

IN THE SUPREME COURT OF OHIO

08-2370

STATE OF OHIO,

Appellee,

vs.

CALVIN NEYLAND, JR.,

Appellant.

* Supreme Court Case No.:
*
* On Appeal from the
* Wood County Court of
* Common Pleas
*
*
* Common Pleas
* Case No. 2007-CR-0359

DEATH PENALTY CASE

NOTICE OF APPEAL OF APPELLANT, CALVIN NEYLAND, JR.

SPIROS P. COCOVES (0030396) (COUNSEL OF RECORD)
610 Adams Street, Second Floor
Toledo, Ohio 43604-1423
419/241-5506 (voice)
419/242-3442 (fax)

and

ANN M. BARONAS (0061848)
413 North Michigan Avenue
Toledo, OH 43624
419/242-0280 (voice)
419/255-6227 (fax)

COUNSEL FOR APPELLANT, CALVIN NEYLAND, JR.

Julia Bates
Lucas County Prosecuting Attorney
Assistant Prosecuting Attorney
Lucas County Courthouse
700 Adams Street
Toledo, Ohio 43624
Phone: (419) 213-4700
Fax: (419) 213-4595

COUNSEL FOR APPELLEE, STATE OF OHIO

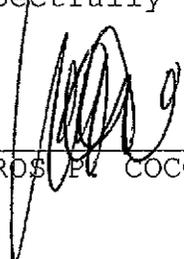
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SUPREME COURT OF OHIO

Notice of Appeal of Appellant, Calvin Neyland, Jr.

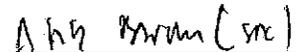
Appellant, Calvin Neyland, Jr., hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Common Pleas pronounced, file-stamped, and journalized November 14, 2008. The R.C. 2929.03(F) Opinion was filed and journalized on November 14, 2008.

This is a capital case in which the offense occurred after January 1, 1995.

Respectfully submitted,



SPIROS P. COCOVES

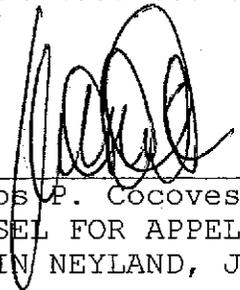


ANN M. BARONAS

COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of appeal was delivered by hand to the office of the Wood County Prosecuting Attorney the 8th day of December 2008.



Spiros P. Cocoves
COUNSEL FOR APPELLANT,
CALVIN NEYLAND, JR.

FILED
WOOD COUNTY CLERK
COMMON PLEAS COURT

2008 NOV 14 P 3: 26

REBECCA E BHAER

IN THE COURT OF COMMON PLEAS
WOOD COUNTY, OHIO

State of Ohio,

Case No. 2007-CR-0359

Plaintiff,

Judge Robert C. Pollex

v.

SENTENCING OPINION

Calvin Neyland, Jr.

On October 30, 2008, the defendant was convicted by the jury of two counts of aggravated murder with specifications. The defendant was convicted of purposely, with prior calculation and design, causing the death of Thomas Lazar as to Count 1 and Douglas Smith as to Count 2 in violation of R.C. 2903.01(A). In addition, the jury convicted the defendant of a firearm specification and the following aggravated circumstance as to each count: that the defendant committed the aggravated murder as part of a course of conduct involving the purposeful killing or attempt to kill two or more persons by the defendant.

Pursuant to R.C. 2929.04(B), a sentencing hearing was held on November 4, 2008 in which the jury was instructed to determine what sentence shall be imposed upon the defendant. The jury returned a verdict recommending the sentence of death. This opinion is being rendered pursuant to R.C. 2929.03(F) which requires that the Court make its own findings as to the existence of any mitigating factors, the aggravating

circumstance the defendant was guilty of committing, and the reasons why the aggravating circumstance is sufficient to outweigh the mitigating factors.

The evidence as to the aggravating circumstance indicated that defendant shot each victim several times and purposefully killed both of them as part of a single course of conduct. Defendant intended the deaths of both Mr. Lazar and Mr. Smith. It was not an impulsive act. Defendant himself, in his unsworn statement, indicated that he is "not the type of person that would just jump off the gun and * * * just do anything that just comes to mind." The Court is convinced beyond a reasonable doubt that each offense defendant was convicted of was part of a course of conduct involving the purposeful killing of two or more persons.

Against this aggravating circumstance, the Court must consider and weigh the mitigating factors presented by defendant. Defendant presented evidence to establish the following statutory factors in possible mitigation of the death penalty: (1) whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law [R.C. 2929.04(B)(3)]; (2) the offender's lack of a significant history of prior criminal convictions and delinquency adjudications [R.C. 2929.04(B)(5)]; and, (3) any other factors that are relevant to the issue of whether the defendant should be sentenced to death [R.C. 2929.04(B)(7)].

As to the first statutory factor, defendant presented the expert testimony of Dr. Sherman, a psychiatrist, who described defendant as being mentally ill, suffering from delusion and schizophrenia. However, the state presented considerable expert witness evidence in rebuttal. The state's three mental experts, Drs. Bergman, Haskins, and

Smith, testified that defendant was not mentally ill. All three experts testified that he was suffering merely from a personality disorder and that he was able to make reasoned choices. The Court finds Drs. Bergman, Haskins, and Smith as the more credible expert witnesses. Dr. Smith was actually defendant's treating psychiatrist for thirty days who had more opportunity to observe and interact with the defendant. During the time defendant was under Dr. Smith's care, she did not observe any signs of mental illness. Dr. Sherman, on the other hand, had a limited observation and evaluation of the defendant.

Considering all of the expert testimonies, the Court finds, as the three State's experts have opined, that defendant has a personality disorder which does not rise to the level of a "mental disease or defect" that prevented defendant from appreciating the criminality of his conduct. Defendant's personality disorder falls under the "catch-all" statutory provision and the Court accords it modest weight.

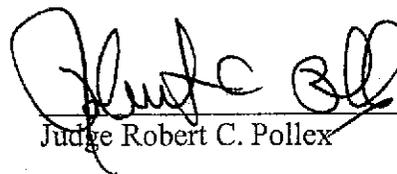
As to the second statutory factor, defendant presented evidence that he lacks a significant history of prior criminal convictions and delinquency adjudications. The Court finds this mitigating factor to be applicable in this case. Defendant, a forty-four year-old male, merely had traffic infractions and three convictions for passing bad checks. The Court accords some weight to this fact.

As to "other factors that are relevant to the issue of whether the offender should be sentenced to death", R.C. 2929.04(B)(7), defendant proposed that defendant's long and relatively successful employment history and his good behavior while incarcerated should merit some mitigating weight. The Court considered both circumstances and finds them to have minimal weight. Defendant's employment history showed short-term

jobs and eventual resignation or termination. Records from the Wood County Justice Center where Defendant has spent time while awaiting trial have indicated his good behavior. The Court finds that this has minimal significance as a mitigating factor. While defendant did not have any major disciplinary problems at the jail, there was no showing that he would make a positive contribution to prison life or the welfare of others. There is not much mitigating weight to his good behavior while in detention, being watched by authorities, and while awaiting trial.

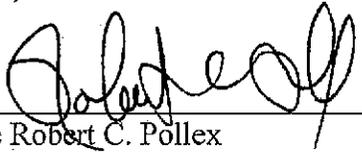
In conclusion, the court finds that defendant was able to establish the existence of these mitigating factors: lack of significant criminal history, personality disorder, relatively successful and long employment history, and good behavior while in detention awaiting trial. However, they pale in comparison to the aggravating circumstance in this case and are only entitled to modest weight. The purposeful killing two or more persons is a grave aggravating circumstance of a very serious weight.

Taking all the foregoing into account and after much deliberation, the court has no doubt that the aggravating circumstance defendant was found guilty of committing outweighs the mitigating factors present in this case. It is the judgment of this Court that the death penalty is appropriate as to each count of the aggravated murder.



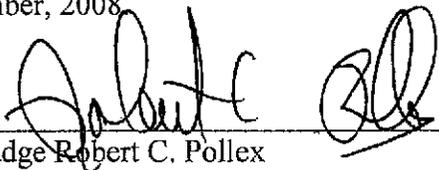
Judge Robert C. Pollex

I hereby certify that a copy of the foregoing opinion was hand delivered to Attorney Gwen Howe-Gebers, Attorney Heather Baker, Attorney Adrian Cimerman, and Attorney Scott Hicks this 14 day of November, 2008.



Judge Robert C. Pollex

I also hereby certify that a copy of the foregoing opinion was duly mailed by ordinary U.S. mail to the Clerk of Courts of the Supreme Court of Ohio, 65 S. Front St., Columbus, OH 43215, this 14 day of November, 2008.



Judge Robert C. Pollex