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February 25, 2016

Clerk
Salem Superior Court
56 Federal Street
Salem, Massachusetts 01970

Re: Commonwealth v. Chism,

Dear Clerk,

Please find enclosed for filing the "COMMONWEALTH'S SENTENCING MEMORANDUM," attached CD, and a certificate of service.

Sincerely,

David F. O'Sullivan
Assistant District Attorney

DFO:fhs
Encl.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT
ESCR2013-1446-001
ESCR2013-1447-002
ESCR2014-0109-001

COMMONWEALTH

v.

PHILIP CHISM

COMMONWEALTH'S SENTENCING MEMORANDUM

Summary and Recommendation

In light of the brutal facts of the defendant's aggravated rape, armed robbery and first degree murder of Colleen Ritzer, and with due regard to the goals of punishment, deterrence, public protection, the possibility of rehabilitation, and to the defendant's age and characteristics, the Commonwealth submits the following sentences are consonant with justice:

- For the murder of Colleen Ritzer by deliberate premeditation and extreme atrocity or cruelty (ESCR2013-1446-001), life in prison with parole eligibility after 25 years;
- For the aggravated rape by natural sexual intercourse of Colleen Ritzer (ESCR2014-0109-001), life in prison with parole eligibility after 25 years, to be served from and after the sentence in no. ESCR2013-1446-001; [1]
- For the armed robbery of Colleen Ritzer (ESCR2013-1447-002), life in prison with parole eligibility after 25 years, to be served concurrently with the sentence in no. ESCR2014-0109-001.

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[1] If adopted, the Commonwealth's recommendation would mean that the defendant will have a parole hearing in year 25 of his sentence for murder at which point he could possibly be paroled to his subsequent sentences for aggravated rape and armed robbery, from which he could be paroled to freedom. See 120 CMR 200.08(3) (c) ("A sentence for a crime committed on or after January 1, 1988 which is ordered to run consecutive to a life sentence shall not be aggregated with a the life sentence for purposes of calculating parole eligibility on the consecutive sentence."). This would render the defendant potentially releasable 50 years from the date of his incarceration, at age 64.

Statement of the Case

On November 21, 2013, a Grand Jury indicted the defendant for the October 22, 2013 murder of Ritzer (G.L. c. 265, § 1) (ESCR2013-1446-001). Also that date, the Grand Jury returned indictments charging the defendant as a youthful offender (G.L. c. 119, § 54) with aggravated rape by unnatural sexual intercourse (to wit: penetrating genital opening with tree branch) (G.L. c. 265, § 22(a)) and with armed robbery of Ritzer's underwear[2] (G.L. c. 265, § 17)(ESCR2013-1447-001-002). On January 24, 2014, a Grand Jury indicted the defendant as a youthful offender for aggravated rape by natural sexual intercourse (G.L. c. 265, § 22(a)) (ESCR2014-0109-001).

The defendant was tried before a jury from November 16, 2015 through December 15, 2015 (Lowy, J, presiding). The jury acquitted him of aggravated rape by unnatural sexual intercourse (to wit: penetrating genital opening with tree branch) (ESCR2013-1447-001), and convicted him of the remaining charges. The Commonwealth moves for sentencing.

I. GENERAL PRINCIPLES

"A judge has considerable latitude within the framework of the applicable statute to determine the appropriate individualized sentence." Commonwealth v. Goodwin, 414 Mass. 88, 92 (1993). Accord Commonwealth v. Donohue, 452 Mass. 256, 264 (2008) ("'A sentencing judge is given great discretion in determining a proper sentence.'"); Commonwealth v. White, 436 Mass. 340, 343 (2002) ("When imposing a sentence, judges are permitted considerable latitude."). "That sentence should reflect the judge's careful assessment of several goals: punishment, deterrence, protection of the public, and rehabilitation." Goodwin, 414 Mass. at 92.

[2] This indictment originally alleged the defendant also robbed Ritzer of her credit card and IPhone. Prior to submission to the jury, it was amended to allege only the taking of the victim's underwear.

"In exercising this discretion to determine a just sentence, a judge must weigh various, often competing, considerations, including, but not limited to, the severity of the crime, the circumstances of the crime, the role of the defendant in the crime, the need for general deterrence (deterring others from committing comparable crimes) and specific deterrence (deterring the defendant from committing future crimes), the defendant's prior criminal record, the protection of the victim, the defendant's risk of recidivism, and the extent to which a particular sentence will increase or diminish the risk of recidivism." Commonwealth v. Rodriguez, 461 Mass. 256, 259 (2012), citing Commonwealth v. Donohue, 452 Mass. 256, 264 (2008). "Therefore, to impose a just sentence, a judge requires not only sound judgment but also information concerning the crimes of which the defendant stands convicted, the defendant's criminal and personal history, and the impact of the crimes on the victims." Id.

"[P]erhaps most importantly, 'the trial judge may consider the nature of the offense[s] and the circumstances surrounding the commission of the crime[s]'" Commonwealth v. Derouin, 31 Mass. App. Ct. 968, 970 (1992), quoting Commonwealth v. Coleman, 390 Mass. 797, 805 (1984). A judge also "may consider many factors which would not be relevant at trial including hearsay information about the defendant's character, behavior, and background." Goodwin, 414 Mass. at 92. "To ensure the proper administration of justice, judges [] attempt to get 'the fullest possible picture of the defendant.'" White, 436 Mass. at 343, quoting Commonwealth v. Settipane, 5 Mass. App. Ct. 648, 654 (1977).

"Consistent with these principles, Massachusetts decisions have recognized the relevance at sentencing of reliable evidence of the defendant's prior misconduct." Goodwin, 414 Mass. at 92, citing cases.[3] "A defendant cannot be punished for uncharged conduct, because such

[3] See e.g., Commonwealth v. Coleman, 390 Mass. 797, 805 (1984) (indictments or other evidence of similar criminal conduct); Commonwealth v. Franks, 372 Mass. 866, 867 (1977) (seven untried indictments for sex-related

information is not 'tested by the indictment and trial process. Punishment is appropriate only for conduct of which the defendant has been charged and convicted.'" Commonwealth v. Stuckich, 450 Mass. 449, 461-462 (2008), quoting Commonwealth v. Henriquez, 56 Mass. App. Ct. 775, 779 (2002), S.C., 440 Mass. 1015 (2003), further citation omitted. "However, if the uncharged conduct is relevant and the report of it 'sufficiently reliable,' the conduct may be considered at sentencing." Stuckich, 450 Mass. at 462. "That is, the uncharged conduct may be considered as bearing on 'the defendant's character and his amenability to rehabilitation.'" Id., quoting Goodwin, 414 Mass. at 93. See Commonwealth vs. Wallace, 76 Mass. App. Ct. 411, 419 (2010). Where a sentencing judge considers uncharged or untried conduct, it is imperative that he demonstrate that he did so only for a proper purpose. Stuckich, 450 Mass. at 462. See Commonwealth v. Henriquez, 440 Mass. 1015, 1016 (2003) ("Ambiguity as to whether a defendant has been improperly sentenced as punishment for other offenses creates a sufficient concern about the appearance of justice that resentencing is required.").

II. SUMMARY OF FACTS PERTINENT TO SENTENCING

A. The crimes of conviction: the aggravated rape, armed robbery, and murder of Colleen Ritzer[4]

1. A normal school day

In October of 2013, Colleen Ritzer was in her second year of teaching math at Danvers High School ("DHS"). She had wanted to be a teacher since she was in pre-school. When she got older, she excelled in math and decided this would be her subject. Just twenty-four years old, Ritzer still lived at home in Andover with her parents, Peg and Tom Ritzer. She was their eldest

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offenses); Commonwealth v. Coull, 20 Mass. App. Ct. 955, 958 (1985) (prior sexual abuse charge which had been dismissed).

[4] Drawn from the trial testimony and exhibits. The trial transcript is not yet complete; the Commonwealth has submitted a disk containing the video-recorded portions of the trial.

child; a brother was away at college, a sister was a senior in high school. A creature of habit, Ritzer would arrive home every day by 3:30 P.M. at the latest, discuss her day with her mother, then sit on the couch and plan the next day's lesson, before having dinner with her family.

On the morning of October 22, Ritzer arrived at DHS before 7:00 A.M., carrying with her a black tote bag and a lunch bag. It was "dress like your friend day" at DHS, and Ritzer wore a purple shirt and black pants to match her friend and fellow math teacher at DHS, Sara Giaquinta.

The defendant, a freshman at DHS who had recently moved from Tennessee, also arrived that morning sometime after 7:00 A.M. He was fourteen years and nine months old. He was carrying a black and yellow backpack and two smaller drawstring satchels, one silver and one red. Since beginning school, the defendant had made a couple of friends and excelled on the freshman soccer team.

Pamela Foss, the defendant's Honors World History teacher, knew the defendant as a quiet but cordial student. He had recently asked to move from the regular history class into honors class because he wanted more of a challenge. He was an average student who missed some homework assignments. That day, there was a quiz on Louis VIII and Machiavelli. The defendant did very well on the quiz. Foss noticed nothing unusual about the defendant's appearance or behavior.

The defendant was in Ritzer's math class. There was no evidence of any prior hostility whatsoever between him and Ritzer. That day, math class fell at the last period of the school day, which ended at 1:55 P.M.. Surveillance video showed the defendant enter Ritzer's second floor classroom slightly after 1:00 P.M.. He was wearing a red sweatshirt, wore the black and yellow backpack on his back, and was carrying the red drawstring backpack. Gilberto Perez was also in the class. Perez would hang out with the defendant in the cafeteria, gym, and classes, and

had been in the defendant's second period Robotics class that day. He had noticed no major changes in the defendant's behavior or demeanor that day, except he was "maybe" a little more quiet.

Math class proceeded normally and without incident. After class, there was a so-called "bubble" period between 1:55 and 2:30 P.M. in which students could study or see teachers for extra help. The defendant stayed in Ritzer's class for this period.[5] Autumn Ciani, a freshman, also went to Ritzer's classroom for this period. Ciani did not seek math help, but rather apparently wanted only to visit with Ritzer, one of her favorite teachers. When Ciani arrived, she drew on the board, as the defendant and Ritzer spoke. The defendant was saying where he was from and Ritzer asked him if he missed Tennessee. Ritzer was "really nice about it," as Ciani testified. The defendant appeared to become annoyed and answered Ritzer's questions tersely, in a low mumbly tone.

Ritzer stepped out to speak to Giaquinta in the hallway outside the classroom. When she did this, the defendant went to the board near the classroom door, and was drawing with Ciani. They talked about drawing and the defendant told Ciani she was good at it. She thanked him. He wrote her name in what he said was Chinese on the Board; Ciani told him this was cool. He seemed fine to Ciani and did not mumble.

In the hallway, Ritzer and Giaquinta spoke. They discussed a meeting Giaquinta had just had. At some point, Giaquinta asked Ritzer whether Ritzer needed to get back to her classroom. Ritzer said the female student in her classroom was just drawing on the board, and that she did not know why the male student was there. They spoke briefly about shampoo, and a student

[5] Evidence was conflicting as to whether Ritzer had asked the defendant to stay after class that day. Several witnesses testified that Ritzer asked the defendant to stay because he was doodling and not doing his math work in class. As set forth below however, Giaquinta, who spoke to the victim outside her classroom during this period, testified that Ritzer had said she did not know why the defendant had stayed after class.

having had lice. Giaquinta's car had not been working, and Ritzer asked Giaquinta whether she needed a ride home that day. Giaquinta said she did not, and Ritzer went back into her classroom. Giaquinta left.

Ritzer returned to her classroom and told Ciani and the defendant that she would have to be leaving soon. She sat back down at her desk, and the defendant sat in a desk near Ritzer. When Ciani started to leave, Ritzer stood at the door with her and they spoke. Ciani said that it "stinks" that Ciani would not have Ritzer's class the next day and that she would not get to see Ritzer. Ciani told Ritzer that she was a great teacher and a great person. Ciani noticed the defendant looked annoyed and angry when she said this. Ciani left the classroom, leaving the defendant and Ritzer alone. There were few students in the academic wing of the school at this time of day.

2. The bathroom

Video surveillance shows that Ritzer then made her way from the classroom to the second floor girls' bathroom. The defendant emerged from the classroom seconds after Ritzer. He had changed from the red sweatshirt he had been wearing that day into a light blue hooded sweatshirt. He briefly scanned the hallway and checked his left pocket while looking in Ritzer's direction. He re-entered the classroom for about two seconds, pulled on the hood of his sweatshirt, and then re-emerged and began to follow Ritzer toward the bathroom. He pulled on white gloves as he walked. He paused briefly, as if listening, before entering the bathroom. He was armed with a box cutter.

Evidence as to what occurred in the bathroom over the next eleven minutes emerges from the autopsy performed by Dr. Anna McDonald, biological evidence collected from Ritzer's body, and other circumstantial evidence and reasonable inferences. The defendant, an athlete

who was physically larger than Ritzer, quickly overpowered her in the bathroom. The autopsy revealed "abundant" petechiae, or pinpoint hemorrhages, on Ritzer' face and around and in her eyes and mouth, showing that the defendant had asphyxiated her.

The defendant raped Ritzer with his penis. Two sperms cells were recovered from the vaginal swab taken at Ritzer's autopsy. A partial Y-STR profile of the sperm cells was generated, and the DNA was shown to be consistent with that of the defendant.[6]

He also repeatedly stabbed and sliced Ritzer's neck with the box cutter. Dr. McDonald opined that it is impossible to determine definitively how many times the defendant applied the box cutter blade to Ritzer's neck because of the catastrophic nature of her injuries. It is clear that portions of the neck were penetrated or slashed again and again in the same or overlapping locations. The autopsy revealed 16 separate discernable neck wounds: 12 stab wounds and 4 incise wounds (Ex. 133). Numerous of these individual injuries breached major structures and would have been fatal in and of themselves. Wounds that did not touch major structures nonetheless would have caused pain. Three of the wounds breached Ritzer's internal jugular vein. A large gaping V shaped wound, labeled "D" on the autopsy diagram, had irregular edges and appeared to be a conglomerate of numerous individual incise wounds, which required multiple applications of the blade in the same area. This wound cut through veins and Ritzer's carotid artery, and her trachea, which was made of cartilage and would require more force to cut through than skin or muscle. The track of wound "D" ultimately stops only at the back of Ritzer's neck. The box cutter blade nicked her vertebrae.

Dr. McDonald opined that Ritzer died of sharp force injuries to the neck and asphyxia by strangulation. She reached the hybrid conclusion because the sharp force injuries and asphyxia

[6] The partial Y-STR profile matched the defendant's DNA at eight loci. He could not be excluded from that partial DNA profile, though over 99 percent of the African American, Asian, Caucasian, and Hispanic populations were excluded.

were each lethal in its own right, and she could not precisely sequence the events. She testified, however, that one could draw the conclusion that the asphyxia was inflicted first, because of the difficulty of inflicting strangulation on a neck in the condition in which Ritzer's neck was ultimately found. Also, as the prosecutor argued in closing, it is inferable that the defendant raped Ritzer before inflicting the gravest injuries to her neck. ("Does it makes sense, ladies and gentlemen, that a teenage boy raped a young woman with that gaping neck wound?").

Eleven minutes into the attack, the defendant was interrupted when a female student, Danielle Bedard, briefly walked into the bathroom. She saw a person's naked buttocks, with skin tone darker than her own.[7] The person was leaning toward the bathroom sink, and she could not see the person's upper body. Likely due to a half-wall that blocked her view, Bedard did not see Ritzer or any blood, nor did she hear anything. She believed she had simply walked in on another student changing, and immediately walked out. She went to another part of the building and did homework.

3. The defendant attempts to hide his crimes

Shortly after being interrupted by Bedard, after eleven minutes alone with Ritzer in the bathroom, the defendant exited. He was still wearing the blue sweatshirt he entered the bathroom wearing, and was now carrying Ritzer's black pants over his arm. He was also inferably carrying her underwear, which was later found in his possession. Blood was on his right hand, though no other obvious blood was then seen on his clothing in the video. He walked quickly down the south hallway and down stairwell three to the first floor, where he exited the building.

[7] Bedard is white. The defendant is biracial.

A student's mother waiting in her car saw the defendant next to the building, crouched in the bushes. He was changing or pulling up his pants and looking around as if to check if someone was looking at him. He then walked up the sidewalk toward the school's middle doors, now wearing a white T-Shirt and no longer carrying clothes. He entered the middle doorway to the academic wing. He ran down the first floor hallway to the stairway one. He ascended this stairway to the second floor, and walked quickly down the hallway, ducking into one classroom, and then entering Ritzer's classroom. He quickly emerged, with his red sweatshirt over his head and carrying Ritzer's black tote bag and lunch bag and his black backpack. He walked down stairwell one carrying these items. In an alcove at the bottom of these stairs, recycling bins are stored. He then came back up the stairwell, no longer carrying these items and now wearing a black balaclava facemask and putting on his red sweatshirt. He ran down the second floor hallway. Before reaching the area of the bathroom where Ritzer was, he paused, turned around and walked in the opposite direction.

He had seen his friend Ramci Escorcia on the second floor landing. The defendant and Escorcia were supposed to meet that day to practice soccer before the formal soccer practice began at 4:00 P.M., as they did twice a week. Escorcia had waited for the defendant at the soccer field and, when he did not arrive, went looking for him. Escorcia called to the defendant by his soccer nickname, "Caco." As if to lead Escorcia away from the bathroom, the defendant walked away from him, turning to address him. Escorcia asked what he was doing. The defendant said he had lost something and could not find it. The defendant was sweating and seemed scared. He told Escorcia to go to the soccer field and that he would meet Escorcia there. Escorcia asked him what he had lost and if he could help. The defendant said it was nothing and again told Escorcia to go to the field. He then began to jog away from Escorcia.

Escorcia followed the defendant down stairwell one, and saw the defendant by the recycling bins. The defendant was pulling one of the bins toward the first floor elevator bank near the middle staircase. Escorcia asked the defendant again what he was doing; the defendant said nothing and told Escorcia again to go to the field. Escorcia did so. The defendant never arrived there.

He rolled the bin into the first floor elevators near the middle staircase, took the elevator to the second floor, and rolled the bin into the bathroom. Over the next several minutes, he deposited Ritzer in the bin, closed the top, and rolled it out of the bathroom, into the elevator, and out of the school. Appearing calm and undisturbed, he rolled the bin past a person who was on his cellphone. He was seen by a student attempting to take the recycling bin up a rocky, steep incline into the woods behind the school. Failing this, he ultimately rolled the bin into another section of the woods, near the entrance to the rail trail.

4. In the woods

He spent the next 25 minutes in the woods. What occurred there emerges from the autopsy, forensic evidence and crime scene photographs. He removed Ritzer from the bin. At some point, he had removed her pants and underwear, leaving her naked from the waist down. He positioned her on the ground, on her back, in the frame of a fallen section of fence. He pushed up her purple shirt and her undershirt and pushed down her bra, exposing her naked breasts. He spread her legs.[8] He spread the incriminatory items around the area. He discarded the bin some distance away, on its side in the bramble and, about the area, he scattered his black backpack, two white gloves, two black socks, and a folded note reading, "I hate you all." (See

[8] Though the defendant was acquitted of penetrating Ritzer with the tree branch, this was almost certainly not based on any finding that the defendant had not inflicted the penetration. Rather, it was likely based on the jury's determination that Ritzer was not alive at the time of the penetration, an issue vigorously litigated at trial. In view of the acquittal, the Commonwealth does not rely on the unnatural rape in support of its recommendation. See Commonwealth v. D'Amour, 428 Mass. 725, 746-747 (1999).

Ex. 71). Though some of the sharp force injuries were clearly inflicted in the bathroom, given their number and depth, and the limited amount of blood on the defendant when he emerged from the bathroom, it is inferable that he did additional cutting to Ritzer's neck in the woods. Before leaving the woods, he covered Ritzer with leaves and other forest debris. He emerged from the woods barefoot, the front of his jeans stained with blood.

The defendant then returned to the high school. He collected some additional belongings from his locker. In a boys' bathroom, he changed out of his bloody pants into shorts. He briefly re-entered the second floor girls' bathroom. He then exited the school and re-entered the woods for 12 minutes.

He then returned to the school and traveled around to various places on the school grounds. At one point in front of the school, he encountered Kevin Hebert, a student who the defendant knew from church activities. According to Hebert, their relationship had been building toward a close friendship. Hebert saw the defendant approaching from a distance, looking down. They spoke and the defendant seemed like his normal self. They spoke about going to the church youth group that Sunday night. The defendant said he could go because he would not have too much homework, and he explained that he had not responded to Hebert's earlier text message because he did not have any minutes left on his cell phone.

After this encounter, the defendant strolled through the field house and school, at one point clearly chewing on a snack, before leaving the building at around 4:30 P.M.

5. The defendant's flight and arrest

After his mother reported him missing that evening, a search for the defendant began. Notices that he was missing were posted on Facebook, and area residents received a reverse 911 call.

Meanwhile, the defendant walked to the area of Endicott Street in Danvers. In addition to Ritzer's underwear, he had stolen her IPhone and wallet. He destroyed and discarded both his cell phone and Ritzer's in the area of the Hollywood Hits movie theater. He used Ritzer's credit card to buy food for himself at Wendy's and a ticket to the movie "Gravity" at the Liberty Tree Mall. He went to BJs Wholesale Club, where he was captured on surveillance sipping a drink near the entryway. He entered the store and shoplifted a hunting knife before leaving. He entered a Danvers Mobile Station and a Gulf Station on Route 1 in Danvers; he walked in each, looked around briefly, and left. Surveillance footage shows him to be calm and undisturbed as he engaged in these activities.

After midnight, he was found walking on Route 1 north by Topsfield Police Officers Neal Hovey and Joe DeBernardo. He was wearing a light blue hooded sweatshirt, shorts, socks pulled up over his calves, sneakers, a balaclava around his neck, and a red nylon satchel on his back. He was walking along the tree line in a narrow area of Route 1 generally unsafe for pedestrians, and the officers stopped as part of their community caretaking function.

The defendant did not make eye contact with the officers. They asked him where he was going (he replied "nowhere"); where he was coming from (he replied "Tennessee"); and whether he had identification (he did not). Asked where he lived, he gave no address. A patfrisk revealed, in one of his pockets, a rock, and, in the other, two Massachusetts driver's licenses, credit cards, and an insurance card, all in the name of Colleen Ritzer. This name meant nothing to the Topsfield officers at that point. Asked where he had obtained the cards, he said he had gotten them at "Stop and Shop"; asked again, he said he gotten them from "her car." Asked what was in the red satchel, he said "survival gear."

When the defendant gave his name, the officers believed they had recovered the teenager reported missing from Danvers. They were elated. They put him unrestrained in the cruiser to keep him warm, confirmed with dispatch that he was the missing student, and transported him to the Topsfield Police Station. There, before inventorying the satchel, Off. Hovey asked the defendant whether there was anything in it that was dangerous. The defendant said yes. Officer Hovey opened the bag and discovered Wendy's and movie theatre receipts, a Nike shirt size large, two rolls of tape, water bottles, a white towel, a flashlight, a can of foot powder spray, and the hunting knife in its sheath. Also in the bag were Ritzer's belongings: keys, a wallet, a soft zippered case, and women's bluish greenish underwear. Folded inside Ritzer's wallet was the box cutter, the blade still protruding and covered in blood. Asked whose blood it was, the defendant said, "It's the girl's." He was read his Miranda rights and signed the form. Officer DeBernardo asked whether he knew where the girl was; the defendant replied, "buried in the woods." Asked if they could help her if they got to her, the defendant replied, "No."

His sweatshirt and sneakers had apparent blood on them, and were taken from him. At one point, he asked if he could have his sneakers back or if he would have to remain shoeless. He also asked for something to eat and drink. The Topsfield officers said no to these requests. He was transported to the Danvers Police Station and ultimately arrested for Ritzer's murder.

6. Discovery of Ritzer's body

Meanwhile, after she did not arrive home after school, Ritzer's family began a search for her that grew increasingly frantic as the hours passed. The search was joined by Ritzer's work colleagues and friends, and ultimately the Danvers and State Police and canine units. Review of the school video system ultimately led law enforcement to the woods near the rail trail. At 3:00 A.M., a forensic scientist searching the woods saw a toe with pink nail polish protruding from

some leaves. A paramedic was called into the woods. He uncovered Ritzer's head and torso; dirt and debris were in her eyes and airway. He checked her heartbeat and pronounced her dead.

B. The mental health defense

The defense did not contest that the defendant committed the acts, but rather asserted that he lacked criminal responsibility. (See defense opening: "Philip Chism killed Colleen Ritzer and did unspeakable things to her body" and closing: "Philip Chism, a kind, smart 14 year old, committed these terrible acts when he was in the throes of a serious mental illness.")[9] The defense presented its criminal responsibility defense through Drs. Richard Dudley, Anthony Jackson, and Yael Dvir.

1. Dr. Richard Dudley

Dr. Dudley, a psychiatrist,[10] was retained by the defense to evaluate the defendant's criminal responsibility. He reviewed documents and medical records, conducted interviews, reviewed case materials, and interviewed the defendant seven times in 2015.[11] Dr. Dudley opined that, at the time of the crimes, the defendant suffered from a mental disease or defect -- psychotic disorder not otherwise specified ("NOS"). This diagnosis, he testified, is used when a person has a sufficient number of symptoms to fall in the category of psychotic disorders, but there is insufficient information to diagnose a specific disorder.[12] Dr. Dudley concluded that, on the date of the offense, as a result of this mental disease or defect, the defendant lacked

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[9] As to the unnatural rape with the tree branch, the defense asserted that Ritzer was dead at the time of the penetration, and thus could not be convicted of rape, which requires a live victim.

[10] Though Board certified in general psychiatry, Dr. Dudley is not Board certified in child, adolescent or forensic psychiatry, though he had performed forensic evaluations. He had testified almost exclusively for the defense.

[11] The interviews were in March, April, May, September, and December of 2015.

[12] Dr. Dudley used a descriptor from the DSM-IV that is no longer used in the current version of the manual released in 2013, the DSM-V, which instead uses the term "schizophrenia spectrum disorder."

substantial capacity to conform his conduct to the law. Dr. Dudley *did not* opine that the defendant was not aware of the wrongfulness of his conduct.

In his interviews with the defendant, Dr. Dudley noted that he had a flat affect, mumbled to himself at times, and at times exhibited what Dr. Dudley termed disorganized and delusional thinking, including a claimed belief that he was not human and had super powers. Dr. Dudley opined that the school surveillance video was consistent with his opinion and reflective of disorganized thought, as it showed the defendant wandering aimlessly around the school covered in blood.[13]

In forming his opinion, Dr. Dudley relied principally on the defendant's own report of command auditory hallucinations beginning at age 10. These alleged auditory hallucinations were the "central feature" of the doctor's diagnosis. Of his 11-page report, 8 to9 pages are dedicated to the defendant's statements concerning this alleged symptom. Dr. Dudley admitted that the defendant's accounts of the onset of these voices, and his descriptions of their origins, were "all over the place." Though his report did not address the possibility of malingering, Dr. Dudley claimed to have considered this possibility, and opined that the defendant was not malingering. He did not, however, order psychometric testing for malingering. Though he reviewed the testing ordered by the Commonwealth experts strongly indicative of malingering, this did not change his opinion.

He opined that it was difficult to determine whether the defendant's condition was the result of trauma or early onset schizophrenia. The defendant denied abuse or neglect of any kind to Dr. Dudley and others, and there was no evidence that the defendant was abused or neglected. Dr. Dudley opined that the defendant nonetheless exhibited "trauma related symptoms,"

[13] Dr. Dudley did not visit the school and trace the defendant's path through it, as did the jury and the Commonwealth's expert, Dr. Robert Kinscherff. Nor did he review surveillance footage of the defendant's interactions with Escorcia or Hebert, or the video footage from BJ's, the movie theatre, or the gas stations.

including anxiety, agitation, avoidance, and nightmares. He opined that the defendant's move from Tennesee to Danvers, where he had lesser community supports, and the challenge of building new relationships there, resulted in the defendant withdrawing and relying more on manga (Japanese animations, comic books and graphic novels). The move to Danvers triggered his deterioration.

Dr. Dudley relied in part on a family history of psychotic symptoms in the defendant's maternal grandmother and aunt. He admitted, however, that no psychometric testing supported his opinion that the defendant was psychotic in October of 2013, and that some of the symptoms on which he relied were normal adolescent behaviors. He did not review the results of a screening test, the Youth Self Help Report Screening Tool, administered in the days after the defendant's arrest, that found no indications of psychosis. He opined that the defendant was undergoing a "psychotic process," but the intensity of his symptoms ebbed and flowed. He claimed that at their most recent meetings the defendant expressed remorse that the fact that his illness had gone untreated had caused "difficulties" for the victim's family.

Asked whether he had considered the sexual aspects of the crime, Dr. Dudley said that he had. He testified that the sexual aspects of the crime "left [him] with some questions," as these was not accounted for by the defendant's psychosis.

2. Dr. Anthony Jackson

While the defendant was awaiting trial, Dr. Jackson, a psychiatrist, treated him in-patient at the Worcester Recovery Center ("WRC") for approximately 2½ weeks. The defendant arrived at WRC on October 15, 2015, a week after jury selection began. He did not evaluate the defendant's mental status at the time of the crime, two years before.