, the Defendant is sentenced to not less than fifty years in prison, nor more than fifty years, consecutive to count 1.

The Defendant is given credit for 1,439 days of time served. Costs of \$626.27 are assessed to the Defendant. Costs are deemed satisfied.

Defendant is advised pursuant to the Nebraska Truth in Sentencing Statute, that her parole eligibility date and the mandatory release date on counts 2 and 3 ^{is} determined by taking the sentence, subtracting the number of days for which the defendant is given credit, and divide the remainder in half.

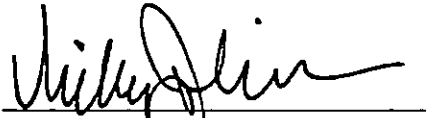
The Defendant is committed to the Nebraska Department of Correctional Services to serve her sentence. She is remanded to the custody of the Saline County Sheriff for transport.

Defendant is subject to the DNA collection act. nj


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Dated this 8 day of November 2021.

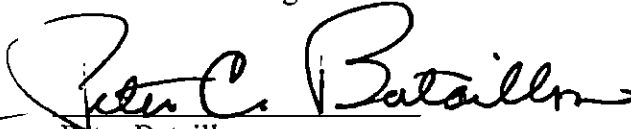
BY THE COURT:



Vicky L. Johnson
District Court Judge

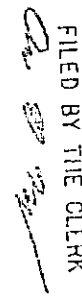


Darla Ideus
District Court Judge



Peter Bataillon
District Court Judge

pc: Doug Warner, Todd Lancaster, Bailey Boswell
Hon. Peter Bataillon, Hon. Darla Ideus

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on November 8, 2021 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

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Date: November 8, 2021

BY THE COURT:


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