

In The Supreme Court of Ohio

State of Ohio,

:

10-0576

Appellee,

:

Case No.

10-0570

-vs-

:

Appeal taken from Stark County  
Court of Common Pleas

James Mammone, III,

:

Case No. 2009-CR-0859

Appellant.

:

**This is a death penalty case**

Notice of Appeal of Appellant James Mammone, III

John D. Ferrero – 0018590  
Prosecuting Attorney

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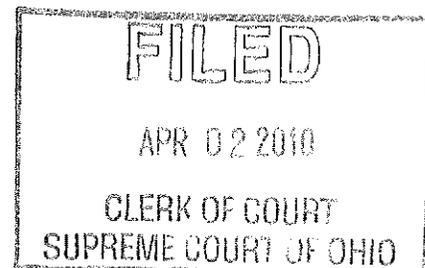
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In The Supreme Court of Ohio

State of Ohio, :  
Appellee, : Case No.  
-vs- : Appeal taken from Stark County  
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: Case No. 2009-CR-0859  
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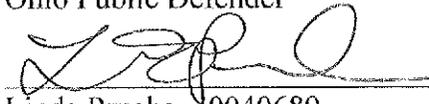
Notice of Appeal

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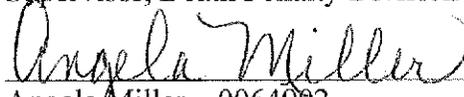
Appellant James Mammone hereby gives notice of appeal to the Supreme Court of Ohio from the decision and judgment entry of the Stark County Court of Common Pleas, entered on February 16, 2010. See Exhibit A. This is a capital case and the date of the offense is June 8, 2009. See Supreme Court Rule of Practice XIX, § 1(A).

Respectfully submitted,

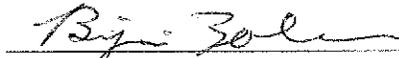
Office of the  
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Counsel For Appellant

Certificate of Service

I hereby certify that a true copy of the foregoing Notice of Appeal of Appellant James Mammone, III was forwarded by first-class, postage prepaid U.S. Mail to John D. Ferrero, Prosecuting Attorney, Stark County, 110 Central Plaza South, Suite 510, Canton, Ohio 44702, on this 2nd day of April, 2010.



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Linda Prucha – 0040689  
Supervisor, Death Penalty Division

Counsel For Appellant

JUDY S. TENGOLD  
CLERK OF COURTS  
STARK COUNTY, OHIOIN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

2010 FEB 16 AM 10:47

STATE OF OHIO,

CASE NO. 2009CR0859

Plaintiff,

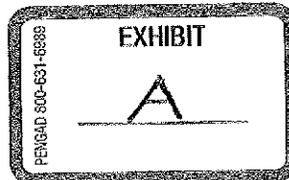
JUDGE JOHN G. HAAS

vs.

JUDGMENT ENTRY  
PRISON SENTENCE IMPOSED**JAMES MAMMONE, III,**

Defendant.

This day, January 20, 2010, came the defendant, **JAMES MAMMONE, III**, in the custody of the Sheriff, accompanied by his counsel, Tammi Johnson and Derek Lowry, Esq., having heretofore been found guilty on January 14, 2010 by a jury of the crimes of Aggravated Murder, 1 Ct. [R.C. 2903.01(B)] (Death) (With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(7)] and (Firearm Specification) [R.C. 2941.145]; Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(1) and/or (A)(2)] (F1) (With Firearm Specification) [R.C. 2941.145]; Aggravated Murder, 2 Cts. [R.C. 2903.01(A) and/or (C)] (Death) (With Two Death Specifications) [R.C. 2929.04(A)(5) and 2929.04(A)(9)]; Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(2)] (F1) (With Firearm Specification) [R.C. 2941.145]; Violating a Protection Order, 1 Ct. [R.C.



2919.27(A)(1)](F3) and Attempt to Commit an Offense (Arson), 1 Ct. [R.C. 2923.02(A)] [R.C. 2909.03(A)(1)](F5) as charged in counts one through seven of the Indictment, and being duly convicted thereon.

The Jury, after finding the defendant guilty beyond a reasonable doubt of the six aggravating circumstances as stated in the Indictment, proceeded to a sentencing hearing pursuant to R.C. 2929.03 on January 19, 2010.

On January 20, 2010, the jury after due deliberation, unanimously found that the aggravating circumstances as to each count of Aggravated Murder outweighed the mitigating factors by proof beyond a reasonable doubt, and recommended the sentence of death be imposed upon the defendant for each count of Aggravated Murder as charged in the indictment.

The Court, after receiving the recommendation of the jury, proceeded to final sentencing on January 22, 2010.

Whereupon the Court was duly informed in the premises on the part of the State of Ohio, by the Prosecuting Attorney, and on the part of the defendant, by the defendant and his counsel, and thereafter the Court asked the defendant whether he had anything to say as to why judgment should not be pronounced against him, and the defendant, after briefly addressing the Court, and showing no good and

sufficient reason why sentence should not be pronounced, the Court thereupon pronounced sentence pursuant to R.C. 2929.03(F). The defendant was afforded his rights under Crim. Rule 32, and the Court imposed consecutive sentences of death regarding Counts One, Three and Four of the indictment, which sentences are set forth in the opinion of the Court filed January 26, 2010, which is incorporated by reference herein, and attached hereto.

Regarding the remaining counts and specifications of which the defendant has been found guilty, the Court has considered the record, oral statements of defendant, and all the facts and evidence adduced at trial, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, and has balanced the seriousness and recidivism factors Ohio Revised Code Section 2929.12.

The Court finds that the defendant has been convicted of Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(1) and/or(A)(2)](F1)(With Firearm Specification) as set forth in Count Two, a felony subject to presumption in favor of prison under division (D) of section 2929.13 of the Ohio Revised Code.

The Court finds that the defendant has been convicted of Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(2)](F1)(With

Firearm Specification) as set forth in Count Five, felony subject to presumption in favor of prison under division (D) of section 2929.13 of the Ohio Revised Code.

The Court finds that the defendant has been convicted of Violating a Protection Order, 1 Ct. [R.C. 2919.27(A)(1)](F3) subject to division (C) of section 2929.13 of the Ohio Revised Code and that a prison term is consistent with the purposes and principles of sentencing in Revised Code Section 2929.11.

The Court further finds that the defendant has been convicted of Attempt to Commit an Offense (Arson), 1 Ct. [R.C. 2923.02(A)][R.C. 2909.03(A)(1)](F5) subject to division (B) of section 2929.13 of the Ohio Revised Code.

The Court further finds that the defendant has been convicted of a firearm specification to Count One [Aggravated Murder, 1 Ct. 2903.01(B)], which specification shall be merged into the firearm specification to Count Two for sentencing purposes.

The Court finds that the defendant has been convicted of or plead guilty to a felony and/or a misdemeanor as listed in division (D) of R.C. 2901.07 and hereby ORDERS that a sample of defendant's DNA be collected pursuant to Ohio Revised Code Section 2901.07.

For reasons stated on the record, and after consideration of the factors under Revised Code 2929.12, the Court also finds that prison is consistent with the purposes of Revised Code section 2929.11 and the defendant is not amenable to an available community control sanction regarding Counts Two, Five, Six and Seven of the indictment.

IT IS THEREFORE ORDERED that the defendant shall be committed to the Lorain Correctional Institution for a prison term of ten (10) years on the charge of Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(1) and/or (A)(2)](F1) as contained in Count Two of the Indictment, and

IT IS FURTHER ORDERED that the defendant shall serve a mandatory and consecutive prison term of three (3) years actual incarceration pursuant to R.C. 2929.14(D)(1) on the Firearm Specification to Count Two [Aggravated Burglary, 1 Ct. 2911.11(A)(1) and/or (A)(2)] [R.C. 2941.145], and

Upon release from prison, the defendant is ordered to serve a mandatory period of five (5) years of post-release control with respect to Count Two, pursuant to R.C. 2967.28(B). This period of post-release control was imposed as part of defendant's criminal sentence with respect to Count Two at the sentencing hearing, pursuant to R.C. 2929.19. If the defendant violates the conditions of post-

release control, the defendant will be subject to an additional prison term of up to one-half of the stated prison term as otherwise determined by the Parole Board, pursuant to law.

IT IS FURTHER ORDERED that the defendant shall be committed to the Lorain Correctional Institution for a prison term of ten (10) years on the charge of Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(2)] (F1) as contained in Count Five of the Indictment, and

IT IS FURTHER ORDERED that this defendant shall serve a mandatory sentence pursuant to 2929.14(D)(1) of three (3) years actual incarceration for Firearm Specification to Count Five (Aggravated Burglary), 1 Ct. [R.C. 2911.11(A)(2)], prior to and consecutive with the sentence imposed for Aggravated Burglary, 1 Ct. [R.C. 2911.11(A)(2)], and

IT IS FURTHER ORDERED that the defendant shall serve the above sentence consecutive to all other counts, and

Upon release from prison, the defendant is ordered to serve a mandatory period of five (5) years of post-release control with respect to Count Five, pursuant to R.C. 2967.28(B). This period of post-release control was imposed as part of defendant's criminal sentence with respect to Count Five, at

the sentencing hearing, pursuant to R.C. 2929.19. If the defendant violates the conditions of post-release control, the defendant will be subject to an additional prison term of up to one-half of the stated prison term as otherwise determined by the Parole Board, pursuant to law.

IT IS FURTHER ORDERED that the sentence for Count Six (Violating a Protection Order, 1 Ct. [R.C. 2919.27(A)(1)] (F3) shall be merged into Count Five, and

IT IS FURTHER ORDERED that the defendant shall be committed to the Lorain Correctional Institution for a prison term of twelve (12) months on the charge of Attempt to Commit an Offense (Arson), 1 Ct. [R.C. 2923.02(A)][R.C. 2909.03(A)(1)](F5) as contained in Count Seven, and

IT IS FURTHER ORDERED that the defendant shall serve the above sentence consecutive with all other counts, and

Upon release from prison, the defendant is ordered to serve an optional period of up to three (3) years of post-release control with respect to Count Seven at the discretion of the Parole Board, pursuant to R.C. 2967.28(B). This period of post-release control was imposed as part of defendant's criminal sentence with respect to Count Seven at the sentencing hearing, pursuant to R.C. 2929.19. If the defendant violates the conditions of post-release control,

the defendant will be subject to an additional prison term of up to one-half of the stated prison term as otherwise determined by the Parole Board, pursuant to law.

IT IS FURTHER ORDERED that the terms of post-release control imposed in this sentence shall be served concurrently, as required by R.C. 2967.28(F)(4)(c).

IT IS FURTHER ORDERED that the defendant shall serve the death sentences imposed in the Court's separate entry filed January 26, 2010 (incorporated by reference and attached hereto) in Counts One, Three and Four consecutive to each other, and consecutive to all other counts of the Indictment.

THE COURT FURTHER ORDERS that such sentence is hereby ORDERED to be carried out on June 8, 2010 or as otherwise modified by a later court date, and

THE FURTHER ORDERED that the defendant be remanded to the custody of the Stark County Sheriff's Department to be transported to the appropriate State Penal Institution to carry out the above imposed sentence, and

Defendant is therefore ordered conveyed to the custody of the Ohio Department of Rehabilitation and Correction.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this defendant is entitled to jail time credit which will be

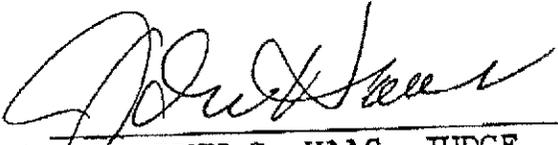
calculated by the Sheriff and the number of days inserted in a certified copy of an order which shall be forwarded to the institution at a later date, and

IT IS HEREIN ORDERED that the defendant shall pay the costs of prosecution for which the Court herein renders a judgment against the defendant for such costs, and

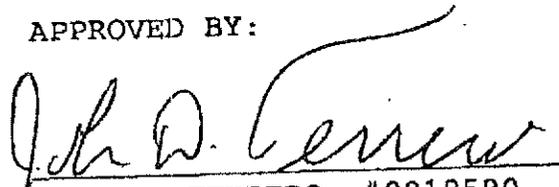
The Court, pursuant to Ohio Revised Code Section 120.36, hereby ORDERS that if the defendant requested or was provided representation by the Stark County Public Defender there is hereby assessed a \$25.00 non-refundable application fee, and

WHEREUPON, the Court explained to the defendant his rights to appeal according to Criminal Rule 32.

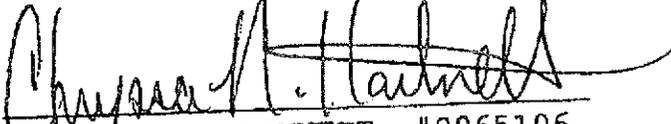
IT IS SO ORDERED.

  
FOR: HON. JOHN G. HAAS, JUDGE

APPROVED BY:

  
JOHN D. FERRERO, #0018590  
PROSECUTING ATTORNEY

  
DENNIS E. BARR, #0020126  
CHIEF, CRIMINAL DIVISION  
ASSISTANT PROSECUTING ATTORNEY

  
CHRYSSA N. HARTNETT, #0065106  
ASST. CHIEF, CRIMINAL DIVISION  
ASSISTANT PROSECUTING ATTORNEY

**FILED**  
 JAN 26 2010  
 NANCY S. REINHOLD  
 STARK COUNTY OHIO  
 CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
 STARK COUNTY, OHIO**

STATE OF OHIO,	)	Case No. 2009CR0859
	)	
Plaintiff	)	JUDGE HAAS
	)	
-vs-	)	<u>OPINION OF THE COURT</u>
	)	
	)	PURSUANT TO O.R.C.
	)	SECTION 2929.03(F)
JAMES MAMMONE, III,	)	
	)	
Defendant	)	

On January 14, 2010, the defendant, James Mammone, III, was convicted of three counts of aggravated murder involving the killings of Margaret Eakin, Macy Mammone and James Mammone, IV. The Jury also convicted the defendant of two specifications, referred to as capital specifications, with regard to each of the three counts of aggravated murder. Those capital specifications became aggravating circumstances for purposes of the sentencing consideration.

On January 20, 2010, the jury found beyond a reasonable doubt that the aggravating circumstances for each count of aggravated murder outweighed the mitigating factors for that count of aggravated murder and recommended the sentence of death for each of the three counts of aggravated murder. Pursuant to Ohio Revised Code Section 2929.03(D)(3) the Court conducted a sentencing hearing on January 22, 2010.

The Court, having independently reviewed the evidence appropriate to the sentencing hearing, the arguments of counsel, the statement of the defendant and the sentencing memorandum filed by the defendant, found that the State had proven

beyond a reasonable doubt that the aggravating circumstances for each separate count of aggravated murder outweighed any mitigating factors for each separate count of aggravated murder and accordingly imposed three separate sentences of death on the defendant. The defendant had declined to have a pre-sentence investigation or mental examination.

The Court, after reviewing said evidence, statements and testimony, was called upon to make an independent determination as to whether or not the jury's recommendation that the sentence of death be imposed for each of the three counts of aggravated murder should be followed and the sentence of death therefore imposed for one or more of the counts.

The defendant was convicted of three counts of aggravated murder, each with two aggravating circumstances. The penalty for each count of aggravated murder was determined separately. The Court separately considered the aggravating circumstances related to each count of aggravated murder and weighed the same against any mitigating factors in determining the penalty for each specific count of aggravated murder. In making the decision, the Court recognized that the aggravated murders themselves were not aggravating circumstances and did not consider the aggravated murders or the nature and circumstances of the aggravated murders as aggravating circumstances in weighing the aggravating circumstances against any mitigating factors for each specific count of aggravated murder.

**Margaret Eakin:**

The aggravating circumstances related to the aggravated murder of Margaret Eakin were as follows:

- 1) The aggravated murder of Margaret Eakin was committed as part of a course of conduct involving the purposeful killing of two or more persons.
- 2) The aggravated murder of Margaret Eakin was committed while the defendant was committing Aggravated Burglary, and the defendant was the principal offender in the commission of aggravated murder of Margaret Eakin.

The aggravated burglary which led to the aggravated murder of Margaret Eakin was committed in her home in the early morning hours while she was alone and still in bed. The purpose of the defendant in trespassing into the home of Margaret Eakin was to commit her aggravated murder.

The aggravated murder of Margaret Eakin took place moments after the defendant had taken the lives of his two children, Macy and James, IV.

**Macy Mammone:**

The aggravating circumstances related to the aggravated murder of Macy Mammone were as follow:

- 1) The aggravated murder of Macy Mammone was committed as a course of conduct involving the purposeful killing of two or more persons by the defendant.
- 2) Macy Mammone was under thirteen years of age at the time of her aggravated murder by the defendant and the defendant was the principal offender in the commission of the aggravated murder of Macy Mammone.

Macy Mammone was five years old at the time of her aggravated murder. Within moments of her death, her brother, James Mammone, IV was killed by the defendant and thereafter their grandmother Margaret Eakin was the victim of aggravated murder by the defendant James Mammone, III.

**James Mammone, IV:**

The aggravating circumstances related to the aggravated murder of James Mammone, IV were as follows:

- 1) The aggravated murder of James Mammone, IV was committed as a course of conduct involving the purposeful killing of two or more persons by the defendant.
- 2) James Mammone, IV was under thirteen years of age at the time of his aggravated murder by the defendant and the defendant was the principal offender in the commission of the aggravated murder of James Mammone, IV.

James Mammone, IV was three years old at the time of his aggravated murder. Just prior to his being the victim of aggravated murder, his sister Macy Mammone was the victim of aggravated murder and thereafter, within moments, his grandmother Margaret Eakin was the victim of aggravated murder at the hands of the defendant James Mammone, III.

These were the aggravating circumstances for each separate count of aggravated murder which were separately weighed against any factors in mitigation of the imposition of the death penalty for each count of aggravated murder and the Court has not considered any victim impact evidence in making it's decision. The Court did

not combine the aggravated circumstances but treated each count of aggravated murder and the aggravating circumstances related to each count separately.

#### MITIGATING FACTORS

- 1) The defendant's lack of a significant criminal record. The defendant was convicted of domestic violence, a misdemeanor of the fourth degree, but there was no other criminal conviction or juvenile adjudication. This mitigating factor was given substantial weight because it along with his adjustment to incarceration while at the Stark County Jail awaiting trial in this matter, were strong indicators that the defendant could adapt well to prison life.
- 2) The defendant expressed regrets regarding the aggravated murder of Margaret Eakin. This remorse was a mitigating factor and was given minimal weight by the Court as it related to the aggravated murder of Margaret Eakin.
- 3) The defendant was under extreme emotional distress and suffering from a severe mental disorder at the time of the aggravated murders of Margaret Eakin, Macy Mammone and James Mammone, IV. While the testimony of Jeffrey Smalldon is clear that any symptoms associated with the disorder were not so severe as to bring into question the defendant's sanity at the time of the offenses or his competency to stand trial, the disorder was a mitigating factor given substantial weight by the Court. Dr. Smalldon's primary diagnosis of the defendant was a personality

disorder, not otherwise specified, with Schizotypal, Borderline and Narcissistic features. Dr. Smalldon also referenced passive-aggressive and obsessive-compulsive personality traits as well as alcohol abuse, episodic by history. All these conditions and traits were given substantial weight as mitigating factors.

- 4) The defendant's work history. The defendant started working at the age of 16 and worked continuously, except for a short period of time during 2007. His jobs included, Mary's Restaurant, insurance sales and real estate appraisals. The defendant even continued to work as a pizza deliverer while he was going back to college. The defendant worked hard and provided for his family. The defendant did well in college being placed on the "President's List" for academic achievement. These were mitigating factors and were given substantial weight by the Court.
- 5) The history, character and background of the defendant. Starting at about age five and continuing until about the age of ten when his father left their home, the defendant was subjected to physical and psychological abuse by his father and further witnessed his mother being subjected to physical and mental abuse by his father. The defendant was referred to as a "loser" and a "maggot". On the other hand, the defendant was loved by his mother and grandparents and had an especially close relationship with his grandfather Mammone. As a result of his parents being

divorced when he was ten, the defendant grew up at times in a single parent home and subsequently in a home with his mother and a stepfather until he left that home when he was eighteen years of age. He was also subjected to both his father and his grandfather abusing alcohol. This abuse of alcohol influenced his father's behavior in particular and all of these factors concerning his childhood and formative years were mitigating factors given substantial weight by the Court.

The Court has also considered all the other statutory factors and the additional mitigating factors raised by the defense in the defendant's sentencing memorandum including his cooperation with the police. All of which were given some weight. The nature and circumstance of the offense were not aggravating factors to be considered by the Court nor were they considered as mitigating factors. The Court has not considered any victim impact evidence in this matter nor was any presented to the Court. The Court has also considered the statements of counsel and the statement of the defendant and all other matters appropriate under Ohio law. The Court did not combine the aggravating circumstances but only considered the aggravating circumstances as to each specific count of aggravated murder in making the Court's decisions.

**MARGARET EAKIN**

The Court weighed the specific aggravating circumstances related to the aggravated murder of Margaret Eakin against the mitigating factors set forth herein to determine whether or not the State of Ohio had proven beyond a reasonable doubt

that the specific aggravating circumstances related to the aggravated murder of Margaret Eakin outweighed any and all of the factors in mitigation that had been presented to this Court. After deliberation, the Court found that the aggravating circumstances specifically proven by proof beyond a reasonable doubt involving the aggravated murder of Margaret Eakin did outweigh the mitigating factors beyond a reasonable doubt. The Court found that the evidence of mitigating factors paled in comparison to the aggravating circumstances.

The aggravated burglary culminating in the aggravated murder of Margaret Eakin took place in the early morning hours when the defendant knew that the victim would be alone in her home and while she was still in bed. The defendant's purpose was clear -- to kill his ex-wife's best friend -- her mother. The fact it was part of his greater plan, his course of conduct in killing his two children, amounted to great weight being given to the aggravating circumstances. In combining the weight given to the mitigating factors, the greater weight of the aggravating circumstances of the aggravated murder of Margaret Eakin was clear beyond a reasonable doubt

It was therefore the sentence of this Court that James Mammone, III be sentenced to death for the aggravated murder of Margaret Eakin.

#### MACY MAMMONE

The Court weighed the specific aggravating circumstances related to the aggravated murder of Macy Mammone against the mitigating factors as set forth herein and found that the State of Ohio had proven beyond a reasonable doubt that the aggravated circumstances involving the aggravated murder of Macy Mammone outweighed the mitigating factors beyond a reasonable doubt. The Court found that

the evidence of mitigating factors paled in comparison to the aggravating circumstances of Macy Mammone's aggravated murder.

The fact that Macy Mammone was only five years old at the time of her aggravated murder and that her death occurred as part of the defendant's course of conduct in killing his son and mother in law within minutes of each other, resulted in great weight being given to the aggravating circumstances of her aggravated murder. In combining the weight given to all of the mitigating factors, the greater weight of the aggravating circumstances of the aggravated murder of Macy Mammone was clear beyond a reasonable doubt.

It was therefore the sentence of this Court that James Mammone, III be sentenced to death for the aggravated murder of Macy Mammone.

#### JAMES MAMMONE, IV

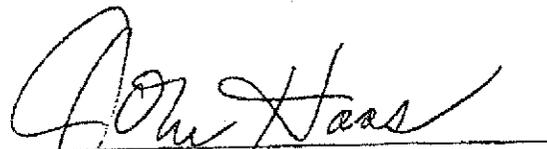
The Court weighed the specific aggravating circumstances related to the aggravated murder of James Mammone, IV against the mitigating factors set forth herein and found that the State of Ohio had proven beyond a reasonable doubt that the aggravated circumstances involving the aggravated murder of James Mammone, IV outweighed the mitigating factors beyond a reasonable doubt. The Court found that the evidence of in mitigating factors paled in comparison to the aggravating circumstances of James Mammone, IV's aggravated murder.

The fact that James Mammone, IV was only three years old at the time of his aggravated murder and that his death occurred as part of the defendant's course of conduct in killing his daughter and mother in law within minutes of each other, resulted in great weight being given to the aggravating circumstances of his

aggravated murder. In combining the weight given to all of the mitigating factors, the greater weight of the aggravating circumstances of the aggravated murder of James Mammone, IV was clear beyond a reasonable doubt.

It was therefore the sentence of this Court that James Mammone, III be sentenced to death for the aggravated murder of James Mammone, IV.

The defendant was ordered conveyed to the appropriate state institution where he will be placed on death row. The Court has set the date of his execution for June 8, 2010 or said date as may be established by a Court of competent jurisdiction. The Court will appoint appropriate due process counsel to handle his appeal in this matter. The opinion will be filed with the Stark County Clerk of Courts as well as with the Clerk of the Supreme Court of Ohio. Court costs to be taxed to the defendant pursuant to Ohio law.

  
HON. JOHN G. HAAS

Copies to:

Stark County Prosecutor's Office  
John D. Ferrero  
Dennis Barr  
Chryssa Hartnett  
Atty. Tammi Johnson  
Atty. Derek Lowry