

In The Supreme Court Of Ohio

State Of Ohio, :

Appellee, :

-Vs- :

Calvin McKelton, :

Appellant. :

Case No.:

10-2198

This Is A Capital Case.

On Appeal From The Court Of
Common Pleas Of Butler County
Case No. CR 2010-02-0189

Appellant McKelton's Notice Of Appeal

Office of the Ohio Public Defender

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FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

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Appellee, :
-Vs- : Case No.:
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Appellant. : **This Is A Capital Case.**

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Appellant McKelton's Notice Of Appeal

Appellant Calvin McKelton hereby gives notice that he is pursuing his appeal as of right to obtain relief from his conviction of aggravated murder, and his death sentence, imposed on November 8, 2010 in the Butler County Court of Common Pleas. See Entry and Sentencing Opinion attached. This is a capital case, and the date of this offense was July 26, 2008. See Sup. Ct. Prac. R. XIX §1(A).

Respectfully submitted,

Office of the Ohio Public Defender

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Certificate Of Service

I hereby certify that a true copy of the foregoing NOTICE OF APPEAL was forwarded by regular U.S. Mail to Robin Piper, Butler County Prosecutor, 315 High Street, 11th Floor, Hamilton, Ohio 45011, this 17th day of December, 2010.



Jennifer A. Prillo - 0073744
Assistant State Public Defender

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COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

JOHN CARPENTER
BUTLER COUNTY
CLERK OF COURTS

STATE OF OHIO	:	CASE NO. CR2010 02 0189
Plaintiff	:	SAGE, J.
vs.	:	
CALVIN S. MCKELTON	:	OPINION
Defendant.	:	

On February 12, 2010, the defendant, Calvin S. McKelton, was indicted with 11 separate crimes by the Butler County Grand Jury. Count 10 of that indictment charged the defendant with the aggravated murder of Germaine Lamar Evans, Sr., with two specifications, each of which carried the possibility of the death penalty. Count 3 of the eleven-count indictment also charged the defendant with the murder of Fairfield Attorney Margaret Allen.

Specification 1 to Count 10 charged that the offense of aggravated murder was committed for the purposes of escaping the detection, apprehension, trial or punishment for another offense, specifically the murder of Margaret Allen. O.R.C. 2929.04(A)(3).

Specification 2 to Count 10 of the indictment charged that Germaine Lamar Evans was a witness to the murder of Margaret Allen and was purposely killed to prevent his testimony in any criminal proceeding, and that the aggravated murder of Germaine Lamar Evans was not committed during the commission of

Judge Michael J. Sage
Common Pleas Court
Butler County, Ohio

the offense to which the victim was a witness. O.R.C. 2929.04(A)(8).

The trial commenced on October 4, 2010. The jury returned a guilty verdict as charged to Count 10, the aggravated murder of Germaine Lamar Evans. The jury also returned a guilty verdict as to Specification 1 and 2 to the aggravated murder. The defendant was also convicted in Count 3 for the murder of Margaret Allen.

After the guilt trial, the Court held a hearing at which time the defendant made a motion to merge the two specifications into a single specification. The prosecutor agreed to only proceed on Specification 2 which was that Germaine Lamar Evans was a witness to the murder of Margaret Allen and was purposely killed to prevent his testimony in that proceeding.

The defendant was also advised at that time of his right to have a presentence report prepared and to have a mental health examination prepared for purposes of mitigation. The defendant, after consultation with his attorneys, declined to have either matter prepared and submitted.

On October 21, 2010, a sentencing hearing was held in which the defendant presented testimony of three witnesses and his own unsworn statement. After closing arguments and instructions of law, the jury commenced its deliberation. The following day, October 22, 2010, the jury unanimously returned a recommendation of the death penalty for defendant's conviction in Count 10 of the indictment.

On November 2, 2010, a sentencing hearing was conducted by this

Court. Based upon relevant evidence presented, the relevant testimony presented at trial and other testimony, including mitigation testimony, the statement of the offender and the arguments of counsel, the Court found by proof beyond a reasonable doubt that the aggravating circumstance in Count 10 outweighed any mitigating factors, and imposed the sentence of death. The Court also imposed a consecutive 15 year to life sentence for the murder of Margaret Allen and further imposed sentences based upon the finding of the jury in Counts 1, 2, 3, 4, 5, 7, 8 and 9 of the indictment.

O.R.C. 2929.03(F) requires the Court, if it imposes a sentence of death, to state in a separate opinion its findings as to the relevance of any mitigating factors set forth in O.R.C. 2929.04(B), the existence of any other mitigating factors, the aggravating circumstance to which the defendant was found guilty of committing and the reasons why the aggravating circumstance the offender was found guilty of was sufficient to outweigh the mitigating factors. The purpose of this opinion is to comply with that requirement.

The evidence presented at trial was that on or about July 26, 2008, the defendant, Calvin S. McKelton and Germaine Lamar Evans, were present in the home of Attorney Margaret "Missy" Allen located in Fairfield, Ohio. The evidence was that the defendant and Missy Allen were engaged in a romantic relationship. Sometime during that day, Mr. McKelton and Ms. Allen argued and the defendant strangled the victim causing her death while Germaine Evans was present in the home. Mr. McKelton and Mr. Evans then drove her body to Schmidt

Field in Cincinnati, Ohio where the body was dumped.

The Cincinnati, Ohio Police Department opened a homicide investigation into Ms. Allen's death. During the course of the investigation, the Cincinnati homicide detectives developed Mr. McKelton as a suspect and became aware that Germaine Lamar Evans may have been a witness to the homicide and may have participated in the dumping of Ms. Allen's body.

Approximately three days before the Evans' murder, the Cincinnati homicide detectives attempted to contact Mr. Evans by calling his sister Crystal Evans to obtain a DNA sample from him. Within three days of that phone call being made, Mr. Evans was murdered. There was extensive testimony by many witnesses, some voluntary and others involuntary, that Mr. McKelton murdered Germaine Lamar Evans to prevent him from being a witness against McKelton in the death of Margaret Allen.

The evidence at trial was that Mr. Evans' body was found in a park area along stairs in a remote, unlit part of the park. Evans was murdered by a shot to the back of his head by a 40mm firearm. The jury convicted Mr. McKelton of both the murder of Margaret Allen and the aggravated murder with specifications of Germaine Lamar Evans.

Prior to the sentencing hearing, the defendant through his attorneys, indicated to the Court that it would not present any of the mitigating factors listed in O.R.C. 2929.04(B). The attorneys indicated McKelton would only present mitigating factors under O.R.C. 2929.04(B)(7) which includes "any other factors

that are relevant to the issue of whether the defendant should be sentenced to death". At the sentencing hearing the defense presented the testimony of three witnesses and the unsworn statement of the defendant.

The first witness was Kayla McKelton, who is the 13-year-old daughter of the defendant. The second witness was Audrey McKelton, who is the mother of the defendant. The third mitigating witness was Crystal Evans. Ms Evans, whom the defendant has been in a romantic relationship with, is also the sister of the victim as well as the mother of one of the defendant's children. The defendant then presented an unsworn statement to the jury prior to the closing arguments during the sentencing trial.

There are mitigating factors which the Court finds exist. The defendant was raised in his early years by a single mother under very humble and chaotic circumstances. McKelton's father abandoned the children and seldom, if ever, provided any type of financial or emotional support to Mr. McKelton and his siblings. By the time Mr. McKelton was eight years old, his mother became heavily involved with crack cocaine. The mother suffered a long period of addiction. During defendant's youth and early adulthood his mother was convicted of a number of criminal offenses including multiple charges of solicitation and a felonious assault charge for which she served prison time. Mr. McKelton indicated that from age 14 years he was self-sufficient and provided support for himself and his family by engaging in trafficking in drugs and robbing other drug dealers.

Mr. McKelton's older brother, Montez, was murdered while Mr.

McKelton was incarcerated. During his periods of incarceration with both the Ohio Department of Youth Services and the Ohio Department of Corrections, the defendant obtained his GED. Mr. McKelton testified that while he was incarcerated he adjusted well to life within the prisons. Mr. McKelton indicated that upon his release from the penal institutions, he would return to the housing projects where he grew up and would live with various family members, including his grandmother and his aunts.

Mr. McKelton is the father of three children. His daughter, Kayla, described him as a 'great father.' During Mr. McKelton's unsworn statement, he indicated that it was his strongest desire to become a role model for his children and other family members. Mr. McKelton indicated that he had long provided for his family and had supported them through his criminal activities. Finally, Mr. McKelton indicated that he himself had been a victim of violent crime. He testified that he was shot once as a juvenile and several more times as an adult.

During both the trial and Mr. McKelton's statement to the Court at sentencing, Mr. McKelton adamantly maintained his innocence.

After consideration of the relevant evidence raised at trial, the testimony relevant to Specification 2 of Count 10 of the indictment, other evidence including the mitigating evidence, arguments of counsel and the unsworn statement of Mr. McKelton and his statement at sentencing, the Court believes by proof beyond a reasonable doubt that the aggravating circumstance the defendant was found guilty of committing outweigh any mitigating factors presented.

The Court certainly recognizes as mitigating evidence the humble and chaotic upbringing of Mr. McKelton. His father abandoned the family early on and his mother engaged in a long history of drug abuse and prostitution. The evidence was that Mr. McKelton from age 14 years was essentially on his own and supported himself, and those around him, by drug trafficking and robbery. Mr. McKelton was able to obtain a GED and adjusted well within the confines of the Ohio Department of Youth Services and the Ohio Department of Corrections. Further, based upon the testimony of his daughter, Mr. McKelton was a good father to not only her but her siblings. He made sure that these children and their mothers were supported, though that support came as a result of his criminal activities.

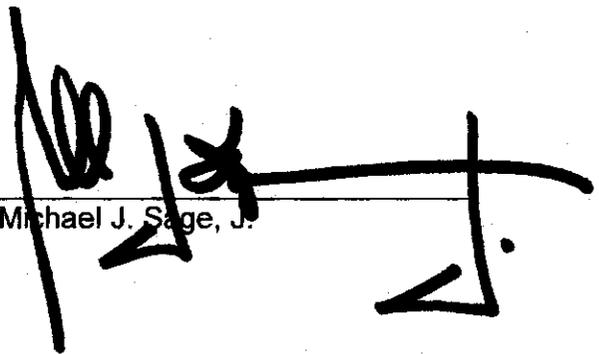
When the Court weighs these mitigating factors against the murder of Germaine Lamar Evans, the Court believes that though they are entitled to some weight, the aggravating circumstance of Mr. Evans' murder outweigh these mitigating factors. The murder of Germaine Lamar Evans was a calculated execution for the purposes of preventing him from testifying against Mr. McKelton concerning the murder of Fairfield Attorney Margaret Allen. The evidence at trial was that Mr. McKelton engaged in extensive prior planning in order to murder Mr. Evans and provide himself with an alibi.

The Court believes that the calculated execution of Germaine Lamar Evans for purposes of preventing him from testifying against Mr. McKelton for the murder of Margaret Allen outweigh any mitigating factors that were presented by

the defense.

Therefore, based upon the evidence and the law, the Court believes that the sentence of death was appropriate and the Court imposed a sentence of death as to Count 10, Specification 2 of the indictment.

So ordered,



Michael J. Sage, J.

Judge Michael J. Sage
Common Pleas Court
Butler County, Ohio