

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
Appellee, :
-vs- : Case No. **11-2005**
JASON DEAN, : **Death Penalty Case**
Appellant :

**ON APPEAL FROM THE CLARK COUNTY
COURT OF COMMON PLEAS
CLARK COUNTY, OHIO, CASE NO. 05 CR 0348**

NOTICE OF APPEAL

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SUPREME COURT OF OHIO

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SUPREME COURT OF OHIO

Notice of Appeal of Appellant Jason Dean

Appellant Jason Dean, by and through counsel, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Clark County Court of Common Pleas, entered in Case No. 05CR0348 on October 18, 2011. A copy of the judgment entry and trial court opinion is attached.

This case involves the conviction of aggravated murder with capital specifications and the imposition of a sentence of death, and well as convictions for other felonies and sentences imposed.

Pursuant to S.Ct. Prac. Rule 2.1(C), this is an appeal of right.

Respectfully submitted,

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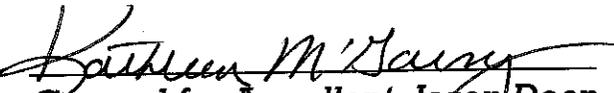
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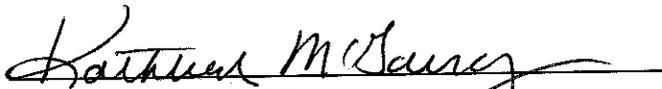
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was forwarded by regular U.S. Mail to D. Andrew Wilson, Prosecuting Attorney, P.O. Box 1608, Springfield, Ohio 45501, this 28th day of November, 2011.


Kathleen McGarry
Counsel for Jason Dean

27 OCT 18 2011

IN THE COURT OF COMMON PLEAS
CLARK COUNTY, OHIO

CLERK OF COURT
COMMON PLEAS COURT
CLARK COUNTY, OHIO

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STATE OF OHIO,

Plaintiff,

- vs. -

JASON DEAN,

Defendant.

Case No. 05-CR-348

ENTRY

The Defendant was found guilty by a jury of the following counts: Count One attempted murder with a firearm specification; Count Two, attempted murder with a firearm specification, Count Three, aggravated robbery with a firearm specification; Count Five, improperly discharging a firearm into a habitation with a firearm specification; Count Six, improperly discharging a firearm in to a habitation with a firearm specification; Count Seven, attempted murder with a firearm specification; Count Eight attempted murder with a firearm specification; Count Nine, attempted murder with a firearm specification; Count Ten, attempted murder with a firearm specification; Count Twelve, aggravated murder with a firearm specification, a specification, that the aggravated murder of Titus Arnold was as part of a course of conduct involving the purposeful killing of, or attempt to kill, two or more people, and a specification that the murder of Titus Arnold was committed while the Defendant was committing, or attempting to commit, aggravated robbery, and that the aggravated murder was committed with prior calculation and design; Count Thirteen, aggravated murder with a firearm specification, a specification, that the aggravated murder of Titus Arnold was as part of a course of conduct involving the purposeful killing of, or attempt to kill, two or more people, and a specification that the murder of Titus Arnold was committed while the Defendant was committing, or attempting to commit, aggravated robbery, and that the aggravated murder was committed with prior calculation and design; and Count Fourteen, aggravated robbery with a firearm specification. Each count set forth under the Ohio Revised Code Sections as contained in the indictment.

The Defendant was also convicted by the Court of four counts of having weapons while under disability as set forth under the Ohio Revised Code and contained in the Counts Four, Eleven, Fifteen, and Sixteen of the indictment. The Defendant was found guilty of Counts Four, Eleven, Fifteen, and Sixteen after having knowingly, voluntarily, and intelligently waived his right to a jury trial both in writing and in open court.

On September 30, 2011, a sentencing hearing was held with respect to all of the charges set forth above. The Defendant was present in court with his attorneys, Gregory Meyers, Jerry McHenry, and Robert Barnhart. Present for the State were Clark County Prosecutor, D. Andrew Wilson, and Special Assistant Prosecuting Attorneys, Stephen Schumaker, and Darnell Carter.

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The Defendant was offered an opportunity to make statement. During his allocution, the Defendant thanked the Court for being fair, and also thanked his attorneys for their work on his behalf. Arguments were made for the Defendant by Mr. Meyers and on for the State by Mr. Wilson. Although the victim's representative was offered an opportunity to speak, the State offered no victim impact statement.

The Court considered all of the information presented at the hearing, the record, and the factors pertaining to the seriousness of the offense. The Court further considered the likelihood of recidivism, and the factors contained in Ohio Revised Code Sections 2929.12, and 2929.13. The Court being fully informed of the circumstances surrounding the charges found no cause which would preclude it from pronouncing the sentence. Therefore, under the law and judgment of the Court, and the State of Ohio, the Defendant is sentenced to a basic prison term of 10 years imprisonment on Count One, 10 years imprisonment on Count 2, 10 years imprisonment on Count Three, 5 years imprisonment on Count Four, 8 years on Count Five, 8 years imprisonment on Count Six, 10 years imprisonment on Count Seven, 10 years imprisonment on Count Eight, 10 years imprisonment on Count Nine, 10 years imprisonment on Count Ten, 5 years imprisonment on Count Eleven, 10 years imprisonment on Count Fourteen, 5 years imprisonment on Count Fifteen, and 5 years imprisonment on Count Sixteen. The Defendant is further sentenced to an additional term of three years imprison as a mandatory and consecutive term pursuant to Revised Code Section 2929.14(D)(1) on each of the firearm specifications, being one additional term for the merged Counts One, Two, and Three; One additional term for the merged Counts Five, Six, Seven, Eight, Nine, and Ten; one additional sentence for the merged Counts Twelve, Thirteen, and Fourteen. These prison terms shall be served in the custody of the Director of the Department of Rehabilitation and Corrections. The Court will grant credit for 2,354 days towards that sentence as the record shows that the Defendant has spent this amount of time incarcerated while awaiting disposition of these charges.

As to the penalty on Count Twelve of the indictment, and the related specifications, the Court having found by separate opinion, that after weighing all of the appropriate evidence, all of the mitigating factors, the arguments of counsel, and the applicable law, that the aggravating circumstances set forth in Specification One of Count Twelve outweighs the mitigating factors beyond a reasonable doubt. Furthermore, the Court accepts the recommendation of the jury and hereby sentences Jason Dean to death for the aggravated murder of Titus Arnold as charged in Count Twelve of the indictment. The Court orders that an execution date shall be set for the 23rd day of March, 2012, to be carried out by the appropriate authorities of the State of Ohio. This execution date is subject to further order by the Supreme Court of Ohio.

The Court further orders that all of these sentences be served consecutively to one and other for a total sentence of Death plus one hundred twenty-five years of imprisonment in the Ohio State Penitentiary. The consecutive sentences are necessary to protect the public from future crime, and consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger that the offender poses to the public. The Court further finds that all of these offenses were committed as part of a course of conduct, and the harm caused by the offenses was so great or so unusual that no single prison term for any one of the offenses adequately reflects the seriousness of the offender's conduct. The Court also finds that the

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The gravity of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

The Court hereby imposes the mandatory period of five years post-release control. If the Defendant violates the terms of post-release control, then the Parole Authority will impose a prison term of up to one half of the stated prison term originally imposed and may also impose additional post-release control for a period of up to eight years. If the post-release control violation results from a conviction for another felony offense, the Court sentencing the Defendant may impose a prison term on the post-release control violation up to the remaining period of post-release control or one year, whichever is greater, to be served prior to and consecutive with the sentence on the new felony offense.

The Defendant was advised that he may never again possess a firearm, and if he is found to be in possession of a firearm, he is subject to prosecution and imprisonment by both the State of Ohio and the federal authorities. The Defendant is ordered to provide a DNA sample to the State of Ohio, and the Defendant is ordered to pay the costs of this action.

The Court hereby appoints Kathleen McGarry and William Lazarow as death penalty certified appellate counsel to represent the Defendant on appeal, and hereby orders that said counsel file a notice of appeal on behalf of the Defendant at no cost to the Defendant.

The Defendant is hereby remanded to the custody of the Director of the Department of Rehabilitation and Corrections forthwith, to be held on death row pending his execution.

IT IS SO ORDERED:

Sumner Walters
SUMNER WALTERS, JUDGE

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CLARK COUNTY, OHIO

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IN THE COURT OF COMMON PLEAS, CLARK COUNTY, OHIO

State of Ohio,
Plaintiff,

v.

Jason Dean,
Defendant.

Case No. 05-CR-0348
JUDGMENT ENTRY
OPINION OF THE COURT
SENTENCING

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CLARK COUNTY, OHIO
CLERK OF COURT

INTRODUCTION

On September 15, 2011, a jury found Jason Dean guilty of six counts of attempted murder (R.C. 2903.02(A) and 2923.02(A)), two counts of aggravated robbery (R.C. 2911.01(A)), two counts of knowingly discharging a firearm into a habitation (R.C. 2923.161(A)(1)), one count of aggravated murder (2903.01(A), 2923.03), and one count of aggravated murder (2903.01(B), 2923.03). Both counts of aggravated murder involved the death of Titus Arnold. The court, additionally, found the defendant guilty of four counts of having a weapon under disability (R.C. 2923.13(A)(2)).

There was a firearm specification on each of the twelve counts upon which the jury returned guilty verdicts. And each count of aggravated murder included two death penalty specifications. The death penalty specifications alleged that (1) aggravated murder was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender (R.C. 2929.04(A)(5)); and that (2) the aggravated murder was committed while Jason Dean was committing or attempting to commit aggravated robbery, and that while Jason Dean was not the principal offender, the aggravated murder was committed with prior calculation and design (R.C. 2929.04(A)(7)). The jury returned guilty verdicts on all specifications. With regards to death penalty Specification One, the jury found that the course of conduct involved the attempt to kill Yolanda Lyles, Andre Piersol, Shanta Chilton, Hassan Chilton, Shani Applin and JaeAda Applin in addition to the aggravated murder of Titus Arnold.

Jason Dean declined the option of a presentence investigation and/or a mental health evaluation. Jason Dean was fully apprised of his rights before proceeding to the sentencing phase.

Prior to the commencement of the sentencing phase, the court conducted a pre-trial hearing on a number of issues, including the admission of exhibits, a liminal issue on the scope of allowable cross examination of the defendant's expert witnesses, and the issue of merger of counts and specifications. The court ruled that the specifications did not merge under Ohio law; however, the court urged the State to proceed on one

specification only. After the hearing, the State elected to proceed on Count Twelve and Specification Number One.

The court commenced the sentencing phase of the trial on September 19, 2011. The court admitted into evidence only a very select number of trial exhibits for purposes of the sentencing phase. The State proceeded to rest upon the jury's finding of guilt on Specification One of Count Twelve, and the exhibits. The defendant presented mitigation evidence, including his own unsworn statement to the jury and two family members who testified to his upbringing. The defense elected not to call expert witnesses that were prepared to testify at the sentencing hearing as a matter of trial strategy. The State presented no rebuttal, and counsel then made their closing arguments to the jury. The jury commenced their deliberations at approximately 12:00, noon, on September 19, 2011.

On September 20, 2011 the jury returned a sentencing verdict finding that the State of Ohio proved beyond a reasonable doubt that the aggravating circumstance in Specification One of Count Twelve outweighed the mitigating factors. This verdict indicated the death penalty on Count Twelve.

The jury was appropriately sequestered during both the trial phase and sentencing phase deliberations. During the trial phase deliberations, the jury was sequestered over two nights. During the sentencing phase, the jury deliberated for approximately twelve hours over a two day period including being sequestered over one night.

The jury's verdict of death on Count Twelve constitutes a recommendation to the court, and this court is required, by law, to perform an independent review of this matter and the jury's recommendation.

Based upon the sentencing verdict of the jury, this court must weigh the aggravating circumstance in the death of Titus Arnold and the mitigating factors to determine whether the jury recommendation of death as to the aggravated murder should be the final sentence of the court.

Jason Dean was found guilty, beyond a reasonable doubt, of purposely, and with prior calculation and design, causing the death of Titus Arnold. In addition, the jury convicted Mr. Dean beyond a reasonable doubt of committing the aggravated murder of Titus Arnold as a part of a course of conduct involving the purposeful attempt to kill Yolanda Lyles, Andre Piersol, Shanta Chilton, Hassan Chilton, Shani Applin and JaeAda Applin.

Under Ohio law, a jury verdict of death is a recommendation to the court. When such a recommendation is made, the trial judge must then deliberate and render the final sentence. Guidance is provided by case law and pursuant to the requirements of Chapter 2929 of the Ohio Revised Code. Ohio law requires that the court set forth its specific findings as to the existence of any mitigating factors pursuant to R.C. 2929.04(B) as well

as any other mitigating factors, the aggravating circumstance the defendant was found guilty of committing, and the court's reasoning applicable to the weighing process.

In determining this matter, the court has considered and weighed all of the appropriate matters required by law. The court has considered the aggravating circumstance found by the jury beyond a reasonable doubt, and has not considered the murder of Titus Arnold as an aggravating circumstance. Likewise, the court has not considered Specification Two as found by the jury.

FACTUAL BACKGROUND AND FINDINGS BY THE COURT AS TO THE SPECIFIC AGGRAVATING CIRCUMSTANCE

The court presents the following factual description of the offenses involved in the aggravated murder and the aggravating circumstance below solely in order to provide factual background for the jury's verdicts. The court has not considered the aggravated murder itself nor any of the other offenses not a part of the specification here as an aggravating circumstance. See *State v. Johnson* (2006), 112 Ohio St.3d 210, 249.

1. The April 10, 2005 event at the Mini Mart on Selma Road - Yolanda Lyles and Andre Piersol.

On April 10, 2005, in the evening hours, Yolanda Lyles and Andre Piersol arrived at the Selma Road Mini Mart in Springfield, Ohio. Lyles had offered a Piersol ride home when she found him walking toward his home. On the way, Lyles wanted some items from the Mini Mart, so she pulled in and gave Piersol money to go inside and purchase the items. At the same time, Jason Dean and Joshua Wade were present at the Mini Mart. Dean was approximately thirty years old at the time, and Wade was a sixteen year old juvenile. Dean and Piersol knew one another. Dean approached Piersol, offering to sell him some pills. Piersol declined and returned to Lyle's vehicle. Before Lyles and Piersol left the Mini Mart, Dean approached the vehicle on the driver's side, brandishing a .25 caliber pistol. Dean demanded money from the pair. Then Dean began firing his pistol through the windshield of the vehicle, with one bullet causing a wound to Piersol's arm. Pieces of broken glass also caused minor injuries to both Piersol and Lyles. Lyles immediately started the car, trying to escape from Dean, and also trying to get Piersol to the hospital for medical attention. Dean and Wade left in Dean's vehicle, chasing the Lyles vehicle part of the way to the hospital.

2. The April 12, 2005 event on Dibert Avenue - Shanta Chilton, Hassan Chilton, Shani Applin and JaeAda Applin.

In the evening hours of April 12, 2005, Jason Dean was a passenger in his own vehicle, which was being operated by Joshua Wade in the 600 block of Dibert Avenue. Wade and Dean were looking for the home and automobile of Devon Williams. Williams lived at 604 Dibert Street with Shanta Chilton; however, his automobile was parked across the street in front of 609 Dibert, a home occupied by Jainada Madison and

her sister, Larolyn Burd. As Dean's vehicle went westbound down Dibert Street, Dean began firing shots from his .25 caliber pistol at Williams' vehicle in front of 609 Dibert Avenue. Several of these shots went into the home of Madison and Burd. The vehicle went to the vicinity of Dibert and Yellow Springs Road and did a u-turn, coming back up Dibert Avenue towards Miami Street. By that time, Williams had crossed Dibert Avenue to inspect the damage to his vehicle. Shanta Chilton, her brother Hassan Chilton, Shanta's friend Shani Applin, and Shani's infant daughter JaeAda were on the front porch of 604 Dibert. As Dean's vehicle passed this house, Wade stopped the vehicle and fired a number of shots from a .40 caliber pistol, owned by Jason Dean, at the four people on the porch. Hassan Chilton's coat was struck by one of the bullets, and a number of the shots went into the home.

3. The April 13, 2005 event on High Street near the intersection of Race Street - Titus Arnold

In the late evening hours of April 13, 2005, Dean and Wade went to the Nite Owl Bar, located at Main and Race Streets in Springfield, Ohio, looking for someone to rob. They stayed at the bar only a few minutes and followed a patron out of the bar to the parking lot. That patron met up with other individuals in the parking lot, and Dean and Wade left in Deans automobile. About two blocks from the Nite Owl, Dean and Wade observed Titus Arnold walking in the 500 block of West High Street. Arnold had just left his place of employment on High Street. Dean exited the vehicle, brandishing his .25 caliber pistol and demanded money from Arnold. Arnold ran and Dean attempted to fire a shot at him. Dean's pistol misfired. Wade jumped out of the car, ran after Arnold and fired two shots from Dean's .40 caliber pistol. One shot struck a parked pickup truck and the other shot struck Arnold in the back, severing his spinal cord and entering the brain. While Arnold's death was not instantaneous, it occurred shortly after the shooting. Dean and Wade stole a small amount of money from Arnold before fleeing the scene in Dean's automobile.

The court accords significant weight to the "course of conduct" specification that the State elected to proceed upon. These multiple attempts to murder six people and the ultimate murder of Titus Arnold occurred over a four day period. They were not committed in the heat of the moment, as a part of one continuous event. The three events were committed discretely and with a sufficient time in between each for a cooling-off, and with ample opportunity to reflect upon the crimes that they had already committed. Therefore, this aggravating circumstance is entitled to great weight.

MITIGATING FACTORS

1. The nature and circumstances of the offense

The court has weighed the nature and circumstances of the offense for any mitigating factors. This has included all of the facts and circumstances, including the participation of Dean's accomplice, Joshua Wade, in the events that are a part of the

offense and the specification. Wade was a willing participant in not only the killing of Arnold, but also the attempted murders of the other six individuals. With the exception of the fact that Wade fired the fatal shot that killed Arnold, and that he fired the shots at the four people located at 604 Dibert Avenue, which the court will address in more depth in another section, the court finds no mitigating factors existing in the nature and circumstances of the offense as it relates to the murder of Titus Arnold.

2. History, character and background of Jason Dean.

Jason Dean was raised primarily in Springfield, Ohio, in what can, in generous terms, be described as a dysfunctional family. His mother and father were married and divorced several times, and lived together for some time periods when they were not married. Both mother and father were physically and emotionally abusive to one another and the father was physically abusive to the children, especially Jason. Neither parent focused upon the needs of their three children. The parents' focus was, instead, on drug abuse, alcohol abuse and marital infidelity. Both the father and particularly the mother, on numerous occasions, abandoned the family to go live with a paramour; sometimes being away from the children for months at a time. Periodically, Jason would be shuffled off to live with an aunt in Florida who provided the only safe and stable environment that he was ever exposed to. Other than the aunt in Florida, there were no positive adult role models for the children. At least marijuana, if not other drugs, was openly used in the home, and the mother would smoke marijuana and would openly tolerate and even encourage the children to do the same. Neither parent cared whether the children progressed or even if they attended school. There were no rewards or encouragement for good behavior or good grades, and there were no repercussions if the children chose not to attend school. Jason developed an addiction to at least marijuana, if not other drugs, at a very young age. Jason quit school at an early age and has never obtained a GED or any further education.

The court can only wonder where Children's Services was during the childhood of Jason Dean. There is no evidence that there was ever any intervention into the young life of Jason Dean in an attempt to provide a positive home life and a positive role model, other than the occasional familial intervention of Jason's aunt.

At the time of the offenses herein, Jason was a thirty year old man, living in the home with his mother and father. Jason's mother occupied a downstairs bedroom, and Jason and his father occupied separate upstairs bedrooms. Jason's best friend and constant companion was his sixteen year old cousin, Joshua Wade, who Jason treated like a son.

The court has weighed all of the evidence presented as it relates to Jason Dean's history, character, and background. The defendant had a terrible childhood. He grew up with no positive role model from either parent. While there was no psychological testimony as to the effect this upbringing had on Jason, it appears that as an adult he was unable to conform his conduct to societal norms and unable to show compassion for

some mitigating value, although the value is minimal. *State v. Landrum* (1990), 53 Ohio St.3d 107, 125-126; *State v. Frazier*, 2007-Ohio-5048, 105 Ohio St.3d 139, ¶ 263; *State v. Ketterer*, 2006-Ohio-5283, ¶ 199.

3. The defendant was a participant in the offense of aggravated murder but not the principal offender.

R.C. 2929.04(B)(6) specifically directs the court to consider in mitigation the following: “[i]f the offender was a participant in the offense, but not the principal offender[, the court shall consider] the degree of the offender’s participation in the offense and the degree of the offender’s participation in the acts that led to the death of the victim.”

This could obviously be very significant factor in mitigation of the penalty of death. The Supreme Court of Ohio has stated: “ * * * the fact that a defendant was not the principal offender is a specific statutory mitigating factor. See R.C. 2929.04(B)(6). Normally, it would be a powerful mitigating factor. Very few death sentences have been approved against persons who were not the principal offender.” *State v. Green*, 2000-Ohio-182, 90 Ohio St.3d 352, 363.

In this case, not only was Jason Dean not the principal offender in the Titus Arnold murder, but he also was not the principal offender in the attempted murders of Shanta Chilton, Hassan Chilton, Shani Applin and JaeAda Applin. Therefore, in weighing this mitigating factor, the court must consider the degree of Dean’s participation in the acts that led to the death of the victim.

It is clear, from the evidence, that while Jason Dean was not the principal offender, the person who fired the fatal shot or the near fatal shots, that he was the central figure in the drama.

As it relates to the murder of Titus Arnold, it is clear that the plan to rob and kill someone on the night of April 13, 2005 was hatched by Dean and Wade together. Dean was a full participant in the plan; not just along for the ride. Dean provided the vehicle to get the two of them to the scene; he provided the murder weapon to Wade and the ammunition for both weapons; and he was armed and ready himself. At the scene of the Arnold murder, Dean was the first person to get out of the car and give chase to Arnold. Dean attempted to fire the first shot at Arnold, and failed only because his pistol either jammed or had the safety on. Wade did not exit the car and fire the fatal shot at Arnold until after Dean’s weapon failed. Dean’s subsequent theft from the dying body of Arnold is further demonstration of the fact that Dean was a full and willing participant in the killing. Without Jason Dean, none of these murders or attempts would have occurred.

In *State v. Robb* (2000), 88 Ohio St.3d 59, the Supreme Court of Ohio found a death sentence to be appropriate in a case where the defendant, while not the principal offender, was one of the gang leaders in the riot at SOCF, resulting in the aggravated murder of a prison guard. With that finding, the court reasoned that this factor was

court accords this factor no weight at all. *State v. Bryan*, 2004-Ohio-971, 101 Ohio St.3d 272, ¶ 226.

4. All other factors enumerated in R.C. 2929.04(B).

The defendant raised the mitigating factors previously set forth in this Opinion. However, out of an abundance of caution and fairness, the Court has also reviewed all of the other factors enumerated in R.C. 2929.04(B). The court finds that none of these factors are applicable except as previously discussed.

The court has specifically not considered in its weighing process the defendant's prior criminal record, including an offense occurring within the prison after his prior conviction of the aggravated murder herein, and including the fact that the present crimes were committed only a matter of days after the defendant's release from prison on a prior conviction. The court mentions these convictions only because they appear as part of the record herein as a part of the pretrial proceedings. The court wants to make sure that the record affirmatively reflects that these matters were not considered by the court.

The court has also not considered the report of the court-ordered competency evaluation. In the pretrial process, the court, *sua sponte*, raised the issue of the defendant's competency to stand trial, based upon matters appearing of record in the prior appellate proceedings in this case. As a result of this court-ordered evaluation, there was a comprehensive report furnished directly to the court and counsel. The report exceeded the parameters of the court ordered evaluation, and upon motion of the defendant, the court ordered the report sealed and all copies destroyed. The court further ordered that the State was barred from using the report or any of the information in the report for any purposes whatsoever. The court wants the record to affirmatively reflect that nothing in that report was considered by the court in this weighing process.

Likewise, the court has not considered the contents and opinions expressed in certain reports of the defendant's retained mitigation experts, Drs. Donninger and Stinson. These reports were furnished to the court in order for the court to consider the liminal issue of the extent to which the court would allow cross examination of these witnesses to test the bases upon which their opinions were formed. Because the defense decided not to call these witnesses to testify, and because their opinions are not a part of the record, the court again wants the record to clearly and affirmatively reflect that the court did not consider these reports, the information in them, or their opinions for any purpose whatsoever.

WEIGHING OF THE SPECIFIC AGGRAVATING CIRCUMSTANCES AND ALL MITIGATING FACTORS

Pursuant to R.C. 2929.03(F), the trial court must make certain findings. A trial court must specifically provide reasons why the aggravating circumstance the offender was found guilty of committing were sufficient to outweigh the mitigating factors. See *State v. Fox* (1994), 69 Ohio St.3d 183; *State v. Green* (2000), 90 Ohio St.3d 352. To

accorded "very little weight," under the circumstances. *Id.*, at 91. See also *State v. Skatzes*, 2004-Ohio-6391, 104 Ohio St.3d 195, ¶ 243 (similar facts and circumstances).

In a case with striking similarity to the present case, the Supreme Court of Ohio found that the R.C. 2929.04(B)(6) mitigating factor directly applied, because the defendant was indicted, tried and convicted as an accomplice, not as a principal offender. Nonetheless, the court held while the evidence failed to establish that the defendant actually killed either victim, he was a crucial participant in the murders, and they accorded this mitigating factor no weight. *State v. Cunningham*, 2004-Ohio-7007, 105 Ohio St.3d 197, ¶ 136. See also *State v. Herring* (2002), 94 Ohio St.3d 246, 267 (death sentence approved where defendant, while not proved to be the principal offender, was a full participant and a leader of the gang of robbers.); *State v. Issa*, 2001-Ohio-1290, 93 Ohio St.3d 49, 71 (no weight given to the fact that defendant was not the principal offender in a murder for hire, because he was a crucial participant in the murder.)

While this court cannot say that no weight should be accorded to the fact that the defendant was not the principal offender, the court, under the circumstances here, places little weight on it since he was a crucial participant.

3. Any other factors that are relevant to the issue of whether the defendant should be sentenced to death.

The court has also considered the sentence of Mr. Wade, the accomplice in this matter, and the principal offender in both the aggravated murder of Titus Arnold and the attempted murders of Shanta Chilton, Hassan Chilton, Shani Applin, and JaeAda Applin. Wade received a sentence of life imprisonment without the possibility of parole. Wade was 16 years of age at the time of the events. He was therefore both statutorily and constitutionally ineligible for the death penalty. Mr. Wade was tried as an adult and was convicted of the same offenses that Mr. Dean has now been convicted of. But for the statutory preclusion of the death penalty, Wade could likely have been sentenced to death as well. Wade and Dean are equally culpable in the eyes of this court. Disparity of sentence does require that death not be imposed. *State v. Smith* (1997), 80 Ohio St. 3d 89, 122. The fact that Wade was legally ineligible for the death penalty does not create a mitigating factor that is entitled to any weight in Dean's favor.

Also, there is some modest evidence that Dean was addicted to marijuana and perhaps cocaine as well. However, there is no evidence that this addiction played any role in the course of conduct involving the attempted murders and the aggravated murder of Titus Arnold. Therefore, the court accords this factor no weight at all. *State v. Goff*, 1998-Ohio-369, 82 Ohio St.3d 123, 143; *State v. Slagle* (1992), 65 Ohio St.3d 597, 614; *State v. Hicks* (1989), 43 Ohio St.3d 73, 80.

And, in his unsworn statement at the sentencing phase, Dean expressed remorse for the murder of Titus Arnold. Because that statement was made at the conclusion of his second trial on these charges, coupled with a plea to the jury for mercy, and further

satisfy the statutory and case law requirements, this court now undertakes this weighing process. The court has not made the aggravated murder of Titus Arnold itself an aggravating circumstance.

The court has considered all of the evidence presented during both the trial phase and the sentencing phase as it relates to the aggravating circumstance that the offense was a part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender. The court has also considered all of the mitigating facts and mitigating evidence. The court has weighed the mitigating factors individually and collectively. In weighing the specific aggravating circumstance against the mitigating factors, the court finds that the State of Ohio has proved beyond a reasonable doubt that the specific aggravating circumstance that the defendant was found guilty of committing outweighs the mitigating factors.

Jason Dean purposely caused the death of Titus Arnold as part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons. In this case, while Jason Dean was not the principal offender in the aggravated murder of Titus Arnold, he was a crucial participant in the crime, and his failure to fire the fatal shot was only due to a misfire by his weapon. Jason Dean was the principal offender in the attempted murder of Yolanda Lyles and Andre Piersol. And, Jason Dean was fully involved and a crucial participant in the events that resulted in the attempted murders of Shanta Chilton, Hassan Chilton, Shani Applin and JaeAda Applin. In all instances, Jason Dean provided the plan, the weapons, the vehicle, the leadership, and the motive. Here, one person was killed and there were attempts to kill six other persons due to the purposeful conduct of Jason Dean.

Against this aggravating circumstance, the court must balance and weigh the mitigating factors. Mitigating factors are those factors about Jason Dean or the offense that he committed that weigh in favor of a life sentence rather than a death sentence. Mitigating factors are not factors that justify or excuse the offense, but they are the factors that, in fairness, weigh against the imposition of the death penalty.

The mitigating factors here are minimal in comparison to the specific aggravating circumstance found by the jury. The court has weighed all of the mitigating factors carefully and fully. When weighed against the mitigating factors, the aggravating circumstances in this case far outweigh the mitigating factors, beyond a reasonable doubt.

The strongest mitigating factor is that Jason Dean was not the principal offender in the offense - that he did not fire the fatal shot that killed Titus Arnold. This fact, however, must be considered in the light of the degree of Jason Dean's participation in the offense and the acts that led to the death of Titus Arnold. Jason Dean was a full participant and the leader in the criminal conspiracy, of himself and Joshua Wade, to kill Titus Arnold and attempt to kill six other individuals. Dean provided the motive, the leadership, the weapons, the vehicle and the opportunity to Wade to accompany him in these events.

The court has considered and weighed all of the mitigating factors. Even when considered collectively, they have, at best, little mitigating value. Separately or together they carry little weight to lessen the moral culpability of the defendant or to weigh in favor of a life sentence. The court therefore finds that the aggravating circumstance outweighs the mitigating factors beyond a reasonable doubt, and that the sentence of death, as recommended by the jury, is appropriate.

CONCLUSION

After weighing all of the appropriate evidence, all of the mitigating factors, the arguments of counsel, and the applicable law, it is the decision of the court that the aggravating circumstance set forth in Specification One of Count Twelve, outweighs the mitigating factors beyond a reasonable doubt. The court therefore accepts the recommendation of the jury.

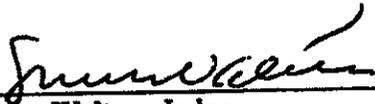
The court **ORDERS** that Jason Dean is hereby sentenced to death for the aggravated murder of Titus Arnold. The court orders that the execution date of Jason Dean shall be set for the 23rd day of March, 2012, to be carried out by the appropriate authorities of the State of Ohio. This execution date is subject to further order by a court of competent jurisdiction.

Jason Dean is hereby **REMANDED** to the custody of the Director of the Department of Rehabilitation and Corrections, forthwith, to be held on death row, pending his execution.

The court further **ORDERS** that the Clark County Clerk of Courts shall forthwith deliver a copy of the entire case file to the Ohio Supreme Court pursuant to law. The court will further appoint appellate counsel for the defendant. The court appoints capital certified appellate counsel as follows: Kathleen McGarry, Supreme Court #038707 and William Lazarow, Supreme Court #014625. The court further shall provide a copy of this Judgment Entry to the Clerk of the Supreme Court of Ohio, along with the appropriate case disposition form required by the Supreme Court of Ohio.

Court costs are taxed to Jason Dean pursuant to law.

Dated: September 30, 2011


Sumner Walters, Judge

