

ORIGINAL

IN THE SUPREME COURT OF OHIO

11-0122

STATE OF OHIO,	:	Case No. _____
	:	
Plaintiff-Appellee,	:	On Appeal from the Pike
	:	County Court of Appeals
v.	:	Fourth Appellate District
	:	
JEFFREY HARDIN,	:	
	:	Court of Appeals
Defendant-Appellant.	:	Case No. 10CA803

MEMORANDUM IN SUPPORT OF JURISDICTION OF JEFFREY HARDIN

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EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

In 2004, the United States Supreme Court re-established vital Confrontation Clause rights that had been substantially impaired by the “indicia of reliability” approach formerly sanctioned by *Ohio v. Roberts* (1980), 448 U.S. 56. In *Crawford v. Washington* (2004), 541 U.S. 36, 54, 68, the Court held that the Sixth Amendment prohibits the prosecution from introducing testimonial hearsay against a criminal defendant, unless the defendant has an opportunity to cross-examine the declarant, or unless the declarant is unavailable and the defendant had a prior opportunity for cross-examination. Then, in *Melendez-Diaz v. Massachusetts*, the Court clarified that forensic laboratory reports are testimonial evidence, and held that the prosecution violates a defendant’s Confrontation Clause right when it introduces a nontestifying analyst’s forensic laboratory report through the testimony of a third party. *Melendez-Diaz v. Massachusetts*, 129 S.Ct. at 2532, 2542.

In *State v. Craig*, 110 Ohio St.3d 306, 2006-Ohio-4571, this Court considered a Confrontation Clause challenge with facts similar to the present case. The report of an autopsy that was performed by an individual who did not testify at trial was introduced, and a medical examiner who did not conduct the autopsy testified as to the victim’s cause of death. This case should be accepted and held for *State v. Craig*, which offers the Court the opportunity to provide guidance to the lower courts by establishing

that *Crawford* and *Melendez-Diaz* mean what they say: the prosecution cannot introduce testimonial statements at trial through hearsay witnesses.¹

STATEMENT OF THE CASE AND FACTS

Jeffrey Hardin was convicted of felony murder and child endangering after the death of his son, Jeffrey Hardin, Jr. ("Junior") in May 2009. After the child's death, the body was taken to the Franklin County Coroner's Office for an autopsy. The autopsy was conducted by Dr. Steven S. Sohn, a deputy coroner, but, by the time of trial, Dr. Sohn no longer worked at the Franklin County Coroner's Office. His supervisor, Dr. Jan Gorniak, testified as to her opinion of the cause of death.

Dr. Gorniak testified that Junior's death was caused by a subdural hematoma due to non-accidental head trauma. She also testified that the death was a homicide and concluded that the injuries were caused by either blunt trauma or a shaking mechanism.

Dr. Phillip Scribano is the medical director of the Center for Child and Family Advocacy at Nationwide Children's Hospital. Dr. Scribano testified that the particular

¹ In *State of Ohio v. Daniel Estrada-Lopez*, 2010-0659, this Court accepted jurisdiction on the following proposition of law: "The Confrontation Clause prohibits the state from introducing testimonial statements of a nontestifying forensic analyst through the in-court testimony of a third party who did not perform or observe the laboratory analysis on which the statements are based." The case has been stayed pending the outcome of *Bullcoming v. New Mexico* and is factually and legally similar to *State v. Hardin*. In lieu of accepting this case and holding it for *State v. Craig*, this Court should accept and hold for *State v. Estrada-Lopez*.

injuries Junior suffered had been caused by significant force. Hardin's counsel objected to the admission of both Dr. Gorniak's and Dr. Scribano's opinions.

The Fourth District Court of Appeals upheld Mr. Hardin's convictions, ruling that coroner's reports are nontestimonial business records, and the testimony of individuals who relied on those records did not violate Mr. Hardin's right to confront the witnesses against him under the Sixth Amendment to the United States Constitution.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

The Confrontation Clause prohibits the state from introducing testimonial statements of a nontestifying coroner through the in-court testimony of a third party who did not perform or observe the autopsy on which the statements are based.

On September 27, 2010, this Court ordered supplemental briefing in *Craig* on two issues involving the application of the United States Supreme Court's decision in *Melendez-Diaz v. Massachusetts* (2009), 129 S.Ct. 2527 and its effect on Mr. Craig's Sixth Amendment Right to confrontation:

- 1) Whether the introduction of the autopsy report completed on Roseanna Davenport violated Donald Craig's Sixth Amendment right to confrontation under *Melendez-Diaz v. Massachusetts* (2009), 129 S.Ct. 2527.
- 2) Whether Dr. Kohler, a medical examiner who did not conduct the autopsy of Roseanna Davenport, properly testified as to Davenport's cause of death in view of *Melendez-Diaz v. Massachusetts*.

On September 28, 2010, the United States Supreme Court agreed to again address the issue of the right to confrontation. Specifically, it accepted certiorari in *Bullcoming v. New Mexico* (09-10876) on the following issue:

Whether the Confrontation Clause permits the prosecution to introduce testimonial statements of a nontestifying forensic analyst through the in-court testimony of a supervisor or other person who did not perform or observe the laboratory analysis described in the statements.

This Court granted Mr. Craig a stay in the briefing given the issue presented in *Bullcoming. State v. Craig*, 2006-1806, October 21, 2010 Entry.

In *State v. Hardin*, like in *Craig*, the report of an autopsy that was performed by an individual who did not testify at trial was introduced, and a medical examiner who did not conduct the autopsy testified as to the victim's cause of death.

The Fourth District Court of Appeals did not distinguish this case from *State v. Craig*. Instead, it followed this Court's previous holding in *Craig*, that the coroner's report was not prepared for the purposes of litigation and was therefore nontestimonial. *State v. Hardin*, Pike App. No. 10CA803, ¶ 20. It also determined that *Melendez-Diaz* did not abrogate the *Craig* holding. However, the Court of Appeals did not acknowledge that this Court has since ordered additional briefing in *Craig* on that very issue.

Since *Crawford*, two courts of last resort have made holdings suggesting that autopsy reports fall within the coverage of the Confrontation Clause. In *City of Las Vegas v. Walsh* (2005), 121 Nev. 899, 124 P.3d 203, the Nevada Supreme Court held that an affidavit by a registered nurse as to the manner in which she drew blood from the accused, in a prosecution for driving under the influence of alcohol, was testimonial.

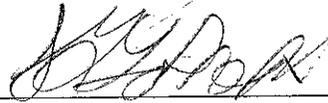
"Although [such documents] may document standard procedures," the Court said, "they were made for use at a later trial or legal proceeding. Thus their admission, in lieu of live testimony, would violate the Confrontation Clause." *Id.* at 208. Similarly, in *State v. Caulfield* (Minn. 2006), 722 N.W.2d 304, the court held that a state laboratory analyst's report, confirming that a tested substance was cocaine, was testimonial, and that admitting it violated the Confrontation Clause. The report was "clearly prepared for litigation," and the court rejected the argument that the report should not be considered testimonial because "state crime lab analysts play a non-adversarial role and are removed from the prosecutorial process." *Id.* at 309. The affidavit in *Walsh* was a ministerial, boilerplate document; the report in *Caulfield* recorded the results of a simple, routine test. Nevertheless, according to those courts, these statements were testimonial. An autopsy report in a homicide case - in which a coroner sets forth detailed observations of the condition of the victim's body - drawing on his expertise and stating or leading to conclusions on such crucial matters as the cause of death - is even more clearly so. The hearsay testimony at Mr. Hardin's trial and the autopsy report on which it relied denied him a fair trial and due process of law in accordance with the United States and Ohio Constitution.

CONCLUSION

This case involves a matter of public and great general interest and a substantial constitutional question. Mr. Hardin requests that this Court accept jurisdiction and hold its decision in anticipation of this Court's decision in *State v. Craig*, 2006-1806.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC
DEFENDER



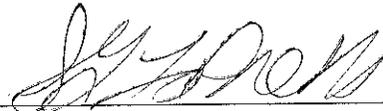
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JEFFREY HARDIN

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Jeffrey Hardin was sent by regular U.S. mail, postage prepaid to the office of Robert Junk, Pike County Prosecuting Attorney, 100 East Second Street, 1st Floor, Waverly, Ohio 45690, on this 21st day of January, 2011.



SARAH G. LoPRESTI #0083928
Assistant State Public Defender

COUNSEL FOR APPELLANT,
JEFFREY HARDIN

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. _____
	:	
Plaintiff-Appellee,	:	On Appeal from the Pike
	:	County Court of Appeals
v.	:	Fourth Appellate District
	:	
JEFFREY HARDIN,	:	
	:	Court of Appeals
Defendant-Appellant.	:	Case No. 10CA803

APPENDIX TO
MEMORANDUM IN SUPPORT OF JURISDICTION
OF JEFFREY HARDIN

{12} Hardin next contends that the admission of the coroner's opinion and the opinion of another medical doctor, Dr. Scribano, violated the Ohio Rules of Evidence. Because we find that the underlying coroner's report was admissible as a self-authenticated public record, we disagree. And we further find that any error in the admission of the notes and records relied on by Dr. Scribano was harmless. Accordingly, we affirm the judgment of the trial court.

I.

{13} The events in this case concern the death of Jeffrey Hardin Junior ("Junior"). Junior was the son of Sasha Starkey and Hardin. On May 11, 2009, Starkey called 911 because Junior had stopped breathing.

{14} An emergency response was dispatched, consisting of both police and paramedics. By the time the paramedics arrived, Junior was pale, cool, and had no pulse. The paramedics attempted to resuscitate Junior while they transported him to the Pike Community Hospital. All attempts to resuscitate Junior were initially unsuccessful. Eventually, the emergency room personnel were able to reestablish Junior's heartbeat. Junior was then transferred to Nationwide Children's Hospital in Columbus. The doctors reestablished a pulse but were unable to reestablish Junior's respiration. And eventually, doctors at Nationwide Children's Hospital had little choice but to terminate Junior's life support.

{15} Along with paramedics, Corporal Rick Jenkins of the Piketon Police Department responded to the 911 call. Jenkins testified that, when he arrived, Hardin was extremely distraught. Hardin admitted that he tried to get the baby to sleep by

placing the child on a sofa and pressing up and down on the cushions causing the baby to gently shake.

{16} Jenkins also took a statement from Hardin, which stated, "I, Jeff Hardin, was having trouble with my son of 5 months. I had shake ... I had shuck [sic] him a couple of times. After that he started crying and fell asleep. He quit breathing." Hardin would later make a similar statement to a criminal investigator of the Pike County Prosecutor's Office. At trial, Hardin contended that he meant shake in a manner similar to that described in the preceding paragraph.

{17} After the child's death, the body was eventually taken to the Franklin County Coroner's Office for an autopsy. The autopsy was conducted by Dr. Steven S. Sohn, a deputy coroner, but, by the time of trial, Dr. Sohn no longer worked at the Franklin County Coroner's Office. Therefore, his supervisor, Dr. Jan Gorniak, testified as to her opinion of the cause of death. Dr. Gorniak testified that Junior's death was caused by a subdural hematoma due to non-accidental head trauma. Dr. Gorniak also testified that the death was a homicide and concluded that the injuries were caused by either blunt trauma or a shaking mechanism.

{18} Dr. Phillip Scribano is the medical director of the Center for Child and Family Advocacy at Nationwide Children's Hospital. Dr. Scribano testified that the particular injuries Junior suffered could not have been caused through the manipulation of sofa cushions as Hardin described. Rather, Dr. Scribano testified that the injuries could have only been caused by significantly more force. Hardin's counsel objected to the admission of both Dr. Gorniak's and Dr. Scribano's opinions.

{¶9} After a bench trial, the trial court found Hardin guilty of the offenses of felony murder, in violation of R.C. 2903.02(B), and endangering children, in violation of R.C. 2919.22(B)(1). The trial court sentenced Hardin to fifteen years to life on the felony murder conviction as well as six years on the endangering children conviction, sentences to be served concurrently.

{¶10} Hardin appeals and asserts the following two assignments of error: I. "When the court admitted the reports of multiple attending physicians and medical technicians without their testimony, Mr. Hardin's right to confront his accusers was violated." And, II. "The trial court erred by allowing expert testimony when the experts had neither directly perceived the facts leading to their opinions nor was the information underlying their opinions otherwise admissible."

II.

{¶11} Hardin first claims that the admission of the autopsy report violated his right "to be confronted with the witnesses against him" under the Sixth Amendment to the United States Constitution. The parties largely agree on the underlying facts of the argument. At trial, Dr. Gorniak, the Franklin County Coroner, testified as to her opinion as to what could and could not have caused the death of Junior. Dr. Gorniak did not perform the autopsy of Junior. Dr. Sohn instead performed the autopsy and reached a conclusion regarding the cause of death. Dr. Gorniak testified that she reached her conclusions independently of Dr. Sohn, but had to rely on the facts underlying Dr. Sohn's autopsy report. Dr. Boesel, a toxicologist, also attached a toxicology report to the autopsy report. Dr. Gorniak testified that, while Dr. Boesel's report was important, she could reach her conclusions independently of that report.

{¶12} Because Hardin's right to confront the witnesses against him involves a constitutional issue, our review is de novo. See, e.g., *Ohio Univ. Bd. of Trustees v. Smith*, 132 Ohio App.3d 211, 223.

{¶13} The United States Supreme Court has recently altered the law with respect to the Confrontation Clause, starting with *Crawford v. Washington* (2004), 541 U.S. 36. The *Crawford* Court held that statements elicited through police interrogation were within the "core class" of testimonial evidence, and "[w]here testimonial evidence is at issue * * * the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." *Id.* at 51-52, 68.

{¶14} In *Crawford*, the Supreme Court declined to offer a comprehensive definition of what statements were or were not testimonial. *Id.* at 68. Unsurprisingly, the question of whether a particular statement was a testimonial statement became a much litigated issue. Subsequently, the Supreme Court considered the question of testimonial statements again in *Davis v. Washington* (2006), 547 U.S. 813.

{¶15} *Davis* actually consisted of two separate cases. In the first, the relevant statements were made to a 911 emergency operator. *Id.* at 817-18. In the second, the police responded to a reported domestic disturbance. *Id.* at 819. And, in the second case, the relevant statements were given after the wife had been separately questioned on the scene by the police officers. *Id.* at 819-20.

{¶16} The Supreme Court concluded that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate

that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Id.* at 822. Accordingly, the Supreme Court found that the statements given to the 911 operator were not testimonial, while the statements elicited during the police interrogation were testimonial. *Id.* at 828-29, 830.

{¶17} After *Crawford*, the Supreme Court of Ohio considered a confrontation clause challenge with remarkably similar facts to the present case. See *State v. Craig*, 110 Ohio St.3d 306, 2006-Ohio-4571, at ¶188. The Supreme Court of Ohio held that a coroner's report was admissible notwithstanding *Crawford* because it was a nontestimonial business record. *Id.*

{¶18} The United States Supreme Court again revisited the question of testimonial hearsay in *Melendez-Diaz v. Massachusetts* (2009), --- U.S. ---, 129 S.Ct. 2527. In that case, the question was whether the admission of "certificates" for the purpose of establishing whether a particular substance consisted of cocaine violated the defendant's confrontation clause rights. *Id.* at 2531. The Supreme Court answered that question in the affirmative in a narrowly divided opinion. See *id.* at 2532.

{¶19} Among other arguments, the *Melendez-Diaz* Court rejected the state's argument that the certificates were business records. The Court stated: "Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because--*having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial--they are not testimonial.* Whether or not they qualify as business or official records, the analysts' statements here--prepared specifically for use at

petitioner's trial--were testimony against petitioner, and the analysts were subject to confrontation under the Sixth Amendment." *Melendez-Diaz* at 2539-40 (emphasis added). The *Melendez-Diaz* Court specifically noted that the reason that the business record exception did not serve to render the certificates nontestimonial was because those certificates had been prepared expressly for trial. *Id.* at 2538. The implication is that if a document was prepared for an entity's internal needs, then that document is still nontestimonial. Therefore, notwithstanding the rejection of the majority in *Melendez-Diaz* of the business records justification, the coroner's report in this case may still be admissible without infringing on Hardin's constitutional rights so long as it was not prepared for the purpose of litigation.

{¶20} After consideration, Hardin provides no sound basis to distinguish this case from *Craig*, and we can discern none from the record. And the *Craig* Court, after consideration, determined that the coroner's report in that case was not prepared for the purposes of litigation and so was nontestimonial. See *Craig* at ¶82-88. A close reading of *Melendez-Diaz* demonstrates that the basis of *Craig*'s ruling remains good law under current United States Supreme Court precedent, and we are bound to apply *Craig*.

{¶21} Accordingly, we overrule Hardin's first assignment of error.

III.

{¶22} Hardin next contends that the admissions of Dr. Gorniak's and Dr. Scribano's opinions were contrary to the Ohio Rules of Evidence.

{¶23} "The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage* (1987), 31 Ohio St.3d 173, paragraph two of the syllabus. "An abuse of discretion involves more than an error of judgment or law; it

implies an attitude on the part of the trial court that is unreasonable, arbitrary, or unconscionable.” *State v. Voycik*, Washington App. Nos. 08CA33 & 08CA34, 2009-Ohio-3669, at ¶13, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. “In applying the abuse of discretion standard, we are not free to substitute our judgment for that of the trial court.” *State v. Burkhart*, Washington App. No. 08CA22, 2009-Ohio-1847, at ¶19 (citations omitted).

{¶24} Specifically, Hardin contends that the admission of Dr. Gorniak’s opinion violated Evid.R. 703. “The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing.” Evid.R. 703. Here, there is no question but that the basis for Gorniak’s opinion was the report prepared by Dr. Sohn (among others). Hardin contends that the trial court erred in the admission of Dr. Gorniak’s opinion as well as the opinion of Dr. Scribano.

{¶25} Hardin cites a case where the Second District Court of Appeals held that the trial court erred in the admission of a coroner’s opinion where the opinion “was based entirely on facts perceived by others and evidence that was not admitted at trial.” *State v. Fouty* (1996), 110 Ohio App.3d 130, 135.

{¶26} In the present case, however, the trial court admitted the coroner’s report into evidence. And we find that the trial court properly admitted the coroner’s report as a public record. See Evid.R. 803(8); see, also, *State v. Sampsill* (Jun. 29, 1998), Pickaway App. No. 97CA17, citing *Goldsby v. Gerber* (1987), 31 Ohio App.3d 268, 269, abrogated on different grounds by *State ex rel. Blair v. Balraj*, 69 Ohio St.3d 310, 313-14, 1994-Ohio-40. We note that the *Sampsill* court listed several limitations of this rule,

but none of those limitations are present in this case. In addition, we note that the report was embossed with a seal and was a self-authenticating document. Evid.R. 902(1). Therefore, Dr Sohn's report was properly admitted into evidence and could be relied upon by Dr. Gorniak in reaching her own independent conclusions under Evid.R. 703.¹

{¶27} Hardin next claims that the admission of Dr. Scribano's opinion also violated Evid.R. 703. Dr. Scribano testified as follows: "within a reasonable degree of medical certainty, my diagnosis when I received the call and reviewed the x-rays and medical record uh, was abusive head trauma. That was confirmed by additional review of the photographs by our staff in the hospital, as well as the photos from the Coroner's Office. And uh, abusive head trauma that has evidence of uh, impact that is visible on physical examination, uh, but also shaking and the retinal hemorrhages uh, that are identified on autopsy that are uh, further confirmation of a shaking mechanism."

{¶28} "Q. * * * In your opinion, are these injuries consistent with a baby being bounced on a couch cushion?

{¶29} "A. No.

{¶30} "Q. Given your years of experience and training, what kind of force would be needed to exert or to cause these kinds of injuries?

{¶31} "A. The degree of force is severe. The degree of force is such that no reasonable caregiver would ever come close to exhibiting in normal care of an infant. Uh, to ascribe a number in terms of force, in terms of [joules] as a measure of force, uh,

¹ We note that this finding does not conflict with the rule in *Craig*. There was no custodian of records to lay a foundation for the admissibility of the report, but, as *Melendez-Diaz* made clear, the issue under the Confrontation Clause is not whether the report satisfies a particular hearsay exception. Rather, the question is whether the evidence was prepared for the purposes of litigation.

there are biomechanic studies that look at injury thresholds and they're not adequate in answering the question. Uh we know that these forces are uh, generating injuries as severe, and worse than, severe motor vehicle crashes that require immediate life support. Uh, so that gives a context to the degree of force. But I could not provide you with an actual number or equation of force uh, right now." Trial Transcript at 373-74.

{¶32} From Dr. Scribano's testimony, it is apparent that he relied upon more than just the autopsy report. Generally, the record indicates that these materials were other medical reports related to the care that Junior received. Based on the record we see no particular reason that these materials could not have been admitted as business records. But, no such foundation was made in regards to these reports. Regardless, Dr. Scribano's testimony is largely duplicative of Dr. Gorniak's. Dr. Gorniak testified that the "immediate cause of death was subdural hematoma due to non-accidental head trauma." Trial Transcript at 101. She also testified that the death was a homicide and that the injuries were caused by either blunt force trauma or a shaking mechanism. Trial Transcript at 104.

{¶33} Some of the materials Dr. Scribano relied upon were neither admitted into evidence nor matters that he personally perceived. This renders the admission of his opinion error, but we find that error harmless. Under Crim.R. 52(A), "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." Ohio Courts have often found that the wrongful admission of cumulative evidence constituted harmless error. See, e.g., *State v. Davis*, Summit App. No. 22724, 2005-Ohio-6224, at ¶15; *State v. Jones*, Scioto App. No. 06CA3116, 2008-Ohio-968, at ¶23;

State v. Kingery, Fayette App. No. CA2009-08-014, 2010-Ohio-1813, at ¶35, citing *State v. Fears*, 86 Ohio St.3d 329, 339, 1999-Ohio-111 (other citations omitted).

{¶34} Accordingly, we overrule Hardin's second assignment of error.

IV.

{¶35} Having overruled both of Hardin's assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and appellant pay the costs herein taxed.

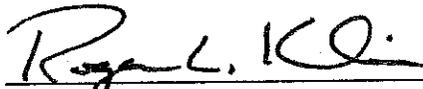
The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

McFarland, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: 
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

Ex A.

1-11-10

IN THE COURT OF COMMON PLEAS, PIKE COUNTY, OHIO

STATE OF OHIO,
PLAINTIFF

CASE NO. 2009CR000129

-VS-

JEFFREY HARDIN,
DEFENDANT

JUDGMENT ENTRY OF SENTENCE
(IMPOSING TERM OF IMPRISONMENT)

.....
This matter came on for a Trial to the Judge of the Court, sitting without a jury, on the 7th and 8th days of December, 2009, upon the Indictment in this action, charging the Defendant in Count One with the offense of "Murder," in violation of Section 2903.02(B) R.C., a Felony Offense, and also charging the Defendant in Count Two of the Indictment with "Endangering Children," in violation of Section 2919.22(B)(1) R.C., a Felony of the Second Degree. The Court finds that the Defendant has waived his right to trial by jury in writing and in open court. The State of Ohio was represented at the trial by the Prosecuting Attorney, ROBERT JUNK, and by Assistant Ohio Attorney General, Emily Pelphrey. The Defendant was present at the trial and was represented by his attorney, JAMES T. BOULGER.

After having heard Opening Statements of counsel, and having heard and considered all of the evidence presented, consisting of the testimony of witnesses and exhibits admitted into evidence at trial, and having heard the Closing Arguments of counsel, the Court finds and determines beyond a reasonable doubt that the Defendant is "Guilty" of the offense of "Murder", in violation of Section 2903.02(B) of the Ohio Revised Code, a Felony Offense, as stated in Count One of the Indictment; and the Court further finds and determines beyond a reasonable doubt that the Defendant is "Guilty" of the offense of "Endangering Children", in violation of Section 2919.22(B)(1) of the Ohio Revised Code, a Felony of the Second Degree, as stated in Count Two of the Indictment.

Both the State of Ohio and the Defendant, through his counsel, indicated to the Court that neither such party desired to request a pre-sentencing investigation, and that each such party consented to Court's conducting a sentencing hearing and imposing sentence on December 8, 2009, following upon the Court's pronouncing the Decision of the Court finding the Defendant guilty of "Murder" and "Endangering Children".

COMMON PLEAS COURT
JAN - 6 2010
JOHN E WILLIAMS
PIKE CO CLERK

Children." The Court then proceeded with sentencing hearing and to pronounce sentence on December 8, 2009. Thereafter, another sentencing hearing was held on December 14, 2009, in order to afford the Defendant the opportunity to allocate, as provided in Crim.R. 32(A)(1), and the Defendant was re-sentenced on such day.

Prior to imposing sentence the Court afforded the Defendant and the Prosecuting Attorney an opportunity to present information relevant to the imposition of sentence in this action.

Before imposing sentence, the Court considered the record, testimony presented at the Trial relevant to sentence, including any oral statements of the Prosecuting Attorney, the Defendant and Counsel for the Defendant. Before imposing sentence, the Court has also considered the purposes and principles of sentencing under Section 2929.11 R.C., including, without limitation, those "overriding purposes" set out in the statute, that is, to protect the public from future crime by the offender and others, and to punish the offender. Prior to imposing sentencing, the Court has also considered and weighed the seriousness and recidivism factors relevant to the offense and to the offender pursuant to Section 2929.12 R.C., and the Court has also considered the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victims of the offense, the public, or both.

Before imposing sentence, the Court has also considered that the sentence to be imposed should be reasonably calculated to achieve the two overriding purposes of felony sentencing commensurate with and not demeaning the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders, and that the sentence to be imposed should not place an unnecessary burden on government resources.

The Court has considered and complied with any the applicable provisions of Section 2929.14 R.C.

The Court further finds that a prison term is mandatory as part of the sentence for the offense of "Murder," in violation of Section 2903.02(B) R.C., as stated in Count One of the Indictment, and that a prison term is not mandatory as part of the sentence for the offense of "Endangering Children," in violation of Section 2919.22(B)(1) R.C., as stated in Count Two of the Indictment. The Court finds that the Defendant is NOT amenable to an available to community control sanction of to a combination of available community control sanctions.

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The Court then indicated that it had considered the record, oral statements, the purposes and principles of sentencing under R.C. 2929.11, the seriousness and recidivism factors, relevant to the offense and offender pursuant to R.C. 2929.12, and the need for deterrence, incapacitation, rehabilitation, and restitution.

The Court then addressed the Defendant personally and asked the Defendant whether there was any reason that the Defendant wanted to state as to why sentence should not be pronounced and imposed immediately, and the Defendant indicated that there was no such reason that the Defendant wanted to state.

The Court then further addressed the Defendant personally and asked the Defendant whether the Defendant wished to make a statement in the Defendant's own behalf or to present any information in mitigation of punishment, and the Defendant indicated that there was nothing that he wished to say.

It is, therefore, the JUDGMENT and SENTENCE of this Court that the Defendant shall serve a mandatory indefinite prison term of fifteen (15) years to life for the offense of "Murder," in violation of Section 2903.02(B) of the Ohio Revised Code, as stated in Count One of the Indictment. Further, it is the JUDGMENT and SENTENCE of this Court that the Defendant shall serve a prison term of six (6) years for the offense of "Child Endangering," in violation of Section 2919.22(B)(1) of the Ohio Revised Code, a Felony of the Second Degree, as stated in Count Two of the Indictment. It is further ORDERED that the prison term imposed as part of the sentence upon Count One and the prison term imposed as part of the sentence upon Count Two shall run concurrently with each other, for an aggregate prison term of fifteen (15) years to life.

The Court further informed the Defendant at the time of sentencing that the Defendant would become eligible for parole after the Defendant had served fifteen (15) years of imprisonment upon the term of fifteen (15) years to life.

It is further ordered, as a part of the sentence imposed upon Count Two that the Defendant will be supervised on post-release control after the Defendant leaves prison for a mandatory period of three (3) years; and that if the Defendant violates any of the terms and conditions of post-release control, then the Parole Board may return the Defendant to prison for up to nine (9) months for each violation, provided, however, that the maximum cumulative period for which the Parole Board can return the Defendant to prison for all violations of post-release control imposed as a part of the sentence upon Count Two cannot exceed one-half of the stated prison term originally imposed by the Court upon Count Two. It is further ordered that if the Defendant

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commits a new felony while on post-release control imposed as part of the sentence upon Count Two, then, in addition to any prison term that the Court which sentences the Defendant upon the new felony may impose for such new felony, that sentencing court may impose a prison term for the violation of post-release control, and the maximum prison term for the violation of post-release control would be the greater of one (1) year or the time remaining on post-release control.

The Court further informed the Defendant at the time of sentencing that the Defendant would become eligible for parole after the Defendant had served fifteen (15) years of imprisonment upon the prison term of fifteen years to life imposed for Murder in regard to Count One of the indictment; and that, if the Defendant were released from prison on parole, and the Defendant then violated any of the terms or conditions of parole, the Defendant could be required to serve the remainder of the prison term of fifteen years to life imprisonment.

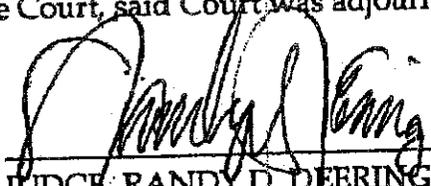
The Court further informed the Defendant that, by virtue of the conviction in this action, the Defendant is prohibited from acquiring, having, carrying or using any firearm or dangerous ordnance, that such disability will continue until the Defendant's death, unless the Defendant is relieved of such disability by a Court of competent jurisdiction, and that violation of this prohibition constitutes the crime of "Having Weapons Under Disability" a violation of Section 2923.13 (A)(3) of the Ohio Revised Code, a Felony of the Third Degree.

The Court indicated to the Defendant that he had the right to appeal any maximum sentence, and if the charge were a serious offense, to appeal or seek leave to appeal the sentence imposed. The Court further indicated to the Defendant that if the Defendant were unable to pay the cost of such appeal, the Defendant had the right to appeal without payment; that if the Defendant were unable to obtain counsel for such appeal, counsel would be appointed without cost; that if the Defendant were unable to pay the costs of documents necessary to appeal, the documents would be provided without cost; and that the Defendant had a right to have a notice of appeal timely filed on the Defendant's behalf.

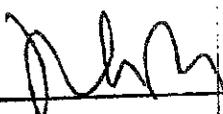
The Defendant is granted credit for 210 days previously served as of the date of the sentencing (December 8, 2009), and shall receive credit for any additional days served while awaiting transportation to the appropriate state institution to begin serving his sentence of imprisonment.

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Any motions that are outstanding are hereby withdrawn by the party who filed them. The Defendant is ORDERED to pay the costs of this action and any bond previously posted is hereby DISCHARGED and any outstanding warrants are recalled. There being no further matters before the Court, said Court was adjourned.


JUDGE, RANDY D. DEERING 01-06-2010

SUBMITTED:

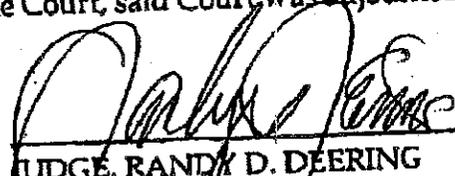

ROBERT JUNK (0056250)
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Waverly, Ohio 45690

APPROVED:

{ See attached }
JAMES T. BOULGER (0033873)
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FILED
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PIKE CO CLERK

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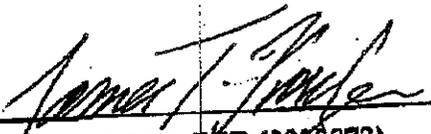
JUDGE, RANDY D. DEERING

01-06-2010

SUBMITTED:

ROBERT JUNK (0056250)
PROSECUTING ATTORNEY
100 E. Second Street
Waverly, Ohio 45690

APPROVED:



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JOHN E. WILSON
CLERK