

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

CASE NO. 2007-1261

2007-2425

Appellee,

vs.

DONALD J. KETTERER,

Appellant.

*A Death Penalty Case on Appeal from the Court of Common Pleas
of Butler County, Case No. CR2003-03-0309*

SUPPLEMENTAL BRIEF OF APPELLEE, STATE OF OHIO

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SUPREME COURT OF OHIO

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STATEMENT OF THE CASE

Pursuant to Rule VI, Section 3(A), of the Rules of Practice of the Supreme Court of Ohio, the Appellee, the State of Ohio, will agree with the statement of facts presented by the Appellant.

ARGUMENT

Proposition of Law No. 2:

In a capital case in which the sentence of death was imposed, the final appealable order is the combination of the final judgment of conviction entry and also the separate opinion imposing death pursuant to R.C. 2929.03(F).

A court of appeals does not have jurisdiction over orders that are not final and appealable. Section 3(B)(2), Article IV, Ohio Constitution. Pursuant to R.C. 2505.02, “[a]n order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following: (1) [a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment; (2) [a]n order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment[.]” R.C. 2505.02(B)(1) & (2).

In a non-capital case, this Honorable Court held that “[a] judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court.” *State v. Baker*, 119 Ohio St.3d 197, 893 N.E.2d 163, 2008-Ohio-3330, syllabus.

The *Baker* decision however, specifically recognized that the holding was limited to “judgment of *conviction*” entries only. *Id.* at ¶11. In *Baker*, Jermaine Baker was convicted by

a jury of having weapons while under disability and obstructing official business. *Id.* at ¶12. Similarly, the other cases cited by Appellant in his supplemental brief, also only concerned judgment of conviction entries involving non-capital convictions. See, *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565 (Andrew Dunn entered a guilty plea to two counts of receiving stolen property and two counts of identity fraud); See, also *State ex rel. Agosto v. Cuyahoga Court of Common Pleas*, 119 Ohio St.3d 366, 2008-Ohio-4607 (Jose Agosto Jr. was convicted by a jury to one count of murder and one count of felonious assault); *State ex rel. Culgan v. Medina County Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609 (Clifford J. Culgan was convicted of one count of corrupting another with drugs, two counts of unlawful sexual conduct with a minor, and one count of attempted pandering of obscenity involving a minor); *State v. Harris*, 122 Ohio St.3d 373, 2009-Ohio-3323 (Harris was convicted on three counts of aggravated robbery, five counts of felonious assault, and firearm specifications on all counts).

In the case at bar, however, Appellant was convicted of a capital offense and sentenced to death. Appellant pled guilty and was convicted of one count of aggravated murder, two counts of aggravated robbery, one count of grand theft, and one count of burglary. The judgment of conviction entry filed on May 29, 2007 and also the nunc pro tunc entry filed on November 15, 2007, only addressed the sentences associated with the non-capital convictions. The statutorily mandated sentencing opinion filed by the three judge panel on February 13, 2004, concerned the aggravated murder conviction and the imposition of a death sentence.

The panel's sentencing opinion was filed pursuant to R.C. 2929.03(F), which mandates "the panel of three judges, when it imposes sentence of death, shall state in a separate

opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors.” Critically, R.C. 2929.03(F) concludes by stating “[t]he judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.” (Emphasis added) Thus, in a capital case, the judgment is not final until both the judgment of conviction and the panel’s opinion pursuant to R.C. 2929.03(F) are both filed. This distinguishes capital offenses from non-capital offenses, in that there are two documents that must be filed before a decision is final.

This case is before this Honorable Court as opposed to the intermediate appellate court because Appellant was sentenced to death. See, R.C. 2953.02. “In a capital case in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the judgment or final order may be appealed from the trial court directly to the supreme court as a matter of right.” *Id.* This Honorable Court has previously affirmed Appellant’s death sentence, but remanded the matter for re-sentencing on the non-capital offenses based on *State v. Foster*, 109 Ohio St. 3d 1, 845 N.E.2d 470, 2006-Ohio-856. See, *State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283; See, also *State v. Ketterer*, 113 Ohio St.3d 1463, 2007-Ohio-1722.

Therefore, the final appealable order in the case at bar is the judgment of conviction entry filed on May 29, 2007, (the nunc pro tunc entry filed on November 15, 2007), and the sentencing opinion imposing the death penalty filed on February 13, 2004. As such, this Court must look to both documents to see if the *Baker* decision would be satisfied, as the

documents must be coupled together to make the decision final. See, R.C. 2929.03(F).

While the judgment of conviction does not specifically state that the Appellant plead guilty, the panel's sentencing opinion, on page two, does specifically state that Appellant "entered pleas of not guilty at his arraignment[,] but that he had "waived his right to a jury and entered a plea of guilty to all charges January 27, 2004." (Emphasis added). As such, this Court has jurisdiction over this case because contained inside of the two documents that comprise the final appealable order, it is specifically stated that the Appellant plead guilty. What is more, in compliance with *Baker*, the documents also include the sentences, the signature of all three judges, and each document includes an entry on the journal by the clerk of court. See, *Baker*, 119 Ohio St.3d 197. This Appeal should therefore move forward towards a decision on the merits.

CONCLUSION

For the foregoing reasons, this Court should find that there is a final appealable order pursuant to *Baker* and submit this case for decision on the merits.

Respectfully submitted,

ROBIN N. PIPER (0023205)
Butler County Prosecuting Attorney



MICHAEL A. OSTER, JR. (0076491)

[*Counsel of Record*]

Assistant Prosecuting Attorney
Chief Appellate Division
Government Services Center
315 High Street , 11th Floor
Hamilton, OH 45011
Telephone (513) 887-3474

PROOF OF SERVICE

This is to certify that a copy of the foregoing Merit Brief of Appellee, State of Ohio, was sent to:

RANDALL L. PORTER [*counsel of record*]
Assistant State Public Defender
250 East Broad Street, Suite 1400
Columbus, OH 43215

by U.S. ordinary mail this 1st day of December, 2009.

A handwritten signature in black ink, appearing to read "Michael A. Oster, Jr.", written over a horizontal line.

MICHAEL A. OSTER, JR. (0076491)
Assistant Prosecuting Attorney

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

STATE OF OHIO : CR03 03 0309
Plaintiff : (Judges Oney, Crehan and Sage)
vs. : SENTENCING OPINION
DONALD J. KETTERER :

This opinion is rendered pursuant to Ohio Revised Code Section 2929.03(F).

The Butler County Grand Jury returned an indictment charging the defendant Donald J. Ketterer in Count One Count with Aggravated Murder, R.C. 2903.01(B), with three specifications: (1) That the defendant committed the aggravated murder for the purpose of escaping detection, apprehension, trial or punishment while committing felonious assault, as a principal offender; (2) that the defendant committed aggravated murder as the principal offender while committing or attempting to commit the offense of aggravated robbery; and (3) that the defendant committed, as a principal offender, the offense of aggravated murder while committing or attempting to commit the offense of aggravated burglary.

Defendant was charged in Count Two of the indictment with Aggravated Robbery 2911.01(A)(3) for attempting or committing a theft offense, to wit: attempting to knowingly obtain money from Lawrence Sanders with purpose to deprive him of said money by threat or intimidation, and did inflict, attempt to inflict, or threaten to inflict physical harm on Lawrence Sanders.

In Count Three defendant was charged with Aggravated Burglary R.C. 2911.11(A)(1) for attempting or committing a theft offense, to wit: attempting to knowingly obtain money from Lawrence Sanders with purpose to deprive him of said money by threat or intimidation, and did inflict, attempt to inflict or threaten to inflict physical harm on Lawrence Sanders.

Judge
PATRICIA ONEY
Common Pleas Court
Butler County, Ohio

In Count Four defendant was charged with Grand Theft of a Motor Vehicle, R.C. 2911.03(A)(1), with the purpose to deprive Lawrence Sanders of his property, to wit: a 1995 Pontiac Grand Am four-door sedan, and did knowingly obtain the said motor vehicle without the consent of Lawrence Sanders.

In Count Five, the defendant was charged with Burglary 2911.12(A)(3) for trespassing in an occupied structure, to wit: the house of Lawrence Sanders which was maintained and occupied as his permanent habitation, to commit in said structure any criminal offense.

The defendant entered pleas of not guilty at his arraignment.

The defendant waived his right to a jury and entered a plea of guilty to all charges January 27, 2004. Evidence was presented as to the charges. The three Judge panel returned a verdict of guilty to the One Count of Aggravated Murder and guilty to all three specifications contained in the indictment as well as a verdict of guilty on Count Two, Three, Four and Five of the indictment in which the defendant was charged with Aggravated Robbery, Aggravated Burglary, Grand Theft of a Motor Vehicle, and Burglary.

Pursuant to Revised Code Section 2929.04(B), a sentencing hearing was held before the panel of Judges February 3, 2004 to determine if the aggravating circumstance outweighed the mitigating factors beyond a reasonable doubt.

FACTS OF THE CASE

On February 24, 2003 the defendant went to the residence of Lawrence Sanders at 980 Shuler Avenue in the City of Hamilton, Butler County, Ohio. He went there for the expressed purpose of obtaining money from Mr. Sanders for the purpose of paying court fines. He was denied money by Mr. Sanders and the defendant felt that Mr. Sanders had "disrespected him". The defendant indicated in his statement that he hit Mr. Sanders on the head with an iron skillet more than once and then stabbed him because he knew that Mr. Sanders could identify him. The defendant knew the victim from having done work for him in the past and having obtained money from him in the past.

Judge
PATRICIA ONEY
Common Pleas Court
Butler County, Ohio

The evidence at the scene and from the testimony of Dr. Sweinhart indicates that the victim had a lethal stab wound in the left thorax which punctured the lung which resulted in 900 cc of blood in the lower lobe. He also indicated that the victim's head had been severely traumatized on both top and sides. There was a broken iron skillet at the scene. The evidence also indicated that the victim had defensive wounds on his arms and he had slashes on his fingers and broken fingers. In addition the photographs indicate that the body was mutilated post mortem.

The victim's body which was located on the kitchen floor with his pants pockets turned inside out and kitchen utensils under the body. The other rooms were ransacked with drawers having been pulled out and items located on the floor. The defendant's statement indicates that he stole coins, jewelry, eyeglasses, rosary beads and other things which he either sold or traded for crack cocaine. Other evidence corroborated the defendant's possession and sale of the items stolen from the Sanders residence.

AGGRAVATING CIRCUMSTANCES

In this case the aggravating circumstances which are to be weighed against the mitigating factors are as follows: (1) That the aggravated murder was committed for the purpose of escaping detection for the offense of felonious assault on Larry Sanders; (2) That the defendant, as a principal offender, committed the homicide while committing, attempting to commit, or fleeing immediately after committing an aggravated robbery; and (3) That the defendant, as a principal offender, committed the homicide while committing, attempting to commit, or fleeing immediately after committing an aggravated burglary.

The State of Ohio introduced the evidence submitted at the adjudicatory phase of the proceedings and submitted no further evidence. The Court indicated it would consider only that evidence relevant to the nature and circumstances of the aggravating circumstances the defendant was found guilty of committing.

Judge
PATRICIA ONEY
Common Pleas Court
Butler County, Ohio

MITIGATING FACTORS

Mitigating factors are factors which, while they do not justify or excuse the crime, nevertheless in fairness and mercy, may be considered as they call for a penalty less than death, or lessen the appropriateness of a sentence of death. Mitigating factors are factors about an individual which weigh in favor of a decision that one of the life sentences is the appropriate sentence.

As requested by the defendant and in accordance with Section 2929.04(B), The panel of Judges considered all the evidence, arguments, and all other information and reports relevant to the nature and circumstances of the aggravated circumstance and to any mitigating factors including but not limited to the history, character, and background of the defendant and all of the following: (B)(3) 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; and (B)(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

As to the (B) (3) mitigating factor the defendant produced two psychologists who testified that the defendant from a mental illness known as Bi Polar Disorder and a personality disorder involving mood instability. The panel was unanimous in finding that even if the defendant suffered from a bipolar and personality disorder there was insufficient evidence to establish that at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.

As to (B)(7)The Court considered the following factors that the defendant requested the Panel to consider as being relevant to the issue of whether the defendant should be sentenced to death or that call for a penalty less than death, or lessen the appropriateness of a sentence of death:

The defendant served in the armed forces between 1968 and 1971. He joined the Army as a court ordered alternative to being sent to a reformatory He received an

honorable discharge. He did serve six months in the stockade early in his military career for assaulting a corporal, but he was honorably discharged from the Army in 1971. The defendant has a Low level of intelligence. His overall IQ is 74 which places him at the lower scale of average. An IQ below 70 is mildly retarded. He did poorly in school and was considered a slow learner and was placed in special classes.

He presented no disciplinary problems while he has been confined to the county jail. Counsel extrapolated this to infer that he would not be a problem in prison. He cooperated with law enforcement in their investigation and voluntarily confessed to his crimes thereby saving the State the time and expense of conducting an extensive murder investigation and he plead guilty as charged to the indictment thereby saving the State the time and expense of a lengthy trial. The contention is that these are signs that the defendant acknowledges and accepts responsibility for his conduct and is contrite and remorseful.

Two witnesses and the defendant's brother testified that he did good things in his life. The court took into consideration that there were times in his life when he was off drugs and sober. During those periods tried to keep two women from doing drugs and prostituting themselves for drug money by giving them shelter and money. He was a friend to them and to his brother. They did not want to see him get the death penalty.

The panel considered the psychological testimony about his mental condition as a mitigating factor under (B)(7) even though the panel found that his mental condition was not such that he lacked substantial capacity to appreciate the criminality of his conduct or to conform conduct to the requirements of the law. The defendant has been diagnosed as Bipolar and with a personality disorder and has had a long standing chronic drug and alcohol addiction. He had been sober for a period of forty months until a few months before this incident attending AA and NA meetings. He then went into a downward spiral of cocaine and alcohol use and was on both alcohol

Judge
PATRICIA ONEY
Common Pleas Court
Butler County, Ohio

and cocaine at the time he committed this offense and was abusing his bipolar medication.

FINDINGS

In order to sentence the defendant to death, the law requires that the Panel find that the aggravating circumstances in this case outweighs the mitigating factors beyond a reasonable doubt. The Panel must consider the evidence presented as to the aggravating circumstance which transformed this offense of aggravated murder from a case in which death was not a potential penalty to one where death is a possible penalty. The aggravating circumstances must then be weighed against the mitigating factors about the individual which would weigh in favor of a decision that a life imprisonment sentence is the appropriate sentence.

The weighing process is just that. The Court must put the nature and circumstances of the aggravating circumstances on one side of the scale and place all the creditable mitigating factors on the other side and make the determination as to whether the nature and circumstances of the aggravating circumstances out weighs the mitigating factors beyond a reasonable doubt. Beyond a reasonable doubt is the highest weight burden known in American law. It is greater than a preponderance which is simply the greater weight of the evidence; it is greater than a clear and convincing standard which has been defined as that which will provide a firm belief or conviction of what is to be established. Beyond a reasonable doubt, in addition to providing a firm belief or conviction, requires that an ordinary person be willing to rely and act upon it in the most important of his or her own affairs.

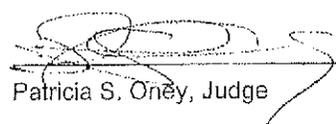
The nature and the circumstances of the aggravating circumstances in this case deserve great weight. The stabbing of the victim to kill him to avoid detection; the calculated searching of the victim for money and turning his pockets inside out; the ransacking of the victim's house looking for things to steal so as to convert the stolen items for crack cocaine. There is nothing mitigating about these circumstances. The Court must then weigh all the credible mitigating factors and determine if the

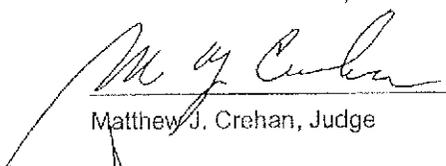
Judge
PATRICIA ONEY
Common Pleas Court
Butler County, Ohio

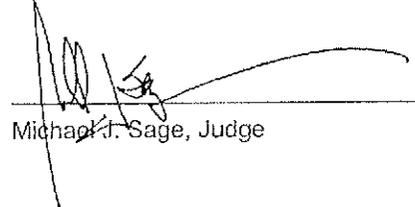
aggravating circumstance out weighs the mitigating circumstances by the beyond a reasonable doubt standard.

In performing that task, the Judges of this panel find that the nature and circumstances of the aggravating circumstances outweigh, beyond a reasonable doubt, the individual and aggregate of the mitigating factors present in this case. Therefore the Panel finds that the sentence of death is appropriate.

ENTER


Patricia S. Onéy, Judge


Matthew J. Crehan, Judge


Michael J. Sage, Judge

cc: Robin Piper/Craig Hedric
J. Gregory Howard/Christopher J. Pagan

Judge
PATRICIA ONÉY
Common Pleas Court
Butler County, Ohio

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

2007 MAY 29 PM

CASE NO. CR2003-03-0309

STATE OF OHIO

Plaintiff

CHIEF CLERK
BUTLER COUNTY
CLERK OF COURT

ONEY, J., SAGE, J. and CREHAN, J.

vs.

RE-SENTENCING
JUDGMENT OF CONVICTION ENTRY

DONALD JOSEPH KETTERER

Defendant

On May 24, 2007 defendant's re-sentencing hearing was held on the noncapital offenses, Counts Two, Three, Four and Five, pursuant to Ohio Revised Code Section 2929.19 and the decision in State v. Ketterer, 113 Ohio St.3d 1463, 2007-Ohio-1722, the previous judgment of conviction and sentence as to Count One having been affirmed in State vs. Ketterer, 111 Ohio St.3d 70, 2006-Ohio-5283, certiorari denied (May 14, 2007), _____ U.S. _____, 2007 WL812004. Defense attorney Randall Porter, and the defendant were present and defendant was advised of and afforded all rights pursuant to Crim. R. 32. The Court has considered the record, the charges, the defendant's Guilty Finding by Judges, and findings as set forth on the record and herein, oral statements, any victim impact statement and pre-sentence report, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code Section 2929.12 and whether or not community control is appropriate pursuant to Ohio Revised Code Section 2929.13, and finds that the defendant is not amenable to an available community control sanction. Further, the Court has considered the defendant's present and future ability to pay the amount of any sanction, fine or attorney's fees.

The Court finds that the defendant has been found guilty of:

AGGRAVATED ROBBERY as to Count Two, a violation of Revised Code Section 2911.01(A)(3) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served consecutive to Count One.
Fine in the amount of \$2,000

AGGRAVATED BURGLARY as to Count Three, a violation of Revised Code Section 2911.11(A)(1) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served consecutive to Count Two.
Fine in the amount of \$2,000

GRAND THEFT as to Count Four, a violation of Revised Code Section 2913.02(A)(1) a fourth degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 17 months.
This sentence will be served concurrent with Count(s) Two and Three.

BURGLARY as to Count Five, a violation of Revised Code Section 2911.12(A)(3) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 4 years.

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO
P.O. Box 515, HAMILTON, OH 45012-0515

This sentence will be served **consecutive** to Count(s) Two and Three.
Fine in the amount of \$1,000

Credit for 1556 served is granted as of this date.

As to Count(s) Two, Three, Four and Five:

The Court has notified the defendant that post release control is in this case up to a maximum of years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control. The defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

Defendant is ORDERED to pay:

Costs of prosecution, supervision and any supervision fees permitted pursuant to Revised Code Section 2929.18(A)(4).

The Court further advised the defendant of all of his/her rights pursuant to Criminal Rule 32, including his/her right to appeal the judgment, his/her right to appointed counsel at no cost, his/her right to have court documents provided to him/her at no costs, and his / her right to have notice of appeal filed on his behalf.

Directive to Ohio Department of Rehabilitation and Correction: Please notify the Butler County Court of Common Pleas of any major changes of incarceration status including but not limited to release, transfer, execution or death of the defendant.

APPROVED AS TO FORM:

ENTER

ROBIN N. PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

ONEY, J.

SAGE, J.

CREHAN, J.

MAO/beg
May 25, 2007

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO
P.O. Box 515, HAMILTON, OH 45012-0515

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

2007 NOV 15 PM 1:57

STATE OF OHIO

Plaintiff

vs.

DONALD JOSEPH KETTERER

Defendant

CASE NO. CR2003-03-0309

ONEY, J., SAGE, J. and CREHAN, J.

AMENDED RE-SENTENCING
JUDGMENT OF CONVICTION ENTRY
(NUNC PRO TUNC: May 29, 2007)

On May 24, 2007 defendant's re-sentencing hearing was held on the noncapital offenses, Counts Two, Three, Four and Five, pursuant to Ohio Revised Code Section 2929.19 and the decision in State v. Ketterer, 113 Ohio St.3d 1463, 2007-Ohio-1722, the previous judgment of conviction and sentence as to Count One having been affirmed in State vs. Ketterer, 111 Ohio St.3d 70, 2006-Ohio-5283, certiorari denied (May 14, 2007), _____ U.S. _____, 2007 WL812004. Defense attorney Randall Porter, and the defendant were present and defendant was advised of and afforded all rights pursuant to Crim. R. 32. The Court has considered the record, the charges, the defendant's Guilty Finding by Judges, and findings as set forth on the record and herein, oral statements, any victim impact statement and pre-sentence report, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors of Ohio Revised Code Section 2929.12 and whether or not community control is appropriate pursuant to Ohio Revised Code Section 2929.13, and finds that the defendant is not amenable to an available community control sanction. Further, the Court has considered the defendant's present and future ability to pay the amount of any sanction, fine or attorney's fees.

The Court finds that the defendant has been found guilty of:

AGGRAVATED ROBBERY as to Count Two, a violation of Revised Code Section 2911.01(A)(3) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served **consecutive** to Count One.
Fine in the amount of \$2,000

AGGRAVATED BURGLARY as to Count Three, a violation of Revised Code Section 2911.11(A)(1) a first degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 9 years.
This sentence will be served **consecutive** to Count Two.
Fine in the amount of \$2,000

GRAND THEFT as to Count Four, a violation of Revised Code Section 2913.02(A)(1) a fourth degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 17 months.
This sentence will be served **concurrent** with Count(s) Two and Three.

BURGLARY as to Count Five, a violation of Revised Code Section 2911.12(A)(3) a third degree felony. With respect to this Count, the defendant is hereby sentenced to:

Prison for a period of 4 years.

PROSECUTING ATTORNEY, BUTLER COUNTY, OHIO
P.O. Box 515, HAMILTON, OH 45012-0515

This sentence will be served **consecutive** to Count(s) Two and Three.
Fine in the amount of \$1,000

Credit for 1556 served is granted as of this date.

As to Count(s) Two, Three, Four and Five:

The Court has notified the defendant that post release control is Mandatory in this case up to a maximum of 5 years, as well as the consequences for violating conditions of post release control imposed by the Parole Board under Revised Code Section 2967.28. The defendant is ordered to serve as part of this sentence any term of post release control imposed by the Parole Board, and any prison term for violation of that post release control. The defendant is therefore ORDERED conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

Defendant is ORDERED to pay:

Costs of prosecution, supervision and any supervision fees permitted pursuant to Revised Code Section 2929.18(A)(4).

The Court further advised the defendant of all of his/her rights pursuant to Criminal Rule 32, including his/her right to appeal the judgment, his/her right to appointed counsel at no cost, his/her right to have court documents provided to him/her at no costs, and his / her right to have notice of appeal filed on his behalf.

Directive to Ohio Department of Rehabilitation and Correction: Please notify the Butler County Court of Common Pleas of any major changes of incarceration status including but not limited to release, transfer, execution or death of the defendant.

{This *nunc pro tunc* entry is necessary to properly and legally reflect the Court of Common Pleas Judgement of Conviction that was originally entered on May 24, 2007, and journalized on May 29, 2007}.

APPROVED AS TO FORM:

ENTER

ROBIN N. PIPER
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

ONEY, J.

SAGE, J.

CREHAN, J.

MAO/beg
May 25, 2007
November 7, 2007 amended