

In The Supreme Court of Ohio

State of Ohio, :

Appellee, :

-vs- :

Case No.:

**12-1212**

Caron E. Montgomery, :

Appellant. :

**This Is A Capital Case**

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On Appeal From The Court Of  
Common Pleas of Franklin County  
Case No. 10CR-12-7125

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Appellant Montgomery's Notice Of Appeal

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Office of the Ohio Public Defender

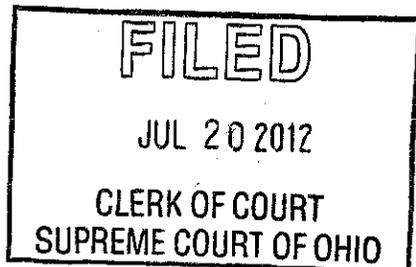
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Counsel for Appellant



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State of Ohio, :  
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-vs- : Case No.:  
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Appellant Montgomery's Notice Of Appeal

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Appellant Caron E. Montgomery hereby gives notice that he is pursuing his appeal as of right to obtain relief from his convictions of aggravated murder and his death sentence imposed on May 24, 2012, in the Franklin County Court of Common Pleas. The Sentencing Opinion was file-stamped on June 6, 2012.<sup>1</sup> See Sentencing Opinion attached. This is a capital case, and the date of this offense was November 25, 2010. See Sup. Ct. Prac. R. 19.1.

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<sup>1</sup> Appellant filed a Notice of Appeal on July 6, 2012, based on the filing date of the Judgment Entry because the Sentencing Opinion did not appear on the trial court's docket. Subsequently, the June 6, 2012, Sentencing Opinion was located. On July 12, 2012, counsel filed an Application for Dismissal of the Notice of Appeal as the forty-five day time limit did not start until the filing of the latter of the judgment entry and sentencing opinion. See Sup. Ct. Prac. R. 19.2(A)(1). This Court granted that Application on July 16, 2012.

Respectfully submitted,

Office of the Ohio Public Defender



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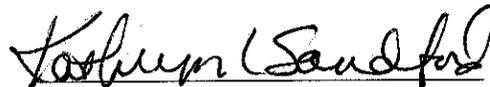
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Certificate Of Service

I hereby certify that a true copy of the foregoing Appellant Montgomery's Notice Of Appeal was forwarded by regular U.S. Mail to Ronald O'Brien, Franklin County Prosecutor, 373 High Street, 14<sup>th</sup> Floor, Columbus, Ohio 43215, on this 20<sup>th</sup> day of July, 2012.



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Counsel for Appellant

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
GENERAL DIVISION

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
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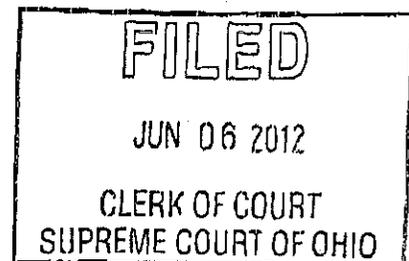
State of Ohio, :  
 :  
 Plaintiff, : Case No. 10-CR-7125  
 :  
 Vs. : Judges Reece, II (presiding), Sheward  
 and Sheeran  
 :  
 Caron E. Montgomery, :  
 :  
 Defendant. :

**SENTENCING OPINION: FINDINGS OF FACT AND CONCLUSIONS OF LAW  
REGARDING IMPOSITION OF THE DEATH PENALTY**

Guy L. Reece, II, J.

The Franklin County Grand Jury returned an indictment as to Defendant Caron E. Montgomery ("Defendant"), charging him with one count of Murder (unclassified felony), in violation of R.C. 2903.02; four counts of Aggravated Murder (unclassified felonies), with death penalty specifications in each count, in violation of R.C. 2903.01/2929.04, and one count of Domestic Violence (felony, fourth degree), in violation of R.C. 2919.25. (Filed on January 11, 2011.)

On May 7, 2012, this case came on for trial before a three-judge panel, pursuant to R.C. 2945.06. On that date, the three-judge panel (the "Panel") accepted the Defendant's plea of guilty to each count and each specification in the Indictment. The Court, as required by R.C. 2945.06, then heard and considered evidence presented by the parties, and, after due deliberation, determined and found the Defendant guilty beyond a reasonable doubt of all counts and specifications in the Indictment.



On May 8, 2012, the Court commenced the Mitigation Phase of the case. It first accepted in evidence from the State of Ohio the exhibits that had been admitted in the evidentiary portion of the first Phase. The Court then heard evidence in mitigation as presented by the Defense, including the testimony of seven (7) witnesses, and the unsworn statement of the Defendant. By agreement of the parties, the case was recessed until May 14, 2012. On that day, the Court accepted into evidence Joint Exhibits One and Two. No further evidence was offered in mitigation or in rebuttal.

On May 14, 2012, and continuing into May 15, 2012, the Panel retired and deliberated on the penalty to be imposed on the Defendant for his conviction of aggravated murder in the deaths of Tahlia Hendricks and Tyron Hendricks. The Panel determined, prior to actually starting the deliberations, that the two counts of aggravated murder as to each of the victims (Counts Two and Three regarding Tahlia Hendricks, and Counts Four and Five regarding Tyron Hendricks) merged for sentencing purposes, and one aggravating circumstance in each of these counts – the purposeful killing of two or more persons by the offender – also merged for sentencing purposes.

In consideration of the sentence to be imposed, therefore, there were a total of four aggravating circumstances that the three-judge panel considered in the weighing process:

(1) that the aggravated murders were part of a course of conduct that involved the purposeful killing of two or more persons by the offender (see R.C. 2929.04(A)(5));

(2) that the aggravated murders involved the killing of a person under the age of thirteen (here, Tahlia Hendricks), and either the Defendant was the principal offender or, if not the principal offender, committed the offense with prior calculation and design (see R.C. 2929.04(A)(9));

(3) that the aggravated murders involved the killing of a person under the age of thirteen (here, Tyron Hendricks), and either the Defendant was the principal offender or, if not the principal offender, committed the offense with prior calculation and design (see R.C. 2929.04 (A)(9)); and

(4) that one of the aggravated murders, i.e. the merged second and third counts of the Indictment, was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by the Defendant (see R.C. 2929.04(A)(3)).

With regard to the above specifications, they, along with the aggravated murders that included said specifications, were part of a plea of guilty entered by the Defendant in open court before the Panel. The plea of guilty to murder, as an unclassified felony, and the plea of guilty to domestic violence, as a felony of the fourth degree, were also made by the Defendant, but they do not constitute, separately or together, an aggravating circumstance, and were not considered by the Panel in determining the penalty for the aggravated murders with specifications.

The evidence presented by the State of Ohio that was admitted during the taking of the pleas of Guilty entered by the Defendant, was not contested by the Defendant.<sup>1</sup> That evidence indicates that on Thursday, November 25, 2010, the Defendant entered into the second floor apartment at 465 Meadowood, Columbus, Franklin County, Ohio, and while there murdered Tia Hendricks, age 31, who was the mother of Tahlia Hendricks, age nine, and Tyron Hendricks, who was also the two-year-old son of the Defendant. Detective Dana Croom noted during his testimony that the autopsy report of Tia Hendricks (Ex. 6B) revealed defensive wounds on Tia

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<sup>1</sup> The Defendant objected, through counsel, to the "plethora of evidence" that was offered by the State. This objection covered most of the evidence, on the ground that it was unnecessary because of the guilty plea (with the Defendant taking full responsibility for his actions), and prejudicial, because in counsel's opinion, the *only* reason to admit it was to inflame the panel. However, the panel—all of whom have had significant prior death penalty case experience—gave scant consideration to the photographs, and none of the other evidence was prejudicially inflammatory.

Hendricks, consisting of wounds to her arms and hands. Ms. Hendricks, like the two children, had her throat cut. According to the autopsy reports (Ex. 5B, 6B, 7B), the slitting of the throats of the victims caused either the carotid artery and/or the jugular vein in each victim to be severed<sup>2</sup>, directly causing their deaths. These were clearly deliberate acts. That the Defendant was the perpetrator of the offenses is evident not only from the fact that he was found, otherwise alone, with the three victims, in the chained and locked upstairs apartment room<sup>3</sup>, but also because there were no signs or evidence of forced entry whatsoever. A 911 call received at 7:02 a.m. on November 25, 2010, from the cell phone of Tia Hendricks also clearly indicated an adult female voice desperately screaming, among other things, "Caron! Caron!"<sup>4</sup> In addition, the admitted DNA evidence strongly corroborated the Defendant as the offender.<sup>5</sup> And, of course, the Defendant admitted the offenses in his pleas of guilty.

The aggravated murder of Tahlia Hendricks, age nine, was not only the killing of a child under the age of thirteen, but also the killing of a person who, had she lived, could well have testified against the Defendant. The aggravating circumstance of "escaping detection, apprehension, trial or punishment," as set forth in R.C. 2929.04(A)(3), was, therefore, clearly established beyond a reasonable doubt. The specification regarding the age of the two children was also proven beyond a reasonable doubt, as was the specification as to the purposeful killing of two or more persons.

After the State of Ohio rested, the Defendant presented the following in mitigation:

<sup>2</sup> Tia: laceration of left common carotid artery and right internal jugular vein (Ex. 6B); Tyron: laceration of the right jugular vein, trachea and esophagus (Ex. 7B); Tahlia: lacerations of the left common carotid artery, left internal jugular vein and right common carotid artery (Ex. 5B). All autopsies were performed by Dr. An, M.D., forensic pathologist.

<sup>3</sup> See, e.g. Ex. 2A-25 (photo of door chain, uncut); 2A-28 (photo: no forced entry); 2A-35 (photo of blood on Defendant's shoes; shoe pattern seen in the blood).

<sup>4</sup> Ex. 11 (CD of 911 call), which was played in open court.

<sup>5</sup> The mathematical odds were listed in the quintillions to one of finding another person whose DNA matched the known sample of the Defendant's DNA that was found in the relevant samples taken.

1. **The background of the Defendant.** Specifically, counsel for the Defendant introduced the following evidence:

- a. The Defendant was raped by older boys when he was four (4) years old.<sup>6</sup>
- b. The Defendant had a lack of parental supervision.
- c. His father was never a part of his life.
- d. He was living with persons, including his mother, who abused alcohol and drugs.
- e. The "system" basically failed him and "unleashed" him.
- f. The Defendant tried, to a very real extent, to be a good father to his children and to others. Taniqa Montgomery, a registered nurse who teaches nursing at the Mt. Carmel College of Nursing, and who is related only through marriage to the Defendant (she married the Defendant's cousin), testified that the Defendant was someone who tried to defuse angry situations, and that there was something inside of him that is worth keeping alive. She noted that although the Defendant's mother provided nice things to the Defendant, and that although the Defendant's mother also took in other nieces and nephews to care for them, that she was "disengaged" as a parent. Nurse Montgomery explained that loving children means "being active in their lives." You put the child before yourself. Nurse Montgomery testified that she did not see the Defendant's mother do this.
- g. The Defendant's son, Kalen, testified that his father knew what was right.
- h. Ryan Clark, a much younger brother of the Defendant, testified that the Defendant was gentle and (in a "fun" way) was also rough with him. The Defendant helped him get his first job - a seasonal one - at the Honey Baked Ham Company.
- i. Cyrill Montgomery testified in mitigation that Michael Stovall, the step-father of the Defendant, had no real relationship with the Defendant's mother. Cyrill also noted that the Defendant gave him some encouraging advice to stick with his business.
- j. Two former Franklin County Children Services ("FCCS") workers, who had not seen the Defendant in years, independently came forward upon reading about the case in the newspaper. Both testified of their distinct recollection that FCCS had let the Defendant down. Roberta Thomas, one of the former FCCS workers, spent about a year with the Defendant. Tim Brown, the other FCCS worker, called the Defendant a "good kid" in relation to those who were there. The Defendant, Mr. Brown testified, was a "big old baby" who watched cartoons. Mr. Brown echoed Nurse Montgomery's testimony in noting that the Defendant's mother was not mean or nasty; she was simply disinterested. Mr. Brown testified that FCCS had "discarded" the Defendant. Both former FCCS workers noted how the Defendant responded to their kindness to him.

2. **Taking full responsibility for his actions.** The Defendant took full responsibility for his actions by entering pleas of guilty to all counts in the Indictment. The responsibility was also noted in the Defendant's unsworn statement: he noted how he "betrayed" the families of the victims, and how he let so many people down. He also noted how he tried to do his best, and asked for forgiveness.

<sup>6</sup> The rape is noted, *inter alia*, in Joint Exhibit One, "Social Summary," prepared 4/15/86, at p. 3; Joint Exhibit Two, in "Activity Notes," dated 4/20, handwritten note on 8<sup>th</sup> page, top of page, lines 2 and 3; and in Willson Family Child and Guidance Clinic, "date seen" 4/22/87, at p. 3.

3. **Potential for Rehabilitation.** Defendant's family members and the two former FCCS employees testified that the Defendant would be able to positively influence others while in prison, including family members and other prison inmates.
4. **Remorse.** The Defendant, in his unsworn statement, several times expressed remorse for what he had done.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### A. The Aggravating Factors

1. The Aggravating Factors have been admitted to and conceded by the Defendant. They are as listed, *supra*, at pp. 2-3. The Panel gave very significant weight to the aggravating factors regarding the killing of two children, aged nine and two, respectively. The murder of innocent children, especially a two-year-old, is one of the most extreme of any aggravating factors.
2. The aggravating factor of the purposeful killing of two or more persons does not merge with the aggravating factor of the killing of children under the age of thirteen. However, this aggravating factor has less independent weight, because it ties in with the killing of the children, which is another specification. Any independent weight it has is based on the third purposeful killing, the murder of Tia Hendricks.
3. The final aggravating circumstance involves a purposeful killing to escape detection, apprehension, trial or punishment. When considering all the facts and circumstances of this case, this circumstance is entitled to some weight, but not a great deal of weight. The panel notes that after committing the murders, the Defendant remained inside a locked apartment room with the three bodies. While it is true that the Defendant superficially injured himself in a poor -- and utterly futile -- attempt to appear as a victim, it is likewise true that, had he been seriously bent on escaping detection, he would not have stayed in the apartment until the police arrived, and could have tampered with the crime scene itself before leaving. There is no evidence he did this.

## B. The Mitigating Factors

1. **The background of the Defendant.** The most stressed mitigating factor by the Defendant was his background and upbringing. There is no question that the Defendant's upbringing was far from ideal. The family was spurned by the Defendant's biological father, and the stepfather was, from the evidence presented, abusive. The Defendant had extremely significant family losses, including the deaths of friends.

There was testimony that the Defendant responded positively to both Roberta Thomas and Tim Howard, then of FCCS. However, the records presented as Joint Exhibits One and Two present a very different record: that the Defendant's conduct while under treatment and while under the custody of Franklin County Children Services was not even moderately cooperative.<sup>7</sup> The April 30, 1988 report from the FCCS records (the last such report) does not show *any* progress on the part of the Defendant. To the contrary, he has now become involved in serious delinquent activity. He simply "does not seem to be worried about any legal consequences for his behavior." He "thoroughly intimidated some of his female teachers." He stole his mother's rental car, went joyriding, and hit a police cruiser. He also "made no effort" to eliminate inappropriate sexual behaviors from his lifestyle.

Previous reports show a similar picture. The April 23, 1987 report indicates that, despite the "greatly improved/almost always achieved" effort by Defendant's mother in her attempt to reunify the family, the Defendant continued to refuse to be cooperative.<sup>8</sup> He "lies when caught, even red handed."<sup>9</sup> He continued to lose points for "disrespect, agitation, infringement, fighting

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<sup>7</sup> The references here are numerous, and contained in both joint exhibits. See, e.g. Joint Exhibit One, FCCS Interoffice Communication, May 5, 1987, from Alvin R. Hadley, at paragraph 4: "It does not appear, in my judgment, that residential treatment has resulted in positive impact with respect to Caron's behavior. In fact, his behavior may be more negative/antisocial than when he was placed in residence at Franklin Village."

<sup>8</sup> In the April, 1988 report, the Defendant's mother appears to have totally given up. She went so far as to claim she was not at work when a caseworker went there to try to talk to her.

<sup>9</sup> Joint Exhibit I, Placement Treatment Plan Evaluation, 4/23/87, at p. 3, Sec. B, Objective #1, 3<sup>rd</sup> paragraph.

and being uncooperative.”<sup>10</sup> That report also noted that the Defendant is “a particularly frustrating youth to work with because he is so well defended and will offer no information even about the most innocuous thing.”

In essence, the Panel found the agency records, which were replete with examples and which were fairly contemporaneous with the events noted in them, much more credible than the testimony, made without reference to any records, of Ms. Thomas and Mr. Brown, who were relying on their memories of events that occurred about 25 years ago. While this Panel did not conclude that these witnesses had “an agenda,” as the prosecution claimed in closing argument, the witnesses also provided no records to corroborate any critical statements made regarding Franklin County Children Services.

Therefore, the mitigating factor related to the Defendant’s background is entitled to some weight.

## **2. Taking full responsibility for his actions.**

The Panel noted both, the plea of guilty to the Indictment and the unsworn statement of the Defendant, in considering this mitigating factor. While this factor is not without some substance, the Panel’s consideration of the weight to be given here is tempered by the Defendant’s attempt to portray himself as a possible victim by inflicting some small cuts on himself prior to the arrival of the police. The timing is obviously different: the Defendant’s taking full responsibility later in time has some merit to it, but all in all, the Panel found negligible weight to this offered mitigating factor.

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<sup>10</sup> Id., at p. 4, Objective #2, large paragraph, lines 4-6.

### **3. Potential for Rehabilitation.**

The Defendant noted in his unsworn statement that he still has two boys, and asked that his life be spared so that he could be a dad from prison. Other witnesses, most notably, Ms. Thomas, Mr. Brown, and Nurse Montgomery, testified that the Defendant's life has value.

The Court did not find a great deal of mitigating weight regarding this evidence. There is precious little, if anything, in the record – from the joint exhibits, to the in-court testimony, to the unsworn statement – that suggests that the Defendant actually is amenable to rehabilitation. He left his children when they were very young (ages four and six, respectively, as to Kalen Montgomery and Caron (Ron-Ron) Montgomery). The overwhelming portion of his life strongly suggests that his life was centered around himself. Most relationships that were formed, for whatever period of time, appear to have been formed in spite of the Defendant, and not because of him. As the Defendant said in his unsworn statement, he was a mess-up, always in trouble. This offered mitigating factor is entitled to very little weight.

### **4. Remorse.**

The Defendant immediately noted in his unsworn statement that he was very sorry for “what I did.” He acknowledged that he “took [his] family,” and that this was a selfish act. He noted that he was sorry from the bottom of his heart. Later in the statement, he reiterated his sorrow and apologized “for letting everybody down.” He continued his apology by apologizing for taking [the lives of] Tia, Tahlia and Tyron. He closed his brief statement by asking for forgiveness.

It is difficult to gauge the overall authenticity of the Defendant's sentiments. The mitigation witnesses who testified on the Defendant's ability to act in conformity with the advice he gave, specifically Kalen Montgomery and Ryan Clark, noted that what the Defendant said and

what he later did were quite different. The joint exhibits are replete with incidents of the Defendant's inability to mature. In other words, the Defendant's overall history belies a finding that his statement was a fundamentally honest one. The Panel gives this offered mitigating factor scant weight.

#### **5. Cumulative Weight of the Factors Presented in Mitigation.**

The Panel found that none of the factors presented in mitigation had any significant weight. Collectively, although the Panel noted the presence of some mitigation<sup>11</sup> in the evidence, that amount of mitigation was not great.

#### **Weighing of the Aggravating Factors and the Mitigating Circumstances.**

The Panel reviewed the mitigating factors, individually and collectively, and discussed them at great length. After a complete discussion, each member of the Panel presented an individual review of the aggravating circumstances and the mitigating factors. In essence, the Panel concluded that the mitigation evidence paled in comparison to the aggravating circumstances. The purposeful killings of two children, both under the age of thirteen, are horrific aggravating circumstances. As a result, when the Panel voted after all discussion had been completed, each judge gave a summary of his opinion as to the weighing process, and each judge individually and independently concluded that in this case, the aggravating circumstances outweighed the mitigating factors beyond a reasonable doubt.

Based upon this conclusion, the Panel unanimously voted to sentence the Defendant to death. This unanimous finding was announced to the Defendant in open court, on May 15, 2012. Sentencing was then set for May 22, 2012, at 9:00 a.m.

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<sup>11</sup> Joint Exhibit Two, in the Discharge Summary, dated October 13, 1987, and which was written by Dr. Rolnick, notes that the Defendant moved from "very poor" to "poor" in the Assessment of Progress on page 1, a slight improvement. The testimony of the mitigation witnesses also mentioned some good advice the Defendant had given some people, from (unfollowed) life lessons in general to one particularly helpful specific piece of advice regarding a cousin's business.

On May 22, 2012, the Court, through its presiding judge, Guy L. Reece, II, asked counsel for the Defendant if they had anything further to add. Mr. Weisman briefly addressed the Court, and Ms. Dixon noted how Mr. Weisman had said everything she wished to say. The Defendant declined to comment prior to sentencing.

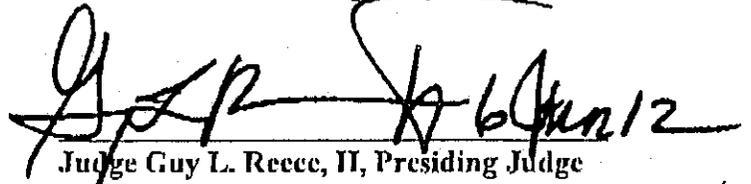
After the defense presentation, the Court recessed, privately reaffirmed its decision on punishment, then reconvened to hear from any other persons involved in the case. Several family members were brought forward by the Victim Witness Advocate, and they addressed the Court as well as the Defendant. After they were finished speaking, the Court, through Judge Reece, sentenced the Defendant. The complete sentence rendered is noted in a separate Sentencing Entry.

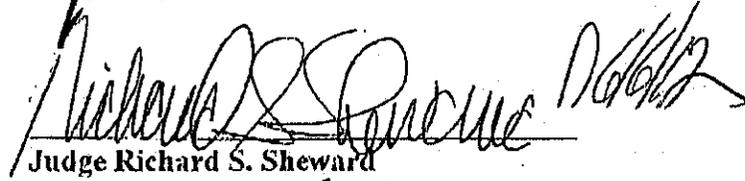
This Decision notes, hopefully adequately, how much the Panel considered the evidence presented and the gravity with which it took its responsibility. The particular judges on this case have had a great deal of experience involving death penalty cases, and the decision reached herein was made neither in haste nor in passion, but after careful consideration of all the evidence. It is not an easy thing to sentence another human being to death, and each member of the Panel clearly felt the weight of that responsibility. However, it must be noted that in the unanimous and individual opinion of the Panel's judges, the aggravating circumstances not only outweighed, but overwhelmed the mitigating factors, beyond any reasonable doubt.

**Conclusion of Law**

Having found that the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt, the Panel finds that the Defendant shall suffer the death penalty.

It is so ordered.

  
Judge Guy L. Reece, II, Presiding Judge

  
Judge Richard S. Sheward

  
Judge Patrick E. Sheeran