

IN THE
SUPREME COURT OF INDIANA

CASE NO. 20S-LW-620

JOSEPH A. OBERHANSLEY)	Appeal from the
Defendant/Appellant)	Clark County Circuit Court 4
)	
v.)	Cause No. 10C04-1409-MR-1
)	
STATE OF INDIANA)	The Honorable Vicki L. Carmichael,
Appellee)	Judge

BRIEF OF APPELLANT
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STATE OF INDIANA)	The Honorable Vicki L. Carmichael,
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BRIEF OF THE APPELLANT

STATEMENT OF ISSUES

- I. Whether the trial court violated Oberhansley’s right to due process of law when it imposed a sentence of life without parole (LWOP), even though the jury had not made one of the required findings under Indiana’s LWOP statute?

- III. Whether Oberhansley’s LWOP sentence was inappropriate, despite the nature of the offense, where Oberhansley was suffering from a profound mental health disorder and was detached from reality when the crime occurred?

STATEMENT OF CASE

After Oberhansley was found by police inside his ex-girlfriend's home with her deceased and dismembered body, the State arrested Oberhansley and charged him with murder, abuse of a corpse, and residential entry. [App. Vol. II, pgs. 91-92]. The court ordered Oberhansley to undergo a psychological evaluation. [App. Vol. II, pg. 102].

The State amended the charging information to remove the abuse of a corpse count, elevate the residential entry charge to burglary, add a count of rape, and request imposition of the death penalty. [App. Vol. II, pgs. 126-28; App. Vol. III, pgs. 37-40].

In February 2017, defense counsel filed a suggestion regarding Oberhansley's competency, due to Oberhansley's "irrational and expressed bizarre thoughts at hearings," his hallucinations in the jail, and his diagnosis of a psychotic disorder with functional impairment. [App. Vol. V, pgs. 14-15]. Counsel also described Oberhansley as "suspicious, paranoid, uncommunicative, and agitated." [App. Vol. V, pg. 15].

The court ordered Oberhansley to be evaluated by several experts, who deemed Oberhansley incompetent to stand trial and diagnosed him with either schizophrenia or a general psychotic disorder. [App. Vol. V, pgs. 58-67]. The court found Oberhansley to be incompetent and had him committed to a mental health hospital. [App. Vol. 5, pgs. 71-72].

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Approximately eight months later, in July 2018, the Logansport State Hospital believed Oberhansley had attained competency. [App. Vol. V, pg. 88]. The report from the hospital diagnosed Oberhansley with schizophrenia but believed toward the end of Oberhansley's stay that he was malingering because he did not wish to leave the hospital. [App. Vol. V, pg. 97].

Just two months later, however, defense counsel again filed a suggestion that Oberhansley was incompetent. [App. Vol. V, pgs. 108-10]. Two experts who conducted the court-ordered evaluations found Oberhansley to be competent. [App. Vol. V, pgs. 117-28, 138-46].

In January 2019, Oberhansley filed a notice to assert an insanity defense. [App. Vol. V, pgs. 231-32]. A forensic evaluation revealed Oberhansley was able to appreciate the wrongfulness of his conduct. [App. Vol. VI, pgs. 2-7]. Oberhansley also disagreed with his attorneys pursuing an insanity defense. [App. Vol. VI, pgs. 89-91]. After motions were filed and a hearing was held, the court ordered defense counsel to honor Oberhansley's wishes and withdraw its pursuit of the insanity defense. [App. Vol. VI, pgs. 243-48].

In June 2019, the parties filed a "stipulation and agreement." [See App. Vol. VII, pgs. 90-91]. Pursuant to the terms of the agreement, the State withdrew its request for imposition of the death penalty in exchange for Oberhansley agreeing to withdraw the insanity defense and

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not present any “mental health defense evidence” during the guilt phase of Oberhansley’s trial. [App. Vol. VII, pgs. 90-91]. The State amended the sentencing request to life without parole. [App. Vol. VII, pgs. 91, 119-22].

Thereafter, Oberhansley sought clarification of what evidence of Oberhansley’s mental health would be permitted in the guilt phase of the trial, given the State intended to present evidence of Oberhansley’s bizarre behavior during his interrogation and allegations that Oberhansley engaged in cannibalism. [App. Vol. VIII, pgs. 34-36]. The State objected to Oberhansley being able to use any mental health evidence during trial, and the court agreed with the State. [App. Vol. VIII, pgs. 51-56; App. Vol. IX, pgs. 100-02].

Early on in the case, Oberhansley filed a motion for change of venue due in part to the pretrial publicity. [App. Vol. II, pgs. 151-53]. The parties eventually agreed a jury would be selected in Hamilton County. [R. Vol. 2, pg. 213; App. Vol. II, pg. 59; App. Vol. VIII, pg. 104]. In August 2019, a jury was selected, and Oberhansley’s trial began. [See R. Vol. 4, pg. 153]. During testimony from the State’s third witness, the witness stated that Tammy did not want Oberhansley to return to prison because she believed his drug use was causing his behavior. [R. Vol. 4, pg. 218]. The court declared a mistrial. [R. Vol. 4, pg. 226].

The second jury selection also occurred in Hamilton County. [Second Supp. App. Vol. III, pg. 4]. However, an insufficient number of jurors were

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available to seat a jury, so the trial ended. [Second Supp. App. Vol. IV, pgs. 99-100].

The parties agreed the third jury would be selected in St. Joseph County. [App. Vol. VIII, pgs. 117-18]. Before the trial took place, however, defense counsel notified the court that Oberhansley was not competent to stand trial. [App. Vol. VIII, pgs. 119-21]. A court-ordered evaluation revealed Oberhansley was not competent, and the parties agreed to him being formally declared incompetent to stand trial. [App. Vol. VIII, pgs. 140-43].

In August 2020, Oberhansley's competency was restored. [See App. Vol. VIII, pgs. 172-85]. Oberhansley's third trial commenced in September 2020. [See R. Vol. 4, pg. 229]. The jury was selected in Allen County. [See Second Supp. App. Vol. IV, pg. 104]. The jury found Oberhansley guilty of murder and burglary, but not guilty of rape. [R. Vol. 8, pg. 109]. After hearing additional testimony and arguments, the jury recommended life without parole. [R. Vol. 9, pg. 8]. The court sentenced Oberhansley to life without parole for murder and imposed a six-year concurrent sentence on the burglary count. [R. Vol. 9, pg. 11]. Oberhansley now appeals.

STATEMENT OF FACTS

Joseph Oberhansley

Joseph Oberhansley reported his childhood in Utah as “good, or better than most.” [App. Vol. X, pg. 35]. He had some interactions with the juvenile justice system as a young teenager, primarily for fighting, property crimes, and possessing a firearm. [App. Vol. X, pgs. 30-33].

Shortly after Oberhansley turned 16, however, his older brother committed suicide. [App. Vol. V, pg. 65]. Seven weeks later, Oberhansley’s father also committed suicide. [App. Vol. V, pg. 65]. Less than a year later, Oberhansley and his ex-girlfriend became parents. [App. Vol. VIII, pg. 181].

Five days after his son’s birth and triggered by the first anniversary of his father’s suicide, Oberhansley killed his ex-girlfriend, shot his mother, and shot himself in the head. [App. Vol. V, pg. 59]. Both he and his mother survived, but Oberhansley was seriously injured. [App. Vol. V, pg. 59].

Oberhansley was comatose for some time, experienced paralysis in part of his body, and had encephalomalacia as a result of the traumatic brain injury in the right frontal and parietal lobes of his brain. [App. Vol. V, pgs. 59, 82]. Encephalomalacia is a very serious condition resulting in softening or complete loss of brain tissue, often after a head injury. [App. Vol. V, pg. 66; App. Vol. VII, pg. 51]. Damage to the fronto-parietal area of

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the brain has been associated with symptoms that mimic schizophrenia. [See App. Vol. V, pg. 84].

In 2000, Oberhansley pleaded guilty to manslaughter and attempted murder and spent 13 years in a Utah prison. [App. Vol. V, pg. 59; App. Vol. X, pg. 33]. During his time in prison, Oberhansley began hearing voices and experiencing psychotic symptoms. [App. Vol. V, pg. 81].

Oberhansley was released to parole and moved to Indiana in mid-2012. [App. Vol. X, pg. 33]. He lived with family and worked at a local car dealership in Clarksville. [App. Vol. V, pg. 81]. But he was terminated from his employment in July 2014 after he began “acting strangely.” [App. Vol. V, pg. 81]. After trying to evade police when he was observed later that evening driving recklessly, Oberhansley told police his family was trying to kill him. [App. Vol. V, pg. 81].

Police took him to a hospital for treatment because Oberhansley kept biting his own wrists. [App. Vol. V, pg. 81]. He told nurses at the hospital he was “Zeus”¹ and was trying to drink his own blood for strength. [App. Vol. V, pg. 81]. While being treated, Oberhansley told hospital staff he was being followed by the FBI, and he wanted them to either shoot him or to give him a gun. [App. Vol. V, pg. 81].

¹ In Greek mythology, Zeus was the god of thunder, and his signature weapon was the lightning bolt.

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After being discharged from the hospital, Oberhansley was admitted to a psychiatric unit due to his “psychotic, paranoid, and grandiose” behavior, and his continued belief that he was Zeus. [App. Vol. V, pg. 81]. He was treated with antipsychotic medication for 4 days and returned to the jail. [App. Vol. V, pg. 81].

Oberhansley eventually bonded out of jail on resisting law enforcement and criminal recklessness charges. [App. Vol. X, pg. 34]. On September 9, 2014, Oberhansley visited a nurse practitioner, who indicated Oberhansley was experiencing depression, pressured speech, racing thoughts, and insomnia. [App. Vol. V, pg. 81]. Oberhansley was described as “paranoid and delusional” at the time but was only treated for insomnia. [App. Vol. V, pg. 81].

Tammy Blanton

In the spring of 2014, Oberhansley began dating Tammy Blanton. [R. Vol. 5, pg. 62]. In June 2014, Oberhansley moved into Tammy’s home. [R. Vol. 5, pg. 63]. Tammy’s coworker and friend, Tessa Shepherd, often talked to Tammy about her relationship with Oberhansley. Shepherd said Tammy described Oberhansley as “not stable,” having a “mental sickness,” hearing voices, thinking he was a god, being “delusional” and “schizophrenic,” and experiencing hallucinations. [R. Vol. 5, pgs. 143-44].

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On Monday, September 8, 2014, Tammy went to work that day and appeared upset to Shepherd. [R. Vol. 5, pg. 103]. Tammy had called Shepherd on Sunday, which was odd to Shepherd. [R. Vol. 5, pg. 103]. Shepherd learned Monday at work that Tammy had called her the day before as a “diversion” because Tammy felt as if she had been repeatedly raped by Oberhansley over the weekend. [R. Vol. 5, pg. 105]. Tammy told Shepherd she had gone along with Oberhansley’s “constant” sex that weekend to “keep the peace.” [R. Vol. 5, pg. 127].

After leaving work that day, Tammy stayed with her friend, Donna. [R. Vol. 5, pg. 105]. Oberhansley did not know Tammy was not coming home that evening. [R. Vol. 5, pg. 131]. Tammy ended her relationship with Oberhansley through text messages with him that evening. [R. Vol. 5, pg. 131].

On Tuesday, September 9, 2014, Oberhansley appeared at Tammy’s work to talk to her. [R. Vol. 5, pg. 106]. Tammy’s supervisor asked him to leave, and Oberhansley did. [R. Vol. 5, pg. 107].

On Wednesday, September 10, 2014, Tammy told Shepherd that Tammy’s father planned to change the locks on Tammy’s doors so she could return home. [R. Vol. 5, pg. 108]. Around 9:30 p.m. that evening, Tammy sent Shepherd text messages to let her know that Tammy had returned home. [R. Vol. 10, pgs. 49-51]. Tammy also told Shepherd that

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Oberhansley had visited the home to get the rest of his property, but that Tammy refused to let him inside, so Oberhansley left. [R. Vol. 5, pg. 141].

At about 3:00 a.m. on September 11, 2014, Tammy called 9-1-1 call to report that Oberhansley was outside her home, pacing between the front and back doors, trying to get inside the home. [*See generally* R. Vol. 10, pg. 54]. Tammy told the operator Oberhansley had mental health issues, thought he was a god, and suffered from delusional schizophrenia. [*See generally* R. Vo. 10, pg. 54].

Officer Brandon McGhee was dispatched to Tammy's home. [R. Vol. 5, pg. 78]. Officer McGhee encountered Oberhansley walking around to the front of the home. [R. Vol. 5, pg. 80]. Oberhansley told Officer McGhee it was his home, and that the locks had been changed while he was at work the day before. [R. Vol. 5, pg. 82].

Four other officers, two of whom were African-American, arrived to assist Officer McGhee. [R. Vol. 5, pgs. 84-85]. One officer recalled it was raining very heavily that night. [R. Vol. 5, pg. 95]. Oberhansley was angry and paced back and forth while slamming his fist in his hand. [R. Vol. 5, pg. 81]. Officer McGhee ordered Oberhansley to leave, and Oberhansley complied. [R. Vol. 5, pg. 83]. Police watched as Oberhansley drove away. [R. Vol. 5, pg. 83].

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Tessa Shepherd

Later that morning, between 9-9:30 a.m., Shepherd noticed Tammy had not shown up for work. [R. Vol. 5, pg. 113]. Shepherd called Tammy's phone repeatedly until a man answered. [R. Vol. 5, pgs. 113-14]. The man claimed to be Tammy's brother, but Shepherd recognized the voice as Oberhansley's. [R. Vol. 5, pg. 114].

Shepherd contacted Tammy's friend, Sabrina Hall. [R. Vol. 5, pg. 64]. Hall called police to conduct a welfare check on Tammy. [R. Vol. 5, pg. 65]. Police responded to Tammy's home, and Oberhansley answered the door. [R. Vol. 5, pg. 191]. Detective Michael Pavey talked to Oberhansley on the front porch and noticed Oberhansley had a cut on his right hand. [R. Vol. 5, pg. 193]. Officers patted Oberhansley down and found a brass knuckle knife in his pocket. [R. Vol. 5, pg. 194]. The knife appeared to have hair and blood on it. [R. Vol. 5, pg. 205]. Oberhansley was talking to the detective "a mile a minute." [R. Vol. 5, pg. 167].

Tammy

Officer Connie Viers entered the home to check on Tammy. [R. Vol. 5, pg. 158]. Officer Viers saw what appeared to be blood on the light switches, a tarp with various tools on the floor, and a "big bloody mound of something in the bathtub." [R. Vol. 5, pgs. 158-59]. Officer Viers also noticed the back door had been forced open. [R. Vol. 5, pg. 158].

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Officer Viers exited the home and told Detective Pavey what she had observed. [R. Vol. 5, pg. 195]. Detective Pavey entered the home, proceeded to the bathroom, and discovered Tammy's body in the bathtub. [R. Vol. 5, pg. 196]. Detective Pavey exited the home, and police obtained a search warrant in order to process the scene. [R. Vol. 5, pg. 196; R. Vol. 6, pgs. 16-17].

Based on the evidence, police believed Oberhansley returned to Tammy's house shortly after police ordered him to leave, forced his way in by breaking the back door, and killed Tammy. [R. Vol. 6, pgs. 70-71]. An autopsy revealed Tammy had been stabbed numerous times in the head, neck, and chest. [R. Vol. 7, pg. 133]. The front part of her skull had been removed, and a portion of her brain was missing. [R. Vol. 11, pg. 4]. Most of her heart was missing from her chest cavity as well. [R. Vol. 11, pg. 7].

Zeus Grey Brown

Oberhansley was arrested and transported to the police station. [R. Vol. 5, pg. 229]. During the ride, Oberhansley stated over and over, "the wicked will flee." [R. Vol. 5, pgs. 230-31].² At the police station, Oberhansley was interrogated. [R. Vol. 6, pg. 104]. The interrogation lasted for 3-1/2 hours. [R. Vol. 6, pg. 106].

² Proverbs 28:1 (ESV) reads: "The wicked flee when no one pursues, but the righteous are bold as a lion."

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Oberhansley began the interview by making several bizarre statements, including the following:

“I’m tingling; I’m like electrified right now,” [R. Vol. 6, pg. 110];

“I shouldn’t have opened that gate,” [R. Vol. 6, pg. 111];

“I just want to restore the balance,” [R. Vol. 6, pg. 111];

Oberhansley also complained there were too many “gates” opened. [R. Vol. 6, pg. 125].

Oberhansley initially told police he did not know Tammy was in the home. [R. Vol. 6, pgs. 139-40]. Oberhansley next claimed Tammy arranged to have two African-American men kill him, but the men killed Tammy instead while holding him hostage. [R. Vol. 6, pgs. 175-77].

Oberhansley told police, “Zeus fell.” [R. Vol. 6, pg. 180]. The detectives stepped out of the room briefly, and Oberhansley began breathing heavily and audibly “buzzing.” [R. Vol. 6, pg. 180]. When police resumed the interrogation, Oberhansley told them Tammy and the men were going to kill him and steal his “third eye . . . in the center of his forehead.” [R. Vol. 6, pg. 194].³

The detectives left the room again, and Oberhansley began breathing heavily and buzzing again. [R. Vol. 6, pg. 200]. When they returned, Oberhansley admitted to prying Tammy’s head open with the knife. [R.

³ The “third eye” in mythology was an invisible eye located in the center of the forehead that was believed to be a gate to inner realms of higher spiritual consciousness.

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Vol. 6, pgs. 205-06]. Police left Oberhansley alone in the room again, and the transcript reveals what occurred:

(Growling and hissing, heavy breathing) Back. Down. **(More hissing and growling)** No harm. **(You can hear his cuffs moving around a lot)** Bzzt **(starts buzzing again)** **(moving around a lot with the cuffs)**

[R. Vol. 6, pg. 211 (emphasis in original)].

When police returned, Oberhansley told them, “I can feel a presence in this room.” [R. Vol. 6, pg. 211]. Oberhansley revealed to the detectives that he ate Tammy’s brain, that he tried to pull the “third eye” out with tongs, that Tammy had taunted him in the bathroom by saying, “checkmate,” and that the storms were “attempts” on him. [R. Vol. 6, pgs. 212-13, 222-24]. Oberhansley also told police he “heard [Tammy’s] thoughts.” [R. Vol. 6, pg. 227].

When the detectives again left Oberhansley alone in the room, Oberhansley began banging, mumbling, growling, and buzzing. [R. Vol. 6, pg. 233]. When the interrogation resumed, Oberhansley told police, “I can smell them . . . there’s a presence.” [R. Vol. 6, pg. 233]. Oberhansley explained to police that he was lying in bed with Tammy when he “started tingling, started getting my tingling, man, the storms started coming, and I caught the vision.” [R. Vol. 6, pg. 238].

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At one point, Oberhansley began moving around the interview room, claiming there was something going on around him that he did not like. [R. Vol. 6, pg. 241]. He said, “I can smell it. I know there’s something right there.” [R. Vol. 6, pg. 242]. Oberhansley then began knocking on something, buzzing, and growling, and he yelled, “Hey, man, I’ll fuck your world up!” [R. Vol. 6, pg. 245]. He also growled and yelled, “Down, down.” [R. Vol. 6, pg. 246].

He explained to the detectives that “they can tap in and control my mind,” “they’ll come in anywhere,” and “it’s a spirit, it’s a sense.” [R. Vol. 6, pg. 247]. As the interrogation concluded, Oberhansley began growling and buzzing again, and he asked one of the officers whether Oberhansley was going to receive his gift of immortality. [R. Vol. 6, pg. 249].

Oberhansley was transported to the jail and placed in a padded cell. [R. Vol. 5, pg. 232]. When police removed the restraints, Oberhansley began panting and beating his chest. [R. Vol. 5, pg. 232]. Later, police met with Oberhansley again to ask him a few more questions. [R. Vol. 6, pg. 107]. The detectives wanted to know what had happened to Tammy’s heart. [R. Vol. 7, pg. 4]. Oberhansley admitted that he ate it, that he had “demons coming out” and that he knew “the power that I owe.” [R. Vol. 7, pg. 8].

After being charged in this case, the court expressed concern about Oberhansley’s competency and asked Dr. Heather Henderson-Galligan to

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evaluate him. [R. Vol. 8, pg. 194]. Dr. Henderson-Galligan first met with Oberhansley on September 18, 2014, one week after Tammy's death. [R. Vol. 8, pg. 195]. For the next month, Dr. Henderson-Galligan met with Oberhansley on five occasions. Dr. Henderson-Galligan was never able to conduct an evaluation due to Oberhansley's psychotic state. [R. Vol. 8, pg. 212]. Dr. Henderson-Galligan described Oberhansley as "attending to voices," "disorganized," exhibiting "machine gun speech," and "acutely psychotic." [R. Vol. 8, pgs. 197, 202, 205]. Oberhansley claimed he was "Zeus Grey Brown" and told the doctor, "My rite of passage is complete[.] I am ready to move on and take my place with my people." [R. Vol. 8, pgs. 204, 208-09].

Dr. Henderson-Galligan described Oberhansley's psychosis as "very real" and "not fake and made up." [R. Vol. 8, pg. 216]. When she met with him in June 2017, she noted he had deteriorated even more. [R. Vol. 8, pg. 221]. The doctor last met with Oberhansley in November 2018. [R. Vol. 8, pg. 225]. By that point, Oberhansley was properly medicated at the time and was communicating much better. [R. Vol. 8, pg. 225]. Dr. Henderson-Galligan was able to complete a full evaluation and determined Oberhansley was suffering from "severe continuous schizophrenia." [R. Vol. 8, pg. 227]. Dr. Henderson-Galligan noted that she had not seen this level of sickness in her 23 years of practice. [R. Vol. 8, pg. 229].

The “Ultimate Chaos in the Human Mind”

At trial, the State presented its case-in-chief, which included testimony and exhibits detailing Oberhansley’s initial encounter with police, the ensuing investigation, and the evidence they found. The State also played portions of Oberhansley’s videotaped interview with police. [See generally R. Vol. 11, pg. 67]. Oberhansley testified on his own behalf and told the jury Tammy let him in when he returned to the home that morning after police had left. [R. Vol. 8, pg. 3]. Oberhansley claimed that two African-American men were already in the home, that one of the men held him at gunpoint while the other man killed Tammy, and that they knocked him unconscious before leaving the home. [R. Vol. 8, pgs. 3-4]. Oberhansley also explained that he had been suffering from head injuries when he was interviewed by police, and that he falsely confessed to being involved in the murder because the interview was long and exhausting. [R. Vol. 7, pg. 250; R. Vol. 8, pg. 5].⁴

⁴ Before the jury was read the final instructions, Oberhansley tendered a proposed jury instruction that would allow the jury to consider a lesser-included offense of voluntary manslaughter. [R. Vol. 8, pgs. 49, 51-58]. The court declined to give the instruction to the jury. [R. Vol. 8, pgs. 59-65]. It seems clear from the discussion between the parties and the court that a written proposed instruction was indeed tendered to the court, but no notation was made on the CCS and a copy of the instruction was not contained in the court file. Appellant’s counsel contacted the trial court clerk, the court reporter, the prosecutor, and defense counsel but was unable to obtain a copy of the proposed instruction.

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The jury found Oberhansley guilty of murder and burglary, but not guilty of rape. [R. Vol. 8, pg. 109]. When the jury returned after recess to begin the penalty phase of the trial, it was instructed the State had to prove the existence of at least one of two statutory aggravating circumstances: (1) Oberhansley intentionally killed Tammy while committing burglary; and (2) Oberhansley dismembered Tammy. [R. Vol. 8, pg. 121].

Defense counsel commented in his opening statement to the jury that the elephant in the courtroom throughout the trial was Oberhansley's mental illness. [R. Vol. 8, pg. 129]. He stated that Tammy was aware of Oberhansley's mental illness and believed he suffered from paranoid schizophrenia. [R. Vol. 8, pg. 130]. He described the crime scene as "Horrific. Bizarre. Surreal. Totally irrational." [R. Vol. 8, pg. 130]. He explained that the defense was presenting Oberhansley's mental disorder as a mitigating circumstance that outweighed any aggravating circumstances. [R. Vol. 8, pg. 133]. He concluded:

[S]uffering from schizophrenia[] is the worst possible nightmare that any human being could live with. The reason, every day we deal with reality. Trying to deal with something that is [in] your mind so real, so dangerous, so right there, that everybody else is saying that nothing is there. It is the ultimate chaos in the human mind.

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[R. Vol. 8, pgs. 133-34].

After the State incorporated the evidence from the guilt phase of the trial and then rested its case, Oberhansley presented the testimony of two experts. [R. Vol. 8, pg. 134]. The first expert was Dr. Timothy Allen, a psychologist at the University of Kentucky. [R. Vol. 8, pgs. 134-35]. Dr. Allen explained to the jury that schizophrenia is a mental illness that involves delusional beliefs. [R. Vol. 8, pg. 144]. Schizophrenia can be treated with medication, but the symptoms worsen with age. [R. Vol. 8, pg. 144]. Thought insertion, or a belief that someone is inserting thoughts in your head, is a common symptom of schizophrenia. [R. Vol. 8, pg. 153].

Dr. Allen explained that Oberhansley's symptoms were evident in July 2014 when he was admitted to the hospital for delusions; on September 9, 2014, when the nurse practitioner described him as delusional and paranoid; and then later in the interrogation after the crime when Oberhansley's thought process was so unorganized. [R. Vol. 8, pgs. 154-56].

Dr. Allen met with Oberhansley on several occasions. [R. Vol. 8, pg. 149]. Dr. Allen testified that Oberhansley was not legally insane at the time of the crime because he acted "appropriately" in the framework of his delusions, but that Oberhansley's ability to appreciate the criminality of his conduct and to conform to the law was certainly impaired as a result of his delusions. [R. Vol. 8, pg. 163]. Finally, Dr. Allen disputed the

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State's assertion that Oberhansley's schizophrenia was a drug-induced psychosis because the psychosis continued even after Oberhansley was no longer using drugs. [R. Vol. 8, pg. 178]. Dr. Allen testified Oberhansley was not malingering, but was suffering from a severe illness that caused him to experience an extreme mental disturbance when he killed Tammy. [R. Vol. 8, pgs. 162, 165].

The second expert to testify was Dr. Heather Henderson-Galligan. [See R. Vol. 8, pg. 189]. After testifying about her work with Oberhansley over the course of the proceedings, Dr. Henderson-Galligan agreed with Dr. Allen that Oberhansley was influenced by an extreme or emotional disturbance when he killed Tammy, and that at the time he could not appreciate the criminality of his conduct due to his severe schizophrenia. [R. Vol. 8, pgs. 227-29].

Oberhansley next made his statement of allocution, using his comments to complain about his trial attorneys and to reiterate that two African-American men killed Tammy. [See R. Vol. 8, pg. 233]. In his closing arguments to the jury, defense counsel again discussed the chaos that occurred inside Oberhansley's mind from his mental disease. [R. Vol. 8, pg. 244].

The jury returned verdict forms indicating the State had proven both aggravating circumstances beyond a reasonable doubt, and it recommended Oberhansley be sentenced to life without parole. [R. Vol. 9,

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pg. 7]. At a sentencing hearing, the court imposed an LWOP sentence and a concurrent 6-year term for the burglary. [R. Vol. 9, pg. 11]. Oberhansley now appeals.

SUMMARY OF ARGUMENT

Oberhansley's sentence of life without parole should be vacated for two reasons. First, the court erred in imposing a sentence of life without parole because the jury failed to make a required finding under Indiana's LWOP statute. Under Indiana law, an LWOP sentence may not be imposed unless the jury finds, among other things, that the aggravating circumstances outweigh any mitigating circumstances. Here, that finding was never made. Imposing the sentence without the prerequisite finding was a violation of Oberhansley's constitutional right to due process of law.

Second, Oberhansley's sentence of life without parole was inappropriate when one views the egregious nature of the offense in the context of his severe mental health illness. Oberhansley acknowledges that the nature of his offense is particularly disturbing. To commit such acts evinces a level of depravity that is rarely seen. But his actions must be viewed in the context of his paranoid delusions.

The Supreme Court of Canada just declared life without the possibility of parole a cruel and unusual punishment. *See R. v. Bissonnette*, 2022 SCC 23 (May 27, 2022). The court described LWOP as "intrinsically

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incompatible with human dignity” and “degrading in nature.” *Id.* The court noted there is inherent dignity in every individual, “including the vilest of criminals.” *Id.*

Oberhansley suffers from a serious and debilitating mental illness that causes him to become so detached from reality that he thought he had to kill Tammy and eat her organs to achieve a higher level of consciousness and strength. Any sentence imposed in this case would not change what Oberhansley did. Nevertheless, sentencing him to serve the remainder of his life in prison is inappropriate.

ARGUMENT

I. The trial court erred in imposing a sentence of life without parole because the jury failed to find that the mitigating circumstances were outweighed by the aggravating circumstances.

Before a trial court may impose a sentence of life without parole, a jury “**must** find that: (1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in [Ind. Code § 35-50-2-9(b)] exists; and (2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.” Ind. Code § 35-50-2-9(1) (emphasis added). When the Indiana General Assembly uses the word “must” in a statute, it means that thing (whatever it is) is

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mandatory. *See D.B. v. Ind. Dep't Child Servs.*, 69 N.E.3d 464, 468 (Ind. 2017).

As required under Indiana Code section 35-50-2-9(l)(1), Oberhansley's jury found that the State proved both alleged aggravating circumstances beyond a reasonable doubt. [App. Vol. IX, pgs. 217-18; R. Vol. 9, pg. 8]. Oberhansley's jury failed, however, to find that the mitigating circumstances were outweighed by the aggravating circumstances, as it was required to do under Indiana Code section 35-50-2-9(l)(2). [App. Vol. IX, pgs. 217-220; R. Vol. 9, pg. 8]. As such, the trial court had no authority to impose an LWOP sentence. This Court should vacate Oberhansley's LWOP sentence and remand his case to the trial court with an order to impose a term of years.

A. Statutory Prerequisites to an LWOP Sentence

"Indiana courts have consistently supported the proposition that 'the nature and extent of penal statutes are primarily legislative considerations.'" *State v. Moss-Dwyer*, 686 N.E.2d 109, 112 (Ind. 1997) (citation omitted). The Indiana General Assembly has determined there are circumstances in which LWOP may be an appropriate sentence for murder. *See* Ind. Code § 35-50-2-9. But before the factfinder (whether jury or judge) even gets to that question, two findings must be made: (1) the State has proved at least one statutory aggravating factor beyond a

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reasonable doubt; and (2) that aggravator (or aggravators) outweighs any mitigating circumstances. Ind. Code § 35-50-2-9(l). Separation of powers considerations require this Court to defer to the General Assembly's decision to make these two findings conditions precedent to imposing an LWOP sentence. *See Moss-Dwyer*, 686 N.E.2d at 111-12.

B. Jury Instructions, Jury Findings, and the Trial Court's Sentencing Statement

In its preliminary penalty phase instructions, the trial court instructed the jury that:

You may recommend the sentence of life imprisonment without parole only if you unanimously find:

1. That the State of Indiana has proven beyond a reasonable doubt that at least one of the charged aggravating circumstances exists; and
2. That any mitigating circumstance or circumstances that exist are outweighed by the charged and proven aggravating circumstance of circumstances.

[App. Vol. IX, pg. 241].

In its final penalty phase instructions, the trial court instructed the jury that:

If you unanimously find at least one charged aggravating circumstance has been proven beyond a reasonable doubt, you must next consider the mitigating circumstances and then weigh the aggravating circumstance(s) against the mitigating circumstance(s). **You may only consider recommending the sentence of life imprisonment without parole if you unanimously find that the aggravating circumstance(s) outweigh the mitigating circumstance(s).**

Even if you unanimously find that the State has met its burden of proof as to the existence of at least one charged aggravating circumstance and that the aggravating circumstance(s) outweigh the mitigating circumstance(s), the law allows you to recommend that the judge impose a term of years instead of the sentence of life imprisonment without parole. **The court will provide you with a verdict form as to the finding that you must make in regard to whether the aggravating circumstance(s) outweigh(s) the mitigating circumstance(s).** Further, the court will provide you with a verdict form to complete in regard to your sentencing recommendation.

[App. Vol. IX, pg. 247 (emphasis added)].

The jury was also instructed that whether it found that the “mitigating circumstance(s) are not outweighed by the aggravating circumstance(s)” or that “any mitigating circumstances are outweighed by

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the aggravating circumstance(s),” it must return the verdict form saying which it found. [App. Vol. X, pg. 11].

The jury returned these findings and recommendations:

IN THE CIRCUIT COURT 4 FOR CLARK COUNTY
STATE OF INDIANA
STATE OF INDIANA
VS. CAUSE #: 10C04-1409-MR-1
JOSEPH ALBERT OBERHANSLEY

VERDICT

AGGRAVATING CIRCUMSTANCE 1

AS TO THE FOLLOWING AGGRAVATING CIRCUMSTANCE ALLEGED BY THE STATE OF INDIANA, WE, THE JURY, FIND THAT THE EXISTENCE OF THE AGGRAVATING CIRCUMSTANCE:

IC 35-50-2-9(b)(1)(B)- Joseph Albert Oberhansley committed the Murder, as charged in Count 1 of the Information, by intentionally killing Tammy Blanton, and did so while committing or attempting to commit Burglary, to-wit: On September 11, 2014 in Clark County, State of Indiana, Joseph Albert Oberhansley did break and enter the building or structure of Tammy Blanton, located at 329 Locust Street in Jeffersonville, and the building or structure was a dwelling, and did so with the intent to commit the felony offense of Murder within it;

WAS PROVED BEYOND A REASONABLE DOUBT
 WAS NOT PROVED BEYOND A REASONABLE DOUBT

(Put an "X" in the appropriate box)

DATED: September 21, 2020 [REDACTED]
JURY FOREMAN

IN THE CIRCUIT COURT 4 FOR CLARK COUNTY
STATE OF INDIANA
STATE OF INDIANA
VS. CAUSE #: 10C04 1409-MR-1
JOSEPH ALBERT OBERHANSLEY

VERDICT

AGGRAVATING CIRCUMSTANCE 2

AS TO THE FOLLOWING AGGRAVATING CIRCUMSTANCE ALLEGED BY THE STATE OF INDIANA, WE, THE JURY, FIND THAT THE EXISTENCE OF THE AGGRAVATING CIRCUMSTANCE:

IC 35-50-2-9(b)(10)- Joseph Albert Oberhansley committed the Murder, as charged in Count 1 of the Information, by knowingly or intentionally killing Tammy Blanton, and Joseph Albert Oberhansley dismembered the victim, Tammy Blanton.

WAS PROVED BEYOND A REASONABLE DOUBT
 WAS NOT PROVED BEYOND A REASONABLE DOUBT

(Put an "X" in the appropriate box)

DATED: September 21, 2020 [REDACTED]
JURY FOREMAN

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<p>IN THE CIRCUIT COURT 4 FOR CLARK COUNTY STATE OF INDIANA</p>	<p>IN THE CIRCUIT COURT 4 FOR CLARK COUNTY STATE OF INDIANA</p>
STATE OF INDIANA	STATE OF INDIANA
VS.	VS.
CAUSE #: 10C04-1409-MR-1	CAUSE #: 10C04-1409-MR-1
JOSEPH ALBERT OBERHANSLEY	JOSEPH ALBERT OBERHANSLEY
VERDICT	VERDICT
THE JURY HEREBY	THE JURY HEREBY
<input checked="" type="checkbox"/> DOES	<input type="checkbox"/> DOES
<input type="checkbox"/> DOES NOT	<input checked="" type="checkbox"/> DOES NOT
RECOMMEND THAT THE COURT IMPOSE A SENTENCE OF LIFE WITHOUT PAROLE.	RECOMMEND THAT THE COURT IMPOSE A SENTENCE OF A TERM OF YEARS.
(Put an "X" in the appropriate box)	(Put an "X" in the appropriate box)
DATED: <u>September 21, 2020</u>	DATED: <u>September 21, 2020</u>
[REDACTED] JURY FOREMAN	[REDACTED]

[App. Vol. IX, pgs. 217-220].

When the jury was brought back into the courtroom to submit its findings and recommendations, the trial court stated to the jurors on the record:

State of Indiana versus Joseph Oberhansley
verdict aggravating circumstance 1, was proved

beyond a reasonable doubt signed and dated on today's date. Verdict as to aggravating circumstance number 2 was proved beyond a reasonable doubt, signed and dated on today's date. Verdict, the jury hereby does recommend that the Court imposes a sentence of life without parole, signed and dated on today's date. And the jury does not recommend that the Court impose a sentence of a term of years, signed and dated on today's date. Thank you ladies and gentlemen.

[R. Vol. 9, pg. 8]. The trial court then dismissed the jury. [R. Vol. 9, pg. 8]. After the jury left, the trial court asked the parties if there was "[a]nything before we break?" [R. Vol. 9, pg. 8]. After the parties both responded "No," court was recessed until the sentencing hearing. [R. Vol. 9, pg. 8].

The trial court held Oberhansley's sentencing hearing on October 13, 2020 and wrote the following in its sentencing statement:

The defendant was tried before this court beginning with jury selection in Allen County on September 8, 2020, and the trial concluded in Clark County on September 18, 2020. The jury found the defendant guilty of Count 1: Murder and Count 2: Burglary (Level 4 Felony). The same jury reconvened on September 21, 2020, and evidence in support of aggravating factors and mitigating factors was heard. The jury found aggravating circumstance 1 was proved beyond a reasonable doubt that the defendant committed the murder as charged in Count 1 by intentionally killing Tammy Blanton and did so

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while committing or attempting to commit burglary in that he did break and enter the dwelling of Tammy Blanton and did so with the intent to commit the felony offense of murder within it. The jury also found aggravating circumstance 2 was proved beyond a reasonable doubt that the defendant committed the murder as charged in Count 1 of the information by knowingly or intentionally killing Tammy Blanton and dismembered the victim, Tammy Blanton. The jury then returned a recommendation that the defendant be given a sentence of Life Without Parole and did not recommend the court impose a sentence of a term of years.

The Court finds there is sufficient evidence to support the jury's decision.

[App. Vol. X, pg. 59].

C. The trial court's decision to impose an LWOP sentence, despite the jury's failure to make a required finding, was a due process violation.

Indiana Code section 35-50-2-9(l) sets out the two findings the jury had to make before the trial court could impose an LWOP sentence on Oberhansley. The jury made the finding required under Indiana Code section 35-50-2-9(l)(1) – that the State proved a statutory aggravator beyond a reasonable doubt. [App. Vol. IX, p. 217-18]. Conversely, the jury failed to make the finding required under Indiana Code section 35-50-2-

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9(l)(2) – that the aggravators outweighed the mitigators. [App. Vol. IX, pgs. 217-220; App. Vol. X, pg. 59; R. Vol. 9, pg. 8]. Imposing an LWOP sentence on Oberhansley, despite the jury’s failure to make the mandatory weighing finding, contravened Indiana Code section 35-50-2-9(l), thereby violating Oberhansley’s right to due process as guaranteed by the Fourteenth Amendment.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no State shall “deprive any person of life, liberty or property, without due process of law[.]” U.S. Const. amend. XIV. “It guarantees procedural and substantive due process. Procedural due process protects against the denial of fundamental procedural fairness. Substantive due process protects against arbitrary and oppressive government action.” *City of Bloomington Bd. Of Zoning Appeals v. UJ-Eighty Corp.*, 163 N.E.3d 264, 268 (Ind. 2021) (cleaned up).

As the U.S. Supreme Court has explained, “we examine procedural due process questions in two steps: the first step asks whether there exists a liberty or property interest which has been interfered with by the State, the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (cleaned up). “[A]n individual claiming a protected interest must have a legitimate claim of entitlement

to it. Protected liberty interests ‘may arise from two sources – the Due Process Clause itself and the laws of the States.’” *Id.*

“Life without parole is ‘the second most severe punishment permitted by law.’” *Graham v. Florida*, 560 U.S. 48, 69 (2010) (citation omitted).

“The State does not execute the offender sentenced to life without parole, but the sentence alters the offender’s life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration” *Id.*

Here, Indiana Code section 35-50-2-9 creates a liberty interest for defendants, like Oberhansley, who are facing an LWOP sentence. Under Indiana Code section 35-50-2-9(l), Oberhansley had a liberty interest in not receiving an LWOP sentence unless his jury made two findings – “(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in [Indiana Code section 35-50-2-9(b)] exists; and (2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.” Ind. Code § 35-50-2-9(l). The trial court deprived him of that liberty interest and denied him due process when it imposed an LWOP sentence absent the jury finding required under Indiana Code section 35-50-2-9(l)(2).

The U.S. Supreme Court’s opinion in *Hicks v. Oklahoma*, 447 U.S. 343 (1980) is instructive. Under Oklahoma law⁵ “a convicted defendant [was]

⁵ The statute requiring juries to determine sentences has since been repealed.

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entitled to have his punishment fixed by the jury.” *Id.* at 345 (citation omitted). When Hicks went on trial for distributing heroin, there was a habitual offender statute that required the jury to impose a forty-year sentence if it found him guilty. *Id.* at 344-45. When the jury found him guilty, it “imposed the mandatory 40-year prison term.” *Id.* at 345.

The Oklahoma Court of Criminal Appeals subsequently found the habitual offender statute unconstitutional. *Id.* When Hicks appealed, he challenged his 40-year sentence, given the unconstitutionality of the habitual offender statute. *Id.* Although it acknowledged the habitual offender statute was unconstitutional, the Oklahoma Court of Criminal Appeals affirmed Hicks’ sentence, “reasoning that [he] was not prejudiced by the impact of the invalid statute, since his sentence was within the range of punishment that could have been imposed in any event.” *Id.* Absent the habitual offender statute, Hicks’ jury would have been instructed that it could impose “any sentence of not less than ten . . . years.” *Id.* at 346 (citation omitted). Thus, “[t]he possibility that the jury would have returned a sentence of less than 40 years is thus substantial. It is, therefore, wholly incorrect to say that the petitioner could not have been prejudiced by the instruction requiring the jury to impose a 40-year prison sentence.” *Id.*

In reversing the Oklahoma Court of Criminal Appeals, the U.S. Supreme Court wrote:

It is argued that all that is involved in this case is the denial of a procedural right of exclusively state concern. Where, however, a State has provided for the imposition of criminal punishment in the discretion of the trial jury, it is not correct to say that the defendant's interest in the exercise of that discretion is merely a matter of state procedural law. The defendant in such a case has a substantial and legitimate expectation that he will be deprived of his liberty only to the extent determined by the jury in the exercise of its statutory discretion, *cf.* *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1 (1979), and that liberty interest is one that the Fourteenth Amendment preserves against arbitrary deprivation by the State. *See Vitek v. Jones*, 445 U.S. 480-488-489 (1980), *citing Wolff v. McDonnell*, 418 U.S. 539 (1974); *Greenholtz v. Nebraska Penal Inmates*, *supra*; *Morrissey v. Brewer*, 408 U.S. 471 (1972). In this case Oklahoma denied the petitioner the jury sentence to which he was entitled under state law, simply on the frail conjecture that a jury *might* have imposed a sentence equally as harsh as that mandated by the invalid habitual offender provision. Such an arbitrary disregard of the petitioner's right to liberty is a denial of due process of law.

Id. (cleaned up).

Here, Oberhansley had a substantial and legitimate expectation that he would be deprived of his liberty (in the form of receiving an LWOP sentence) only if the jury made the two findings the legislature has said are mandatory. Absent both findings – and a review of the record shows

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that the jury failed to make the weighing finding required under Indiana Code section 35-50-2-9(1)(2) – the trial court had no authority to impose an LWOP sentence. That it did so anyway was a denial of Oberhansley’s right to due process.

D. Oberhansley’s challenge to this due process violation is not waived or, alternatively, was fundamental error.

The defense did not object when the jury returned its penalty phase findings and recommendations without making the required weighing finding. [R. Vol. 9, pg. 8]. Likewise, the defense did not object at Oberhansley’s sentencing hearing when the trial court imposed an LWOP sentence without the jury having made the required weighing finding [R. Vol. 9, pgs. 9-14]. Generally, failing to lodge a timely objection in the trial court results in the waiver of an issue on appeal. *See Jackson v. State*, 735 N.E.2d 1146, 1152 (Ind. 2000). However, this Court has held that “[c]ounsel need not object to preserve a sentencing error for review.” *Reed v. State*, 856 N.E.2d 1189, 1194 (Ind. 2006) (*citing Kincaid v. State*, 837 N.E.2d 1008, 1010 (Ind. 2005)).

In *Kincaid*, this Court gave several examples of the sentencing issues that Indiana’s appellate courts have reviewed even when the issue was not first presented to the trial court: “improper consideration of an aggravating circumstance, failure to consider a proper mitigating

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circumstance, inaccurate weighing of aggravating and mitigating circumstances, etc.” *Kincaid*, 837 N.E.2d at 1010. To be sure, the contours of Oberhansley’s argument are different. His argument is not that there was an inaccurate weighing of aggravating and mitigating circumstances, but rather that the jury made no finding as to the results of that weighing . . . assuming the weighing even occurred.

Additionally, his argument is couched in the constitutional framework of a due process violation. But, even though different, Oberhansley’s issue is not so different from the sentencing issues this Court has reviewed without the issue having first been raised in the trial court. Oberhansley, therefore, asks this Court not to find this issue waived.

Even if the Court finds this issue waived, it should nevertheless review it under the doctrine of fundamental error. In *Allen v. State*, 686 N.E.2d 760, 775 n.13 (Ind. 1997), this Court described fundamental error analysis:

The doctrine of fundamental error permits an appellate court to avoid the ordinary rules of appellate procedure in order to address a claim of error not raised in the trial court but which claims a deprivation of fundamental due process. *Reynolds v. State*, 460 N.E.2d 506, 508 (Ind. 1984). To be “fundamental error” it must constitute a clearly blatant violation of basic and elementary principles, and the harm or potential for harm therefrom must be substantial and appear clearly and prospectively. *James v. State*,

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613 N.E.2d 15, 25 (Ind. 1993). This means that irremediable prejudice to a defendant's fundamental right to a fair trial must be immediately apparent in the disputed evidence or argument.

The due process violation Oberhansley challenges here fits that bill. Oberhansley was sentenced to serve every day of the rest of his life in prison even though the process set out in the statute that permits such a penalty was not followed. What the U.S. Supreme Court has said about the magnitude of an LWOP sentence bears repeating – it “alters the offender’s life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration” *Graham*, 560 U.S. at 69. The harm here is both grievous and clear. So even if the Court finds this issue waived, it should still address it under the doctrine of fundamental error and find that Oberhansley was denied his right to due process.

E. This Court should vacate Oberhansley’s LWOP sentence and remand his case to the trial court with an order to impose a term of years.

The plain language of Indiana Code section 35-50-2-9 makes clear what the appropriate remedy for this due process violation is. Under Indiana Code section 35-50-2-9(1)(2), an LWOP sentence cannot be imposed unless the jury finds that “any mitigating circumstances that

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exist are outweighed by the aggravating circumstance or circumstances.” Since the jury did not make that finding here, Oberhansley’s LWOP sentence cannot stand. The trial court was without the authority to impose that sentence. Absent an Indiana Code section 35-50-2-9(l)(2) finding, the only available sentencing option is a term of years.

Oberhansley respectfully asks this Court to find his right to due process was violated, to vacate his LWOP sentence, and to remand his case to the trial court with an order to impose a term of years.

II. Oberhansley’s sentence of life without parole was inappropriate.

Article 7, Section 4 of the Indiana Constitution gives this Court “in all appeals of criminal cases, the power to . . . review and revise the sentence imposed.” Indiana Appellate Rule 7(B) provides that “[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

“Sentencing review turns on ‘the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.’” *Wright v. State*, 168 N.E.3d 244, 268 (Ind. 2021) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)).

As this Court explained in *Gibson v. State*, 51 N.E.3d 204 (Ind. 2016),

“the principal role of our review is to leaven outliers rather than achieving a perceived correct sentence.” *Id.* at 215 (cleaned up). This Court’s Appellate Rule 7(B) authority is important because it allows a defendant to have his sentence reviewed “in a climate more distant from local clamor.” *Serino v. State*, 798 N.E.2d 852, 856-57 (Ind. 2003). In the end, “the length of the aggregate sentence and how it is to be served are the issues that matter.” *Wright*, 168 N.E.3d at 268.

The aggregate sentence in this case – LWOP – is inappropriate in light of the nature of Oberhansley’s offense and his character. He asks this Court to exercise its 7(B) authority and revise his LWOP sentence to a term of years.

A. The Offenses of Conviction and Sentencing Ranges

The jury found Oberhansley guilty of murder and burglary as a level 4 felony (Counts I and II). [App. Vol. II, pgs. 8, 86]. When the offenses were committed in September 2014, the sentencing range for murder was “between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years.” Ind. Code § 35-50-2-3(a) (2014). The sentencing range for a Level 4 felony was “between two (2) and twelve (12) years, with the advisory sentence being six (6) years.” Ind. Code § 35-50-2-5.5 (2014).

On December 5, 2014, the State filed an information, pursuant to

Indiana Code section 35-50-2-9, requesting a death sentence for Oberhansley. [App. Vol. II, pg. 124]. In its death request, the State alleged two aggravating circumstances. First, the State alleged that Oberhansley intentionally murdered Tammy while committing or attempting to commit burglary. [*Id.* (citing Ind. Code § 35-50-2-9(b)(1)(B) (2014)]. Second, the State alleged that Oberhansley dismembered Tammy. [*Id.* (citing Ind. Code § 35-50-2-9 (b)(10) (2014)]. The State later filed an amended death request alleging a third statutory aggravator – that Oberhansley intentionally murdered Tammy while committing or attempting to commit rape. [App. Vol. III, pg. 39 (citing Ind. Code § 35-50-2-9(b)(1)(F))].

On June 28, 2019, the parties filed a stipulation whereby the State agreed to seek an LWOP sentence instead of death, and the defense agreed not to present any “mental health defense evidence” at trial and not to challenge the trial court’s ruling on the insanity defense. [App. Vol. VII, pgs. 90-91]. This stipulation did not alter the statutory aggravators the State was alleging. But once the jury acquitted Oberhansley of rape, the (b)(1)(F) aggravator was off the table. [R. Vol. 8, at pg. 115].

Following the penalty phase presentations by the parties, the jury⁶ found the State proved both alleged statutory aggravators beyond a reasonable doubt and recommended an LWOP sentence. [App. Vol. IX,

⁶ As discussed in the first issue, the jury did not make a finding that the aggravators outweighed the mitigators.

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pgs. 217-20]. The trial court, following the jury's recommendation, imposed an LWOP sentence for murder as charged in Count 1 [App. Vol. X, pgs. 59-60]. The trial court also imposed a six-year sentence for the burglary charged in Count 2 and ordered that sentence to be served concurrently with the LWOP sentence for Count 1 [*Id.*].

B. The Nature of Oberhansley's Offense

Gruesome. Horrific. Brutal. It would not be exaggerating to use any of these words to describe Tammy's murder. The crime scene photographs show Tammy's mutilated body lying in a bathtub, covered in blood and brain matter. [R. Vol. 10, pgs. 212-14]. According to the forensic pathologist who performed her autopsy, Tammy sustained twenty-five (25) sharp force injuries to her head, neck, torso, and right hand. [R. Vol. 10, pg. 249]. Sharp force injuries, the pathologist explained, "are stab wounds and incise wounds." [R. Vol. 7, pg. 133]. Some of the sharp force injuries were so deep and made with such force that Tammy's underlying bones and vertebrae were fractured. [*Id.* at 133-45].

Using a jigsaw, Oberhansley removed a 4 ½" x 1 ⅛" section of Tammy's skull at her forehead and cut a hole in her chest. [R. Vol. 11, pgs. 4, 7; R. Vol. 7, pgs. 12-13]. The autopsy revealed that most of Tammy's heart and brain, as well as a portion of her left lung, were missing. [R. Vol. 7, pgs. 134-35]. In a statement to police, Oberhansley admitted to eating those

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parts of Tammy's body. [R. Vol. 7, pg. 13]. Tammy's DNA was found in a skillet and on a knife, fork, spoon, and tongs recovered from her kitchen. [*Id.* at 44-48].

C. Oberhansley's Character

As a child, Oberhansley played Little League and had a lot of friends. [App. Vol. X, pg. 35]. He had a good relationship with both of his parents, but his mother was the victim of domestic violence at the hands of his father. [*Id.*; App. Vol. V, pg. 58]. He spent some time living with his maternal grandparents as a child, and there was domestic violence in that relationship as well. [R. Vol. 10, pg. 43].

Beginning at the age of twelve, Oberhansley started committing delinquent acts of varying severity and spent time in youth detention. [App. Vol. X, pgs. 30-33]. The suicide deaths of his older brother and father when he was 16, however, seem to have marked a significant turning point in his life. [*See* App. Vol. V, pgs. 58, 65]. After his father died, he dropped out of school and started using drugs, including cocaine and methamphetamine, on a regular basis. [App. Vol. X, pg. 36; R. Vol. 10, pg. 40]. At 17, within days of his son's birth, Oberhansley shot and killed his son's mother, shot and almost killed his own mother, and shot himself in the head in a suicide attempt. [App. Vol. VIII, pg. 181].

Oberhansley suffered permanent brain damage because of his suicide

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attempt. While he had surgery to remove bullet and bone fragments from his brain, some bullet fragments remain in his brain to this day. [App. Vol. V, pgs. 66, 82]. The path the bullet traveled through his brain is visible in images from a CT scan. [R. Vol. 4, pg. 46].

Oberhansley's first documented signs of psychosis appeared while he was in prison in Utah. [App. Vol. X, pg. 81]. He was treated with antidepressant and antipsychotic medications. [*Id.*]. He moved to Indiana in 2012 when he was released on parole. [App. Vol. X, pg. 33]. Between 2012 and 2014, he was evaluated on more than one occasion for a "psychotic disorder." [App. Vol. V, pg. 59].

On July 21, 2014, Oberhansley was fired from his job after he began "acting strangely." [App. Vol. V, pg. 81]. He was arrested that evening for trying to evade police after he had been seen driving recklessly. [*Id.*]. He told the police that his family wanted to kill him and that he was being followed by the FBI. [*Id.*]. The police took him to a hospital because he was chewing on his left wrist. [R. Vol. 10, pg. 31]. He said he was chewing on his wrist because he was Zeus and wanted to drink the blood of Zeus because it would give him strength. [App. Vol. V, pg. 81]. He asked the nurses to shoot him or give him a gun so he could shoot himself. [R. Vol. 10, p. 33]. He was discharged back into police custody after being given an antipsychotic. [*Id.*].

Three days later, Oberhansley was admitted to an inpatient

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psychiatric unit where “he was found to be agitated, verbally abusive, paranoid, and still claiming he was Zeus.” [App. Vol. V, pg. 81]. He was there for four days and took only a few doses of antipsychotic medication before he was discharged back to jail. [R. Vol. 10, pg. 33].

According to Dr. Allen, a psychiatrist who testified as a defense expert, Oberhansley was operating under an extreme emotional or mental disturbance when he killed Tammy. [R. Vol. 8, pg. 162]. Oberhansley had “active delusions that he was going to be harmed. He had active hallucinations. He had a history of mental illness.” [*Id.*]. Dr. Henderson-Galligan, a psychologist who also testified as a defense expert, believed the interrogation video showed clear evidence that Oberhansley was experiencing both visual and olfactory hallucinations. [*Id.* at 216-21]. The psychologists both believed that Oberhansley was suffering from schizophrenia. [*Id.* at 173, 227]. In Dr. Henderson-Galligan’s two decades as a psychologist, Oberhansley was the most severely mentally ill person whose case she had reviewed. [*Id.* at 230].

D. An LWOP sentence is inappropriate in this case.

It would be easy to look at the horrors visited upon Tammy and conclude they were simply the actions of a monster. But doing so would be reductive, and this Court’s 7(B) review must look deeper. This Court must consider his actions in the context of his profound mental illness.

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This is not Oberhansley's first criminal conviction. More to the point, this is not his first conviction for killing a woman he had or was having a relationship with. That is a terrible fact, no question. There is also no question that Oberhansley was suffering from a severe mental illness when he committed this crime. What there is a question about, however, is whether Tammy would be alive today if Oberhansley were not so severely mentally ill. There are reasons to believe that she would. Because of that, Oberhansley asks this Court to find his sentence of life without parole is inappropriate.

CONCLUSION

Based on the foregoing arguments and authority, Oberhansley respectfully requests that this Court vacate his sentence of life without parole and remand the case to the trial court to impose a term of years.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been delivered through IEFS to the following, this 31st day of May, 2022:

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