

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO  
plaintiff-appellee

CASE NUMBER 2010-0854

-vs-

ANTHONY KIRKLAND  
defendant-appellant

>THIS IS A CAPITAL CASE<

Appeal from Hamilton County  
Court of Common Pleas  
Trial Number B-0901629  
Judge Charles Kubicki, Jr.

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MOTION FOR STAY OF EXECUTION

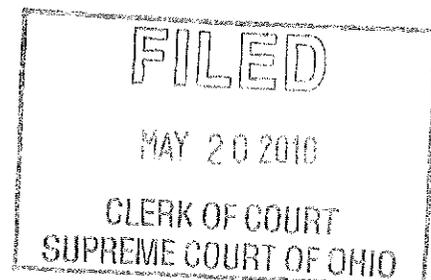
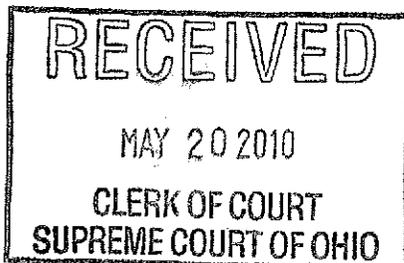
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IN THE SUPREME COURT OF OHIO

STATE OF OHIO  
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CASE NUMBER 2010-0854

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>THIS IS A CAPITAL CASE<

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APPELLANT'S MOTION FOR STAY OF EXECUTION

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Appellant Anthony Kirkland was convicted, and given two consecutive sentences of death. His execution date is 30 September 2010.

Attached hereto as exhibits are the trial court's Judgment Entry and Sentencing Opinion, filed on 31 March 2010. Appellant hereby moves this court for an order staying his execution for the duration of his appeal with this Court, relief to which he is entitled as a matter of right. See Ohio Constit. Art. IV, Section 2(D)(2)(c); also O.R.C. Section 2929.05(A); and Ohio Sup. Ct. Pract. R. 19.

*Herbert E. Freeman*

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## CERTIFICATION

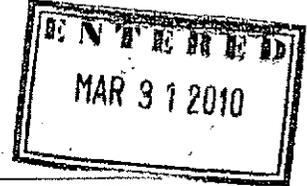
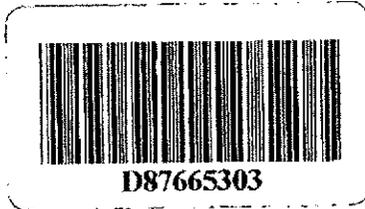
I certify that a duplicate original of this document was personally hand-delivered to the usual place of business of Joseph Deters, Hamilton County Prosecutor, on the filing date time-stamped hereon.

A handwritten signature in black ink that reads "Herbert E. Freeman". The signature is written in a cursive style with a large initial 'H' and 'F'.

Herbert E. Freeman

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

date: 03/31/2010  
code: GJEI  
judge: 232



Judge: *CJ* CHARLES J KUBICKI JR

NO: B 0901629

STATE OF OHIO  
VS.  
ANTHONY KIRKLAND

JUDGMENT ENTRY: SENTENCE:  
INCARCERATION

Defendant was present in open Court with Counsel A NORMAN AUBIN and WILLIAM WELSH on the 31st day of March 2010 for sentence.

The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and after trial by jury as to counts #1, #2, #3, #4, #5, #8, #9, #10, #11, and #12 and entering a plea of guilty as to counts #6 and #7, the defendant has been found guilty of the offense(s) of:

- count 1: ATTEMPT (RAPE) (DISMISS SPECS #1, #2, #3), 2923-02A/ORCN,F2
- count 2: AGGRAVATED MURDER WITH SPECS #1 & #2  
(DISMISS SPECS #3, #4, #5), 2903-01B/ORCN,CD, MERGED WITH COUNT #4
- count 3: AGGRAVATED ROBBERY (DISMISS SPEC #1), 2911-01A3/ORCN,F1
- count 4: AGGRAVATED MURDER WITH SPECS #1 & #2  
(DISMISS SPECS #3, #4, #5), 2903-01B/ORCN,CD
- count 5: GROSS ABUSE OF A CORPSE, 2927-01B/ORCN,F5
- count 6: MURDER, 2903-02A/ORCN,SF
- count 7: GROSS ABUSE OF A CORPSE, 2927-01B/ORCN,F5
- count 8: ATTEMPT (RAPE) (DISMISS SPECS #1, #2, #3), 2923-02A/ORCN,F2
- count 9: AGGRAVATED MURDER WITH SPECS #1, #2, #3  
(DISMISS SPECS #4, #5, #6), 2903-01B/ORCN,CD
- count 10: AGGRAVATED ROBBERY, 2911-01A3/ORCN,F1
- count 11: AGGRAVATED MURDER WITH SPECS #1, #2, #3  
(DISMISS SPECS #4, #5, #6), 2903-01B/ORCN,CD, MERGED WITH COUNT #9
- count 12: GROSS ABUSE OF A CORPSE, 2927-01B/ORCN,F5

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned as follows:

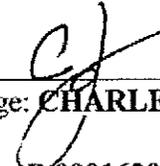
count 1: CONFINEMENT: 8 Yrs DEPARTMENT OF CORRECTIONS

count 3: CONFINEMENT: 10 Yrs DEPARTMENT OF CORRECTIONS

Defendant was notified of the right to appeal as required by Crim. R 32(A)(2)

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

date: 03/31/2010  
code: GJEI  
judge: 232

  
Judge: CHARLES J KUBICKI JR

NO: B 0901629

STATE OF OHIO  
VS.  
ANTHONY KIRKLAND

JUDGMENT ENTRY: SENTENCE:  
INCARCERATION

count 4: CONFINEMENT: DEPARTMENT OF CORRECTIONS  
DEATH BY LETHAL INJECTION

count 5: CONFINEMENT: 12 Mos DEPARTMENT OF CORRECTIONS

count 6: CONFINEMENT: INDEFINITE TERM OF 15 Yrs - LIFE  
DEPARTMENT OF CORRECTIONS

count 7: CONFINEMENT: 12 Mos DEPARTMENT OF CORRECTIONS

count 8: CONFINEMENT: 8 Yrs DEPARTMENT OF CORRECTIONS

count 9: CONFINEMENT: DEPARTMENT OF CORRECTIONS  
DEATH BY LETHAL INJECTION

count 10: CONFINEMENT: 10 Yrs DEPARTMENT OF CORRECTIONS

count 12: CONFINEMENT: 12 Mos DEPARTMENT OF CORRECTIONS

COUNT #2 IS MERGED WITH COUNT #4 FOR THE PURPOSE OF  
SENTENCING.

COUNT #11 IS MERGED WITH COUNT #9 FOR THE PURPOSE OF  
SENTENCING.

SPECIFICATION #1 TO COUNT #9 IS MERGED WITH SPECIFICATION #3  
TO COUNT #9 AT SENTENCING PHASE.

THE SENTENCES IN COUNTS #1, #3, #4, #5, #6, #7, #8, #9, #10, AND #12 ARE  
TO BE SERVED CONSECUTIVELY TO EACH OTHER.

Defendant was notified of the right to appeal as required by Crim. R 32(A)(2)

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

date: 03/31/2010  
code: GJEI  
judge: 232

  
Judge: CHARLES J KUBICKI JR

NO: B0901629

STATE OF OHIO  
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ANTHONY KIRKLAND

JUDGMENT ENTRY: SENTENCE:  
INCARCERATION

THE TOTAL AGGREGATE SENTENCE IS TWO (2) DEATH SENTENCES AND TWO (2) INDEFINITE TERMS OF SEVENTY (70) YEARS TO LIFE IN THE DEPARTMENT OF CORRECTIONS.

THE DEFENDANT IS TO RECEIVE CREDIT FOR THREE HUNDRED EIGHTY NINE (389) DAYS TIME SERVED.

THIS SENTENCE IS TO BE SERVED CONSECUTIVELY TO THE SENTENCE IMPOSED IN CASE B0904028.

THE DEFENDANT IS TO PAY THE COURT COSTS.

PURSUANT TO R.C. 2947.08, THE DATE OF EXECUTION AS TO COUNTS #4 AND #9 SHALL BE THURSDAY, SEPTEMBER, 30, 2010.

PURSUANT TO R.C. 2950.01, THE DEFENDANT IS CLASSIFIED A TIER III SEX OFFENDER OR CHILD-VICTIM OFFENDER.

THE DEFENDANT HEREIN IS NOT ELIGIBLE FOR INTENSIVE PRISON PROGRAM, TRANSITIONAL CONTROL, JUDICIAL RELEASE, OR ANY OTHER EARLY RELEASE PROGRAM AND IS TO SERVE THIS SENTENCE IN ITS ENTIRETY.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT

Defendant was notified of the right to appeal as required by Crim. R 32(A)(2)

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

date: 03/31/2010  
code: GJEI  
judge: 232

  
Judge: CHARLES J KUBICKI JR

NO: B 0901629

STATE OF OHIO  
VS.  
ANTHONY KIRKLAND

JUDGMENT ENTRY: SENTENCE:  
INCARCERATION

**PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.**

**AS PART OF THE SENTENCE AS TO COUNTS #1, #3, #8, AND #10 IN THIS CASE, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR FIVE ( 5 ) YEARS.**

**IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE ( 9 ) MONTHS FOR EACH VIOLATION, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT ( 50% ) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST- RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE ( 12 ) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.**

**AS TO COUNT #6, THE DEFENDANT IS NOT SUBJECT TO THE POST RELEASE CONTROL PROVISIONS OF OHIO LAW AS THIS IS A LIFE SENTENCE. PAROLE ELIGIBILITY FOR THIS OFFENDER IS GOVERNED BY OHIO REVISED CODE §2967.13(A)(1) AND THE DEFENDANT IS SO ADVISED.**

Defendant was notified of the right to appeal as required by Crim. R 32(A)(2)

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

STATE OF OHIO

Plaintiff,

vs.

ANTHONY KIRKLAND

Defendant.

: Case No. B 0901629  
:  
: Judge Charles J. Kubicki, Jr.  
:  
:  
: **SENTENCING OPINION**  
: **R.C. 2929.03(F)**  
:  
:  
:

**I. BACKGROUND**

**a. CASONYA CRAWFORD**

On May 4, 2006, the defendant attacked, beat, attempted to rape, robbed and strangled to death 14 year old Casonya Crawford. The defendant then burned the body of Ms. Crawford. The body was recovered in a secluded area with no clothing except one sock.

**b. ESME KENNEY**

On March 7, 2009, the defendant attacked, beat, attempted to rape, robbed and strangled to death 13 year old Esme Kenney. The defendant then partially burned the body of Ms. Kenney. The body was recovered in a secluded area with no clothing except shoes and socks.

**c. ADDITIONAL CRIMES**

On June 14, 2006, the defendant strangled Mary Jo Newton to death. The defendant then burned the body of Ms. Newton. On December 22, 2006, the defendant stabbed Kimya Rolison in the neck causing her death. The defendant then burned the body of Ms. Rolison.

**d. THE EVIDENCE**

Shortly after the crimes against Ms. Kenney, the defendant was apprehended by police at the crime scene. The defendant had property belonging to Ms. Kenney. Forensic evidence, including Ms. Kenney's DNA on the defendant, supported the defendant's guilt. Ms. Kenney's body also showed signs of rape.

After several hours of police interviews, the defendant confessed to the crimes involving Ms. Kenney. The defendant also admitted to murdering Casonya Crawford and burning her

body. The defendant denied attempting to rape and robbing Ms. Crawford. The defendant also confessed to killing Ms. Newton and Ms. Rolison and burning their bodies.

## **2. THE INDICTMENTS**

### **a. B0901629**

On March 17, 2009, the defendant was indicted in case B0901629 and charged with the following offenses:

- Count 1: Attempt (Rape) with specifications R.C. 2923.02(A)
- Count 2: Aggravated Murder with specifications (CD) R.C. 2903.01(B)
- Count 3: Aggravated Robbery with specifications R.C. 2911.01(A)(3)
- Count 4: Aggravated Murder with specifications (CD) R.C. 2903.01(B)
- Count 5: Gross Abuse of a Corpse R.C. 2927.01(B)
- Count 6: Murder R.C. 2903.02(A)
- Count 7: Gross Abuse of a Corpse R.C. 2927.01(B)
- Count 8: Attempt (Rape) with specifications R.C. 2923.02(A)
- Count 9: Aggravated Murder with specifications (CD) R.C. 2903.01(B)
- Count 10: Aggravated Robbery with specifications R.C. 2911.01(A)(3)
- Count 11: Aggravated Murder with specifications (CD) R.C. 2903.01(B)
- Count 12: Gross Abuse of a Corpse R.C. 2927.01(B)

Counts 1 through 5 pertain to the victim, Casonya Crawford. Counts 6 and 7 pertain to the victim, Mary Jo Newton. Counts 8 through 12 pertain to the victim, Esme Kenney.

In addition to the death penalty specifications contained in counts 2, 4, 9, and 11, the indictment contained repeat violent offender specifications; sexually violent predator specifications; and sexual motivation specifications. The State of Ohio dismissed all of the non-death penalty specifications before the trial began.

### **b. B 0904028**

On June 22, 2009, the defendant was indicted in case B0904028 and charged with the following offenses:

Count 1: Murder R.C. 2903.02(A)

Count 2: Gross Abuse of a Corpse R.C. 2927.01(B)

Counts 1 and 2 apply to the victim, Kimya Rolison.

### 3. THE TRIAL PHASE

The indictments were consolidated for purposes of trial. However, after the jury was impaneled and before opening statements, the defendant pled guilty as charged to the murder and gross abuse of a corpse charges regarding the victim, Kimya Rolison in case B0904028.

At the same time, the defendant pled guilty to count 6, Murder and count 7, Gross Abuse of a Corpse in case B0901629. Both counts relate to the victim, Mary Jo Newton. Sentencing was deferred until after the trial.

Trial proceeded on the remaining counts in case B0901629 involving the two remaining victims, Casonya Crawford (counts 1-5) and Esme Kenney (counts 8-12). On March 12, 2010, the jury found the defendant guilty on all of the remaining counts, including all death penalty specifications.

### 4. MERGER OF THE AGGRAVATING CIRCUMSTANCES

For purposes of the sentencing phase, the Court merged the two "escape detection" specifications<sup>1</sup> with the "felony murders of attempted rape and aggravated robbery" specifications<sup>2</sup> contained in counts 9 and 11. The remaining specifications of "course of conduct"<sup>3</sup> and the "felony murders of attempted rape and aggravated robbery"<sup>4</sup> did not merge as they were not duplicative.<sup>5</sup> The jury was instructed to consider each aggravated murder count and accompanying specifications separately.

### 5. THE SENTENCING PHASE

The sentencing phase of the trial began on March 16, 2010.

During the sentencing phase, the defendant presented the expert testimony of Dr. Scott Bresler, psychologist and clinical director of the Division of Forensic Psychiatry at the University of Cincinnati School of Medicine. The defendant also made an unsworn statement.

<sup>1</sup> Specification 1 to Counts 9 and 11; R.C. 2929.04(A)(3).

<sup>2</sup> Specification 3 to Counts 9 and 11; R.C. 2929.04(A)(7).

<sup>3</sup> Specification 1 to Counts 2 and 4; Specification 2 to Counts 9 and 11; R.C. 2929.04(A)(5).

<sup>4</sup> Specification 2 to Counts 2 and 4; Specification 3 to Counts 9 and 11; R.C. 2929.04(A)(7).

<sup>5</sup> *State v. Frazier* (1991), 61 Ohio St. 3d 247, 256; *State v. Smith* (1997), 80 Ohio St.3d 89, 116; *State v. Palmer* (1997), 80 Ohio St.3d 543, 573-574; *State v. Robb* (2000), 88 Ohio St.3d 59, 85.

The defendant elected to proceed under R.C. 2929.04(B)(7), any other factors that weigh in favor of a sentence other than death. On March 17, 2010, the jury returned verdicts with death recommendations involving the aggravated murders of Casonya Crawford and Esme Kenney (counts 2, 4, 9 and 11).

**6. SENTENCING – COURT PROCEDURES WHEN DEATH RECOMMENDED**

The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.<sup>6</sup> If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to R.C. 2929.03(D)(3).<sup>7</sup>

Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court ..., if, after receiving ... the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, ... that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, it shall impose sentence of death on the offender.<sup>8</sup>

Absent such a finding by the court ..., the court ... shall impose one of the following sentences on the offender: ..., one of the following:<sup>9</sup> [l]ife imprisonment without parole;<sup>10</sup> ... life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;<sup>11</sup> ... life imprisonment with parole eligibility after serving thirty full years of imprisonment.<sup>12</sup>

**7. AGGRAVATING CIRCUMSTANCES (AFTER MERGER)**

**a. COUNT 2 – CASONYA CRAWFORD**

The aggravating circumstances applicable to Count 2 are:

- o The offense was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the defendant.<sup>13</sup>
- o The offense was committed while the defendant was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the offense of the May

<sup>6</sup> RC § 2929.03 (D)(1)

<sup>7</sup> RC § 2929.03 (D)(2)(e)

<sup>8</sup> RC § 2929.03 (D)(3)

<sup>9</sup> RC § 2929.03 (D)(3)(a)

<sup>10</sup> RC § 2929.03 (D)(3)(a)(i)

<sup>11</sup> RC § 2929.03 (D)(3)(a)(ii)

<sup>12</sup> RC § 2929.03 (D)(3)(a)(iii)

<sup>13</sup> Specification 1 to Count 2; R.C. 2929.04(A)(5).

4, 2006, rape of Casonya Crawford and the defendant was the principal offender in the commission of the aggravated murder.<sup>14</sup>

**b. COUNT 4 – CASONYA CRAWFORD**

The aggravating circumstances applicable to Count 4 are:

- The offense was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the defendant.<sup>15</sup>
- The offense was committed while the defendant was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the offense of the May 4, 2006, aggravated robbery of Casonya Crawford and the defendant was the principal offender in the commission of the aggravated murder.<sup>16</sup>

**c. COUNT 9 – ESME KENNEY**

The aggravating circumstances applicable to Count 9 are:

- The offense was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the defendant.<sup>17</sup>
- The offense was committed while the defendant was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the offense of rape of Esme Kenney and the defendant was the principal offender in the commission of the aggravated murder.<sup>18</sup>

**d. COUNT 11 – ESME KENNEY**

The aggravating circumstances applicable to Count 11 are:

- The offense was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the defendant.<sup>19</sup>
- The offense was committed while the defendant was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the offense of aggravated robbery of Esme Kenney and the defendant was the principal offender in the commission of the aggravated murder.<sup>20</sup>

<sup>14</sup> Specification 2 to Count 2; R.C. 2929.04(A)(7).

<sup>15</sup> Specification 1 to Count 4; R.C. 2929.04(A)(5).

<sup>16</sup> Specification 2 to Count 4; R.C. 2929.04(A)(7).

<sup>17</sup> Specification 2 to Count 9; R.C. 2929.04(A)(5).

<sup>18</sup> Specification 3 to Count 9; R.C. 2929.04(A)(7).

<sup>19</sup> Specification 2 to Count 11; R.C. 2929.04(A)(5).

<sup>20</sup> Specification 3 to Count 11; R.C. 2929.04(A)(7).

## 8. MITIGATING FACTORS

Mitigating factors are factors about an individual or an offense that weigh in favor of a decision that a life sentence rather than a death sentence is appropriate. Mitigating factors are factors that diminish the appropriateness of a death sentence. All of the mitigating factors presented must be considered. Mitigating factors include, but are not limited to, the nature and circumstances of the offense, the history, character and background of the defendant, and:

a. WHETHER THE VICTIM OF THE OFFENSE INDUCED OR FACILITATED THE OFFENSE -  
R.C. 2929.04(B)(1)

- The defendant did not request a jury instruction on the R.C. 2929.04(B)(1) mitigating factor or raise the issue in the sentencing phase. But during the trial phase, the defendant's statement to law enforcement was admitted. His statement included claims that Ms. Crawford threw the defendant's money back at him and that she kned him. The defendant also claimed that Ms. Kenney ran into him.

b. ANY OTHER FACTORS THAT WEIGH IN FAVOR OF A SENTENCE OTHER THAN DEATH --  
R.C. 2929.04(B)(7)

- PERSONALITY DISORDER During the sentencing phase, the defendant presented evidence that he has "an adjustment disorder with mixed emotional issues and conduct," and "he also suffers from ... an antisocial personality disorder." More specifically, the defendant presented evidence that he is a psychopath. Dr. Bresler also testified that the defendant has anger and rage directed at women. Dr. Bresler also talked about "Stockholm Syndrome" where an individual who has been abused by some antisocial individual begins to identify with and almost take on the persona of the life of that individual that perpetrates the abuse on them.
- REMORSE Dr. Bresler testified that "[a]fter the fact, [the defendant] will step back when he becomes a little calmer and try to justify why it is he did what he did. In other words, in his mind why it was okay to do it, so to speak. And he seems to have been able to do that almost with everyone of these people with the exception of one [Esme Kenney]"

Dr. Bresler also testified, "I think he tries to put together in his mind, you know, some kind of rationalization and I don't think it works for him, so oftentimes when he talks about her he'll cry." Later, referring to why the defendant went back and allegedly "talked to the bodies" of Ms. Crawford and Ms. Kenney, Dr. Bresler stated "I mean, he was pretty -- I mean, he says he was pretty high. He says -- I mean, he's conflicted about what he did, but, again, I don't know why."

- **ASSIST/COOPERATE WITH THE POLICE** The defendant confessed to murdering Ms. Crawford and Ms. Kenney. The defendant also confessed to murdering Ms. Newton and Ms. Rolison.
- **DEFENDANT TOOK RESPONSIBILITY FOR 2 NON-CAPITAL MURDERS** In addition to confessing to the two unsolved murders of Ms. Newton and Ms. Rolison, the defendant pled guilty to both murders.
- **ALCOHOL/DRUG ABUSE** Dr. Bresler indicated that the defendant engaged “in extensive substance abuse beginning in early teenage years.” Dr. Bresler opined that substance abuse complicates any issues the defendant may have. Dr. Bresler further stated that “[i]f there’s anger it could get rid of the road blocks that keep him from acting out on that anger, et cetera et cetera.” The defendant, during his confession, claimed he had consumed alcohol and/or consumed drugs prior to the Crawford and Kenney murders.
- **ABUSIVE CHILDHOOD** The defendant presented evidence, through the testimony of Dr. Bresler, that he had an abusive, violent and sadistic father. The defendant’s biological father, George Palmore, was alcohol dependent and extremely violent toward the defendant and his mother. In addition to physically abusing the defendant, the defendant was forced to watch his father beat and rape the defendant’s mother.
- **PROBABILITY OF NO RELEASE FROM PRISON** The defendant asked the jury to select the “life without parole” recommendation. The defendant also argued the jury should consider that the defendant was not going to be released from prison as a mitigating factor.
- **MERCY** The defendant, during his unsworn statement, took responsibility for his crimes and asked for mercy.
- **THE DEFENDANT WAS PRODUCTIVE WHILE IN PRISON ON ANOTHER MATTER** The defendant obtained a college degree while in prison. However, the State countered that while in prison, the defendant made several threats he would kill other inmates and prison staff. The defendant countered that there were only four reported incidents over approximately 17 years in prison.
- **THE DEFENDANT CANNOT CONTROL HIMSELF AND HIS ANGER** The defendant’s expert testified that the defendant, as a psychopath, “has poor behavioral controls and impulsivity.” Additionally, the defendant “can be extremely aggressive.” The defendant also made statements regarding his anger and rage.
- **THE DEFENDANT COULD BENEFIT SOCIETY** The defendant argued to the jury that he could be a case study for his personality disorders which might benefit society by learning how, in the future, to treat persons with similar disorders.

9. WEIGHING AGGRAVATING CIRCUMSTANCES AND MITIGATING FACTORS

No inference should be drawn from the order in which the mitigating factors and aggravating circumstances are discussed. The Court when weighing the aggravating circumstances against the mitigating factors considered the mitigating factors both individually and collectively against the aggravating circumstances that were proved beyond a reasonable doubt for each count separately against all of the mitigating factors raised by the defendant.

a. NO MITIGATING FACTORS APPEAR IN THE NATURE AND CIRCUMSTANCES OF THE OFFENSES

The nature and circumstances of the offenses are only considered to see if they provided any mitigating factors. Each offense is considered separately to determine whether any mitigating factors exist.

The defendant beat and strangled to death each of his two victims during a separate robbery and attempted rape of each victim. During the defendant's confession, he claimed Ms. Crawford threw his money he offered her back at him and she kneed him. The defendant also claimed Ms. Kenney ran into him.

Even if Ms. Crawford forcibly resisted her encounter with the defendant or Ms. Kenney accidentally ran into the defendant, as the defendant claims, those facts would not be mitigating. Ms. Kenney did not resist. Discounting the defendant's uncorroborated and self-serving claims about the victims' actions, the defendant admitted that Ms. Kenney did not deserve what he did to her.

Ms. Crawford allegedly threw the defendant's money back at him when he gave it to her just to "talk." However, such an insult from a 14 year old child deserves no weight in mitigation.<sup>21</sup> The defendant also claims she kneed him. Even if true and unprovoked, the facts have very little mitigating value.

Accordingly, the Court finds that no mitigating factors appear in the nature and circumstances of the offenses. The Court also finds that there is no mitigating value with regard to a potential R.C. 2929.04(B)(1) mitigating factor. The Court does not hold the absence of R.C. 2929.04(B)(1) mitigating factor against the defendant. Instead, the Court only considered the possibility of the existence of such a factor for the potential benefit of the defendant since it was discussed by him during the trial phase.<sup>22</sup>

<sup>21</sup> *State v. Sapp* (2004), 105 Ohio St.3d 104

<sup>22</sup> Consider *State v. Depew* (1988), 38 Ohio St.3d 275; *State v. Benner* (1988), 40 Ohio St. 3d 301.

b. ABUSIVE CHILDHOOD

The defendant's difficult childhood – an abusive father - is a mitigating factor.<sup>23</sup> However, he lived with his father only until he was 9 or 10.

Additionally, the Ohio Supreme Court has “seldom given decisive weight to” a defendant's unstable or troubled childhood.<sup>24</sup> Moreover, the defendant was in his late thirties when he killed Ms. Crawford and 40 years old when he killed Ms. Kenney. “In other words, he had reached ‘an age when \* \* \* maturity could have intervened,’ and the defendant ‘had clearly made life choices as an adult before committing [the] murder[s].’”<sup>25</sup>

Accordingly, the Court finds some mitigating value to the defendant's abusive childhood. However, the value is significantly minimized given the defendant's age when the offenses were committed.

c. ASSIST/COOPERATE WITH THE POLICE

“A defendant's confession and cooperation with law enforcement are mitigating factors.”<sup>26</sup> However, little weight in mitigation is assigned to the defendant's confession. The defendant initially lied to police, denying his own guilt and trying to blame someone named “Pedro.”<sup>27</sup> He did not confess until one of the investigating officers indicated he was being criminally charged and the defendant knew he was caught at the Kenney crime scene with Ms. Kenney's property.<sup>28</sup> The defendant had previously denied the earlier murders when there was no evidence against the defendant.

The defendant's confession to the additional murders deserves some mitigating value. But the value is diminished due to the fact that the defendant only confessed after he was caught for the Kenney murder.

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<sup>23</sup> *State v. Perez* (2009), 124 Ohio St.3d 122; See, e.g., *State v. White* (1999), 85 Ohio.St.3d 433, 456, 709 N.E.2d 140.

<sup>24</sup> *State v. Perez* (2009), 124 Ohio St.3d 122; *State v. Hale*, 119 Ohio.St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, ¶ 265.

<sup>25</sup> *State v. Perez* (2009), 124 Ohio St.3d 122; *State v. Campbell* (2002), 95 Ohio.St.3d 48, 53, 765 N.E.2d 334, quoting *State v. Murphy* (1992), 65 Ohio.St.3d 554, 588, 605 N.E.2d 884 (Moyer, C.J., dissenting).

<sup>26</sup> *State v. Perez* (2009), 124 Ohio St.3d 122; *State v. Bethel*, 110 Ohio.St.3d 416, 2006-Ohio-4853, 854 N.E.2d 150, ¶ 191.

<sup>27</sup> *State v. Perez* (2009), 124 Ohio St.3d 122; Cf *State v. Fox* (1994), 69 Ohio.St.3d 183, 195, 631 N.E.2d 124 (defendant confessed only after initially denying involvement; confession entitled to no weight); *State v. Hoffner*, 102 Ohio.St.3d 358, 2004-Ohio-3430, 811 N.E.2d 48, ¶ 119 (defendant confessed, but had previously misled police as to his involvement).

<sup>28</sup> *State v. Perez* (2009), 124 Ohio St.3d 122; Cf *State v. Fox* (1994), 69 Ohio.St.3d 183, 195, 631 N.E.2d 124 (defendant confessed only after initially denying involvement; confession entitled to no weight); *State v. Hoffner*, 102 Ohio.St.3d 358, 2004-Ohio-3430, 811 N.E.2d 48, ¶ 119 (defendant confessed, but had previously misled police as to his involvement).

Accordingly, the Court finds some mitigating value to the defendant's confession. On the other hand, his initial lying diminishes the weight of this factor. On balance, this factor is not impressive.

d. **REMORSE**

The record contains some evidence of remorse. In his confession, the defendant expressed some regret with regard to the Kenney murder. He said she did not deserve to die like that.

The sincerity and depth of the defendant's remorse is questionable. His tardy, half-hearted, and self-serving expressions of remorse are belied by his callous attitude just after the murder. When asked what he did after the Kenney murder, the defendant went to get some food because he was hungry. Also during his confession, the defendant seemed more concerned about himself. Any expression of remorse is further minimized by Dr. Bresler's testimony that, as a psychopath, the defendant lacks the ability to have remorse and is a pathological liar.

Remorse deserves very slight, if any, weight in this case.<sup>29</sup>

e. **PERSONALITY DISORDERS**

The defendant's expert testified that the defendant suffers from personality disorders. However, Dr. Bresler makes clear that any personality disorders that the defendant may have do not justify or excuse the defendant's behavior. Accordingly, the Court finds some mitigating value to the defendant's personality disorders.

f. **DEFENDANT TOOK RESPONSIBILITY FOR 2 NON-CAPITAL MURDERS**

Similar to the Court's finding regarding the defendant's confession, the Court gives some value for taking responsibility for the murders of Ms. Newton and Ms. Rolison. However, the value is diminished by the defendant's initial denials. The value is further diminished by the fact that his guilty pleas were more due to trial strategy and this was a "mitigation case."

g. **ALCOHOL/DRUG ABUSE**

Dr. Bresler indicated that the defendant engaged in substance abuse since his teenage years. The defendant claimed he used alcohol and/or drugs prior to the murders. Nevertheless, the Court gives little mitigating value to the defendant's substance abuse.

h. **PROBABILITY OF NO RELEASE FROM PRISON**

The Court gives very little mitigating value to the fact that the defendant probably won't be released from prison.

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<sup>29</sup> See *State v. Perez* (2009), 124 Ohio St.3d 122.

i. MERCY

The Court gives some mitigating value to the defendant's request for mercy.

j. THE DEFENDANT WAS PRODUCTIVE WHILE IN PRISON ON ANOTHER MATTER

The Court finds some value that the defendant obtained a college degree while in prison. However, the value is diminished by the fact that while in prison, the defendant made several threats he would kill other inmates and prison staff.

k. THE DEFENDANT CANNOT CONTROL HIMSELF AND HIS ANGER

The Court finds little or no value that the defendant has anger, impulsivity, and control issues. The defendant's expert testified that the defendant behavior issues are not an excuse or justification for the crimes he committed.

l. THE DEFENDANT COULD BENEFIT SOCIETY

The Court finds little, if any, value that the defendant could be a case study for his personality disorders which might benefit society by learning how to treat, in the future, persons with similar disorders.

iii. WEIGHING THE AGGRAVATING CIRCUMSTANCES FOR EACH COUNT AGAINST THE MITIGATING FACTORS

Weighing the aggravating circumstances applicable to each count of the aggravated murders separately against these mitigating factors, the Court finds and concludes that the aggravating circumstances as to each count outweighs the mitigating factors by proof beyond a reasonable doubt.

Specifically, the Court finds that each count included a "course of conduct involving the purposeful killing of or attempt to kill two or more persons by the defendant" specification. The R.C. 2929.04(A) (5) specification constitutes a grave aggravating circumstance that deserves great weight.<sup>30</sup>

Additionally, each count contains a "felony murder" specification that involves either an attempt to commit rape (counts 2 and 9) or aggravated robbery (counts 4 and 11). Each of the "felony murder" specifications deserves great weight.

As for all four aggravated murder counts, each of the "course of conduct" specifications contained in each count alone is a sufficient aggravating circumstance to outweigh the mitigating factors. The same is true for each of the "felony murder" specifications contained in each count.

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<sup>30</sup> See *State v. Sapp* (2004), 105 Ohio St.3d 104; *State v. Trimble* (2009), 122 Ohio St.3d 297; *State v. Vrabel*, 99 Ohio St.3d 184, 2003-Ohio-3193, 790 N.E.2d 303, ¶ 80-81; *State v. Braden*, 98 Ohio St.3d 354, 2003-Ohio-1325, 785 N.E.2d 439, ¶ 162-163; *State v. Clemons*, 82 Ohio St.3d at 456-457, 696 N.E.2d 1009.

When weighing the aggravated circumstances for each count against the mitigating factors, the aggravating circumstances not only outweigh the mitigating factors by proof beyond a reasonable doubt, the mitigating factors pale by comparison.

*i. Count 2 – Casonya Crawford*

As to Count 2, the two aggravating circumstances attached to Ms. Crawford's murder constitute grave circumstances. The defendant's murder of Ms. Crawford included a course of conduct involving the murder of two or more people. The defendant's murder of Ms. Crawford after attempting to rape her is a particularly egregious circumstance. In contrast, the Court finds that as to each of these aggravating circumstances, the defendant's mitigating evidence has little significance.

The aggravating circumstances applicable to Count 2 outweigh the mitigating factors by proof beyond a reasonable doubt. Therefore, the Court finds, beyond a reasonable doubt, that the death sentence as to count 2 is appropriate.

*ii. Count 4 – Casonya Crawford*

As to Count 4, the two aggravating circumstances attached to Ms. Crawford's murder constitute grave circumstances. The defendant's murder of Ms. Crawford included a course of conduct involving the murder of two or more people. The defendant's murder of Ms. Crawford after robbing her is an extremely serious circumstance. In contrast, the Court finds that as to each of these aggravating circumstances, the defendant's mitigating evidence has little significance.

The aggravating circumstances applicable to Count 4 outweigh the mitigating factors by proof beyond a reasonable doubt. Therefore, the Court finds, beyond a reasonable doubt, that the death sentence as to count 4 is appropriate.

*iii. Count 9 – Esme Kenney*

As to Count 9, the two aggravating circumstances attached to Ms. Kenney's murder constitute grave circumstances. The defendant's murder of Ms. Kenney included a course of conduct involving the murder of two or more people. The defendant's murder of Ms. Kenney after attempting to rape her is a particularly egregious circumstance. In contrast, the Court finds that as to each of these aggravating circumstances, the defendant's mitigating evidence has little significance.

The aggravating circumstances applicable to Count 9 outweigh the mitigating factors by proof beyond a reasonable doubt. Therefore, the Court finds, beyond a reasonable doubt, that the death sentence as to count 9 is appropriate.

*iv. Count 11 – Esme Kenney*

As to Count 11, the two aggravating circumstances attached to Ms. Kenney's murder constitute grave circumstances. The defendant's murder of Ms. Kenney included a course of conduct involving the murder of two or more people. The defendant's murder of Ms. Kenney after robbing her is an extremely serious circumstance. In contrast, the Court finds that as to each of these aggravating circumstances, the defendant's mitigating evidence has little significance.

The aggravating circumstances applicable to Count 11 outweigh the mitigating factors by proof beyond a reasonable doubt. Therefore, the Court finds, beyond a reasonable doubt, that the death sentence as to count 11 is appropriate.

**10. CONCLUSION AND SENTENCE**

After consideration of all of the relevant evidence, the defendant's statement, arguments of counsel, legal authority and for the reasons and findings set forth in this Sentencing Opinion, the Court finds, by proof beyond a reasonable doubt that the applicable aggravating circumstances the defendant was found guilty of committing outweigh the mitigating factors. Therefore, the Court concurs with the jury's recommendation and orders sentence as follows:

*i. Count 2 – Casonya Crawford*

As to Count 2, for the offense of Aggravated Murder, a special felony, in violation of R.C. 2903.01(B) with specifications 1 and 2, in violation of R.C. 2929.04(A)(5) and R.C. 2929.04(A)(7), the offense is merged for purposes of sentencing in light of the sentence imposed in Count 4. Otherwise, the Court would impose a sentence of death.

*ii. Count 4 – Casonya Crawford*

As to Count 4, for the offense of Aggravated Murder, a special felony, in violation of R.C. 2903.01(B) with specifications 1 and 2, in violation of R.C. 2929.04(A)(5) and R.C. 2929.04(A)(7), the Court hereby sentences the defendant, Anthony Kirkland, to death.

*iii. Count 9 – Esme Kenney*

As to Count 9, for the offense of Aggravated Murder, a special felony, in violation of R.C. 2903.01(B) with specifications 2 and 3, in violation of R.C. 2929.04(A)(5) and R.C. 2929.04(A)(7), the Court hereby sentences the defendant, Anthony Kirkland, to death.

*iv. Count 11 – Esme Kenney*

As to Count 11, for the offense of Aggravated Murder, a special felony, in violation of R.C. 2903.01(B) with specifications 2 and 3, in violation of R.C. 2929.04(A)(5) and R.C. 2929.04(A)(7), the offense is merged for purposes of sentencing in light of the sentence imposed in Count 9. Otherwise, the Court would impose a sentence of death.

All counts are to be served consecutively to each other and all other counts contained in this case and B0904028.

*i. Sentence Execution Date*

Pursuant to R.C. 2947.08, the date of execution as to Counts 4 and 9 shall be Thursday, September 30, 2010.

IT IS SO ORDERED.

  
3.31.10  
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Judge Charles J. Kubicki, Jr.