

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

DEVOROUS HENDRICKS,  
Petitioner,

vs

WARDEN, LEBANON  
CORRECTIONAL INSTITUTION,  
Respondent.

Case No. 1:12-cv-213

Barrett, J.  
Litkovitz, M.J.

**ORDER**

Petitioner has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 with the assistance of counsel. (*See* Doc. 1). In the petition, he presents, among other grounds for relief, a claim challenging the sufficiency of the evidence supporting his convictions on two murder charges and one felonious assault count after a bench trial before Hamilton County, Ohio, Common Pleas Court Judge Melba Marsh. The claim was exhausted in the state courts and is subject to review on the merits.

In considering the merits of petitioner's sufficiency of evidence claim, the undersigned has read the trial transcript provided by the respondent as an attachment to the return of writ. (*See* Doc. 11). Upon review of the transcript, it appears that audio recordings of petitioner's and co-defendant Edgar Crawford's various police interviews were played at the bench trial and that transcripts and/or written summaries of those interviews were also provided to Judge Marsh. (*See id.*, Trial Tr. 550, 558-59, 689-94). However, neither the interviews (identified as State's Exhibits 25 and 26 and Court's Exhibit 1) nor the transcripts of those interviews were made part of the trial record. Furthermore, it appears that other critical information was introduced at trial by way of exhibits, which were not made part of the trial record or were not adequately explained on the record by witnesses called to testify about them at the trial. Specifically, a

deposition transcript introduced by petitioner (Defendant's Exhibit 9) was admitted into evidence, but was not made part of the trial record. (*See id.*, Trial Tr. 873-74). Moreover, both parties introduced records pertaining to 911 calls and other calls made from various phones, including phones used by Crawford and petitioner, on the night of the murders (State's Exhibits 27-29 and Defendant's Exhibits 7-8), which are difficult to follow based solely on the trial witnesses' testimony. (*See id.*, Trial Tr. 560-61, 708-09, 720, 868-73).

In the interest of a complete record and in order to ensure that petitioner's sufficiency of evidence claim is given full consideration, the undersigned concludes that the evidence cited above, which is presently missing from the trial record, should be included as part of the record before this Court. Therefore, respondent is hereby **ORDERED** to supplement the record within thirty (30) days of the date of filing of this Order with the following items that were presented and considered by Judge Marsh in the underlying state criminal trial: State's Exhibits 25-29; Court's Exhibit 1; Defendant's Exhibits 7-9; and any transcripts that were provided to Judge Marsh in conjunction with those exhibits. To the extent that respondent is unable to provide the Court with any of the items ordered herein, respondent shall state in the responsive pleading the reasons why such item cannot be obtained for purposes of supplementing the record.

**IT IS SO ORDERED.**

Date:

10/1/13



Karen L. Litkovitz  
United States Magistrate Judge