

ORIGINAL

In The Supreme Court of Ohio

State of Ohio, :
 Appellee, : Case No. **12-1644**
 -vs- : **Appeal taken from Trumbull**
 Nathaniel Jackson, : **County Court of Common Pleas**
 Appellant. : **Case No. CR 01-CR-794**
 : **This is a death penalty case**

NOTICE OF APPEAL OF APPELLANT NATHANIEL JACKSON

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Trumbull County Prosecuting Attorney

OFFICE OF THE
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COUNSEL FOR APPELLEE

COUNSEL FOR APPELLANT

In The Supreme Court of Ohio

State of Ohio, :
Appellee, : **Case No.**
-vs- : **Appeal taken from Trumbull**
 : **County Court of Common Pleas**
Nathaniel Jackson, : **Case No. 01 CR 794**
Appellant. : **This is a death penalty case**

NOTICE OF APPEAL OF APPELLANT NATHANIEL JACKSON

Appellant Nathaniel hereby gives notice of appeal to the Supreme Court of Ohio from the judgment entries of the Trumbull County Court of Common Pleas, entered on August 14 and August 16, 2012. See Exhibits A, B, and C. This is a capital case and the date of the offense is December 12, 2001. See Supreme Court Rule of Practice 19.1

Respectfully submitted,

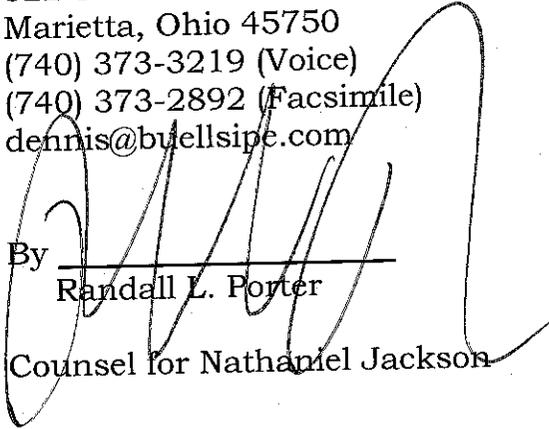
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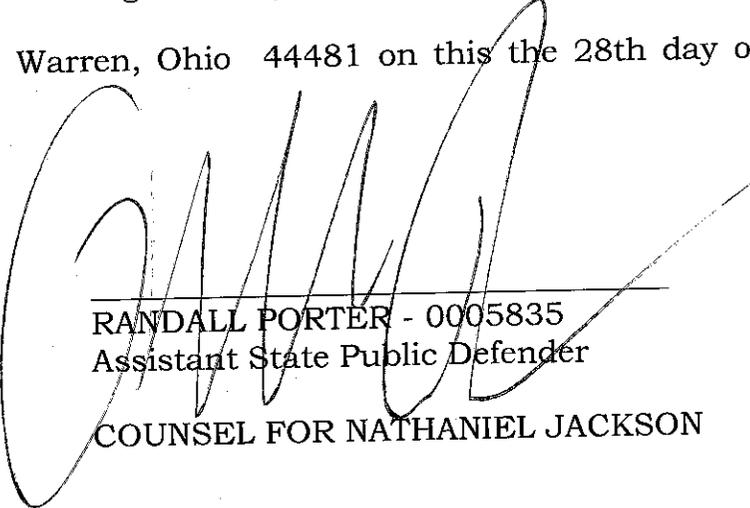
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By 
Randall L. Porter
Counsel for Nathaniel Jackson

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Notice Of Appeal of Appellant Nathaniel Jackson* forwarded by electronic and regular U.S. Mail to Luwayne Annos, Assistant Prosecuting Attorney, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this the 28th day of September, 2012.


RANDALL PORTER - 0005835
Assistant State Public Defender

COUNSEL FOR NATHANIEL JACKSON

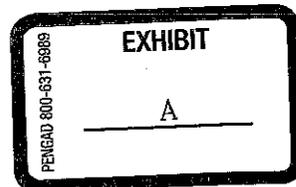
IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

CASE NO. 01-CR-794

STATE OF OHIO,)	JUDGE JOHN M. STUARD
)	
PLAINTIFF)	
)	
vs.)	<u>JUDGMENT ENTRY</u>
)	
NATHANIEL JACKSON,)	<u>ENTRY ON SENTENCE</u>
)	
DEFENDANT)	

On August 14, 2012, Defendant, Nathaniel Jackson's sentencing hearing was held pursuant to O.R.C. Section 2929.19. Defense Attorneys, Anthony Consoldane and James Lewis, and Prosecutor Dennis Watkins and Assistant Prosecutor Charles Morrow were present, as was Defendant, Nathaniel Jackson, who was afforded all rights pursuant to Criminal Rule 32. The Court has considered the record and oral statements, as well as the principles and purposes of sentencing under O.R.C. Section 2929.11, and has balanced the seriousness and recidivism factors of O.R.C. Section 2929.12.

Pursuant to law, the Trial Court this day, August 14, 2012, having determined in a separate opinion of specific



findings that the aggravating circumstances as to the count of Aggravated Murder outweigh the mitigating factors by proof beyond a reasonable doubt, then made inquiry as to whether the Defendant had anything to say why judgment should not be pronounced against him, and the Defendant in answer showed no good cause or sufficient reason why sentence should not be pronounced.

The Court has considered the factors under O.R.C. Section 2929.14 and makes the following findings:

- 1) The shortest prison term will demean the seriousness of the Defendant's conduct;
- 2) The longest prison term is appropriate because the Defendant committed the worst form of the offense;
- 3) Multiple prison terms are necessary to protect the public from future crime and to punish the offender;
- 4) Consecutive prison sentences are not disproportionate to the seriousness of the Defendant's conduct and to the danger the offender poses to the public;
- 5) The harm caused by the multiple offenses was so great that no single prison term for any of the

offenses committed as part of a single course of conduct adequately reflects the seriousness of the Defendant's conduct; and

6) The Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Defendant, Nathaniel Jackson, be taken from the courtroom to the Trumbull County Jail and from thence to the Correction Reception Center at Lorain, Ohio, and thereafter be sentenced to death on August 15, 2013, on Count One; and imprisoned therein for the stated prison term of ten (10) years on Count Three; plus a mandatory term of three (3) years on the Firearm Specification to be served prior to and consecutive to the sentence imposed in Count Three; ten (10) years on Count Four, plus a mandatory term of three (3) years on the Firearm Specification to be served prior to and consecutive to the sentence imposed on Count Four; sentence in Count Four to be served consecutively to the sentence imposed on Count Three. Firearm Specifications in Count Three and Count Four shall merge as one sentence in Count Three as a matter of law.

Defendant is Ordered to the cost of prosecution taxed in the amount of \$ _____ for which execution is awarded.

8/14/12

John M. Stuard

DATE

JUDGE JOHN M. STUARD

THE CLERK OF COURTS IS HEREBY ORDERED TO SERVE COPIES OF THIS ENTRY TO ALL COUNSEL OF RECORD.

John M. Stuard
JUDGE JOHN M. STUARD

You are hereby notified that you have been convicted of a felony of violence and pursuant to Section 2923.13 of the Ohio Revised Code, you are prohibited from acquiring, having, carrying or using any firearm or dangerous ordnance.

KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY
2012 AUG 14 PM 4:17
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
CASE NO. 01-CR-794

STATE OF OHIO,)

Plaintiff)

vs.)

NATHANIEL E. JACKSON,)

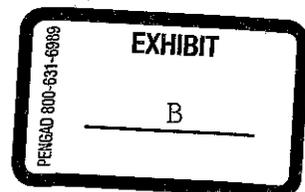
Defendant)

FINDINGS OF FACTS

AND CONCLUSIONS OF LAW

The Defendant, Nathaniel E. Jackson, having entered a plea of not guilty, this matter proceeded to trial, and the Defendant being found guilty was sentenced by this Court.

The matter is before the Court on remand from the Supreme Court of Ohio pursuant to the Court's opinion and order on remand. The remand is quite specific wherein having found no prejudicial error in regard to Defendant, Nathaniel Jackson's conviction, the conviction and judgment of the Court was affirmed. The reviewing Court went on to state the opinion that the administrative act of typing this Court's opinion evaluating the appropriateness of the death penalty as required by R.C. 2929.03(F) was defective. The Supreme Court apparently thought the prosecution participated in the Court's conclusions as set forth in the final opinion.



This writer has presided over the trials of each of the Co-Defendants, Nathaniel Jackson and Donna Roberts. He has reviewed and decided the appropriateness of the death penalty option in both cases as required by O.R.C. 2929.03 and now does so again as ordered by the Ohio Supreme Court.

On November 8, 2002, a Trumbull County jury returned a verdict finding the Defendant, Nathaniel E. Jackson, guilty of two (2) counts of Aggravated Murder arising from the death of Robert S. Fingerhut. Since Count 1 and Count 2 of the indictment merge for sentencing purposes, the State elected to dismiss Count 2 and proceed to the mitigation phase on the 1st count of the indictment. Therefore, for the purposes of this opinion, the Defendant was convicted, under the 1st count of the indictment, of purposely, and with prior calculation and design, of causing the death of Robert S. Fingerhut. The jury further found that the State had proved beyond a reasonable doubt the specifications of Aggravating Circumstances. After the mitigation hearing, the jury concluded that the State had proved beyond a reasonable doubt that the Aggravating Circumstances outweighed the mitigating factors and returned a verdict recommending that the sentence of death be imposed upon the Defendant.

Factually, the evidence presented by the State revealed that while the Defendant was in prison for a prior conviction unrelated to the present case, he along with the co-defendant, Donna Roberts, plotted the murder of her housemate and ex-husband, Robert S. Fingerhut.

The police authorities in investigating the death of Robert S. Fingerhut found two (2) boxes of personal letters written between Jackson and Roberts, wherein they planned in great detail how the murder of Robert s. Fingerhut would be carried out. The police also found numerous phone call recordings from the institution in which Jackson had been incarcerated wherein specific preparations were discussed.

The State, therefore, had a plethora of information in the handwriting of both Co-Defendants wherein they plotted the murder of Robert's housemate, and ex-husband, Robert S. Fingerhut. Indeed, both of them conceived and executed a plan to kill Fingerhut in order to permit the Defendant, Roberts, to live "happily ever after." However, the plan went awry when Jackson, who was in the house where Fingerhut resided, was shot in the left index finger during the execution of Fingerhut. He then took Fingerhut's car keys and drove the vehicle which Fingerhut typically operated to his business location in to Youngstown. Shortly thereafter, Roberts took the Defendant to

a motel in Boardman and rented a room where Jackson could hide out. Ultimately, the Defendant was captured at a house in Youngstown, and gave a statement to the police alleging self defense.

More specifically, the State introduced evidence that on December 11, 2001, two (2) days after the Defendant was released from prison, Robert S. Fingerhut, while in his home, was pistol whipped and shot 3 times, causing at least four injuries from gunshots. Two of the injuries were to the back, with one grazing the back, and the other entering near the shoulder before exiting out the chest area of the victim. Fingerhut also sustained a defensive gun shot wound to the webbing of his left hand between the thumb and forefinger. The fatal gunshot was to the top of Fingerhut's head and from a short distance. This injury "would have dropped him like a sack of potatoes," as testified to by Dr. Humphrey Germaniuk, the coroner.

Police responded to the crime scene as a result of a 911 call. When they arrived at approximately 12:01 a.m., they were met by the Co-Defendant, Donna Roberts, who informed them that her ex-husband's car was missing. She also granted them permission to search the residence and her car. During this search, police found more than 140 letters from the Defendant

to Roberts in her dresser, and an equal number of letters from Roberts to the Defendant in the trunk of Roberts' car, in a paper bag bearing the Defendant's name and prison number.

Additionally, law enforcement officers were able to obtain 19 telephone conversations, lasting more than three (3) hours, which were recorded while the Defendant was incarcerated in Lorain Correctional Institution. These telephone conversations, along with the letters which spanned three (3) months, revealed a continuing and evolving plan to kill Fingerhut immediately upon the Defendant's release from prison.

The evidence also revealed that Roberts, near the time of the murder, was seen driving her automobile in a very slow manner away from the vicinity of the home where Fingerhut lived. Furthermore, within two (2) hours from the last time Fingerhut was seen alive, Roberts rented a hotel room for the Defendant. In this room, bloody bandages and other medical supplies were found by hotel cleaning people and were subsequently collected by police.

The car which was usually driven by Fingerhut, and which had been reported stolen by the Co-Defendant, was recovered in Youngstown, Ohio. Bloodstains were located throughout the vehicle and were collected by law enforcement. DNA analysis revealed that the blood matched that of DNA profile of the

Defendant.

The State also introduced evidence that Roberts and the Defendant discussed purchasing a "new Lincoln" or "2002 Cadillac DeVille" for the Defendant. Additionally, Fingerhut had two (2) life insurance policies with a total death benefit of \$550,000.00 and with Donna Roberts named as the beneficiary.

Based upon this and other evidence, the jury properly concluded that the Defendant committed a burglary to facilitate the premeditated and the purposeful murder of the victim Fingerhut along with the Co-Defendant Roberts. The Defendant after executing his plan, then stole Fingerhut's vehicle which allowed the jury to find that the murder was committed while committing the aggravating circumstances of Aggravated Burglary and Aggravated Robbery.

In a case of this nature, pursuant to O.R.C. 2929.03(D)(3), the Court is required to determine whether the State has proved beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors. Indeed the Supreme Court of Ohio has stated in State v. Wogenstahl (1996), 75 Ohio St. 3d, 344:

The nature and circumstances of the offense may only enter into the statutory weighing process on the side of mitigation...In the penalty phase of a capital trial, the 'aggravating circumstances' against which the mitigating evidence is to be weighed are limited to the specifications of aggravating circumstances set forth in

RC 2929.04(A)(1) through (8) that have been alleged in the indictment and proved beyond a reasonable doubt. (See Wogenstahl at 356)

In performing its statutory duty, a review of the aggravating circumstances is required.

- 1.) *The Defendant committed the Aggravated Murder while he was committing, attempting to commit, or fleeing immediately after committing Aggravated Burglary and that he was the principal offender.*

The evidence presented at trial reflected that the Defendant trespassed in the victim's dwelling and murdered him. The Court finds that the Defendant entered into 254 Fonderlac Drive in Howland Township. He was wearing gloves and armed with a gun, with which he struck the victim leaving a mark on Fingerhut's face. Once in the house, he fired the gun three times causing four (4) separate wounds. The fatal shot was to the top of Fingerhut's head, and nearly straight down.

From the aforementioned evidence, the Jury concluded that the Defendant committed the Aggravated Murder while he was committing, attempting to commit, or fleeing immediately after committing Aggravated Burglary and that he was the principal offender.

- 2.) *The Defendant committed the Aggravated Murder while he was committing, attempting to commit, or fleeing immediately after committing Aggravated Robbery and*

that he was the principal offender.

As he was driving away from the crime scene, and prior to abandoning the vehicle in Youngstown, he left blood evidence throughout the car. This evidence was subjected to DNA testing, which confirmed that forensically, it was his blood. Quite simply, the Defendant committed the Aggravated Robbery to escape the consequences of his prior murderous act.

This evidence permitting the jury to conclude that the Defendant committed the Aggravated Murder while he was committing, attempting to commit, or fleeing immediately after committing Aggravated Robbery and that he was the principal offender.

To be weighed against the aggravating circumstances are the mitigating factors. In this case, the following factors were considered by the Court as possible mitigation against each specification and against the imposition of the death penalty:

- 1.) *The nature and circumstances of the offense, the history, character, and background of the offender.*

As was noted in Wogenstahl, supra, the nature and circumstances of the offense may only enter into the statutory weighing process on the side of mitigation. However, in this

case, reviewing the nature and circumstances, the Court does not find any credible evidence which would allow the Court to accord any weight to the nature and circumstances of the offense against the imposition of the death penalty.

In considering the history, character and background of the offender, this Court considered the home life of the Defendant and the fact that he grew up in a relatively poor environment, and that he was cared for and raised by his mother and maternal grandmother. His biological father had little, if any, real involvement with him, and this lack of a father figure likely contributed to his behavioral problems.

Though the Court gives some weight to the Defendant's upbringing, it deserves little weight because of the credible testimony from the Defendant's step-father, his sister, his mother, and Dr. McPherson. These witnesses testified that the Defendant was respectful to both his mother and grandmother. His sister, who described him as smart and really kind, noted that they attended church. Further, there was testimony offered that he was reared in an environment, where he was not physically or sexually abused. His mother also declined to say that his home was in a "rough neighborhood," or that the Defendant had any problems in school. Dr. McPherson's report noted that the Defendant had not been hospitalized for any

physical or mental condition. The witnesses also notes that they practiced moral tenets and that responsibility and respect were taught.

In conclusion, from the testimony of these witnesses, there is nothing particularly evident to show an unusual childhood or to offer an explanation for the Defendant's behavior which would be entitled any significant weight on the side of mitigation.

2.) *Whether the victim of the offense induced or facilitated the killing.*

Although under R.C. 2929.04(B)(1), the mitigating factor regarding whether the victim of the offense induced or facilitated it, was not specifically argued by the Defendant during the penalty phase of the trial as mitigating, the Court did consider the Defendant's videotaped statement presented in evidence during the trial phase. In the self-serving statement, the Defendant claimed that the killing of the victim was as a result of the Defendant protecting himself from an unprovoked attack by the victim.

This statement to the police attempted to construct a scenario wherein the victim approached the Defendant to purchase marijuana and then invited the Defendant into his home. The Defendant then claims that the victim then pulled a

gun on him. The Defendant asserted that he attempted to disarm the victim, but the gun went off apparently striking the victim. However, the other facts illustrating the planning and execution of the murder, along with the physical evidence introduced, causes the Defendant's version not to be credible. As such, the Court does not accord any weight to this mitigating factor.

3.) *Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.*

Again, while the Defendant did not specifically argue this mitigating factor, the Court upon reviewing the video tape, noticed that the Defendant claimed that the victim made derogatory statements about the Defendant's race which angered the Defendant. However, this comment is likewise not convincing for the same reasons noted previously. This mitigating factor has no weight.

4.) *Any other factors that are relevant to the issue of whether the offender should be sentenced to death.*

Under R.C. 2929.04(B)(7), commonly referred to as the "catch all provision," the Court reviewed the Defendant's capacity to appreciate the criminality of his conduct in light

of the defense expert testimony regarding his mental history and mental state at the time of the offense was considered as a possible factor under R.C. 2929.04(B)(3).

This testimony revealed that the Defendant suffered from Attention Deficit Disorder/Hyperactivity Disorder, Chemical Dependency, and a reported history of alcohol abuse. Further, the evidence disclosed that the Defendant had an Antisocial Personality Disorder and was considered low average or better in intelligence.

Significantly, however, there was no evidence presented that the Defendant, at the time of the offense, had any mental disease or defect or that he lacked the capacity to appreciate the criminality of his conduct. His Antisocial Personality Disorder only showed that he had a history of inappropriate and impulsive behavior from his early childhood to the present. He was incarcerated four (4) times. According to the Defendant's own expert, the Defendant, throughout his juvenile and adult life had received repeated treatment and/or probation for his criminal transgressions and his drug and alcohol abuse. He did not learn from his past mistakes, but only escalated his antisocial conduct.

In summary, this Court gives very little weight in mitigation to the Defendant's mental status, and his drug and

alcohol abuse history especially in light of the Defendant's elaborate scheme to kill the victim, elude capture, and finally his attempt to deceive police officers with a statement blaming the victim.

Further under R.C. 2929.04(B)(7), the Court examined the Defendant's ability to maintain himself in a stable fashion in a structured setting. Indeed, it was suggested by the Defense that he could be a productive member of the general prison population, and that this should be considered as mitigating. However, the Court gives slight weight to this particular factor.

The Defendant's last incarceration was the result of him not learning from his past mistakes, and from his tendency to act out impulsively without looking at the consequences. Furthermore, he repeatedly was placed on probation, but he continued to digress, committing more serious criminal acts. Indeed, during the last incarceration, the Defendant claimed to have "found God" and that he was going to straighten out his life. At the same time, it is abundantly clear that he was plotting to commit the ultimate criminal act, a premeditated burglary and murder, while pre-textually presenting himself to prison officials as a good candidate for a release program. Quite simply, in the very setting in which the Defense suggests

that he could be a productive member, the Defendant defined and refined a plot, involving gloves, a mask and handcuffs, to murder Robert S. Fingerhut so that in effect he could assume Fingerhut's lifestyle, including running the Greyhound bus business, managing rental properties, and living in his home with Fingerhut's ex-wife.

The Defendant also offered an unsworn statement, wherein he stated that he was "very sorry for what happened." The Court likewise gives this statement slight weight as the statement lacked sincerity. The tone and tenor of the apology did not, in the Court's opinion, come from someone who was genuinely remorseful. Even assuming that the Defendant was remorseful, such retrospective remorse is not entitled to any significant weight. To the contrary, the Court believes that the Defendant's feigned remorse stems from the fact that the Defendant was apprehended. The Defendant was disappointed that the fool-proof, premeditated murder plot, which he developed over nearly three (3) months, and which included shooting the victim "in the 'F'ing head," failed.

When independently weighing the aggravating circumstances as to the Aggravated Murder as previously outlined against the collective factors in mitigation, this Court finds that the aggravating circumstances not only outweigh the mitigating

factors by proof beyond a reasonable doubt, but in fact, they almost completely overshadow them.

The State of Ohio has recognized that under certain circumstances, the death penalty is an appropriate sanction for any Defendant who commits an Aggravated Murder during the commission of certain felonies. In the case at bar, the underlying felonies are Aggravated Burglary and Aggravated Robbery.

In this particular case, the Court accords substantial weight to the Aggravated Burglary specification. In order to prove an Aggravated Burglary, the State is required to demonstrate that the Defendant trespassed in the occupied structure for the purpose of committing a criminal act. In most instances, this criminal act is a theft offense. Occasionally, a Defendant will trespass to commit a kidnapping or even a rape. Such criminal acts provide the basis upon which a Defendant can be convicted of Aggravated Burglary. Then, if during any of these underlying criminal acts, the victim is purposely killed, an Aggravated Murder with the specification of Aggravated Burglary has been committed. These alone can permit the imposition of the death penalty should the aggravating circumstance of the Aggravated Burglary be found to outweigh the mitigating factors.

Under the facts in the instant case, this Court cannot foresee of any other form of Aggravated Burglary where the weight to be given to this aggravating circumstance could ever be greater. The evidence reveals that the sole purpose for the Defendant's illegal entry in the Fingerhut residence was not to commit a theft, a kidnapping or a rape, but rather to carry out the premeditated, cold blooded execution of Robert S. Fingerhut. This is the most heinous form of Aggravated Burglary, and it is entitled to unsurpassed weight. Further, in this Court's view, this aggravating circumstance, standing alone, outweighs all of the evidence presented in mitigation.

The Court further gives weight to the Aggravated Robbery specification. After shooting the victim in the head, the Defendant took personal property of the victim to effectuate his escape. Indeed, the Defendant stole the victim's keys and his car.

Against this backdrop, the mitigating factors of the Defendant's background, history and character, his Antisocial Personality Disorder, his Attention Deficit Disorder, his history of drug and alcohol abuse, as well as his unsworn statement, have very little effect in minimizing, lessening, or excusing the degree of the Defendant's murderous conduct. From the overwhelming evidence, it is this Court's opinion that the

Defendant and the Co-Defendant plotted the murder of Robert S. Fingerhut solely to collect \$550,000.00 in insurance proceeds. This was accomplished by trespassing in the residence where Fingerhut resided, for the sole purpose of ambushing and murdering him.

Upon consideration of the relevant evidence raised at trial, the relevant testimony, the other evidence, the unsworn statement of the Defendant, and the arguments of counsel, it is the judgement of this Court that the aggravating circumstances, outweigh, by proof beyond a reasonable doubt, the collective mitigating factors.

8/14/12

DATE

John M. Stuard

JUDGE JOHN M. STUARD
COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

TO THE CLERK OF COURTS: YOU ARE ORDERED TO SERVE COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD OR UPON THE PARTIES WHO ARE UNREPRESENTED FORTH WITH BY ORDINARY MAIL

John M. Stuard
JUDGE

KAREN INFANTE ALLEN
CLERK OF COURTS
TRUMBULL COUNTY
2012 AUG 14 PM 4:17
TRUMBULL COUNTY
CLERK OF COURTS

MARSH INFANTS ALIEN
CLEAN OF COURTS
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TRUMBULL COUNTY
CLEAN OF COURTS

**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION-
TRUMBULL COUNTY, OHIO**

CASE NUMBER: 2001 CR 00794

**STATE OF OHIO
PLAINTIFF**

VS.

JUDGE JOHN M STUARD

**NATHANIEL E JACKSON
DEFENDANT**

**SENTENCED TO THE LORAIN
CORRECTIONAL FACILITY**

**NUNC PRO TUNC
JUDGMENT ENTRY ON SENTENCE**

A DEATH PENALTY CASE

The Court has prepared this Nunc Pro Tunc Judgment Entry on Sentence for the purpose of correcting the original Entry on Sentence filed in this case on August 14, 2012. On August 15, 2012, Atty. Charles Morrow filed a Motion to Correct Entry on Sentence alerting the Court to the fact that certain clerical errors were present in the August 14, 2012 sentencing entry. The Court has reviewed the motion as well as the August 14, 2012 sentencing entry and finds the entry contained several inadvertent errors. Therefore, the Court renders this Nunc Pro Tunc Judgment Entry on Sentence for the purpose of correcting the August 14, 2012 Entry on Sentence previously prepared by the Court.

On August 14, 2012, Defendant, Nathaniel Jackson, was brought before this Court for the purposes of re-sentencing after the original sentence was vacated by the Eleventh District Court of Appeals on October 18, 2010. On August 14, 2012, the Defendant's sentencing hearing was held pursuant to R.C. 2929.19. The

PENGAD 800-631-6889
EXHIBIT
C

represented by Atty. Randall L. Porter. Also present in Court was Atty. John P. Parker.¹ Atty. Charles L. Morrow and Atty. LuWayne Annos were present in Court on behalf of the State of Ohio.

The Defendant was afforded all rights pursuant to Crim.R.32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under R.C. 2929.11 and has balanced the seriousness and recidivism factors of R.C. 2929.12.

The Court has previously set forth in a separate opinion of specific factual findings that the aggravating circumstances as to Count One; Aggravated Murder, outweigh the mitigating factors by proof beyond a reasonable doubt. The Court inquired of the Defendant at the hearing in this matter as to whether he had anything to say why judgment should not be pronounced against him. The Defendant, in answer, showed no good cause or sufficient reason why sentence should not be pronounced.

The Court has considered the factors under R.C. 2929.14 and makes the following findings: (1) The shortest prison term will demean the seriousness of the Defendant's conduct; (2) the longest prison term is appropriate because the Defendant committed the worst form of the offense; (3) multiple prison terms are necessary to protect the public from future crime and to punish the offender; (4) consecutive prison sentences are not disproportionate to the seriousness of the Defendant's conduct and to the danger the offender poses to the public; (5) the harm caused by the multiple offenses was so great that no single prison term for any of the offenses committed as part of a single course of conduct adequately reflects the seriousness of the Defendant's conduct;

¹ Atty. Parker advised the Court during the sentencing hearing that a conflict existed which prevented him from representing the Defendant for the purposes of this sentencing hearing.

and (6) the Defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the Defendant.

It is therefore, ORDERED, ADJUDGED and DECREED that:

1. The Defendant is hereby sentenced to death on August 15, 2013 on Count One;
2. The Defendant serve an prison term of Ten (10) Years on Count Three plus Three (3) Years on the firearm specification;
3. The Three (3) Year imprisonment term on the firearm specification shall be served prior to and consecutive to the imprisonment term for the underlying offense in Count Three for a total imprisonment term of Thirteen (13) Years on Count Three;
4. The Defendant serve a prison term of Ten (10) Years on Count Four plus Three (3) Years on the firearm specification;
5. The Three (3) Year imprisonment term on the firearm specification shall be served prior to and consecutive to the imprisonment term for the underlying offense in Count Four for a total imprisonment term of Thirteen (13) Years on Count Four;
6. The imprisonment term on Count Four shall be served consecutive to the imprisonment term imposed on Count Three;
7. The firearm specifications in Count Three and Count Four shall merge for the purposes of sentencing in Count Three as a matter of law;
8. The Defendant is ordered to submit to DNA testing;
9. The Defendant shall pay the cost of prosecution taxed in the amount of \$ _____ costs for which execution is awarded.

As to Counts Three and Four, the Court has further notified the Defendant that post-release control is mandatory in this case for Five (5) Years, as well as the consequences for violating conditions of post-release control imposed by the Parole Board under R.C. 2967.28. The Defendant is ordered to serve as part of this sentence any term of post-release control imposed by the Parole Board, and any prison term for violation of that post-release control.

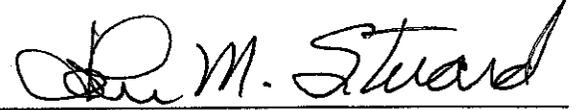
As to Count One, the Court has further notified the Defendant that post-release control is mandatory if the Defendant is released on parole before serving the Death Sentence in Count One. The maximum possible parole period is equal to a Life Sentence imposed for the Aggravated Murder charge in Count One. A violation of any parole rule or condition may result in (1) a more restrictive sanction while released; (2) an increased duration of parole supervision, up to the maximum set out above; and/or (3) re-imprisonment for a period of time equal to the Life Sentence. If the Defendant commits another felony while subject to this period of parole or supervision, or if by some other means violates the conditions of parole, he may be sent back to prison to serve out the remainder of the Life Sentence imposed.

The Defendant is hereby advised that most prison inmates are eligible to earn days of credit against their prison sentences for each completed month of productive participation in educational or employment programs developed by ODRC with specific standards for performance by prisoners. Some inmates, including those confined for sex offenses and the most dangerous first and second degree felonies and homicides are not eligible to earn days of credit.

The Court further disapproves of the Defendant's placement in a program

of shock incarceration pursuant to R.C. 5120.031 or for placement in an intensive prison program pursuant to R.C. 5120.032.

IT IS SO ORDERED.

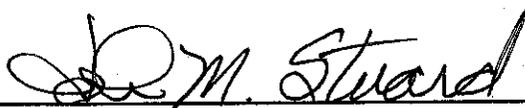


JUDGE JOHN M STUARD

Date:

8/16/12

**TO THE CLERK OF COURTS: You Are Ordered to Serve
Copies of this Judgment on all Counsel of Record
or Upon the Parties who are Unrepresented Forthwith
by Ordinary Mail.**



JUDGE JOHN M STUARD

8-16-12
copies to:
Prof.
R. Porter